

Burying the Past: Making Peace and Doing Justice after Civil Conflict

Nigel Biggar, ed.

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How should societies that have transitioned from authoritarian to democratic rule deal with the atrocities and gross human rights violations of their immediate past? Should those implicated in the crimes of past regimes be prosecuted? This sophisticated volume attempts to address such questions.

About one-third of the book is comprised of well-reasoned theoretical chapters that answer the above questions by creating a space in liberal justice for forgiveness. The remainder consists of empirical contributions that describe the ways in which international institutions and five countries (Chile, Guatemala, South Africa, Rwanda, and Northern Ireland) have responded to such crimes. Unlike the theoretical section, most contributions here argue that while memory and forgiveness (the truth commissions) are important, they are not enough to meet the victims' psychological needs and do not guarantee non-repetition. The introduction rightly acknowledges that some of the chapters argue in different directions.

Doing justice in the aftermath of civil conflict is a thorny problem. In liberalism, criminal justice always has been straightforward: the courts, the mouthpiece of objective law, have to mediate and impose punishment if the perpetrator is proven guilty. Punishment must consist of penalties that annul the advantages seized by the criminal, compensate the victim in the case of

damage, and prevent future repetition by reforming the perpetrator and serving as a warning to potential criminals. In all of this, punishment has to be proportionate to the crime, as Bentham rightly noted. This is what is obtained in liberal societies and, indeed, in all societies governed by the rule of law.

However, the contributors to the book's theoretical section try to politicize criminal justice by creating a tension between the need for justice and the need for peace/political stability. They agree that doing justice in the case of injury definitely entails punishment, but argue that the perpetrators would interpret this as revenge, an act of a subjective will, if they committed the crime while serving a former regime. In this context, strict adherence to justice would fuel a cycle of killings that would continue *ad infinitum* (Hegel's self-related negativity) and topple whatever political accommodation was negotiated to achieve peace.

The contributors bridge the tension between the moral claim of justice and the political demands of peace by arguing that criminal justice is not primarily about punishing the perpetrator, but that it involves recognizing the injury and acknowledging the victim's dignity. Furthermore, the authors argue that justice entails establishing the truth and preserving the story so that the public will have a lasting collective memory of it, that public remembrance is a warning against any repetition, and that forgiveness is a restorative justice that unburdens people from the past's hold and also reintegrates the perpetrators into the community.

As I noted earlier, liberal justice is about just punishment. However, this is missing from the idea of restorative justice developed in the first four chapters. The courts have no role in "restorative" justice, and what emerges is a political compromise that makes politics possible but barely addresses the victims' concerns. Some of the examples used actually express the victim's disapproval of, and weak support for, the case of political forgiveness. Take the case of Steve Biko's family in South Africa, presented by Donald Shriver. Biko's family is said to have "refused to appear before the Truth and Reconciliation Commission, fearing that the commissioners would grant amnesty to the murderers." Instead, the family went to the courts.

The empirical section shows that public disclosure and forgiveness are good – but not the best – road to travel. In her chapter on institutional responses to the past, Martha Minow shows that during the twentieth century, ad hoc international tribunals were the standard mechanisms for advancing human rights and that these have developed into permanent international courts through various truth and reconciliation commissions. She rightly concludes that "legal institutions can offer armatures for memory, and frames for

the kinds of acknowledgement that prevent both forgetting and vengeance,” but that “truth commissions may be too tepid, too ineffectual.”

Brandon Hamber’s chapter on South Africa and Alexandra Barahoma’s de Brito’s piece on Chile reveal that a public revelation of the truth does not necessarily heal the victim or bring closure. In the case of South Africa, Hamber presents evidence to bear and notes that “some survivors still remain angry about amnesty for perpetrators, and some perpetrators and beneficiaries of the system still deny responsibility.” The case of Chile has been well publicized by the international press: the government’s attempt to trade truth for justice was defeated by human rights groups that brought the courts center stage. The climax in this press for justice was the arrest and prosecution of Augusto Pinochet.

A high point of the book is the author’s conclusion, which ties the theoretical arguments with the empirical. During this analysis, he notes that reckoning with the past is a long process and that a framework of political stability is required. Hence, in his own sweet words, “compromise is inevitable, and the price of peace is that justice – especially its retributive dimension – must be allowed to suffer political constraints.”

In sum, the book’s theoretical and empirical sections complement each other so that readers are presented with a complete whole. The former draws on facts presented in the latter to make arguments for restorative justice, while the historical chapters use their own cases to refute theory. The result is a very serious and excellent work on justice in societies trying to deal with their violent past. It is very suitable for graduate and higher level undergraduate classes as well as research.

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