

Reconstituting Political Community: Truth Commissions, Restorative Justice and the Challenges of Democratic Transition

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We have been concerned, too, that many consider only one aspect of justice. Certainly, amnesty cannot be viewed as justice if we think of justice only as retributive and punitive in nature. We believe, however, that there is another kind of justice— a restorative justice which is concerned not so much with punishment as with correcting imbalances, restoring broken relationships—with healing, harmony and reconciliation.

- Archbishop Desmond Tutu¹

Introduction

When Desmond Tutu wrote these words in his Foreword to the South African Truth and Reconciliation Commission (TRC) Report, he introduced a new term into the transitional justice lexicon. Borrowing from a broader movement for criminal justice reform active primarily in North America and Australia, Tutu sought to articulate an alternative justification for the political compromises embodied in the work of the commission—a justification that expressed an ethical dimension of these choices that was not easily captured by conventional retributive understandings of justice. Since then, restorative justice has become a mainstay of the field of transitional justice, although its precise meaning and implications remain somewhat elusive.

With this in mind, this paper sets out to deepen our understanding of the contribution of restorative justice discourse to the field of transitional justice by exploring its conceptual and practical usage. In the first section of the paper, I describe the rise of restorative justice discourse in the sphere of transitional justice, underlining two distinct periods in the development of restorative justice theory. In the two sections that follow, I delve more deeply into the theoretical and practical underpinnings of these two models of restorative justice, exploring two illustrative examples: the South African TRC and Rwanda's gacaca courts. In the concluding section, I draw attention to a tension in the conceptualization of restorative justice in the context of transition found in the theory's dual commitment to reconciliation and democratic participation. I argue that restorative justice makes an important contribution to the field of transitional justice by highlighting the human dimension of transition, specifically, the ways in which political violence touches people's lives and affects their relationships with others. However, to the extent that restorative justice theory adheres to a romanticized ideal of reconciliation couched in language of healing and forgiveness, it risks frustrating the development of a robust democratic culture, open to the expression of difference and the peaceful resolution of conflict.

The rise of restorative justice discourse in the sphere of transitional justice

Conditions of extreme political and social adversity have been known to yield remarkable creativity in politics and developments in the field of transitional justice over the past three decades are certainly no exception. The rise of the discourse of restorative justice in the context

¹ Desmond Tutu, "Foreword by Chairperson," in *Truth and Reconciliation Commission of South Africa Report*, ed. Truth and Reconciliation Commission (New York: Macmillan Reference, 1999), par. 36.

of transitions from political oppression, authoritarianism or violent conflict to democratic rule serves to illustrate this trend and, in particular, underscores the complexity of the relationship between ethics and politics where conditions of political instability require imagination and compromise on both fronts.

While the term “restorative justice” is not new to contemporary political discourse, having served as the hallmark of a movement for criminal justice reform in Canada, the United States, Australia and New Zealand since the 1970s² and more recently in Europe, in the context of post-conflict and democratic transition, it has come to be most closely associated with the development of the truth commission as an institution of transitional justice. Early truth commissions were not framed in terms of restorative justice, however. Indeed, the first truth commissions to become widely known, Argentina’s National Commission on the Disappearance of Persons (1983-1984) and Chile’s National Commission on Truth and Reconciliation (1990-1991), were generally seen as unfortunate, but necessary compromises of justice, where prosecution and punishment of those responsible for atrocities committed under the previous regime were feared too destabilizing for these fragile, new democracies.³ Still, to the extent that such commissions contributed to establishing a public record of what had occurred during the period of oppressive rule and provided victims with the opportunity to recount the horrors of their experiences, many commentators and participants felt that such commissions were able to deliver “partial” justice, where “full” justice was beyond reach.⁴ The act of truth-telling thus acquired a moral force of its own, serving as an antidote to the pervasive denial of past atrocities by agents of the state, while offering formal recognition and public acknowledgement to the victims of these crimes. Such revelations took on an added significance in cases where deception had been a key element of the crimes committed, as in the many “disappearances” that took place in Argentina, Chile and other Latin American countries during their dictatorship years.⁵ Furthermore, truth commissions were able to look beyond individual instances of abuse—the focus of trials—to identify broader patterns of state-sanctioned and institutionalized oppression and violence and to recommend legal and institutional reforms aimed at preventing the recurrence of such crimes in the future.⁶ In this sense, they were able to uncover a deeper truth about the past, revealing the systematic nature of the injustices perpetrated during the period under scrutiny and lending credence to victims’ stories of abuse, while laying the groundwork for future reconciliation and peace.

² See, for example, Gordon Bazemore, "Three Paradigms for Juvenile Justice," in *Restorative Justice: International Perspectives*, ed. Burt Galaway and Joe Hudson (Monsey, NY: Criminal Justice Press, 1996), Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (Portland, Oregon: Willan Publishing, 2002), Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice*, 2nd ed. (Cincinnati, OH: Anderson Publishing Co., 2002), Martin Wright, *Justice for Victims and Offenders: A Restorative Response to Crime* (Milton Keynes Philadelphia: Open University Press, 1991), Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, 3rd ed. (Waterloo, ON: Herald Press, 2005).

³ Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York: Routledge, 2002), Naomi Roht-Arriaza, "The New Landscape of Transitional Justice," in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge, UK: Cambridge University Press, 2006).

⁴ Jennifer J. Llewellyn, "Truth Commissions and Restorative Justice," in *Handbook of Restorative Justice*, ed. Gerry Johnstone and Daniel W. Van Ness (Portland, OR: Willan, 2007). See also José Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law Journal* 43 (1992).

⁵ Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions*, 27.

⁶ *Ibid.*, 24-31, Roht-Arriaza, "The New Landscape of Transitional Justice."

These sorts of arguments about the benefits of truth-telling for states dealing with a past marred by grave injustice captured important ethical dimensions of the process of transition; nonetheless, their emergence as *post facto* justifications⁷ for a response dictated to a great extent by the political circumstances of the day served to reinforce the perception that the choice of a truth commission over trials meant sacrificing justice for truth.⁸ It was not until the creation of the South African Truth and Reconciliation Commission (TRC, established by the Promotion of National Unity and Reconciliation Act of 1995) that the choice of a truth commission over criminal prosecution of those responsible for crimes committed prior to the transition was framed in explicitly ethical terms—as a response that furthered, rather than frustrated, the demands of justice. While the conditional amnesty granted by the TRC did involve some sacrifice of justice to the extent that justice was understood in purely retributive and punitive terms, the chief architects of the TRC argued that it promoted “another kind of justice—a restorative justice which is concerned not so much with punishment as with correcting imbalances, restoring broken relationships—with healing, harmony and reconciliation.”⁹

Like previous truth commissions, the legal foundations of the TRC were constructed in a climate of political pragmatism and compromise, in this case, through a process of negotiation between the African National Congress (ANC) and the governing National Party.¹⁰ As Desmond Tutu wrote in his Foreword to the TRC Report, “Neither side in the struggle (the state nor the liberation movements) had defeated the other and hence nobody was in a position to enforce so-called victor’s justice.”¹¹ The National Party’s support for the 1994 elections hinged upon the presence of amnesty guarantees, which effectively ruled out the option of full-scale criminal tribunals.¹² Yet, in spite of these important political constraints on the transitional process, the TRC claimed a nobler foundation than other commissions: instead of pursuing punishment for those responsible for the crimes of apartheid, the TRC would focus on coming to terms with the past in a broader sense, with the aim of reconciling and unifying a deeply fractured society. The idea of restorative justice was evoked as a way of articulating this ambitious moral project and reorienting the transitional justice process away from retribution towards restoring “the dignity of all South Africans” so that “the sons and daughters of South Africa would begin to feel truly ‘at home.’”¹³ Revealing the truth of the crimes of the apartheid era would contribute to mending “broken relationships” between South Africans, while helping to repair the social fabric of a country deeply traumatized by its past. In this way, the TRC and, in particular, its controversial amnesty provision (which granted amnesty to those who disclosed the full extent of their

⁷ As Roht-Arriaza puts it, “The emphasis on “truth” required a theory of why the truth was so important.” Roht-Arriaza, “The New Landscape of Transitional Justice,” 3.

⁸ It should be noted, however, that the establishment of a truth commission does not necessarily rule out the possibility of prosecuting those accused of human rights violations—only the granting of amnesty could do that and even amnesty laws might later be repealed, as was the case in Argentina. The findings of truth commissions may even end up serving as evidence in future trials. Hayner notes, for example, that Spain’s request for Pinochet’s extradition relied heavily on evidence from the report of the Chilean truth commission. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions*, 38.

⁹ Tutu, “Foreword by Chairperson,” par. 36.

¹⁰ Elizabeth Kiss, “Moral Ambition within and Beyond Political Constraints: Reflections on Restorative Justice,” in *Truth V. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2002), 68-69.

¹¹ Tutu, “Foreword by Chairperson,” 5.

¹² Kiss, “Moral Ambition within and Beyond Political Constraints.”

¹³ South Africa, *Truth and Reconciliation Commission of South Africa Report* (New York: Macmillan Reference, 1999), I, chap. 5, par. 80.

involvement in the crimes perpetrated during the apartheid era), were framed not as sacrificing justice or some portion thereof, but as furthering a distinct kind of justice illuminated by the transitional context.¹⁴

This potentially quite radical shift away from the dominant thinking about the requirements of justice in the wake of political oppression and violence ignited a great deal of practical and philosophical debate,¹⁵ and although judgements were mixed on the distinctiveness and moral appropriateness of this alternative conception of justice—not to mention the ability of the TRC to achieve its ambitious aims—the ensuing discussion made certain that restorative justice would secure a more or less permanent place in the transitional justice lexicon. Talk of “restoring justice” to societies dealing with legacies of mass violence and political oppression has since become commonplace¹⁶ and the need to consider strategies for reconciling communities divided by conflict (in addition to bringing those responsible for human rights violations to account) is now largely taken as understood.

At the same time, however, the measures associated with restorative justice have changed in important ways. While restorative justice once seemed inseparable from the truth commission model, more recently, the term has come to be associated with mechanisms of transitional justice that are much more localized and community-based, reflecting local traditions and practices and engaging those most directly affected by the conflict in the justice process. Although truth-telling remains central to these processes and reconciliation is still an important aim, these institutions treat the direct participation of victims and perpetrators in addressing the violence they have experienced and the cultural relevance of the institutions in which this engagement occurs as key to a deeper social and moral reconstruction. The gacaca courts established in Rwanda following the 1994 genocide, which were put into operation across the country in early 2004, and East Timor’s Community Reconciliation Processes initiated in April 2002 are examples of the kind of institutions associated with this new wave of restorative justice mechanisms.¹⁷ In part, a reaction against the one-size-fits-all approaches associated with tribunals and truth commissions and to worries about their remoteness from the communities

¹⁴ See David Dyzenhaus, "Survey Article: Justifying the Truth and Reconciliation Commission," *The Journal of Political Philosophy* 8, no. 4 (2000). There is some disagreement in the transitional justice literature as to whether restorative justice is a form of justice specific to the transitional context or a broader ethical ideal that becomes more salient in societies recovering from political oppression and violence. See Llewellyn, "Truth Commissions and Restorative Justice." Although, until recently, there had been remarkably little cross-pollination between the restorative justice literature dealing with criminal justice reform and aboriginal justice and accounts of restorative justice in the transitional justice context, I find little evidence to suggest that the architects of the TRC believed restorative justice to be exclusive to periods of political transition.

¹⁵ See, for example, Robert I. Rotberg and Dennis Thompson, eds., *Truth V. Justice: The Morality of Truth Commissions*, *University Center for Human Values Series* (Princeton, N.J.: Princeton University Press, 2000), Charles Villa-Vicencio and Wilhelm Verwoerd, eds., *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa* (Cape Town; London: University of Cape Town Press; Zed Books, 2000).

¹⁶ See, for example, Rama Mani’s use of the term in Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge, UK: Polity Press; Blackwell Publishers Inc., 2002).

¹⁷ For descriptions of these processes, see Patrick Burgess, "A New Approach to Restorative Justice: East Timor’s Community Reconciliation Process," in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), Urusaro Alice Karekezi, Alphonse Nshimiyimana, and Beth Mutamba, "Localizing Justice: Gacaca Courts in Post-Genocide Rwanda," in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey M. Weinstein (Cambridge, UK: Cambridge University Press, 2004).

concerned,¹⁸ these processes generally work in tandem with other transitional justice mechanisms—part of a recent trend towards multi-dimensional responses to justice in political transitions, which combine measures that emphasize truth-telling with international and domestic trials, reparations schemes and other formal and informal programs geared towards ensuring that violence does not recur.¹⁹

As it will become clear, these changes in the measures associated with restorative justice reflect not only a shift in thinking about the kinds of processes that are best suited to furthering reconciliation in communities divided along ethnic lines, but also changing ideas about the ethical and political goals orienting those processes. This, in turn, has important consequences for the conceptualization of restorative justice and its appropriateness as a framework within which to understand and meet the demands of justice in the aftermath of violent conflict.

Truth and reconciliation: justifying the TRC

A sceptical reading of the TRC's embrace of restorative justice as an ethical foundation for its work would see it as a political move designed to render the political compromises involved in South Africa's negotiated transition more palatable to citizens seeking justice. But such a conclusion could be arrived at only by ignoring both the context in which the transition took place²⁰ and the tremendously powerful language contained within the TRC Report and the interim constitution that paved its way, which suggests a more profound vision of moral, political and social change for South Africa.²¹ Indeed, in a commentary on the commission quoted in the TRC Report, Judge Richard Goldstone suggests that without its "philosophical, religious and moral aspects... the commission [would] be an empty legal vessel which would do a great deal of harm and achieve nothing."²² What, then, should we make of the TRC's commitment to restorative justice? Did the commission's appeal to restorative justice in justifying its work reflect an ethical orientation that was truly distinctive? Finally, how appropriate or desirable is such a model for thinking about justice in the context of democratic transition?

The post-amble to South Africa's interim constitution of 1993 speaks of the need to construct "a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans..."²³ To secure such a future, it continues, requires the pursuit of both "reconciliation between the people of South Africa and the reconstruction of society."²⁴ It calls, then, for South Africans to "transcend the divisions and strife of the past" and to address this legacy "on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* [humaneness] but not for victimisation."²⁵ The TRC, later established by act of

¹⁸ Roht-Arriaza, "The New Landscape of Transitional Justice."

¹⁹ Ibid., 8.

²⁰ Maybe add reference to Leebaw article.

²¹ Certainly, pragmatic justifications for the TRC also occupied a prominent place within the TRC Report, but this, on its own, ought not to diminish the importance of these ethical arguments. The simultaneous presence of both kinds of rationales for the commission may be seen as reflecting what Kiss refers to as the "dual perspective" of the "truth commission experience," namely "of reluctant realpolitik and of visionary moral ambition." Kiss, "Moral Ambition within and Beyond Political Constraints," 69.

²² South Africa, *Truth and Reconciliation Commission of South Africa Report*, I, chap. 5, par. 1.

²³ *Constitution of the Republic of South Africa Act 200 of 1993*, after section 251.

²⁴ Ibid.

²⁵ Ibid.

parliament,²⁶ took up this task and strove to maintain the spirit of the constitution's words on reconciliation and national unity by gathering evidence and personal accounts of the human rights violations committed during the period from March 1, 1960 to May 10, 1994²⁷ in order to construct "as complete a picture as possible" of these abuses²⁸ and extend much-needed recognition and acknowledgement to citizens who had suffered greatly under apartheid.²⁹

The turn to restorative justice in the commission's efforts to justify and express the motivation behind its work needs to be understood with these general aims in mind. Conceived as part of a broader strategy aimed at democratizing and reconstructing South African society, the TRC's central focus was on the relational or interpersonal dimension of this process. The commission saw its efforts to uncover the truth about injustices perpetrated under the previous regime as an opportunity to renew the ethical foundations of South African society. Thus, its ostensibly backward-looking mandate had a forward-looking goal: its truth-seeking process would be conducted in such a manner as to encourage a reckoning with the past that would precipitate the (re)generation of social ties fractured by decades of violence and repression. The concept of restorative justice, borrowed from a broader movement working to reform domestic criminal justice systems in North America and elsewhere, offered a framework for thinking about this process and a rationale for sidestepping prosecution and punishment that went beyond political necessity. While there is much to be examined in the TRC's adoption of restorative justice as a model for transitional justice, for the purposes of this discussion I will focus on three dimensions of this approach: (1) the humanizing element of restorative justice, (2) its approach to the question of accountability and (3) the idea of reconciliation as individual and national healing.

A central aspect of the restorative model of justice adopted by the commission is its conceptualization of crime as primarily about human relationships.³⁰ Crime, on this view, is first and foremost an offence against a human being and not against the law or the state. Its significance lies less in its defiance of the norms embodied in the law or of the authority of the state than in the harm that it causes to individuals. The physical harm, fear, pain and humiliation that victims endured in South Africa were experiences that tore at their most basic sense of self and denied their claims to the status and rights not only of citizens, but of human beings. They were crimes with a deeply human impact and needed to be addressed on these terms. Hence, the TRC aimed at "correcting imbalances" and "restoring broken relationships" through efforts to recognize the suffering experienced by victims and to reassert their equal status as moral agents worthy of respect.³¹ Providing victims with the opportunity to tell their stories in their own words to a respectful and sympathetic audience, unmediated by lawyers or spokespeople, was a central element of this process. The public nature of the hearings also contributed to the commission's humanizing mission:

²⁶ *Promotion of National Unity and Reconciliation Act, No. 34 of 1995.*

²⁷ The cut-off date was extended by President Nelson Mandela in December 1996.

²⁸ *Promotion of National Unity and Reconciliation Act, No. 34 of 1995.* The commission's objectives, as outlined in section 3 (1) of the Act, also included: (1) "facilitating the granting of amnesty to persons who make full disclosure" of all the facts related to their involvement in human rights abuses, (2) "restoring the human and civil dignity of victims" by giving them the opportunity to relate their experiences and "recommending reparations" be awarded to them and (3) proposing measures to prevent the recurrence of human rights abuses in future.

²⁹ South Africa, *Truth and Reconciliation Commission of South Africa Report*, I, chap. 5, par. 2.

³⁰ *Ibid.*, I, chap. 5, par. 82.

³¹ Tutu, "Foreword by Chairperson," par. 36.

Many people who witnessed the accounts of victims were confronted, for the first time, with the human face of unknown or silenced victims from the conflicts of the past. The public victim hearings vividly portrayed the fact that not only human rights in the abstract, but the very dignity and ‘personhood’ of individual human beings were centrally violated.³²

In the broader restorative justice movement, the need to put a human face on a justice system that is seen as highly mechanical, too adversarial and heavily dominated by professionals is motivated to a large extent by victims’ (and offenders’) negative experiences with the system. In the transitional context, this move to humanize and personalize measures to address past injustice resonates on a much deeper level, as the severity and systematic nature of the crimes committed poses a threat to the moral footings of the entire social edifice.

Part of what is involved in reasserting the dignity and humanity of victims is holding their victimizers accountable for their crimes. A response to past injustice that acknowledged the harm that had been done, but did not forcefully denounce the actions of the perpetrator—most obviously through punishment—would undoubtedly raise questions about the sincerity of the recognition being extended to victims. The issue of holding perpetrators accountable was a controversial one in the case of the TRC, due principally to the amnesty clause included in the Promotion of National Unity and Reconciliation Act which provided that amnesty be granted to those who made “full disclosure of all the relevant facts relating to acts associated with a political objective” that were carried out during the period covered by the commission.³³ The confessions would take place in public, in front of the Committee on Amnesty where they would be closely scrutinized and investigated for accuracy. It was up to the committee, then, to determine whether amnesty would be granted in each case; those who were unsuccessful in their application or chose not to apply would face the possibility of prosecution.³⁴

One of the main concerns normally raised about amnesty as a response to past injustice is that it shields perpetrators from accountability, allowing them to get away “scot-free.” The assumption that typically underlies such a view is that holding someone accountable for wrongdoing means punishing them. Although the justification for punishment may take any number of different forms—consequentialist or deontological, instrumental or intrinsic—the intuitive appeal of this idea often hinges on an idea of retribution or just deserts, namely, that a person who commits a wrong *ought* to be punished and, further, that the punishment they should suffer ought to be proportional to the severity of the wrong they have committed. Following the logic of restorative justice, however, the TRC rejected such a view, choosing instead to interpret accountability through the ideas of confession and making amends: from the perspective of restorative justice, accountability lies in the active assumption of responsibility by an offender, as contrasted with punishment which is passively received. The suggestion, apparent in the remarks of Desmond Tutu quoted earlier,³⁵ is that this is one of the clearest lines of demarcation between retributive and restorative justice: where the former stresses punishment as the most appropriate response to wrongdoing following a logic of just deserts, the latter sees reparation, confession and apology as the best ways to hold offenders to account.

³² South Africa, *Truth and Reconciliation Commission of South Africa Report*, I, chap. 5, par. 90.

³³ *Ibid.*, preamble.

³⁴ Look for stats on how many prosecutions have actually occurred.

³⁵ See page 2.

As a number of commentators have pointed out,³⁶ however, this distinction between retributive and restorative justice has been significantly overdrawn.³⁷ While there is no question that punishment, as hard treatment, is largely abandoned on the restorative model—many of those responsible for terrible crimes under apartheid did go unpunished in this sense—the punitive element still featured centrally in the operations of the commission. As David Dyzenhaus points out, there was an important element of public shaming that accompanied perpetrators' confessions.³⁸ The fact that victims were able to confront those who had victimized them and that much of this was captured by the media had important consequences for perpetrators at the personal level, including severed relations with neighbours and family-members and even broken marriages.³⁹ Furthermore, if the idea of retribution is understood in expressive terms, that is, as “affirming the importance of the moral order that is violated when the equal status [of citizens] that it mandates is violated,”⁴⁰ then as Chinapen and Vernon argue, the convergence between retributive and restorative justice becomes even more evident:

To the extent that the truth-recovery process affirms a status that in the victim's case was violently denied, its aim is identical to that of retributive justice, whether it replaces or supplements punitive practice itself. It takes a different form because of the difference—a morally significant difference, not merely an empirical difference—between abnormal disrespect within a system of law and normal denial in a context in which the operation of law itself has become systematically exclusive.⁴¹

Put differently, Chinapen and Vernon's claim is that the fundamental concerns and objectives of retributive and restorative justice are essentially the same, though the extraordinary context of transition dictates a different kind of justice-based response to wrongdoing than in established democracies characterized by a more or less stable moral order. In each case, the equality and dignity of victims is affirmed, thus restoring a moral equilibrium that has been lost—or perhaps creating one that did not exist in the first place.

Elizabeth Kiss has suggested that what really distinguishes restorative justice from retributive justice, then, is its commitment to reconciliation.⁴² This commitment is embodied in the concept of *ubuntu* or humaneness, first evoked in the interim constitution. Traditional to many indigenous South African communities, this idea expresses the constitutive function of human relationships for individual identity and personhood. It is a spirit of community and interconnectedness marked by attitudes of mutual respect and conciliation.⁴³ The interim constitution called for South Africans to recapture this value and the TRC took it as a central aim to rekindle a sense of community and mutuality in the citizenry, with a view to creating a “home for all South Africans.”⁴⁴ It recognized, however, that reconciliation would not be forthcoming and that it would require work on a number of different levels:

³⁶ See esp. Rhiana Chinapen and Richard Vernon, "Justice in Transition," *Canadian Journal of Political Science* 39, no. 1 (2006), Dyzenhaus, "Survey Article: Justifying the Truth and Reconciliation Commission."

³⁷ Certainly, in the restorative justice literature devoted to the criminal justice context, this point has become more widely recognized. See, for example, Kathleen Daly, "Restorative Justice: The Real Story," *Punishment & Society* 4, no. 1 (2002).

³⁸ Dyzenhaus, "Survey Article: Justifying the Truth and Reconciliation Commission," 478.

³⁹ Kiss, "Moral Ambition within and Beyond Political Constraints," 76, Tutu, "Foreword by Chairperson," par. 35.

⁴⁰ Chinapen and Vernon, "Justice in Transition," 121.

⁴¹ *Ibid.*: 124.

⁴² Kiss, "Moral Ambition within and Beyond Political Constraints," 79.

⁴³ South Africa, *Truth and Reconciliation Commission of South Africa Report*, I, chap. 5, par. 85.

⁴⁴ *Ibid.*, I, chap. 5, par. 26.

The road to reconciliation, therefore, means both material reconstruction and the restoration of dignity. It involves the redress of gross inequalities and the nurturing of respect for our common humanity. It entails sustainable growth and development of the spirit of *ubuntu*... It implies wide-ranging structural and institutional transformation and the healing of broken human relationships. It demands guarantees that the past will not be repeated. It requires restitution and the restoration of our humanity—as individuals, as communities and as a nation.⁴⁵

The commission's contribution to reconciliation lay in setting the conditions for what it frequently referred to as individual and national healing. Its truth-telling mandate was key to this process, for in addition to providing victims with the opportunity to tell their stories and be publicly recognized, it helped articulate a wider narrative about the past that would be granted a permanent place in the national consciousness. Only by opening the wounds of the past, it argued, would the cleansing and healing of the body politic become possible.⁴⁶ Thus, the TRC saw itself as yielding a truth that was both "healing and restorative," a "kind of truth that places facts and what they mean within the context of human relationships—both amongst citizens and between the state and its citizens."⁴⁷

As laudable as this objective sounds, the TRC's understanding of reconciliation as healing raises some difficult questions. Placed within the wider context of democratization and social reconstruction, it is not entirely clear that this model of reconciliation is the appropriate one. If we take the analogy between individual and national healing seriously, then this suggests a degree of social and ethical cohesion that is both unlikely to be achieved and not necessarily desirable for the kind of pluralistic, liberal democracy that the South African transition sought to create. At the individual level, the commission frequently identified the healing process with particular cathartic moments—an interaction between victim and perpetrator, for example—that would provoke an emotional response in both participants and onlookers. These emotional responses were intended to bring home the human impact of the crimes committed, while renewing a sense of fellowship and solidarity within the broader community. Combined, these healing moments were thought to contribute to rebuilding social ties by restoring citizens' mutual trust and instilling within them a greater sense of responsibility. It is by no means clear, however, that the encounter between victim and perpetrator or the victim's act of testifying will produce these sorts of healing effects—the psychological evidence on this is mixed,⁴⁸ but the dangers of generalizing to all victims are quite evident. At the societal level, this begs the question as to whether social repair along these lines is actually achievable, for just as we cannot be certain testifying will produce healing effects for victims, we cannot predict how others will respond to their revelations.⁴⁹ Similarly, to think of healing as requiring forgiveness, as the commission's chairperson, Archbishop Desmond Tutu often suggested, presents an image of reconciliation as requiring a degree of rapprochement between victims and offenders that is simply not appropriate and, couched in religious concepts, marginalizes those who do not

⁴⁵ Ibid.

⁴⁶ Ibid., I, chap. 5, par. 47.

⁴⁷ Ibid., I, chap. 5, par. 43.

⁴⁸ For a discussion of the potential healing benefits of truth-telling for individuals and societies recovering from mass violence (and their limitations), see Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), 61-87.

⁴⁹ Rosemary Nagy, "Reconciliation in Post-Commission South Africa: Thick and Thin Accounts of Solidarity," *Canadian Journal of Political Science* 35, no. 2 (2002): 337.

subscribe to the same religious convictions.⁵⁰ While mutual respect (or at least toleration) and a culture of human rights are critical to a healthy democracy, a deeper sense of solidarity along the lines suggested here is not required, nor is it necessarily desirable.⁵¹

Empowering local communities: new approaches to restorative justice in transition

For some time, restorative justice in the context of transition has been closely tied to the truth commission model. Yet, the past decade has seen the emergence of a new wave of transitional justice mechanisms that have laid claim to the label of restorative justice. While these institutions and practices have retained a commitment to truth-telling and reconciliation as central to a successful and just democratic transition, they reflect a shift away from the ambitious state-wide, top-down responses embodied in trials and truth-commissions to a more localized, community-based approach to dealing with the past. Prompted, in part, by concerns about the detachment of Western-style legal interventions from their target communities and a desire to square the demands of justice with the need for reconciliation,⁵² these initiatives have sought to render the transitional process more meaningful to citizens by incorporating traditions and practices rooted in local culture, to empower victims and foster a “civic culture” oriented towards democracy⁵³ by creating opportunities for meaningful participation in the justice process, and to promote social harmony by reintegrating perpetrators into their communities through processes of “reintegrative shaming.”⁵⁴

This shift in the practices associated with restorative justice reflects a change, also, at the conceptual level, although this is best understood as a shift in emphasis rather than a theoretical overhaul of the paradigm. The new model of restorative justice is more overtly retributive and considerably more pragmatic in its approach to reconciliation. To a greater degree, restorative justice is conceived as a particular kind of response to past injustice, rather than as a conceptually distinct theory of justice, and its appropriateness is seen as more dependent on cultural, social and political context than on universal principles. Truth-telling remains at the heart of restorative justice, but participation by victims, perpetrators and community-members in deliberative forums is valued in its own right. Restorative justice mechanisms, furthermore, are seen as acting in tandem with trials and truth commissions, as part of a multi-layered process aimed at combating impunity and fostering reconciliation within deeply divided communities.

A good illustration of the kinds of responses to past injustice associated with this new wave of restorative justice mechanisms are Rwanda’s gacaca courts.⁵⁵ Developed by the

⁵⁰ This point is made by Nagy in *Ibid.*: 334. There is much more to be said on this point, but space restrictions do not allow me to pursue it any further here.

⁵¹ On this point, I am in agreement with Nagy. *Ibid.*

⁵² Timothy Longman, "Justice at the Grassroots? Gacaca Trials in Rwanda," in *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 207.

⁵³ See Aneta Wierzyńska, "Consolidating Democracy through Transitional Justice: Rwanda's Gacaca Courts," *New York University Law Review* 79 (2004).

⁵⁴ Alana Erin Tiemessen, "After Arusha: Gacaca Justice in Post-Genocide Rwanda," *African Studies Quarterly* 8, no. 1 (2004): 60. Shaming that is reintegrative rather than stigmatizing occurs when a community expresses its disapproval of certain conduct while offering pathways for offenders to be reaccepted into the community. For a detailed account of the theory of reintegrative shaming and its roots in criminological theory see John Braithwaite, *Crime, Shame and Reintegration* (New York: Cambridge University Press, 1989).

⁵⁵ While there are a number of other cases that might be discussed here—East Timor’s Community Reconciliation Processes, for example—due to space limitations, I will restrict my discussion here to this one illustrative example.

Rwandan government in response to a growing backlog of cases in the domestic courts and increasing concern that the United Nations-led International Criminal Tribunal for Rwanda, based in Arusha, Tanzania, was too remote from Rwandan society and unconcerned with the process of reconciliation in the country despite the centrality of this issue to its mandate,⁵⁶ the gacaca courts are a hybrid initiative, combining elements of local Rwandan traditions and Western legal responses. The name “gacaca” literally means “small grass,” referring to the outdoor meeting places where people have traditionally gathered to resolve disputes arising within the community, typically involving property, land or personal injury.⁵⁷ Karekezi, Nshimiyimana, and Mutamba describe these traditional dispute resolution processes as follows:

Such informal institutions are characterized by direct links between the parties, litigation considered as a community problem more than an individual problem, a trial centred on the victim, social pressure rather than coercion as the principal motivator, a flexible and informal procedure, voluntary participation, and decisions achieved through mutual agreement between the parties and the community, with the restoration of social harmony as the principal goal.⁵⁸

The “inkiko gacaca” or gacaca courts—as the new government initiative has been called in order to distinguish its new incarnation from the old, which is simply called “gacaca”⁵⁹—incorporate many of these same elements, but have been modified in important ways to adapt to the present needs of the government and community. The chief difference between the two lies in the degree of formality of the system: where traditional gacaca was informal, functioning on the margins of the legal system, gacaca courts operate with formalized rules and procedures and function under the authority of the state. Gacaca judges or *Inyangamugayo*, for example, are chosen by means of organized elections, rather than simply by virtue of their status as male elders in their communities, and are provided with limited legal training and assistance by special legal advisors as needed during the trials. The crimes adjudicated by the gacaca courts are also much more serious, ranging from property crimes (category 4 under Rwanda’s 1996 Organic Law) to killing or attempting to kill under the orders of others (category 2). Category 1 crimes, which include organizing the genocide, rape and killing with particular intensity and eagerness fall under the jurisdiction of the regular courts.⁶⁰ Sentences imposed must conform to government-issued guidelines, which are distinctly punitive, but the courts do retain considerable discretion in this area.⁶¹

Briefly, the gacaca process involves two phases.⁶² The first phase is a series of public meetings in which members of the community gather to discuss how the genocide affected them and compose lists of suspects to be tried at different court levels in accordance with the severity of the crimes of which they have been accused. The classification of crimes is carried out in

⁵⁶ Alison Des Forges and Timothy Longman, “Legal Responses to Genocide in Rwanda,” in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey M. Weinstein (Cambridge, UK: Cambridge University Press, 2004), Karekezi, Nshimiyimana, and Mutamba, “Localizing Justice.”, Longman, “Justice at the Grassroots?.”

⁵⁷ Longman, “Justice at the Grassroots?,” 209.

⁵⁸ Karekezi, Nshimiyimana, and Mutamba, “Localizing Justice,” 73.

⁵⁹ Longman, “Justice at the Grassroots?,” 211.

⁶⁰ For a more detailed description of the gacaca courts, their operations and procedures, see Karekezi, Nshimiyimana, and Mutamba, “Localizing Justice.”, Longman, “Justice at the Grassroots?.”

⁶¹ Longman, “Justice at the Grassroots?,” 212.

⁶² This description draws heavily on Karekezi, Nshimiyimana, and Mutamba, “Localizing Justice.” and Longman, “Justice at the Grassroots?.”

private by a panel of 19 judges elected at the cell level, the smallest of the three major administrative units in Rwanda, and the accused are then tried at the appropriate court level. The judges who preside over the sector- and district-level courts are representatives of the cell judges who are responsible for selecting them.

Initial evaluations of the gacaca process in Rwanda have been mixed. Problems range from logistical issues relating to the location of community meetings and participation rates⁶³ to more serious human rights concerns,⁶⁴ such as questions about the legal competence of judges, the independence and impartiality of the courts and a lack of protections for the accused. Power politics also pose a hindrance to the success of the gacaca courts at both the macro-level, where concerns are raised about the politicization of the process in general (e.g., the fact that RPF offences are not included) and of the ethnic identities that played such a fatal role in the genocide,⁶⁵ and the micro-level, where community-members often fear retaliation for testifying at the hearings.⁶⁶ Finally, as Tiemessen points out, “[t]here is irony in the relationship between populist and grassroots participation that is state-imposed.”⁶⁷ Here, gacaca must carry out a difficult balancing act, preserving the benefits of an inherently grassroots process, while incorporating it into a formalized system that affords both protections and limitations.

On the positive side, the gacaca process has shown success on a number of fronts. It has strengthened considerably the inclusion of women in the justice process, both as participants at general assemblies and as judges.⁶⁸ Transparency and community involvement are notably greater in the gacaca courts, with deliberation playing a central role. The use of incentives, such as lighter sentences including community service, to encourage confession has softened the punitive edge of the process, facilitated offenders’ reintegration into communities and contributed to the establishment of a public record of the genocide’s impact, although questions have been raised about the authenticity of confessions in some cases.⁶⁹ A study by Longman, Pham and Weinstein⁷⁰ has shown that Rwandans, regardless of ethnicity, hold significantly more positive attitudes towards the gacaca courts than the ICTR and domestic trials and are much more informed about the process—a finding that is especially encouraging given the system’s overarching objective of rendering the transitional justice process more meaningful to its target communities. Finally, by including community-members in the justice process, the gacaca courts have given “the people of Rwanda a rare opportunity to control their own destinies,”⁷¹ which, for a society recovering from collective trauma, is far from trivial.

⁶³ Karekezi, Nshimiyimana and Mutamba found that weather considerations (rain or strong sun) would lower participation rates or hamper communication at meetings as people sought shelter from the sun and moved to the fringes of the group. Karekezi, Nshimiyimana, and Mutamba, "Localizing Justice," 78.

⁶⁴ For an outline of, and an argument defending the gacaca process against, many of these human rights concerns, see Longman, "Justice at the Grassroots?," esp. 212-19.

⁶⁵ Tiemessen, for example, notes how “victim,” “perpetrator” and “survivor” identities have been evoked in such a way as to reinforce ethnic divisions and further stigmatize Hutus, despite an official government line that promotes a national Rwandan identity. Tiemessen, "After Arusha."

⁶⁶ Longman, "Justice at the Grassroots?," 222.

⁶⁷ Tiemessen, "After Arusha," 69.

⁶⁸ Karekezi, Nshimiyimana, and Mutamba, "Localizing Justice," 80.

⁶⁹ Ibid., 79.

⁷⁰ Timothy Longman, Phuong Pham, and Harvey M. Weinstein, "Connecting Justice to Human Experience: Attitudes toward Accountability and Reconciliation in Rwanda," in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey M. Weinstein (Cambridge, UK: Cambridge University Press, 2004).

⁷¹ Longman, "Justice at the Grassroots?," 224.

Conclusion: Reconstituting political community in the aftermath of political oppression and mass violence

Perhaps the greatest contribution of restorative justice discourse to the field of transitional justice is its humanizing element: restorative justice acknowledges and addresses the human dimension of transition, drawing attention to the ways in which political violence touches people's lives and affects their relationships with others—their family, neighbours and fellow citizens. Restorative justice seeks to mend these fractured relationships by encouraging dialogue across divisions, empowering victims and renewing their sense of agency, and holding offenders to account while offering them pathways to reacceptance into the community.

There is, however, an important tension in the conceptualization of restorative justice in the context of transition that emerges once we examine more closely the mechanisms associated with this approach alongside the values and aims they seek to promote. The tension lies in restorative justice's dual emphasis on democratic participation and reconciliation. On the one hand, through its language of healing and forgiveness, restorative justice expresses an ideal of a healed and reconciled community that enjoys a high degree of ethical and social cohesion. As such, restorative justice gestures towards a point of harmony on the horizon—whether originating in the past or existing only as a future possibility—and the hope of overcoming longstanding ethnic divisions and strife to build a unified society. On the other hand, the mechanisms associated with restorative justice, especially in its most recent incarnations, are designed with a view to promoting the direct participation of those affected by past injustice in the transitional justice process, ensuring that a plurality of perspectives will be voiced in the public sphere. Thus, a romanticized ideal of a unified community is coupled with an agonistic vision of democratic politics.

As evidence drawn from a recent study of transitional justice processes in the former Yugoslavia and Rwanda indicates, people's views of justice can vary dramatically.⁷² Showing survivors of mass violence the respect they deserve—as a path to personal healing or as a vehicle for internalizing a civic culture committed to human rights and peaceful democratic discourse—therefore requires that we admit a variety of potentially conflicting views into the public sphere. And this may not be a bad thing: rather than seek to eliminate public discord, to draw former oppressors and victims together under an umbrella of reconciliation and national unity, transitional societies should seek instead to create an environment in which differences can be expressed safely, by building non-violent mechanisms through which demands and interests can be voiced and conflicts resolved. As Leigh Payne argues,⁷³ while truth-telling often has an unsettling effect, exposing different, sometimes contentious views of past events, this is a desirable outcome for new democracies seeking to overcome deep ethnic cleavages and a history of violence.

The second wave of restorative justice mechanisms points us in this direction, all the while emphasizing the need to address the relational dynamics of transition. As Halpern and Weinstein eloquently put it, “It is the interpersonal ruins, rather than the ruined buildings and

⁷² Eric Stover and Harvey M. Weinstein, eds., *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004).

⁷³ Leigh A. Payne, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence*, ed. Neil L. Whitehead, Jo Ellen Fair, and Leigh A. Payne, *The Cultures and Practice of Violence Series* (Durham: Duke University Press, 2008).

institutions, that pose the greatest challenge for rebuilding society.”⁷⁴ The authors look to the concept of empathy to help express the ethical component needed to regenerate healthy relationships and build trust after mass violence. Interestingly, their concept of empathy does not require convergence of views and perspectives, but rather, a recognition and acceptance of the existence of alternative understandings of the truth and that agreement on the past may never be achieved.⁷⁵ Building empathy within communities torn apart by violence and oppression is a long-term project and will not be accomplished in cathartic bursts.⁷⁶ Such a concept holds great promise as a starting-point from which to rethink the idea of reconciliation central to restorative justice discourse.

⁷⁴ Jodi Halpern and Harvey M. Weinstein, "Empathy and Rehumanization after Mass Violence," in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey M. Weinstein (Cambridge, UK: Cambridge University Press, 2004), 304.

⁷⁵ *Ibid.*, 317.

⁷⁶ *Ibid.*, 319.

Bibliography

- Bazemore, Gordon. "Three Paradigms for Juvenile Justice." In *Restorative Justice: International Perspectives*, edited by Burt Galaway and Joe Hudson, 37-67. Monsey, NY: Criminal Justice Press, 1996.
- Braithwaite, John. *Crime, Shame and Reintegration*. New York: Cambridge University Press, 1989.
- Burgess, Patrick. "A New Approach to Restorative Justice: East Timor's Community Reconciliation Process." In *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, edited by Naomi Roht-Arriaza and Javier Mariezcurrena, 176-205. Cambridge: Cambridge University Press, 2006.
- Chinapen, Rhiana, and Richard Vernon. "Justice in Transition." *Canadian Journal of Political Science* 39, no. 1 (2006): 117-34.
- Constitution of the Republic of South Africa Act 200 of 1993*.
- Daly, Kathleen. "Restorative Justice: The Real Story." *Punishment & Society* 4, no. 1 (2002): 55-79.
- Des Forges, Alison, and Timothy Longman. "Legal Responses to Genocide in Rwanda." In *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, edited by Eric Stover and Harvey M. Weinstein, 49-68. Cambridge, UK: Cambridge University Press, 2004.
- Dyzenhaus, David. "Survey Article: Justifying the Truth and Reconciliation Commission." *The Journal of Political Philosophy* 8, no. 4 (2000): 470-96.
- Halpern, Jodi, and Harvey M. Weinstein. "Empathy and Rehumanization after Mass Violence." In *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, edited by Eric Stover and Harvey M. Weinstein, 303-22. Cambridge, UK: Cambridge University Press, 2004.
- Hayner, Priscilla B. *Unspeakable Truths: Facing the Challenge of Truth Commissions*. New York: Routledge, 2002.
- Johnstone, Gerry. *Restorative Justice: Ideas, Values, Debates*. Portland, Oregon: Willan Publishing, 2002.
- Karekezi, Urusaro Alice, Alphonse Nshimiyimana, and Beth Mutamba. "Localizing Justice: Gacaca Courts in Post-Genocide Rwanda." In *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, edited by Eric Stover and Harvey M. Weinstein, 69-84. Cambridge, UK: Cambridge University Press, 2004.
- Kiss, Elizabeth. "Moral Ambition within and Beyond Political Constraints: Reflections on Restorative Justice." In *Truth V. Justice: The Morality of Truth Commissions*, edited by Robert I. Rotberg and Dennis Thompson, 68-98. Princeton: Princeton University Press, 2002.
- Llewellyn, Jennifer J. "Truth Commissions and Restorative Justice." In *Handbook of Restorative Justice*, edited by Gerry Johnstone and Daniel W. Van Ness, 351-71. Portland, OR: Willan, 2007.
- Longman, Timothy. "Justice at the Grassroots? Gacaca Trials in Rwanda." In *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, edited by Naomi Roht-Arriaza and Javier Mariezcurrena, 206-28. Cambridge: Cambridge University Press, 2006.

- Longman, Timothy, Phuong Pham, and Harvey M. Weinstein. "Connecting Justice to Human Experience: Attitudes toward Accountability and Reconciliation in Rwanda." In *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, edited by Eric Stover and Harvey M. Weinstein, 206-25. Cambridge, UK: Cambridge University Press, 2004.
- Mani, Rama. *Beyond Retribution: Seeking Justice in the Shadows of War*. Cambridge, UK: Polity Press; Blackwell Publishers Inc., 2002.
- Minow, Martha. *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press, 1998.
- Nagy, Rosemary. "Reconciliation in Post-Commission South Africa: Thick and Thin Accounts of Solidarity." *Canadian Journal of Political Science* 35, no. 2 (2002): 323-46.
- Payne, Leigh A. *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence*. Edited by Neil L. Whitehead, Jo Ellen Fair and Leigh A. Payne, *The Cultures and Practice of Violence Series*. Durham: Duke University Press, 2008.
- Roht-Arriaza, Naomi. "The New Landscape of Transitional Justice." In *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, edited by Naomi Roht-Arriaza and Javier Mariezcurrena, 1-16. Cambridge, UK: Cambridge University Press, 2006.
- Rotberg, Robert I., and Dennis Thompson, eds. *Truth V. Justice: The Morality of Truth Commissions, University Center for Human Values Series*. Princeton, N.J.: Princeton University Press, 2000.
- Promotion of National Unity and Reconciliation Act, No. 34 of 1995*.
- South Africa. *Truth and Reconciliation Commission of South Africa Report*. New York: Macmillan Reference, 1999.
- Stover, Eric, and Harvey M. Weinstein, eds. *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*. Cambridge: Cambridge University Press, 2004.
- Tiemessen, Alana Erin. "After Arusha: Gacaca Justice in Post-Genocide Rwanda." *African Studies Quarterly* 8, no. 1 (2004): 57-76.
- Tutu, Desmond. "Foreword by Chairperson." In *Truth and Reconciliation Commission of South Africa Report*, edited by Truth and Reconciliation Commission, 1-23. New York: Macmillan Reference, 1999.
- Van Ness, Daniel W., and Karen Heetderks Strong. *Restoring Justice*. 2nd ed. Cincinnati, OH: Anderson Publishing Co., 2002.
- Villa-Vicencio, Charles, and Wilhelm Verwoerd, eds. *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*. Cape Town; London: University of Cape Town Press; Zed Books, 2000.
- Wierzyńska, Aneta. "Consolidating Democracy through Transitional Justice: Rwanda's Gacaca Courts." *New York University Law Review* 79 (2004): 1934-69.
- Wright, Martin. *Justice for Victims and Offenders: A Restorative Response to Crime*. Milton Keynes Philadelphia: Open University Press, 1991.
- Zalaquett, José. "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations." *Hastings Law Journal* 43 (1992): 1425-38.
- Zehr, Howard. *Changing Lenses: A New Focus for Crime and Justice*. 3rd ed. Waterloo, ON: Herald Press, 2005.