The Role of Informal Mechanisms in Transitional Justice[1]

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Introduction

Practitioners and theorists of transitional justice and post-conflict resolution are effectively engaged in helping societies move either from war to peace, or from a repressive or authoritarian regime to democracy. In so doing, they face a number of challenges. Yet repairing the social interactions and institutions of a particular society is paramount.

The theory of acknowledgement posits that individuals and societies must consciously engage in a process through which they may come to terms with, emotionally respond to, and actively remember and discuss the events of the past. This acknowledgement is a necessary component of forgiveness, social trust, civic engagement, social cohesion, and eventual outcomes including reconciliation, democratization, or other functioning institutions of society. The process of acknowledgement, then, is critical to the rebuilding of any society.

Yet the institutions that have been created and implemented by national governments and the international community, like the truth commission, have shown themselves unable to promote this kind of acknowledgement, at least in some circumstances. This paper explores the existence and use of traditional and informal mechanisms in this regard. And it provides some ideas for their implementation.

Acknowledgement and Reconciliation

The process which must be undertaken by individuals living within these societies may encompasses any number of steps. But it is likely to include some form of coming to terms with the past, emotional response, and memory and remembering, in both its emotional and physical manifestations. These steps form the basis of what I call "acknowledgement," a contingent part of the individual and societal healing process. I posit that this acknowledgement is necessary for allowing forgiveness to take place, whereupon social trust and civic engagement can begin to form.

Coming to terms with the past deals with elements of both consciousness and acceptance. In dealing with the past, one must accept "the admission something as true or as stated and the recognition of the authority of the claims of others," as it is defined by the Oxford Canadian Dictionary. Adorno advocates a forgetting of the past and "turning the page."[3] Others, including Hayner, reflect a belief in the processes of uncovering evidence and enabling past deeds to be recognized.[4] There are also a number of scholars exploring the need for truth commissions and trials.[5] It is my belief that in a society's quest to overcome a legacy of mass violations of human rights, it must not only confront its past, but begin to do something to overcome it.

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[3] Theodor W. Adorno, "What Does Coming to Terms with the Past Mean?" in *Bitburg in Moral and Political Perspective*, ed. Geoffrey Hartman (Bloomington: Indiana University Press, 1986), 114.

[4] Priscilla Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16 (1994): 597-655; and Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 24-31.

[5] See Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), chapters 3, 4, 5; Diane F. Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 1, ed. Neil J. Kritz (Washington, D.C.: United States Institute of Peace Press, 1995), 376-383; Samantha Power, "The Stages of Justice: Review of Mark Osiel's Mass Atrocity, Collective Memory and the Law," *The New Republic* Mar. 02, 1998: 34; and Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (London: Transaction Publishers, 2000), chapters 5,6.

In reckoning with past injustices, individuals within a society must deal with their emotional responses to the violence they have endured or witnessed, in order to move forward in the process of acknowledging those past events. Kübler-Ross puts forward a rudimentary conception of the stages of grief that is helpful in providing a picture of the process of grieving: denial, anger, bargaining, depression and acceptance.[6] It is important to note that Kübler-Ross's theory was developed around the grieving process of "ordinary" individuals, who deal with many of the same feelings as those people in societies recovering from an extended period of atrocity:[7] feelings of loss, lack of self-worth/self-respect,[8] and helplessness.[9] In many cases, if it is not expressed, the trauma experienced by individuals within society becomes normalized.[10] In other cases, those same individuals may choose to reject the truth about past events,[11] which becomes internalized as a different means of coping.   Emotional responses as a whole, then, represent important in the process of achieving a civil society.

Another key component of coming to terms with the past is memory and remembering. A significant portion of the literature contends that forgetting is harmless.[12] Others, however, see much potential in remembering, arguing that initially unpleasant memories will be

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[6] Elisabeth Kübler-Ross, *On Death and Dying* (Don Mills: Maxwell Macmillan, 1969), 34-105.

[7] There is no question that trauma and grief are, indeed, related, and that trauma can complicate the grieving process. See Cynthia Blomquist, "Comfort for the Grieving Child," in *Healing the Children of War*, ed. Phyllis Kilbourn (Monrovia, CA: MARC Publications, 1997), 58-61.

[8] Jeffrie G. Murphy, "Retributive Hatred: an essay on criminal liability and the emotions," in *Liability and responsibility: Essays in law and morals*, eds. R.G. Frey and Christopher W. Morris (New York: Cambridge University Press, 1991), 360.

[9] Trudy Govier, *Revenge, Forgiveness and the Unforgivable* (Calgary: unpublished manuscript, 2001), 24.

[10] Rafael Moses, "Denial in Political Process," in *Denial: A Clarification of Concepts and Research*, ed. E.L. Edelstein, Donald L. Nathanson, and Andrew M. Stone (New York: Plenum Press, 1989), 291-295.

[11] Pierre Vidal-Naquet, *Assassins of Memory: Essays on the Denial of the Holocaust*, trans. Jeffrey Mehlman (New York: Cambridge University Press, 1992), 20; and Trudy Govier, "What is Acknowledgement and Why is it Important?" (Calgary: unpublished manuscript, 2000), 11.

[12] See, for example, Aharon Appelfeld, "The Awakening," in *Holocaust Remembrance: the shapes of memory*, ed. Geoffrey Hartman (Cambridge, MA: Basil Blackwell, 1994), 149-151: Saul Friedlander, "Trauma, Memory and Transference," in *Holocaust Remembrance: the shapes of memory*, ed. Geoffrey Hartman (Cambridge, MA: Basil Blackwell, 1994), 262-212; and Martin Jay, "Against consolidation: Walter Benjamin and the refusal to mourn," in *War and Remembrance in the Twentieth Century*, eds. Jay Winter and Emmanuel Sivan (Cambridge: Cambridge University Press, 1999, 221-230.

transformed into building-blocks for an even stronger society.[13] It is also important to recognize

the distinction between personal memory and collective memory, that which is shared as a group

by the people in a given society.[14] Collective memory is a concept which stands on its own as a

consequential phase through which a society bent on moving forward will pass. Like emotional

response and coming to terms with the past, memory and remembering are important concepts.

Commemoration in a transitional society serves as one indication of the society's

acknowledgement of past events.   Monuments and memorials can provide an important gauge of

the state administration's position on the moving forward of a society in the wake of past

atrocity. They exist as a tool of participatory remembrance,[15] important in the collective psyche

and common loci of a culture.[16] Official memorials provide a means by which the state can

ensure that those who have died will be remembered.[17] The literature recognizes the charges of

historical revisionism which are leveled at those who attempt to physically commemorate.[18]

Commemorations, therefore, provide an important outlet for memory.

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[13] Carina Perelli, "*Memoria de Sangre*: Fear, Hope and Disenchantment in Argentina," in *Remapping Memory*, ed. Jonathan Boyarin (1994), 39, 49-50 in Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (London: Transaction Publishers, 1997), 14; Dietrich Bonhoeffer in Geiko Müller-Fahrenholz, *The Art of Forgiveness: Theological Reflections on Healing and Reconciliation* (Geneva: WCC Publications, 1997), 43.

[14] Osiel, *Mass Atrocity, Collective Memory, and the Law*, 18-19, 256-261; Marita Sturken, *Tangled Memories: The Vietnam War, the AIDS Epidemic, and the Politics of Remembering* (Berkeley, CA: University of California Press, 1997), 2; Paul Connerton, *How Societies Remember* (New York: Cambridge University Press, 1989), 1-3; Jay Winter and Emmanuel Sivan, "Introduction," in *War and Remembrance in the Twentieth Century*, (Cambridge: Cambridge University Press, 1999), 1-5; Müller-Fahrenholz, *The Art of Forgiveness,* 48; Lawrence L. Langer, "Remembering Survival," in *Holocaust Remembrance: the shapes of memory*, ed. Geoffrey Hartman (Cambridge, MA: Basil Blackwell, 1994), 253.

[15] James E. Young, "Memory and Monument," in *Bitburg in Moral and Political Perspective*, ed. Geoffrey H. Hartman (Bloomington: Indiana University Press, 1986), 110, 112.

[16] Harriet F. Senie, *Contemporary Public Sculpture: Tradition, Transformation, and Controversy* (New York: Oxford University Press, 1992), 24; James E. Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven: Yale University Press, 1993), 6; Maya Lin, "Making the Memorial," *The New York Review of Books*, 2 Nov., 2000, 33-35.

[17] Don Handelman, *Models and Mirrors: towards an anthropology of public events* (New York: Cambridge University Press, 1990); James W. Mayo, *War Memorials as Political Landscape: The American Experience and Beyond* (New York: Praeger, 1988), 169-170.

[18] Robin Winks in Sanford Levinson, *Written in Stone: Public Monuments in Changing Societies* (Durham: Duke University Press, 1998), 64; Young, "Memory and Monument," 111; Kelley M. Wickham-Crowley and Catherine E. Karkov, "A Dialogic Commentary: Speaking with the past," in *Spaces of the Living and Dead: An*

Each of these steps comprises what I have called acknowledgement. And this process, while difficult, must be undertaken in order to realize any kind of success in moving forward after a period of mass violation of human rights. It is a key ingredient, a necessary but not sufficient condition, in reckoning with the past, both on an individual level and in the context of societal recovery. And without acknowledgement, the following stages, I argue, are nearly impossible to attain.

Forgiveness, defined by the Oxford Canadian Dictionary as to "cease to feel angry or resentful towards [someone or something]" is a critical step in the process of reckoning with the past. It is an interpersonal[19] and cognitive process[20] that encompasses the progression of acknowledgement. The literature suggests that "the teleology of forgiveness is reconciliation,"[21] arguing that "forgiveness sets the stage for renewed relationships built on trust."[22] The outcomes toward which the process of acknowledgement, if allowed to function properly, will lead, are simply varying degrees of the forgiveness process; for it lies at the heart of reconciliation, and reconciliation leads to trust, by which I infer social trust and potentially democracy.

Trust is a construct which exists specifically within the context of social relationships. It is an important determinant in the outcome of a society.[23] Without trust, people inevitably stop

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Archaeological Dialogue, eds. Catherine E. Karkov, Kelley M. Wickham-Crowley, Bailey K. Young (Oxford: Oxbow Books, 1999), 149.

[19] Robert D. Enwright and Catherine T. Coyle, "Researching the Process Model of Forgiveness Within Psychological Interventions," in *Dimensions of Forgiveness: Psychological Research and Theological Perspectives*, ed. Everett J. Worthington (Philadelphia: Templeton Foundation Press, 1988), 140; Roy Baumeister, Julie Juola Exline, and Kristin L. Sommer, "The Victim Role, Grudge Theory, and Two Dimensions of Forgiveness," in *Dimensions of Forgiveness: Psychological Research and Theological Perspective*, ed. Everett J. Worthington (Philadelphia: Templeton University Press, 1988), 79-83.

[20] Jeffrie G. Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988), 4-8, 116-120.

[21] Robert C. Roberts, "Forgiveness," *American Philosophical Quarterly* 32 (1995): 299.

[22] Müller-Fahrenholz, *The Art of Forgiveness,* 36.

[23] Clifford Geertz, "The Rotating Credit Association: A 'Middle Rung' in Development," *Economic Development and Cultural Change* X.2.II (1962): 259; Trudy Govier and Wilhelm Verwoerd, "Trust and the Problem of National Reconciliation," (Calgary: unpublished manuscript, 2000), 13-14; James S. Coleman, *Foundations of Social*

accepting the word of their superiors, stop participating in the stuff of civil society.[24]   The development of trust in a given society, then, is of great importance in the kinds of institutions which grow and thrive in a society.

Where properly nurtured, trust can develop into far-reaching networks of civic engagement and democracy is able to take a firm hold.[25]   This contributes to what Putnam, Fukuyama and others have referred to as social capital, "a subset of the notion of social cohesion. Social cohesion refers to two broader intertwined features of society: (1) the absence of latent conflict... and (2) the presence of strong social bonds – measured by levels of trust and norms of reciprocity, the abundance of associations that bridge social divisions (civic society), and the presence of institutions of conflict management..."[26]   And this social cohesion is the stuff of reconciliation.

Formal vs. Informal Mechanisms

In order to bring about this process of acknowledgement and reconciliation, transitional societies have opted to use a variety of formal mechanisms. This process dates to the ancient Greeks, where it formed the basis of *The Oresteia*, a play in which Orestes is forced to face the past deeds of his forefathers.[27]   But its modern incarnations date only as far back as the twentieth century.

One such mechanism is the trial. Based on the notion of retribution or punishment for crimes committed, the trial involves a person charged with the commission of an illegal crime

Theory (Cambridge: The Belknap Press of Harvard University Press, 1990), chapters 6,7; and Trudy Govier, "An Epistemology of Trust," *International Journal of Moral and Social Studies* 8.2 (1993): 158-169.

[24] Gabriel Almond and Sidney Verba, *The Civic Culture* (Princeton: Princeton University Press, 1963), chapter 10.

[25] Robert Putnam, *Making Democracy Work* (Princeton: Princeton University Press, 1993), 169, 177; Almond and Verba, *The Civic Culture*, 264-265, 284; Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley: University of California Press, 1984), chapter 6.

[26] Lisa F. Berkman and Ichiro Kawachi, eds., *Social Epidemiology* (New York: Oxford University Press, 2000), 175.

[27] Aeschylus, *The Oresteia*, trans. Robert Fagles (New York: Viking Press, 1975).

being brought before an arbitrator, if not a panel of his peers, whereupon his guilt and subsequent penalty is determined. "In the Western liberal legal tradition, the rule of law... entails the presumption of innocence, litigation under the adversar[ial] system, and the ideal of a government by laws, rather than by persons."[28] In their modern guise, such trials began with the post-war Nuremberg trials and Tokyo tribunal, which were appointed to deal with Nazi war crimes. These, then, form the basis of international precedent and law for the tribunals which were appointed in the 1990s: International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and the recent initiation of the International Criminal Court (ICC). In this way, the international community has shown an interest in the prosecution of perpetrators of crimes of mass atrocity, genocide, and war crimes.

Another, more recent approach, has been the truth commission. The first-ever truth commission was convoked in Uganda in 1974. Since that time, more than 20 truth commissions have been appointed by national governments, among them highly successful commissions in Argentina, Chile, and South Africa. The truth commission is a restorative institution intended to provide a forum in which a society can learn about the abuses of its collective past. Generally, a truth commission's main task is to collect information about past abuses, and to compile this information to produce a coherent account of the history of that society. This can be particularly important in societies where abuses have been government-sponsored and have therefore gone unrecorded in any official way. It is often the case that these abuses are unsubstantiated or even denied by the governments in question. For this reason, a truth commission can play a vital role in uncovering and chronicling the events of a society's collective past.

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[28] Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998) 25.

In other cases, states have opted to appoint various other mechanisms in pursuit of societal restoration. Based broadly around principles of reparative justice, these institutions fall into two main categories: apology and restitution. The Australian government, for example, instituted National Sorry Day, beginning 26 May 1998, and held annually, to "participate and be involved in activities to acknowledge the impact of the policies of forcible removal on Australia's indigenous populations." [29] The restitutive example most often cited, and which is frequently touted as a success, is of the Canadians and Americans of Japanese descent who were interned during the Second World War. In 1988, the American government gave those Japanese who had been interned USD $20,000 per survivor as a form of compensation under the Civil Liberties Act, while in the same year, the Canadian government awarded CAD $21,000 under the Japanese Canadian Redress Agreement. [30]

The kinds of mechanisms described above are implemented by an organ of the state or by an international governing body. They are supported and funded by these bodies. And it is under the auspices of these bodies that they operate.

In an earlier study, I considered the ability of the Ugandan truth commission, the Commission of Inquiry into Violations of Human Rights, to foster acknowledgement. Indeed, what I found was that the Commission had been beset by any number of shortcomings from the very beginning. The Commission suffered from lack of political will, timing difficulties, and institutional constraints. [31] And I could find little evidence of its success in promoting the process of societal acknowledgement. The modest and still-growing civil society in Ugandan indicates

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[29] "Sorry Day," [article on-line]; available from http://www.cultureandrecreation.gov.au/articles/sorry/; accessed 9 Dec. 2004.

[30] *Final Report on the Implementation of the Japanese Canadian Redress Agreement, 1988* (Ottawa: Japanese Canadian Redress Secretariat and Canadian Heritage, Nov. 1997) 5.

[31] These limitations are discussed in greater detail in Joanna R. Quinn, "Constraints: The Un-Doing of the Ugandan Truth Commission," *Human Rights Quarterly*, 26.2 (May 2004), 401-427 and in Joanna R. Quinn, "The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti," (Ph.D. diss., McMaster University, 2003).

that some acknowledgement has taken place. But democracy is not firmly entrenched, and Museveni shows no sign of allowing it to take hold.[32]   As a result, growth of civil society in the country remains stunted. It seems that the Commission was unable to affect real and lasting political stability, let alone foster social trust and social capital.

Yet many of those to whom I spoke in Uganda in 2001 suggested that some form of acknowledgement had, in fact, taken place. Although there was no evidence of the cultivation of acknowledgement through the formal mechanism of the truth commission, it seemed likely that some of the traditional and informal practices that are carried out within the country might be capable of producing this kind of acknowledgement. And that even without the formal structure of the truth commission, some communities might have been acknowledging the events of the past and coming to terms with them. I thought an exploration of this kind of traditional acknowledgement in Uganda could provide much needed insight into one of the reasons that truth commissions and other institutions often called upon in the rebuilding process are not effective.

In October and November of 2004, I returned to Uganda to I returned to Uganda for a period of six weeks to study first-hand these informal mechanisms of acknowledgement, both in areas where traditional acknowledgement has been reported and those in which it has not. I interviewed more than 45 people, mostly society's elites and leaders, about such alternative mechanisms of acknowledgement. These people included leaders of the communities involved, officials of the Roman Catholic and Africa Inland Churches, the Uganda Human Rights Commission, various Secretaries of State and other government officials, as well as national and international aid workers, missionaries and other support organizations including Africa Inland

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[32] Recently, the British government cut its assistance to Uganda, citing Museveni's undemocratic governance. "U.K. aid cut pressures Uganda," BBC News [article on-line]; available from http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/africa/449838, accessed 1 May 2005.

Mission and World Vision.   I also spoke directly to some of the beneficiaries of such acknowledgement: people who have been received back into their communities and their families.

What I found in Uganda seems to echo what others are beginning to report from around the world: Traditional mechanisms exist and have done so for years, providing a strong system of both governance and reconciliation, outside of the formal mechanisms imposed by the Western world. And, while the more formalized Western models often allow for only one form of justice – retributive, restorative, or reparative – these traditional institutions seek to combine various of these and other elements in keeping with the values of the community.

What Do Traditional Mechanisms Look Like?

Traditional communal values are expressed in much the same way almost universally. "The Indian communities," for example, "view a wrongdoing as a misbehaviour which requires teaching or an illness which requires healing."[33]   African traditional beliefs reiterate these values:

> If you have harmed my child, it is because something has gone wrong with you to such an extent that you could do that. That which has gone wrong for you is now harming my life. It means I cannot be the kind of human being I want to be because you are no longer human. So it is in my interest – my interest – as the victim, to get you and assist you to get your humanity back so that I can become human again... This is a fundamentally different way of looking at a community and looking at what to do with evil. African traditional religion has no such thing as Satan. The biggest evil is to live in complete disregard of others.[34]

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[33] Rupert Ross, *Returning to the Teachings* (Toronto: Penguin, 1996) 5.
[34] Antjie Krog interview by Philip Coulter, in *Walk to Freedom* (*Ideas*, Canadian Broadcasting Corporation, 2004).

Indeed, examples from different parts of the globe reveal these similarities. Hollow Water, Manitoba,[35] is seen as one of the most successful models of the implementation of community healing circles based on aboriginal teaching. Likewise, the traditional elders' court in Attawapiskat, Ontario,[36] and the community court[37] system in Sandy Lake, Ontario provide real insight into the motivations for and dedication to the preservation and use of traditional models. Navajo Tribal Courts,[38] too, emphasize traditional teachings, and cases are adjudicated under Navajo common law.

Similar models can be found outside of North America. In New Zealand, Family Group Conferences, based on traditional Maori principles including teaching, settlement, and community restoration have been available as an alternative to Western-based sentencing since 1989.[39] And village courts adjudicate according to customary law in the Highlands of Papua New Guinea.[40]

Africa provides a diverse range of such traditional mechanisms. Internally displaced, war-affected people in Angola utilize a type of traditional psychological healing called *conselho*, which is based on "the general encouragement given to people to abandon the thoughts and memories of war and losses."[41] Holistic purification and cleansing rituals, attended by the family and broader community, are carried out in welcoming ex-combatant child soldiers back

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[35] An excellent description of Hollow Water's Community Holistic Healing Circle is found in Rupert Ross, *Returning to the Teachings* (Toronto: Penguin, 1996) 29-50.

[36] The Attawapiskat traditional justice pilot project ran from 1991-1994, and the traditional court of justice has been sitting ever since. Bryan Phelan, "Provincial court barred from Attawapiskat," Wawatay News Vol.21 #10 [article on-line] May 19, 1994; available from
http://www.wawatay.on.ca/index.php?module=pagesetter&func=viewpub&tid=1&pid=536, accessed 30 April 2005.

[37] Ross, *Returning to the Teachings*, 223.

[38] Philmer Bluehouse and James Zion, "The Navajo Justice and Peace Ceremony," in *The Mediation Quarterly* 10.4 (Summer 1993): 328.

[39] Teresa Olsen, Gabrielle M. Maxwell and Allison Morris, "Maori and Youth Justice in New Zealand," in *Popular Justice and Community Regeneration*, ed. K. Hazlehurst (London: Praeger, 1995) 89-102.

[40] Sarah Garap, "The struggles of women and girls in Simbu Province," *Development Bulletin* 50 (October 1999): 48.

[41] Carola Eyber and Alastair Ager, "Conselho: psychological healing in displaced communities in Angola," *The Lancet* 360 (Sep. 14, 2002) 871.

into the community in both Angola and Mozambique.[42] In Western Kenya, traditional conflict resolution mechanisms are used by the Pokot, Turkana, Samburu and Marakwet tribes.[43] Ceremonies to "cool the heart[s]" of child ex-combatants upon their return to their home communities in Sierra Leone are carried out by the broader community.[44] Inkundla in South Africa comprises a series of traditional small claims courts.[45] And Rwanda has chosen to utilize its tradition of *gacaca*, a form of traditional dispute resolution mediated by chiefs and tribal elders, most recently re-vamped, formalized, and used to deal with crimes of genocide.[46]

Uganda has a particularly vibrant history of the use of traditional mechanisms, and in many of the 56 different ethnic groups within the country, these institutions are still used.[47] Among the Karamojong, the *akiriket* councils of elders adjudicate disputes according to traditional custom[48] which include cultural teaching and ritual cleansing ceremonies.[49] The Acholi carry out ceremonies of *mato oput* (drinking the bitter herb), and *nyouo tong gweno* (a welcome ceremony in which an egg is stepped on over an *opobo* twig) in welcoming ex-

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[42] Alcinda Honwana, "Children of War: Understanding War and War Cleansing in Mozambique and Angola," in *Civilians in War*, ed. Simon Chesterman (Boulder: Lynne Rienner, 2001) 1137-140, and Carolyn Nordstrom, *A Different Kind of War Story* (Philadelphia: University of Pennsylvania Press, 1997) 142-152.

[43] Ruto Pkalya, Mohamud Adan, Isabella Masinde, *Indigenous Democracy: Traditional Conflict Resolution Mechanisms*, eds. Betty Rabar and Martin Karimi (Kenya: Intermediate Technology Development Group – Eastern Africa, Jan. 2004).

[44] Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*, United States Institute of Peace, Special Report 130 (Feb. 2005): 9

[45] *Gacaca, Inkundla, traditional systems of justice being looked at in the US as "Restorative Justice."* Herndon, VA: Marek Publications, 2001, [article on-line]; available from http://www.marekinc.com/GovernanceINT100901.html, accessed 22 July 2002.

[46] See, for example, Peter E. Harrell, *Rwanda's Gamble: Gacaca and a New Model of Transitional Justice* (New York: Writers Club Press, 2003).

[47] For a more in-depth discussion of the use of traditional mechanisms in Uganda, see Joanna R. Quinn, "What of Reconciliation? Traditional Mechanisms of Acknowledgement in Uganda," a paper prepared for *Reconciliation*, a conference held by the Nationalism and Ethnic Conflict Research Centre at The University of Western Ontario, May 14-15, 2005.

[48] Bruno Novelli, *Karimojong Traditional Religion* (Kampala: Comboni Missionaries, 1999) 169-172, 333-340.

[49] Peter Lokeris, Minister of State for Karamoja, interview by author, 18 Nov. 2004, Kampala, Uganda.

combatant child soldiers home after they have been decommissioned.[50] The Baganda use the traditional *Kitewuliza*, a juridical process with a strong element of reconciliation, to bring about justice.[51] The Lugbara, in the northwest of the country, maintain a system of elder mediation in family, clan and inter-clan conflict.[52] And in 1985, an inter-tribal reconciliation ceremony, *gomo tong* (the bending of spears) was held to signify that "from that time there would be no war or fighting between Acholi and Madi, Kakwa, Lugbara or Alur of West Nile."[53]

Components of Traditional Mechanisms

Although these mechanisms differ between regions and also between ethnic groups within a particular region, it is important to note that in all cases, they have served as important elements in the process of post-conflict resolution.[54] "Traditional systems of government were not elaborate, because law and order were maintained through the normative system which was part of the social structure."[55]

Bluehouse and Zion provide a useful distinction between adjudication and mediation:

> The dynamics of mediation and adjudication are different. Adjudication [referred to in this paper and elsewhere as arbitration] uses power and authority in a hierarchical system. A powerful figure makes decisions for others on the basis of "facts" which are developed through disputed evidence, and by means of rules of "law" which are also contested by the parties.... In sum, adjudication is a vertical system of justice which is based on hierarchies of power, and it uses force to implement decisions.

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[50] For an excellent description of *mato oput* see Sverker Finnstrom, *Living With Bad Surroundings: War and Existential Uncertainty in Acholiland in Northern Uganda* (Uppsala: Acta Universitatis Upsaliensis, Uppsala Studies in Cultural Anthropology no. 35, 2003) 297-299.

[51] John Mary Waliggo, "The Human Right to Peace for Every Person and Every Society," (paper presented at Public Dialogue organized by Faculty of Arts, Makerere University in conjunction with Uganda Human Rights Commission and NORAD, Kampala, Uganda, 4 Dec. 2003) author's collection, 7. Also, idem, "On Kitewuliza in Buganda, 3 May 2005," author's collection, 1.

[52] Joseph Ndrua, "A Christian Study of the African Concept of Authority and the Administration of Justice among the Lugbari of North Western Uganda," (M.A. diss., Catholic Higher Institute of Eastern Africa, 1988), 42-56.

[53] Finnstrom, *Living With Bad Surroundings*, 299.

[54] Aylward Shorter, *African Culture: An Overview: Socio-Cultural Anthropology* (Nairobi: Paulines Publications Africa, 1998), 65.

[55] Eric O. Ayisi, *An Introduction to the Study of African Culture*, 2nd ed. (Nairobi: East African Publishers, 1979), 110.

> In contrast, mediation is based on an essential equality of the disputants. If parties are not exactly equal or do not have equal bargaining power, mediation attempts to promote equality and balance as part of its process. It is a horizontal system which relies on equality, the preservation of continuing relationships, or the adjustment of disparate bargaining power, between the parties.[56]

Yet Waliggo contends that these are merely two distinct parts of an overall process used in dealing with conflict at the group, community, clan or neighbourhood level. Other elements included in this process might be reconciliation, compensation, and various rites and symbols. [57] It is clear that in the practical definition of many of these elements, the boundaries between restorative and retributive justice, as mentioned above, begin to blur.[58] Each of these is explored below.

Arbitration, or "the traditional administration of justice,"[59] is similar to the trials mentioned above. Indeed, those involved in a dispute or conflict appear before a panel of wise or powerful men.[60] And through the deliberations of a standing committee[61] or group of elders, held in secret[62] or in the open[63] leaders generally come to a common agreement and decide upon a suitable punishment. This was seen as crucial: "without taking proportional retribution in grave cases, a society dishonours itself, and undermines public confidence that the society takes itself and its values seriously.[64] Yet this retribution is linked directly with other social controls including socialization[65] and compensation, discussed further below. And unlike the Western

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[56] Bluehouse and Zion, "The Navajo Justice and Peace Ceremony," 328-329.

[57] Waliggo, "The Human Right to Peace," 7.

[58] Andrew Oldenquist, "An Explanation of Retribution," *The Journal of Philosophy* 85.9 (Sept. 1988): 471.

[59] Waliggo, "The Human Right to Peace," 8.

[60] Ayisi, *An Introduction to the Study of African Culture*, 67, 111; Bruno Novelli, *Aspects of Karimojong Ethnosociology* (Verona: Museum Combonianum no. 44, 1988) 48; and Paul Ngologoza, *Kigezi and Its People* (Kampala: Fountain Publishers, 1998) 20.

[61] Ngologoza speaks of the *Abakuru b'emiryango* as such; see *Kigezi and Its People*, 20.

[62] Waliggo, *The Human Right to Peace*, 8.

[63] Ngologoza, *Kigezi and Its People*, 20.

[64] Oldenquist, "An Evaluation of Retribution," 471.

[65] Ayisi, *An Introduction to the Study of African Culture*, 111. See also Finnstrom, *Living With Bad Surroundings,* 76, 201, 219; Novelli, *Karimojong Traditional Religion*, 201-225; and E.E. Evans Pritchard, *Witchcraft, Oracles and Magic Among the Azande* (Oxford: Clarendon Press, 1937) 154.

retributive model, this kind of judgement is sought only as a last-ditch attempt to find resolution, after the adjudicators have exhausted all other means at their disposal.[66]

A key part of the conflict resolution process is mediation, wherein one person or a group of people acts as a go-between among the offended parties and the offender. Waliggo identifies mediation as "the most commonly appreciated means of solving conflicts" in many rural African communities.[67] Mediation is distinct from adjudication or arbitration, in that all parties have equal power, and the decisions come "out of the clans and families from the bottom up, not the top down."[68] This is closely linked with the process of negotiation, wherein, "using the African wisdom, the elders and even the two parties themselves gradually come to a common agreement."[69] In this way, "individual problems can be solved and a wider societal balance achieved.... [The session] is not only one of individual healing but also a process of socialization."[70]

Another vital part of this process, in many cases, is compensation. Indeed, the Acholi traditions counted compensation as a precondition for their reconciliation ceremonies.[71] This is echoed in claims that "forgiveness comes after the payment of damages,"[72] and calls for "reconciliation through disbursement."[73] Finnstrom reports that "social barriers can be dissolved by admitting wrongdoing and deciding on compensation."[74]

Surrounding all of this, of course, is the element of reconciliation. Waliggo maintains that "reconciliation was always an essential and final part of every legal and other peaceful

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[66] Novelli, *Aspects of Karimojong Ethnosociology*, 73.
[67] Waliggo, *The Human Right to Peace*, 8.
[68] Ross, *Returning to the Teachings*, 55.
[69] Waliggo, *The Human Right to Peace*, 8.
[70] Finnstrom, *Living With Bad Surroundings*, 219.
[71] Geresome Latim, Executive Secretary, *Ker Kwaro Acholi*, interview with author, 22 Nov. 2004, Gulu, Uganda.
[72] Dennis Pain, *The Bending of Spears* (International Alert, Dec. 1997) 55.
[73] Ibid., 34.
[74] Finnstrom, *Living With Bad Surroundings*, 297.

settlement of conflict...[Yet, he maintains that] it also stood on its own."[75] In many different

ethnic configurations, such as the institutions of the Karamojong, reconciliation is always the

first element of this process to be attempted.[76] And of the Acholi mechanisms, Rwot Onen

David Acana II said, "*poro lok ki mato oput*" ("Peace talks and reconciliation are the best way to

resolve conflict.")[77]

This reconciliation is then demonstrated through various rites and symbols. These range

from very elaborate celebrations and ceremonies to more common rituals. These may include

blood pact alliances, marriage, intimate friendships, and communal celebrations to consolidate

peace.[78] Others include eating and drinking together, the shaking of hands, and the exchange of

gifts to show restoration of peace,[79] as well as the slaughter of animals, and the exchange of

dried coffee berries.[80] One such ceremony performed among the Acholi demonstrates the care

and symbolism bestowed upon these ceremonies:

> After the initial part of the *mato oput* ceremony is carried out, the parties are asked "May
> you today come and drink and eat and share everything together. Will you make this day
> a day to come together?" Both parties then go into house where two sheep have been
> slaughtered. The sheep are placed at opposing ends and someone from each side with a
> sharp knife cuts both in half at the same time. Half of each sheep is given to each side at
> the same time. And each party cooks its sheep halves. They then go to a house where
> both will share food together, and both sides begin to eat together. After eating inside the
> home, the lower jaws of both sheep taken by each side. The heads of the clans will take
> the jaws and carry them back to their homes to be put safely away as living testimony
> that the blood of the sheep had cleansed the one-time hostile clans. So from then on,
> when a dispute is about to erupt between both clans, they will bring out the jaw as a

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[75] Waliggo, *The Human Right to Peace*, 9.

[76] Novelli, *Aspects of Karimojong Ethnosociology*, 73.

[77] Quoted in Tim Allen, *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention* (London: Crisis States Research Centre, Development Studies Institute, London School of Economics, Feb. 2005), 67.

[78] Waliggo, *The Human Right to Peace*, 6,9; see also Ngologoza, *Kigezi and Its People*, 32.

[79] John Mary Waliggo, "Reconciliation as a Means of Resolving Conflict and Restoring Relations," (paper presented at AMECEA Pastoral Institute, Eldoret, Kenya, 6 June 2003) author's collection, 2.

[80] Sister Specioza Kabahoma, Justice and Peace Commission, interview by author, 10 Nov. 2004, Nsambya, Uganda.

reminder that we had agreed never to do this kind of thing again. The jaw is kept for posterity.[81]

The impact of such institutions and mechanisms upon societies is now being noted by major world institutions. The World Bank says that "cultural heritage has the power to inspire hope" and urges "the protection and conservation of cultural heritage in complex emergencies."[82] And the Security Council has noted the "importance of assessing the particular justice and rule of law needs in each... country, taking into consideration the nature of the country's legal system, traditions, and institutions."[83]

Others question the relevance of such institutions on rapidly urbanizing and globalizing societies. Indeed, "the traditional values, cultural knowledge and social institutions of everyday life are threatened."[84] And as people move farther away from their *gemeinschaft* communities, the social meanings of the ceremonies which are still practiced appear, in some cases, to be shifting.[85] It is clear that, among the Karamojong[86] and also among the Acholi,[87] cultural education through practice and social education, is beginning to decline.

Still, Mbiti argues:

It would be wrong to imagine that everything traditional has been changed or forgotten so much that no traces of it are to be found. If anything, the changes are generally on the surface, affecting the material side of life, and only beginning to reach the deeper levels of the thinking pattern, language content, mental images, emotions, beliefs and response in situations of need. Traditional concepts still form the essential background of many African peoples, though obviously this differs from individual to individual and from

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[81] Geresome Latim, Executive Secretary, *Ker Kwaro Acholi*, interview with author, 22 Nov. 2004, Gulu, Uganda.
[82] *Uganda: Post-Conflict Resolution* (Washington: World Bank, 2000) 9.
[83] Sir Emyr Jones Parry, President of the Security Council, *Presidential Statement on Justice and the Rule of Law: The United Nations' Role*: *a statement on behalf of the Security Council 6 Oct. 2004*, available http://www.ukun.org/search/search_show.asp?Aid=779&T=1, accessed 25 Apr. 2005.
[84] Finnstrom, *Living With Bad Surroundings,* 201.
[85] Ibid., 298.
[86] Novelli, *Karimojong Traditional Religion*, 201-225.
[87] Finnstrom, *Living With Bad Surroundings*, 76, 219. See also E.E. Evans Pritchard, *Witchcraft, Oracles and Magic Among the Azande* (Oxford: Clarendon Press, 1937) 154.

place to place. I believe ... that the majority of our people with little or no formal education still hold on to their traditional corpus of beliefs.[88]

Finnstrom and others also take this into account: "These practices, far from being dislocated in a past that no longer exists, have always continued to be situated socially. They are called upon to address present concerns. Of course, like any culturally informed practice, with time they shift in meaning and appearance."[89] "Ideas about old models are often used to help shape new ones."[90]

Potential Uses

Elsewhere, I have argued for the creation of a national, centralized body working for the establishment of acknowledgement and promotion of reconciliation in Uganda.[91] Above, I reported on formalized systems, including the Navajo Tribal Courts, for example, that have resulted from the very informal and traditional practices that have been discussed. In many ways, this presents a bit of a conundrum: We are, in fact, moving back and forth between formalized and informalized mechanisms, which tends to blur the lines between them to some extent.

Even to label such mechanisms as "informal" is to do them a disservice. For in many parts of Uganda, such practices, in fact, have more formal authority than comparative Western models. Particularly among the Sabiny[92] and the Karamojong,[93] this is the case. It was

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[88] Mbiti, *African religions and philosophy*, xi.
[89] Finnstrom, *Living With Bad Surroundings,* 299.
[90] Allen, *War and Justice in Northern Uganda*, 84.
[91] Joanna R. Quinn, "What of Reconciliation? Traditional Mechanisms of Acknowledgement in Uganda," a paper prepared for *Reconciliation*, a conference held by the Nationalism and Ethnic Conflict Research Centre at The University of Western Ontario, May 14-15, 2005.
[92] Confidential interview by author with Sabiny man studying at Makerere University, 7 Nov. 2004, Kampala, Uganda.
[93] Peter Otim, Inter-Governmental Authority on Development, interview with author, 23 Nov. 2004, Kampala, Uganda.

frequently reported to me that councils of elders hold more sway within the community than do government-appointed law enforcement officers, and that such councils have the authority to override police sentences: "For example, a clan may come to the police to demand a prisoner's release because conditions in prison are too good. So they will go to the prison and pull him out. And the police don't dare say no because they will have to deal with 500 armed warriors!"[94]

It seems clear, however, that these traditional mechanisms have a great deal to offer. It was variously reported to me that "everyone respects these traditions,"[95] and that reconciliation continues to be an "essential and final part of peaceful settlement of conflict."[96] A common understanding of these symbols, ceremonies, and institutions, and their meanings remains throughout Uganda.

As such, the promotion of the kinds of institutions frequently discussed by those working to resolve conflict ought to be a priority. In Northern Uganda, for example, where the civil war has been waged by the Lord's Resistance Army over the past nineteen years, the current debate about the use of the International Criminal Court (ICC) and the process of amnesty available through the Amnesty Commission, must be framed within the context of Acholi's particularly vibrant traditions of justice, compensation, and reconciliation. Similarly, in aiming to resolve the weapons and raiding problems among the Karamojong and their neighbours in Eastern Uganda and Western Kenya, any solution devised must be built around traditional Karamojong institutions, including the *akiriket* and the authority of the elders.

By utilizing these mechanisms wholesale, or by borrowing liberally from them to formulate new practices and institutions, the latent understanding of such mechanisms will

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[94] Idem.
[95] Confidential interview by author with Sabiny man studying at Makerere University, 7 Nov. 2004, Kampala, Uganda.
[96] Waliggo, "The Human Right to Respect," 9.

translate strongly to the new institutions. Furthermore, their use will serve to strengthen levels of social trust and civic engagement within these societies; for if the people believe in and trust such mechanisms, it is believed that they will participate in the activities promoted by them. Certainly, it is clear from the experience of the Commission of Inquiry into Violations of Human Rights (CIVHR) in Uganda, that foreign institutions simply do not engender this same kind of trust; and as a result, institutions like the truth commission are simply ignored as people go about their daily lives, pursuing the kinds of mechanisms they know and trust.

In any case, no such process can be implemented within a community without the express commitment of that community. Top-down processes in Uganda, from the CIVHR to the ICC, as history has demonstrated, frequently meet with resistance. As demonstrated above, traditional practices generally involve "bottom up" participation.[97] And this should be respected.

Conclusions

The process of acknowledgement, then, is able to promote coming to terms with the past, emotional response, remembering, forgiveness, social trust, civic engagement, and social cohesion. These elements are the building-blocks of societal rebuilding. And of reconciliation. Acknowledgement forms a necessary condition in moving the reconstruction forward. Without it, the process simply falls flat.

Acknowledgement may be found in many different kinds of institutions. It is essential to note, however, that these mechanisms, like the truth commission in Uganda, do not necessarily foster this process. In some cases, it appears that these kinds of foreign institutions may actually do more harm than good. Yet acknowledgement appears to be inherent in the kinds of mechanisms traditionally found and the ceremonies and rites traditionally practiced in different

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[97] Ross, *Returning to the Teachings*, 55.

ethnic communities.   These traditional institutions, therefore, ought to be explored for their potential use in post-conflict resolution.