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Sobriety in a post-genocidal society: Good neighborliness among victims and aggressors in Rwanda?

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Sobriety in a post-genocidal society: good neighborliness among victims and aggressors in Rwanda?

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> People come to Rwanda and talk of reconciliation. It's offensive. Imagine talking to Jews of reconciliation in 1946. Maybe in a long time, but it's a private matter. (Edmond Mrugamba, quoted in Gourevitch, 1998, p 240)

Overview

In the months of April to July, 1994, an estimated 800,000 Rwandans—roughly 10 percent of the total population—were murdered by their fellow citizens. For the most part, the violence was orchestrated by the majority Hutu group against the minority Tutsi group, although many Hutu who were opposed to or even ambivalent about the extirpation of the Tutsi were also persecuted. Tutsi and Hutu had previously lived deeply intermingled for centuries: not as tribes, but as social groups within the same culture (Prunier, 1995, p 403). It was the assassination of Juvénal Habyarimana, the then Hutu President of Rwanda (and leader of the Hutu expansionist party), on April 6, 1994, which triggered the genocide and uncorked simmering ethnic tensions. DesForges (1995, p 9) and Prunier (1995, pp 213–221) provide considerable evidence that Habyarimana was assassinated by extremist Hutu within his own party. The genocide ended when the Rwandan Patriotic Army—primarily composed of Tutsi émigrés in Uganda—invaded Rwanda and ousted the murderous Hutu Power regime. A new regime, called the Government of National Unity (but led by the Tutsi-dominated Rwandan Patriotic Front (RPF)), took over the reins of power.

The Rwandan genocide has given rise to considerable discussion as to what the origins of a genocide may be. Most recently, the Organization for African Unity has established an "eminent persons' group" to investigate the underlying causes of the Rwandan mass murder. The Rwandan genocide has also given rise to debate on how to retrospectively "deal with" a genocide. For the most part, this has involved discussion about the appropriate level of judicial intervention. I have been part of this debate;[2] I have also been part of the judicial response to the Rwandan genocide, having served as a public defender in the Rwandan criminal justice system in February and March, 1998. This participation has made me somewhat pessimistic about the extent to which adjudication can, in the aftermath of a genocide, promote national reconciliation and social reunion.

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Now as Rwanda begins to mourn the fifth anniversary of its genocide, it should also celebrate the fifth anniversary of its survival. As time passes, Rwanda enters a stage of social and historical development which can be referred to as the "post-genocidal" stage. Some would say that Rwanda is actually in an *intra*-genocidal phase, given the persistence of Hutu rebel insurrection throughout the country, specifically in the Ruhengeri *préfecture* of the north-west. Although the merits of this classification can be debated, fatalistically characterizing Rwanda to be *intra*-genocidal assumes an ability to look in the future, a task no scholar is capable of completing. It can be safely agreed that Rwanda is "post-genocidal" in the sense that it has survived its first very serious genocide. Since its independence in 1962, Rwanda has, of course, seen scattered bouts of ethnically motivated violence, but none of the depth and ferocity of the 1994 carnage.

Post-genocidal societies: models and forms

All life does not end when a genocide is ended. Among the victims, there are survivors. These survivors must continue to co-exist, in some form, with the collectivity of aggressors who perpetrated the violence. New relationships must be drawn up between these groups, the states which govern them, and the land upon which they live. Both entities must also co-exist with third parties—the nations and groups of the world. In all cases, the goal of building a post-genocidal society should be to assure the prevalence of the rule of law, of respect for human rights, and for comity among peoples. If these building-blocks are not carefully laid, genocidal forces may well recur; or the post-genocidal society will simply continue to stagger in a shell-shocked limbo. The effectiveness of the methods chosen to rebuild the rule of law in a post-genocidal society may well depend on the nature and form of that post-genocidal society. In effect, the theory being advanced for discussion in this essay is that the weight of importance to attach to political reform, legal intervention, punishment, retribution or reconciliation within the constellation of post-genocidal policies depends on the "type" of post-genocidal society in question.

Post-genocidal societies can take several forms. Many of these have occurred throughout history; to this end, this discussion is not just of a theoretical construct. Of course, the typology of post-genocidal societies suggested here is neither exhaustive not impermeable. Many post-genocidal societies may have elements of more than one "type." In this sense, the categories of post-genocidal societies listed below are to be understood as Weberian "ideal-types."

(1) The homogeneous post-genocidal society

Here the oppressor group has succeeded in "eliminating" the victim group. This can be accomplished by wiping this group out completely (the case with some First Nations Peoples in Latin and North America in the aftermath of colonialization). It can also be accomplished by driving the victim group out of the prior

society and out of the prior nation-state. In this sense the victim group is "eliminated" from the territory and polity of the oppressors. Co-habitation is no longer a political reality. This may be the *dénouement* of the Balkans conflicts; it could also be an approximation of the effects of the Nazi persecution of the Jews once the Holocaust was stopped. It may be in these societies that international (or successor regime) criminal sanction may be the most effective and necessary to promote *accountability* and collective atonement.

(2) The dualist post-genocidal society

Here the oppressor group does not succeed in "cleansing" its society of the presence of the victim group. Both groups continue to co-exist within the same nation-state. The question which arises is what sorts of institutional structures can be designed in order to accommodate both groups, allocate responsibility, and still heal the scars of the victims. One possibility is the creation of independent sub-states or regions, to which ethnicity and territoriality may be geographically linked. At times, which is the case in Rwanda, the ethnic divisions bear no linkage to geography and, as a result, the creation of sub-administrative units linked to ethnicity is unfeasible. No "tidy" solution is possible. There are three important subsets of the dualist post-genocidal society:

(i) the oppressor group controls power;
(ii) the victim group controls power;
(iii) a third group (i.e. foreign governments or armies) controls power.

In terms of (i) and (ii) it is also important to consider which group is numerically superior or economically dominant. This may well affect the type of solution necessary to accommodate both groups within the same nation-state. By way of example, Rwanda can be studied as a dualist[3] post-genocidal society in which the minoritarian victim group controls power.

(3) The pluralist post-genocidal society

The oppressor group must continue to co-exist with a victim group and a third group; or there are several victims or oppressors who must co-exist within the same territory or polity. South Africa is an example of a pluralist society in which numerous groups were victims and, to varying extents, some were oppressors. Although the violence may be characterized as taking the form of crimes against humanity, the coalescing of this violence along a binary black/white pattern certainly adds a measure of racial cleansing that fits within the spirit of the Genocide Convention. In South Africa the oppressed groups constitute the majority of the population and now control political power, although it is unclear whether economic dominance is yet in the hands of these demographically majority groups.

In order for all dualist and pluralist post-genocidal societies to survive with

relative peace, I suggest that the principal transition which must be made is at an individual or personal level. *The citizen must change political allegiance from the individual ethnic group to the state, which must be viewed as an institution independent of the ethnic groups living within the state.* A national identity must supersede ethnic identity. As suggested by both Harel (1998) and Smith (1986), national identity consists of a shared understanding of public life within the territory of the nation-state, the notion of citizenship, the self-determination of the state, and shared political institutions. Without the completion of this psychological transition from ethnicity to nationality, it may be difficult to avoid future *inter*-ethnic conflicts and potential genocides. For victims, this challenge may test the depth of resolve, forgiveness, and stoicism. It also introduces the question whether concepts of nationality can be socially engineered from the rubble left by expansionist ethnic identification.

The singularity of the Rwandan genocide

How does Rwanda fit within these typologies? Although I have already classified Rwanda as a dualist post-genocidal society with the victims minoritarian yet controlling power, it may be helpful to look at the factual context to flesh out the implications of this classification to evaluate the types of policies that can best promote peace and long-term stability for Rwanda. In this sense, it is important to recall that the RPF government has chosen a policy of extensive judicial prosecution and incarceration as the principal device to purportedly promote social cohesion, order and, perhaps, nationality in post-genocidal Rwanda. As will become clear, the typology of Rwanda's post-genocidal society may militate against the use of this policy tool as a device to promote long-term stability. To this end, this essay could perhaps stimulate discussion as to what alternative policies could be considered.

The Rwandan genocide was implemented at the behest of the Rwandan government, with the agreement of local authorities, and by the hands of ordinary Rwandan men and women. Responsibility for the repression is thus shared by the individual, the collectivity and the state. The killings were not depersonalized through the use of technological innovations; for the most part, the victims were butchered with machetes (*panga*), sticks, and rudimentary instruments. The slaughter also involved torture, sexual assault and theft. Because of the methodology of the killings, together with the numbers of collateral offenses, significant numbers of Rwandans were involved as perpetrators in the bloodbath.[4] Many more notified authorities of the location of Tutsi and dissident Hutu and, consequently, participated as accomplices in the killings.

The violence which ravaged Rwanda from April to July, 1994, was neither spontaneous nor unexpected. Tensions between Hutu and Tutsi have been simmering since European colonial intervention. In terms of demography, before the genocide the Hutu comprised approximately 85 percent of Rwanda's population (estimated at 7–8 million), the Tutsi 14 percent. The mass killings together

with patterns of migration have affected the population distribution; nonetheless, the Tutsi still remain a minority.

The most important characteristic of the Rwandan genocide is its internecine nature. This is not a conflict between states, nor (as in the former Yugoslavia) between historically distinct groups artificially lumped together into one nation-state. This is civil unrest between two historically symbiotic groups. It is nothing short of collective fratricide. Consequently, the violence which pitted Hutu against Tutsi, although in large measure aimed at wiping out the Tutsi population of Rwanda, may not fall neatly within the "national," "ethnic" and "racial" categories of the Genocide Convention. From a historical and anthropological perspective, ethnic cleavages in Rwanda are less pronounced than in other regions where similar genocidal outbreaks have erupted. In fact, "... ethnographers and historians have lately come to agree that Hutus and Tutsis cannot properly be called distinct ethnic groups" (Gourevitch, 1998, p 48). Both groups together comprise the Banyarwanda ("people of Rwandan extraction"). They share the same Bantu language, a common religion, and joint history. Even lifestyle choices, eating habits, music, art and culture are deeply intertwined. Similar personal names are given indifferently to Tutsi or Hutu. Both groups are quite geographically and socially commingled; *intra*-societal divisions operated more along clan lines than "ethnic" lines. Unlike in the former Yugoslavia, there is no possibility for a 'Hutuland' or 'Tutsiland' as there have never been separate dwelling patterns. In the end, this leads to the unsettling conclusion that similarities among groups do not necessarily mitigate the hate which is a prerequisite to genocide; it also demonstrates the powerful imagery of exaggerated—perhaps even contrived—notions of ethnic identity and the effect this can have on group members. In the end, however, Hutu and Tutsi viewed themselves as ethnic groups, and that it was this construction of ethnicity that lay at the root of the violence.[5] Hutu and Tutsi continue to view themselves, and each other, as ethnic groups today. This is a principal legacy of colonialism: the heritage of Belgian fascination with Tutsi and Hutu physical differences and of the consequent introduction of mandatory ethnic identity cards which made official and impenetrable the lines between Tutsi and Hutu. The identity cards were finally abolished by the Government of National Unity. By then, however, the politics of ethnicity may have become intractable:

> Even without identity cards, everybody seemed to know who his neighbors were. In the aftermath of the genocide, the ethnic categories had become more meaningful and more charged than ever before. (Gourevitch, 1998, p 223)

The relationship between the Rwandan state, the Rwandan citizen, and the genocide is also worth exploring. It is clear that the former Rwandan leadership directed the army to extirpate the Tutsi minority. It is also clear that the government incited hatred through a carefully designed propaganda scheme. Defense lawyer arguments—such as those at the trial of Clément Kayishema currently underway at the International Criminal Tribunal for Rwanda (ICTR)—that the mass murder was the result of "spontaneous violence" of ordinary Hutu

who blamed their Tutsi neighbors for murdering President Habyarimana, are more rhetoric than reason. However, it is indisputable that hundreds of thousands of ordinary Hutu participated in the massacres, sometimes under army supervision, sometimes independently, and often with great zeal. Some Hutu risked and lost their lives sheltering Tutsi; however, these incidents were anomalous when compared to the considerable public support given to the pogroms. Rwanda is truly a situation where "... it took a brave man indeed to abandon solidarity with the crowd and refuse to go along" (Prunier, 1995, p 246). This psychological and moral dilemma is set out by Hannah Arendt in the significantly different context of Nazi Germany:

> [The] case rested on the assumption that the defendant, like all "normal persons", must have been aware of the criminal nature of his acts, and Eichmann was indeed normal insofar as he was "no exception within the Nazi regime". However, under the conditions of the Third Reich only "exceptions" could be expected to react "normally". (Arendt, 1964, pp 26–27)[6]

In genocidal Rwanda it may very well have been even more "exceptional" to have acted "normally." As a result, the fact that the current government has chosen to prosecute a broad array of people—even those who may only have had peripheral involvement in the genocide—resurrects Arendt's concern that when many are guilty, and almost all are a little guilty, no one may actually feel any guilt. Perhaps for this reason, the overwhelming majority of the prisoners we interviewed do not believe they did anything wrong. They believe, as shall be explored in greater detail further on in this essay, that they are incarcerated simply because their "side" lost the war. Should their "side" win and topple the Government of National Unity, they will be freed. Their imprisonment, so goes the thinking, has nothing to do with any wrongdoing, but only with the vengeance of the new group which now holds the reins of power.

The singularity of Rwanda post-genocide

The uniqueness of Rwanda's post-genocidal society reposes on three main characteristics: (1) the depth of social intermingling; (2) the promulgation of extensive judicial intervention as the official policy to "deal with" the genocide; and (3) the tenuous hold the minority Tutsi government may have on power.

The challenge of Hutu–Tutsi interdependence

The starting point of any discussion of contemporary Rwanda is that its society is one in which people who have suffered unimaginable horrors are expected to live together—side-by-side—in a society and in neighborhoods with the exact same people who inflicted these horrors in the first place. Philip Gourevitch aptly summarizes the uniqueness of this challenge:

> Never before in modern memory had a people who slaughtered another people, or in whose name the slaughter was carried out, been expected to live with the remainder of the people

> that was slaughtered, completely intermingled, in the same tiny communities, as one cohesive national society. (Gourevitch, 1998, p 302)

No national reconciliation policy can operate independently of this intense commingling, and the paradoxical ethnic polarization (all the more real notwithstanding its apparent artificiality). Nor can any official policy ignore the significant levels of intermarriage, mixed family lineages and just plain social networking that spool their way through Rwandan society. These linkages quickly became apparent to us in our public defender work. Our interpreters regularly knew accuseds and prisoners: often from university, or from the local *commune*, or through the families of spouses and relatives. These connections operated independently of the generally Tutsi background of the interpreters and the Hutu background of the detainees. These tight linkages must be taken into account in the creation of mechanisms to promote social reconciliation in the post-genocide period. It may well be that these social connections can ground more of a mediated or extra-judicial process. The basis for these extra-judicial processes could lie in local custom. In Rwanda, there have been recent efforts to revitalize the traditional *gachacha* arbitration system and thereby shy away from the adversarial trial model. *Gachacha* operates at the grass-roots level, with local communities settling disputes through the appointment of local sages and leaders who would bring the parties together in the pursuit of communal justice. Although it may be difficult to stretch this system to cover the brutality of genocide, it may well be that such a mediated approach might flow more naturally from, and return Rwanda to, traditional patterns of convivality.

Trials, adjudication, imprisonment and punishment

The Rwandan government has chosen to promote social deterrence through extensive retribution. The paradox is that the glut of detainees is met with a legal system saddled with a scarcity of personnel and resources. In 1994 there were 10,000 prisoners; by the end of 1998 there are nearly 130,000. This number constitutes roughly 10 percent of the adult male Hutu population. As a result, Rwanda's prisons, designed to hold a maximum of 15,000 prisoners, are hopelessly overcrowded. In addition, current genocide trials in Rwanda have a limited heritage of rule of law upon which to ground themselves. William Schabas candidly comments that "... the Rwandan legal system has never been more than a corrupt caricature of justice" (Schabas, 1996, p 531). Nonetheless, the Rwandan state is placing upon this fragile system the onus of adjudicating nearly 130,000 cases of genocide and crimes against humanity. Notwithstanding this fragility, social peace in Rwanda remains heavily conditioned on both Hutu and Tutsi believing that the process by which prisoners are judged is both fair and effective. These perceptions are critically important, since victims and aggressors must both co-exist within the same nation-state. Just as many Hutu fear the current RPF-dominated government, so, too, do many Tutsi fear that they may face retribution from Hutu in the future. Within this context of mutual

trepidation, the task of evenhandedly addressing responsibility for the genocide assumes greater importance. This raises the question as to what role justice can play in a society in which those who have suffered must redefine a new national consciousness with those exact same people who inflicted that suffering.

Many individuals, both Rwandans and foreigners, favor judicial intervention to prevent impunity for crimes against humanity and genocide.[7] In his most recent book, Neier (1998) articulates his conviction that trials ensure that the basic rules necessary for a civil society to take hold cannot be disregarded without consequences; this, in turn, may consolidate social consensus. Retribution is seen as a prerequisite to forgiveness and reconciliation. Although upon arrival in Kigali I shared this impression—which for want of a better term can be called the "trial model"—my enthusiasm for aggressive judicial intervention declined as my experiences grew. I found the goals of the genocide trials to be less and less important, and the trials themselves to be causing as much harm as good. In fact, the pursuit of Rwanda's genocide trials may no longer be a tool to promote social peace and communal reconciliation. As a result, Rwanda may well pose some challenges to the broad consensus embodied by the "trial model."

In Rwanda, practical limitations oblige the "trial model" to rely on a legal and correctional system fraught with structural shortcomings. As a result, numerous compromises have to be made. One of these involves the right to full answer and defense, a sacrosanct pillar of the rule of law. The compromise to which it is subjected has been assessed by de Beer as follows:

> In a country which has experienced a genocide and massacres in which tens of thousands of people have been involved, and which have caused the deaths of hundreds of thousands of people, where over a hundred thousand suspects are huddled into prisons awaiting trial, where there are only around thirty lawyers, and where the majority of judges have had to be content with a legal training of a few months, it would be inappropriate to take offense at the fact that the presence of lawyers cannot be systematically ensured at all the trials. (de Beer, 1997, p 25, fn 2)

This limitative compromise is all the more important when one considers that the Rwandan trials may have been designed to play a transitional role in the succession of the RPF regime to that of Habyarimana. The possible role of trials as agents of transition has given rise to academic commentary. Ruti Teitel (1997, p 2037) notes that "... trials offer a transitional mechanism ... to express public condemnation of aspects of the past, as well as public legitimation of the new rule of law." If Teitel's hypothesis is accepted, it could cast the Rwandan genocide trials as a way for the repressive regime of the past to be expurgated from the Rwandan consciousness and for a new regime, purportedly one of rule of law, to emerge. Unfortunately, Teitel's preconditions for the trial to serve such a transformative function are simply not found in the Rwandan situation. Teitel warns:

> Successor criminal trials are expected to lay the foundation of the transition by expressing disavowal of predecessor norms; yet for such trials to realize their normative potential, they

> must be prosecuted in keeping with the full procedural legality associated with working democracies ... Otherwise, paradoxically, successor trials become vulnerable to challenge as political justice. (Teitel, 1997, p 2037)

As a result, the present state of the Rwandan genocide trials satisfies neither the goals of individual justice nor the legitimization of regime transformation. Given these results—which largely flow from the structural limitations of the Rwandan legal system—it may be better to consider a more limited judicial solution. This is not to say that "the law" may not play an important role in post-genocidal healing. However, trials and prosecutions are only part of the tools the law makes available to post-genocidal societies to heal wounds and build for the future. In the Rwandan situation, it is the application of legal norms through extensive, spotty and often lethargic adjudication which is of concern. Focus on the trial model must not remove attention from other reconciliatory devices within and outside of the law. Transitions to democracy are not just about trials—they involve a number of goals, including political, economic, social, and also human rights goals. Gustafson (1998, pp 18–19) concludes that, in deeply divided societies, those prisoners who occupy the dock "... are inevitably and widely seen as symbolic representatives of their group." As a result, criminal prosecutions do not have a conciliatory effect, but may in fact manifest and exacerbate difference (Gustafson, 1998, p 18).

In light of these considerations, different societies have developed various official responses in the wake of the perpetration of genocide and crimes against humanity.[8] These can roughly be subdivided into three approaches: (1) the political amnesty (for example, in Argentina, El Salvador, Uruguay, and Chile); (2) public reconciliation through "truth commissions" (South Africa); and (3) limited prosecution of ringleaders (Nuremberg, the International Criminal Tribunals for both Rwanda and Yugoslavia).

The Rwandan government has rejected all three approaches. Instead, it has opted for extensive prosecution. Given Rwanda's alarmingly limited resources, this basically means a policy of extensive life imprisonment pending trial. At this juncture, it must be remembered that no judicial system has ever sought to prosecute crimes committed by 130,000 persons against over 800,000 victims. *Quaere* whether Rwanda is the place, and whether this is the time, to pioneer such an initiative. Whatever improvements may have been made in the quality of trials, only 300 out of 130,000 prisoners were adjudged from 1994 to early 1998. Any legal system which, in over three years, has only determined the guilt or innocence of 0.2 percent of all detainees cannot be said to be dispensing "justice." Although the government has indicated that 5,000 genocide suspects will stand trial in 1998, this pledge is proving to be unrealistic. Nonetheless, even if such a rate of trials were attained and sustained, it would still take over 25 years to adjudicate all prisoners.[9] There may be much to gain were Rwanda to incorporate elements from some of these other approaches. Although true reconciliation in which people can live and work together cannot be based on silence, it can be even less based in sclerosis and procrastination. The model of

post-genocidal society found in Rwanda may be analogous to the situation in South Africa (in Rwanda the importance of reconciliation is even more important given that the victims are in the minority). Lessons could therefore be learned from the Truth and Reconciliation Commission which has been evaluated as:

> [T]he best effort the world has seen. The hearings ... allowed victims of human rights violations to tell their stories in public, helped the country heal. The amnesty process, while permitting many important criminals to escape justice, is allowing families to know exactly what happened to their loved ones in dozens of cases that would likely never have gone to trial in South Africa's fragile judicial system.[10]

The transplantation of the Truth Commission from a situation of "crimes against humanity with racial animus" to that of clear genocide holds the promise of an interesting academic discussion. It suggests that models of social reconstruction in all situations of orchestrated state violence may be capable of comparison and emulation. This may be particularly germane in light of the controversy over the arrest and potential extradition of General Pinochet of Chile. This is a situation of crimes against humanity, with no ethnic or racial dimension, unlike South Africa, and certainly unlike Rwanda. If the non-adjudicative approach is deemed to have significant merit, and can be applied to a "pure" crimes against humanity situation, even when such violence bears neither ethnic, racial nor religious animus, this may pose a challenge to the drive to launch extra-territorial or international proceedings against Pinochet.

In any event, the implementation of the Organic Law through the "trial model" appears to be causing considerable social division and mistrust. In order for there to be some element of long-term stability for the Rwandan state, trust must return to the relationships between Hutu and Tutsi. Prunier (1995, p 389) finds that "... ethnic relations are based on mutual fear, lies, unspoken prejudices and continued stereotyping;" in the intervening years these feelings have likely grown, not dissipated. Refusing to release unfairly detained persons or persons detained for excessive periods of time further perpetuates this mistrust. More broadly, the trials have not been very successful in producing the "truth" of what "happened" in Rwanda in 1994. Gustafson (1998, p 26) suggests failure may be inevitable when trials are used as devices to search for the "truth." She concludes:

> A particularly misguided claim ... is that criminal prosecutions are productive of "the truth". Nothing so belies this as the paucity of information about the 1994 genocide in Rwanda, generated by hundreds of criminal prosecutions, relative to the wealth of information about apartheid South Africa, compiled through nonprosecutorial means. (Gustafson, 1998, p 26)

Notwithstanding these apparent structural shortcomings, in recent months there is a growing indication in the western *préfectures* that people are unhappy with the rebel activity. Many prisoners who have been freed by rebels refuse to participate in the guerrilla activity. These sentiments could be seized upon, and

cultivated through policies of genuine power-sharing. After all, without the active support of all segments of Rwandan society, any government will always be as frail as its predecessors. Incarcerating 10 percent of the adult male Hutu population will not promote long-term stability for Rwanda. Victim and aggressor must build a new national consciousness.

Rwanda may constitute an example of the limits of trials to promote national reconciliation in a post-genocidal society. These trials reinforce ethnic identity to the detriment of the salutary development of a national consciousness. This may well be an unsettling conclusion, but one that should certainly not be shocking. After all, all that a trial can do and all that it should do—as Hannah Arendt has pointed out—is determine the objective truth about the guilt or innocence of the person who is accused. At most, there may be some resultant public catharsis. It is short-sighted to view this catharsis, and the judicial intervention which gives rise to it, as a substitute for political inclusion. It is even more unfortunate to use these trials as a tool to bully the population in the absence of economic and social reforms. As it stands, these reforms, which lie beyond the criminal justice system, may be the best way to foundationally promote the long-term health of Rwanda. Although criminal justice intervention may play a part of post-genocidal healing—even possibly an important part—it cannot be relied on to the detriment of other policy initiatives. This may pose a serious challenge for the "trial model," currently occupying a dominant position in the international legal discourse and constituting the basis of the International Criminal Court.

The RPF government as a "foreign" government

Ultimately Rwanda must develop a new power-sharing arrangement. Room should be made for democratic opposition parties and for the RPF itself to democratize. Instead, the RPF appears increasingly unflinching in its grip on power, with those opposing its initiatives being deemed enemies of the Rwandan state.[11] In a sense, this is understandable. Prunier (1995, p 257) is wise to point out that any consideration of the possibilities of a coalition government in post-genocidal Rwanda cannot be made without realizing how great the horrors were which the survivors experienced. However, Tutsi anger and fear will not be assuaged by tightly gripping onto power. Instead, they will simply become chronic. Of great concern is the fact that the tightening of the RPF's grip on power, which hitherto came at the expense of Hutu moderates, is increasingly serving to exclude the Tutsi survivors of the genocide from the RPF government. The stasis in the prosecution of those accused of genocide, together with the political exclusion, creates a sense of frustration among victims. Some have said that there is a growing perception among all Rwandans that the RPF is a "foreign government." The Government of National Unity, notwithstanding the arguably good intentions of its RPF leadership, has been unable to transcend ethnic identity and, consequently, is not a national government.

Power sharing is not enough. Political power must be applied to resolve many of the acute problems which Rwanda faces, many of which have barely been

acknowledged by the Rwandan government. For example, there is a 3–4 percent population growth per year. Over 50 percent of the Rwandan population is under the age of 15 years. Three hundred thousand of these children are living, often impoverished, in child-headed households. In terms of public health, Rwanda's AIDS epidemic is one of the worst in East Africa. Additionally, in the first quarter of 1998, Rwanda was badly hit by serious food shortages, whose effects are ongoing.[12] These are blamed on climate, but the mass return of refugees, together with feeding 130,000 economically unproductive individuals in the prisons, does not ease the load. Rwandan land-use patterns, affected by the resettlement of displaced populations, are triggering deforestation and erosion issues which need to be addressed. The effects of these short-sighted cultivation patterns is currently felt in the serious flooding caused by the heavy El Niño rainfalls. Concerted efforts need to be made to implement terracing for agriculture on Rwanda's hilly terrain, which will be necessary if food production is to be maintained in the long run. After all, land-use patterns which exhaust the arableness of the terrain increase competition for fertile plots; this competition was one factor inducing peasant participation in the genocide. Additionally, attempts should be made to diversify the economy. Without at least the partial resolution of some of these problems, any legal adjudication of the genocide will offer nothing better than temporary stability. This begs the question as to what would have been the transformative potential of the Nuremberg trials without the implementation of the Marshall Plan. Can there be long-term moral justice in the presence of the perceived economic, social and political injustice which motivates Hutu discontent?

From ethnocracy to democracy

In order for political reforms to have any effect, all groups in Rwanda must perceive these reforms to be in their individual interest, or for the betterment of a collective interest in which these individuals have a stake. This collective interest must be defined as the Rwandan state.

In a dualist (or pluralist) post-genocidal society, the transition which must be made is from allegiance to ethnicity to allegiance to the apparatus of the state. The state, in its representative capacity, must accommodate the interests of all those who inhabit its territory, regardless of ethnicity. This is especially the case in a situation such as Rwanda's in which the group which needs to be included comprises the overwhelming majority of the population.

At present in Rwanda, personal identification remains at the level of the ethnic group, not of the state. This pattern of identification emerged most compellingly in my meetings with prisoners accused of genocide. Almost all prisoners proclaimed, often very eloquently, their innocence. Undoubtedly, many detainees are objectively innocent. But many others who objectively participated in the genocide do not feel morally guilty. It was this sense of moral ambiguity that struck me the most in the interviews. I had thought that, after nearly four years of imprisonment, someone would come forward and confess, wishing to seek

some closure or redemption. Instead, the prisoners inhabit a world where almost no one feels guilty. Jean-Paul Akayesu's statements at his own sentencing hearing before the ICTR were echoed by many of the detainees with whom we met, most of whom played a far humbler role in the Habyarimana regime:

> Although the decision of my guilt has already been taken, I am sure in my heart that I am not guilty.[13]

Many detainees see themselves as prisoners of war, simply ending up on the losing side. In fact, the prisoners do not even call the events of April to June, 1994, the "genocide," but, instead, call it "the war."[14] Almost all prisoners had little faith in the RPF, the Government of National Unity, or in the judicial system (all of which are perceived as Tutsi-dominated and operating only in the interest of the Tutsi, notwithstanding the presence of some Hutu in each institution). As a result, Rwanda may be, and certainly is perceived as, an ethnocracy.

Charles Taylor posits that a democracy will only function should there be a social cohesion buttressing the legitimacy of the government.[15] This is especially the case in dual- or multi-ethnic states. When democracy lacks this social consensus, it becomes illegitimate and exclusionary. Both majority and minority groups must feel sufficient trust in the state that the alignment of political winners and losers is not perceived to operate along ethnic lines. If this is necessary for a multi-ethnic state such as Canada or Spain, then it is integral and imperative for a post-genocidal society.

According to Taylor, the state develops this legitimacy when the political manifestations of one's personal identification lie not with one's ethnicity but with the state. The legitimization of the authority of the state depends on this conflation between inner self-concept and outer political activity.

If this is accepted as a working hypothesis of a functional democracy, then Rwanda is far from the mark. More troubling, however, is the fact that Rwanda is not making progress in moving towards this mark; in fact, the policies which have been introduced which parrot democratization appear to be increasing alienation and exclusion. Hutu and Tutsi must begin to see themselves as Rwandans, *point final.* The primary allegiance must turn away from ethnic nationalism to the institutions of the state. Democracy requires a certain level of homogeneity in which all citizens (or at least a large critical mass) bear their primary allegiance to the state. Allegiance connotes an affective attachment—perhaps even an emotional bond—and not just a detached view of the state as a technical, sterile apparatus limited to distributive and corrective functions. Although there may be situations in which the ethnicity constitutes the state (in a single-ethnic state) and thereby personal identification with the ethnicity may equate personal identification with the state (which can give rise to the fearful effects of the state as an organic embodiment of an ethnicity), this is certainly not the case in a poly-ethnic state.[16] The forcible inclusion of a minority or majority group in a state to which it bears no allegiance or input is simply the flip-side of the forcible exclusion of ethnic cleansing.

Rwanda must therefore develop institutions, procedures and administrations which are blind to ethnicity. Although it may be very difficult to disaggregate ethnicity from the allocation of power in Rwandan society, such a disaggregation may be essential to the health and welfare of both Hutu and Tutsi. The tragedy of Rwanda may be the emptiness of the concept of "Rwandan" to many of its citizens. The narratives of Hutu Power identity—notably that the Tutsi are "interlopers" from northern Africa, nothing short of "devils" with "hooves and tails"—are antithetical to the cultivation of a Rwandan national consciousness. There are, however, some signs of hope, mostly in the younger generation. Describing attacks on schools in the northwest in September 1998, African Rights says children refused to separate themselves into groups of Hutus and Tutsis when confronted by Hutu rebels and were slaughtered together.[17] This is not an isolated phenomenon. Philip Gourevitch (1998, p 353) reports that, in April, 1997:

> During [an] attack on [a] school in Gisenyi, as in the earlier attack on [a] school in Kibuye, the students, teenage girls who had been roused from their sleep, were ordered to separate themselves—Hutus from Tutsis. But the students had refused. At both schools, the girls said they were simply Rwandans, so they were beaten and shot indiscriminately ... Mightn't we all take some courage from the example of those brave Hutu girls who could have chosen to live, but chose instead to call themselves Rwandans?

There may be an inchoate development in Rwanda of shared identity outside of ethnicity and within the notion of "Rwandan." Common citizenship can perhaps be created by reaching back to history before colonial "discovery." For example, Monsignor Louis de Lacger's history of Rwanda concludes:

> One of the most surprising phenomena of Rwanda's human geography is surely the contrast between the plurality of races and the sentiment of national unity. The natives of this country genuinely have the feeling of forming but one people. (Cited in Gourevitch, 1998, pp 54–55)

Somewhere along the way, this sense of unity has been lost.[18] Of course, throughout history the *supra*-ethnic fealty was to the Mwami, the traditional Tutsi (viewed as Rwandan, though) king, who headed a society in which Hutu–Tutsi lineages were both permeable and porous. The need is now to recreate these feelings of loyalty to a democratic Rwandan state, to kindle a collective national identity. As opposed to Hutu and Tutsi adumbrating competing claims of entitlement and injury, both must work together in a mutually inclusive drive to promote Rwandan national interests. As difficult as it will be, and as painful for the Tutsi victims, the struggle should become one for integration, reconciliation and atonement, not for a *quid pro quo* domination of a bipolar state. This is not to say that the development of national sentiments eliminates the more ancient ethnic identifications. If anything, as Smith (1986) observes, a "dual attachment" may emerge. In a dualist post-genocidal society, however, whatever dual attachments may exist must see the national attachment trump the ethnic attachment. Citizenship, which we know can become multicul-

tural, multi-religious and multi-ethnic, must be the singular defining personal incarnation of the political manifestation.

Yet the tragedy of Rwanda continues. Possibilities for internal reconciliation are hampered by the progressive destabilization of all of East Africa. The politics of ethnicity are now being promulgated internationally by the RPF and by its opponents. Operating in the interests of Tutsi outside of Rwanda, the RPF has intervened in conflicts within the Congo.[19] The Rwandan killing fields have become regional—and international—in scope. The violence within the Congo is increasingly resulting in anti-Tutsi pogroms;[20] in fact, much of the genocidal invective found in Rwanda in 1994 is currently being disseminated in the Congo. By way of example, Radio Télévision Nationale Congolaise recently ordered Congolese people to arm themselves with "... 'a machete, spear, arrow, hoe, spades, rakes, nails, truncheons, irons, barbed wire, stones and the like' to 'kill the Rwandan Tutsis' in Ituri district."[21] Rwanda may be sliding into a wide-scale war, the cycle of violence may be continuing; this time what is essential is that the international community act on its obligation to prevent crimes of genocide.

Notes and References

1. I would like to thank Gene Mullins (University of Arkansas at Little Rock School of Law) and Scott Requadt for helpful suggestions on earlier drafts of this essay.
2. See Mark A. Drumbl, "Rule of law amid lawlessness: counseling the accused in Rwanda's domestic genocide trials," forthcoming 29 *Columbia Human Rights Law Review*, 544, 1998. Sections I.E, VII.B, and VIII of Drumbl (1998) provide a basis for the discussion in this essay. The focus of Drumbl (1998) is not on the notion of a post-genocidal society in Rwanda, nor on the political and attitudinal shifts necessary to promote a viable post-genocidal society, but on the limited role that widespread genocide prosecutions may play in promoting national reconciliation.
3. This is not to deny that a third ethnic group—the Twa—also play a role in Rwandan society. The Twa, however, constitute 1 percent of the Rwandan population. They were both victims and aggressors in the genocide. However, in approximating an "ideal-type," Rwanda is closer to the dualist model than to a pluralist one.
4. Soyinka (1998, p 11) reports that:

> To capture the uniqueness of the Rwandan crime, one must imagine that nearly the entirety of the German population participated in the liquidation of the Jews, or that the Russian masses responded to Stalin's war against the kulaks, armed themselves with picks and shovels and massacred the Kulaks in village after village, instead of merely watching them being herded off to their eventual extermination.

Of course, this is not to deny the fact that many Hutu actively opposed the genocide. As noted by DesForges (1995, pp 1, 17):

> Despite enormous pressure—indeed sometimes at the cost of their own lives—many Hutu in Rwanda refused to participate in the slaughter. Countless Hutu went further and warned, hid, fed, transported, cared for and fought alongside Tutsi. Their heroism belies the simplistic notion spread by extremists that people of these two groups are bound to hate and kill one another.

5. In the Akayesu judgment, the ICTR gave official notice to the fact that notions of ethnicity can be constructed. The ICTR held that the shared characteristics between Hutu and Tutsi did not preclude the finding that the intentions of the murderous Hutu regime were to wipe out the Tutsi, who were found to constitute an ethnic group as per the definitions in the Genocide Convention.
6. It is, of course, always difficult to make comparisons between various genocides. The sheer complexity of factors which lead to a genocide make a comparative analysis problematic. However, studying a genocide in relation to other incidents of genocide may help promote a broader understanding of the psychology and rationale of genocidal thinking and the motives underpinning genocidal conduct.
7. DesForges (1995, p 14): "Prompt and effective prosecution of the accused would break the pattern of impunity common to all prior massacres. Punishing the guilty would demonstrate that ruthless exploitation

of communal tensions, up to and including the level of genocide, is not an acceptable strategy for securing political power and would offer some hope of interrupting the cycle of violence"; Schabas (1996, p 535): "Prosecuting the perpetrators of genocide is a most urgent priority. It is essential for the restoration of Rwandan society that the wheels of justice begin to turn with respect to the crimes committed during 1994"; Prunier (1995, pp 341, 354–355): "All the various segments of the population need the ritual cleansing of a mass public trial ... The Europeans are shocked when they hear the Rwandese ... ask for the trials to be held in Rwanda and for the death penalty to be used. But the Rwandese are right. The immensity of the crime cannot be dealt with through moderate versions of European criminal law made for radically different societies. Only the death of the real perpetrators will have sufficient symbolic weight to counterbalance the legacy of suffering and hatred. They have to die. This is the only ritual through which the killers can be cleansed of their guilt and the survivors brought back to the community of the living."

8. It is important, of course, to distinguish crimes against humanity from genocide (although the differences may often be blurred). The patterns of democratization required in transcending a regime which perpetrates crimes against humanity as opposed to genocide may well be different. Nonetheless, this is not to say that models of social reconstruction in crimes against humanity situations where there is an element of racial animus (for example South Africa) serve no purpose as precedents to situations closer to the genocide end of the continuum. In fact, the situation may be quite the contrary.
9. Domestic genocide trials in Rwanda follow the procedures established by the *Organic Law on the Organization of Prosecutions for Offenses Constituting the Crime of Genocide or Crimes Against Humanity Committed since October 1, 1990*, Law No. 08/96, August 30, 1996. All of the crimes encapsulated within the Organic Law were previously sanctionable under the Rwandan Penal Code. Nonetheless, although Rwanda ratified the Convention for the Prevention and Punishment of Genocide in 1975, it has not provided in the Penal Code for procedures for the imposition of punishments for the offenses of genocide and crimes against humanity. The Organic Law now creates such procedures. Consequently, the Organic Law does not apply retroactively.
10. "South Africa's stinging truths," Editorial, *The New York Times*, November 1, 1998, p A14.
11. For example, in mid-February, 1998, the RPF developed a "joint political program," which would purportedly include the other political parties, to guide the "process of political transformation aimed at unity, reconciliation and democracy." Notwithstanding, "... any political movement, any party or any individual that goes against that programme will be regarded as an enemy of the nation and will be fought accordingly." See "RPF takes a new political course," *The New Times*, February 20–27, 1998, p 1.
12. Notwithstanding the amplitude of these problems, over 90 percent of the United Nations' proposed humanitarian programs for 1998 in Central Africa remain unfunded. See IRIN *News Update*, No 430, June 4, 1998.
13. IRIN *News Update*, No 512, September 29, 1998.
14. Gourevitch (1998, pp 98–99) concludes that conflating the genocide with the war against the RPA is faulty:

> Although the genocide coincided with the war, its organization and implementation were quite distinct from the war effort. In fact, the mobilization for the final extermination campaign swung into full gear only when Hutu Power was confronted by the threat of peace.

15. "Democracy and Exclusion," Annual Lecture of the Columbia University Center for Law and Philosophy, November 5, 1998.
16. It is interesting to note that, as Harel (1998) points out, even if a state such as Israel, which is equated with the Jewish religion, there are certain practitioners of that religion (ultra-Orthodox) whose personal identification is not politically manifested in an adherence to the state. Modern Jewish nationalism is conceived by large segments of the ultra-Orthodox perspective as an "unintelligible concept—an oxymoron" (Harel, 1998, p 10). I posit that large segments of the Hutu population conceive of the modern Rwandan state in the same way.
17. IRIN *News Update*, No 508, September 23, 1998. On June 1, 1998, 30,000 people demonstrated peacefully against the rebel insurgency in a rural part of Kigali *préfecture*.
18. It may well have officially begun with Rwanda's first post-independence leader, Grégoire Kayibanda, who proclaimed in 1962 (the year of Rwandan independence) that Rwanda was "two nations in one state."
19. See, for example, IRIN *News Update*, No 488, August 26, 1998: "Ugandan and Rwandan soldiers were captured when Angolan forces seized Kitona air base [in the DRC] ... Zimbabwean military authorities said"; IRIN *News Update*, No 498, September 9, 1998: "Rwandan President Pasteur Bizimungu has stated that the DRC government's support for 'genocidaires' would be a reason for Rwanda to declare war on

DRC"; IRIN *News Update*, No 508, September 23, 1998: "Reuters reported that a military camp in rebel-held Goma was attacked ... by a coalition of Rwandan Interahamwe militia."

20. See, for example, IRIN *News Update*, No 490. August 28, 1998: "Various news media reported disturbing incidents of Kinshasa residents burning alive Tutsi rebels in the city ... In the Kasavubu district ... residents were 'carrying aloft a charred body'...'We have burnt Tutsis here', said one man, interviewed by the radio ...'It was not the soldiers, it is we ourselves who burn the Tutsis'"; IRIN *News Update*, No 489, August 27, 1998: "Over 100 bodies of ethnic Tutsis had been found in Kinshasa"; IRIN *News Update*, No 493, September 2, 1998: "The killing of ethnic Tutsis appears to [be] becoming more and more widespread in DRC ... sources told ... 80 Tutsis were killed in Lubumbashi ... scores of Tutsi has been killed by government troops in Kisangani and buried in mass graves ... many bodies were seen floating in the Congo river." The Embassy of the Republic of Rwanda, Washington, DC, issued a press release on October 14, 1998, entitled "Today we are raising the red flag on genocide a second time."
21. See, for example, IRIN *News Update*, No 479, August 12, 1998.

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