

# **After Genocide: The Politics of Justice and Reconciliation**

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# Lecture's plan

- **Part I.** Words matter!
- **Part II.** Turning concepts into political action: justice as trials and reconciliation as European integration: 2 responses to mass atrocities in 1940s and 1950s
- **Part III.** Larger ambitions today for justice as 'transitional justice' and reconciliation as regional integration
- **Part IV.** A few remarks on Eastern/Central European countries, Russia, and the US
- **Part V.** Provisional conclusions

# How to live together after genocide?

“In contemplating **history as the slaughter-bench** at which the happiness of peoples, the wisdom of states, and the virtue of individuals have been sacrificed, a question necessarily arises: To what principle, to what final purpose, have these monstrous sacrifices been offered?” (Hegel, *Reason in History*, 27).

“But there remains also the truth that **every end in history necessarily contains a new beginning**; the beginning is the promise, the only ‘message’ which the end can produce. Beginning, before it becomes a historical event, is the supreme capacity of man; politically it is identical with man’s freedom... **This beginning is guaranteed by each new birth; it is indeed every man**” (Arendt, *The Origins of Totalitarianism*, 479).

**Part I.**

**Words matter!**



# **(Very) brief genealogy of terms**

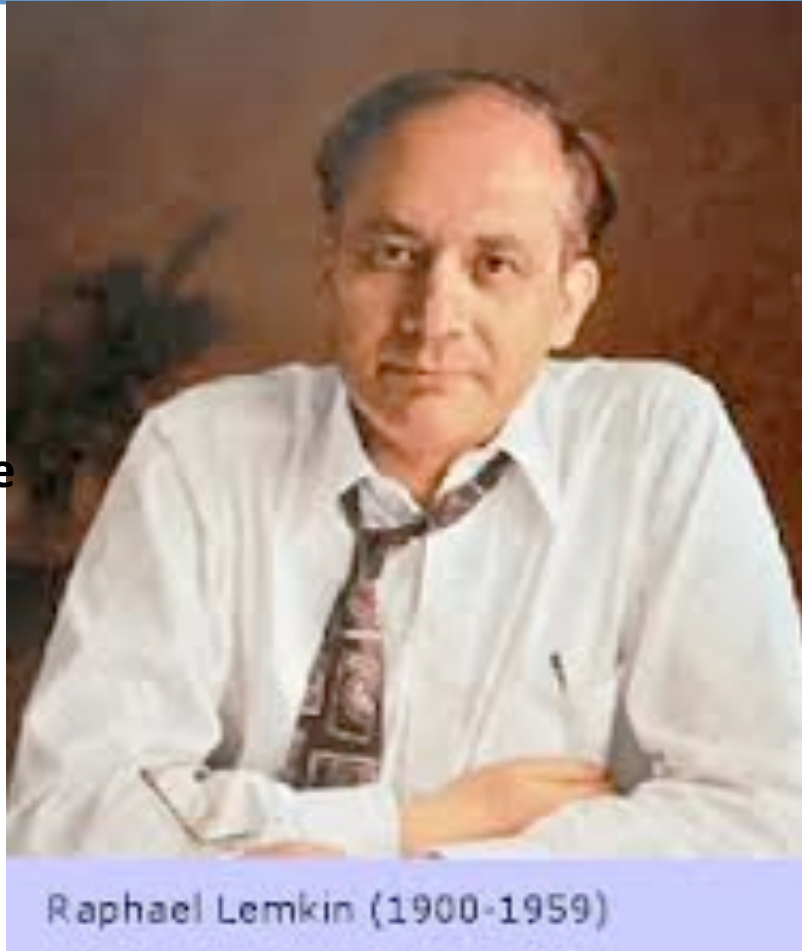
Theorizing a response to radical political evil after the Holocaust

- Theorizing genocide: Lemkin (1944)
- Theorizing political reconciliation: Arendt (1945, 1951, 1958)
- Theorizing justice: Jaspers (1946)

# Theorizing Genocide

## Raphael Lemkin (1900-1959)

Naming the crime



Institutionalizing  
punishment

# UN Convention on the Prevention and Punishment of the Crime of Genocide (1948)

**Definition:** Acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such (art. 2):

- (a) Killing members of the group
- (b) Causing serious bodily or mental harm to members of the group
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group

# Crimes punishable under the Convention

Art. 3:

- (a) Genocide
- (b) Conspiracy to commit genocide
- (c) Direct and public incitement to commit genocide
- (d) Attempt to commit genocide
- (e) Complicity in genocide

# Theorizing political reconciliation: (Arendt 1945, 1951)

- Political reconciliation: Missing from European political lexicon (until Hegel's *The Phenomenology of Spirit*, **1807**)
- **1945**: 'Approaches to the German Question': Germany in a federated Europe (*Essays in Understanding*)
- **1951**: Reconciliation as the unending search for 'understanding' (*The Origins of Totalitarianism*)

# Hannah Arendt (1950)



## Another kind of reconciliation: 'forgiveness' and 'promise' (Arendt, *Human Condition*, 1958)

### **Action is both irreversible and unpredictable:**

miracle-making – and Holocaust-making – capacity to act under the dual conditions of natality and plurality

### **Political 'remedies':**

- **Forgiving: acting anew** with former perpetrator (**not** amity, forgetting, healing)
- **Promising** (treaties, constitution, etc.)
- Arendt is a frequent reference in conflict resolution literature

# Karl Jaspers with Gertrud Jaspers-Mayer: Theorizing the thin place between justice and reconciliation





# Jaspers on justice and reconciliation after genocide: *The question of German Guilt* (1946)

- Criminal guilt: Individual guilt  
Judicial process
- Political guilt: Collective guilt  
Public debates. Reparations
- Moral guilt: Individual guilt  
Personal process
- Metaphysical guilt: Cosmopolitan responsibility. Personal process

the question of  
GERMAN GUILT

KARL JASPERS

with a new introduction by  
Joseph W. Koterski, S.J.

Translated by E. B. Ashton

## **Part II. Turning concepts into political action:**

**Two responses to mass atrocities in 1940s and 1950s in Europe:**

- Justice through trials
- Reconciliation through European integration

# 1940s: Justice after genocide

After 'crimes against peace' in 1945:

- Revenge: Shoot the guilty (Stalin's alleged initial response)
- Justice: Try the guilty (Allies' shared decision)

# Nuremberg (1945-6) and Tokyo trials (1946-8)



# Trials: Contributions and problems

+

- Establish records for posterity
- A moral language: rights, guilt, accountability
- Led to the Convention on Genocide (1948)

–

- Retroactivity
- Selectivity
- Politicization (what about US racism, Western European colonialism, Stalin's 'purges'?)

**Launching the Schuman Plan (May 9, 1950): a  
‘European contribution to world peace’ (no mention  
of reconciliation)**





**Founding peace: 3 years of negotiations to establish institutions and policies. Can be interpreted as 'forgiveness' and 'promise' (Arendt)**



# Early European integration: Contributions and problems (ECSC, 1952)

- + **'Forgiveness'**: Incite recent enemies to collaborate on shared interests
- Stimulate economic exchanges
- Helps solve the Saar problem and the 'German question' for the West
- - **'Promises'** are limited: small membership; exchanges 'integrated' only for coal and steel
- Fails to explain to its peoples why economic integration serves democracy, peace and prosperity and how the community function



# Comparing justice and European integration as responses to mass atrocity

## *Nuremberg and Tokyo trials*

- **Justice: Past-oriented**
- **Hierarchical order:** the judges, the perpetrators and victims
- **The WWII Allies hegemony as the *main sponsors***
- **Promise is short term:** trials and implementation of punishment.
- **Cold War** breaks the legacy of institutions/ policies

## *European integration (+ 1952 Coal and Steel Community)*

- **Integration: Future-oriented**
- **Egalitarian order:** elected officials and civil society
- **The US hegemon as *temporary adviser***
- **Promise is 'for ever'**
- **Cold War** aids process

## **Part III. Larger ambitions today**

**Justice as 'transitional justice'**

**Reconciliation as regional integration**

**Building just, reconciled and  
prosperous societies**

# Justice as 'transitional justice' (term appears mid-1990s)

- **Both** past and future-oriented
- Domestic and international
- **History:** 1970s in Argentina, Greece
- 1980s in Chile, Brazil
- 1990s South Africa, Rwanda
- 2000s: Western Balkans, Cambodia

# Goals of transitional justice

- Justice and deterrence (as in 1946)
- Information/truth
- Develop a moral language that can help rebuild the political community

## **Post Cold War:**

- ‘Healing’ as a form of collective and individual therapy (recalls Jaspers)
- Build the democratic community

# Transitional justice's institutions and policies today (4 pillars)

- Courts, domestic and international
- Truth and Reconciliation Commissions
- Reparations
- Work of healing through museums, monuments, historians' commissions, etc.

# The European Union of 28 member states



# European integration as 'forgiveness' and 'promise' or reconciliation

## **Future-oriented:**

- From 6 to 28 member states
- From coal and steel to all policy field (entire economy, currency, immigration, etc.)
- The EU as an external hegemon: aspires to contribute to world peace not just through peace within but by spreading peace without

## **Past oriented:**

- EU supports research and policies on memory for shared identity and democratization

# Goals of European integration

- A Europe at peace
- Democracy
- Prosperity
- **What is changing:** the Union is closing its doors to new members. **Can there be 'forgiving' and 'promising' with non-members?**



# Transitional justice and European integration converge

## Transitional justice

- Past and future oriented
- Broader set of goals and policies
- Many domestically-initiated processes
- Some processes international
- **The challenge of 'promising':**  
The ICC treaty not ratified by China, Russia, US

## European integration

- Future and past oriented
- Broader set of goals and policies
- In between federal and confederal orders
- **The challenge of 'promising':** Primacy of EU law challenged

## **Part IV. Some reflections on Eastern and Central Europe, Russia, and the US**

### **Transitional justice and regional integration**

# European integration and transitional justice in Central and Eastern Europe since 1989

- The 1993 Copenhagen criteria for EU accession: rule of law, free market, fair justice system, democratic order (no mention of transitional justice)
- Each country has organized its own processes of transitional justice in order to satisfy the Copenhagen criteria
- In Central and Eastern Europe: Some trials, opening of archives, “lustration laws”, apologies, monuments

# Russia as a successor state of the Soviet Union

- Transitional justice
- Regional integration

# Transitional justice, Russia and the US

- Little comparative literature on Russia/Soviet Union in Anglo-Saxon literature (and similar situation regarding US)
- A regrettable intellectual lacuna

# Transitional justice's institutions and policies today

- Courts, domestic and international: trials
- Truth and Reconciliation Commissions
- Reparations: monetary and symbolic
- Work of healing through museums, monuments, historians' commissions, etc.



# US detention camps for 120,000 Japanese-Americans (1942-46)

## 1988: Apologies and reparations





# Transitional justice in the US: the lingering effects of institutionalized segregation: Ferguson August 2014



## ***Roy Brooks' Atonement and Forgiveness: A New Model for Black Reparations (2006)***

- **No mention of trials or truth commissions:** truth established; perpetrators dead
- **Reparations and apology:** museums and a trust fund must be created for educational or investment purposes
- If atonement is credible (trust fund and apologies) **the victim has civic responsibility to forgive:** the healing and reconstruction of civic bond impossible otherwise

# Genocide and the Soviet Union and the US

- Soviet Union: Targeting specific national and ethnic groups (Cossacks, Tatars, Germans, Koreans, Chechens, Ingushs, etc.) with intent to kill significant segments of the targeted populations
- Was it a '**democide?**' (Etkind, 2013)
- The USA and the American Indians: was it a genocide?

# Transitional justice in Russia

- **Truth telling:** Khrushchev's 'Secret Speech' to twentieth Party Congress 1956: Stalin's 'unjustified repression'; Gorbachev's *perestroika*
- Truth-telling in the arts and literature
- **Reparations:** The 'rehabilitation' of the imperial family and many victims of Stalinist purges
- **Other activities:** Memorial Society (1989-) has demanded monuments, opening of archives, etc.
- **No trials** of Soviet perpetrators

**Katyn's mass graves as a place of  
'healing' (acknowledge guilt, remember, mourn)**





# Transitional justice, Katyn massacres, and Polish-Russian relationship

- **1940:** Execution of 21, 857 Polish officers and deportation of their families. Soviet Union accuses Nazi Germany of the crime
- **1990:** Soviet Union acknowledges Soviet responsibility for executions.
- **1992:** Russian transfer documents confirming Soviet guilt to Polish authorities
- **1993:** Yeltsin in Warsaw asks Poles: 'Forgive us if you can'
- **2004:** Russian investigation closed
- **2010:** Wadj's film *Katyn* screened on TV channel *Kul'tura* and Russia's *Channel One*. President Lech Kaczynski's 'reconciliatory message'.
- **2010:** Russian Duma recognizes Katyn as a crime of Stalinist regime
- **2011:** Russia envisages rehabilitation of Katyn's victims

# Patriarch Kirill praying at Katyn, July 2012, for Soviet and Polish 'innocent victims'



# Integration: The Eurasian Economic Union (2015)

- Members: Armenia, Belarus, Russia, Kazakhstan, (and Kirghizstan, May 2015)
- Modeled in part after the European Union

A Commission, Court of Justice and Eurasian Development bank

Free movement of people, goods, capital and services



## Questions to ponder on regional integration and its 'promises'

- Who will join? **Are 'forgiveness'/justice necessary?**
- How to balance the decision-making power of large, powerful states and weaker states?
- Redistributing economic resources?
- How to make sure **'promises'** are enforced?
- **Contribution to world peace?**

# **Part V. Provisional conclusions**

**Preventing mass atrocities**

**Responses of transitional justice and regional integration**

# Provisional conclusions/questions

- **Who will impose end of violence today?** Justice and reconciliatory processes: these responses to mass atrocities predicated on cessation of violence
- Can we explain/discuss **the absence of a phenomenon?**
- **Scholarly research should examine specific cases within shared conceptual framework:** i.e. examine Russia and US in comparative perspectives.
- **Societies must elaborate their own processes:** Learning from best practices and yet being original. European integration was 'new'. Post-WWII trials were 'new'. **Imagination:** Lemkin, Arendt, Jaspers.

# Searching for justice and reconciliation after genocide

“In contemplating **history as the slaughter-bench** at which the happiness of peoples, the wisdom of states, and the virtue of individuals have been sacrificed, a question necessarily arises: To what principle, to what final purpose, have these monstrous sacrifices been offered?” (Hegel, *Reason in History*, 27).

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