



Ethical Rehabilitation After the Holocaust

Paul E. Wilson

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PART I

Memorialization



Introduction to *Ethical Rehabilitation* *After the Holocaust*

Genocide leaves behind moral corruption and twisted societies. A genocide like the Holocaust can happen only if many individuals and collectives abandon an ethical commitment to uphold for all the fundamental right to life. When a society lives through a genocide the moral imagination of peoples and collectives, their ethical behaviors, and even the underlying social contract become scarred, twisted, and broken. The effect is compounded if the genocide happens during a war when the national infrastructure is decimated. Societies and individuals caught within a genocide need an ethical rehabilitation in its wake. Most often societies rely upon a process of transitional justice (TJ) to accomplish a post-genocide make-over. Transitional justice is thought to include three components: memorialization, reparations, and lustrations. In their order of presentation these refer to the honoring of deceased victims and survivors, the restoration of goods and services to victims along with compensation for past wrongs, and the capture and prosecution or punishment of perpetrators. Beyond these initial steps individuals and societies must become proactive in the prevention of future genocides.

How to start the process of transitional justice for a reversal of injustices is no small consideration. Since transitional justice aims to assist individuals and society to recover from genocide or mass atrocity and enter into a new state of social equilibrium, it may seem as if either lustrations or

reparations should be prioritized over memorialization. After all, any delay in lustrations may result in the escape of perpetrators. Likewise, delays in reparations leave victims vulnerable and open to additional suffering. Both lustrations and reparations are immediate needs within a post-genocide society.

Should memorialization receive attention before reparations or lustrations? The last of the stages of genocide is denial. To the extent that denial is operational it blocks the forward movement of transitional justice. Memorialization can positively affirm the facticity of the Holocaust by negating denial and opening the way forward for rehabilitation.

I. GENOCIDE AS THE CULMINATION OF A PROCESS

I concur with other scholars that genocide should be seen as a process that begins in genocidal priming, and I see full-blown genocide as a state of affairs brought about by the process. Full-blown genocide represents a time when the amount of mass killing has risen to a crescendo. The outcome of the process is contingent upon necessary and nonsufficient causes that some scholars have identified as stages of genocide. I take Dr Gregory Stanton's ten stages of genocide to be an authoritative statement on those necessary causes of genocide.¹ For example, one necessary and nonsufficient cause of genocide appears to be the dissemination of a peculiar type of propaganda that targets victims.

The process of genocide is seen as an artificial process created by humanity. It is not a biological contagion such as a virus. It is not a war between different species. Rather it is an inter-species conflict wherein humanity engages in an elaborate process of self-destruction. One or more groups of people descend upon a targeted ethnic group with the intention of eradicating the entire group. A few incidents within a genocide may

¹ On the ten stages of genocide see Gregory Stanton, "The Ten Stages of Genocide" Web: <http://www.genocidewatch.com/ten-stages-of-genocide>. Early warning checklists similar to Stanton's ten stages were developed by Franklin Littell and Israel Charny. Like Stanton's ten stages these checklists enabled the readers to identify actions that would move a society to full-blown genocide. For a brief review of Littell and Charny's warning systems see Stephen Leonard Jacobs, "Franklin H. Littell's and Israel W. Charny's Early Warning Systems," *Journal of Ecumenical Studies*, 46 (4, 2011): 599–608.

smack of mass hysteria, but many more incidents confirm that genocide is an intentional product that first-order genocidal perpetrators initiate and second-order genocidal perpetrators freely support.² The violence and mortal harm that ensue give cause for moral judges to identify the behavior of the perpetrators as blameworthy. Those who perpetrate genocide shall stand condemned. How did Holocaust perpetrators convince themselves or others that this should be the right course of action? Answers to that question are discussed in my book *The Degradation of Ethics Through the Holocaust*.

Genocidal priming that leads into full-blown genocide comprises several stages that are in themselves necessary but not sufficient conditions. Stanton, who authored the ten stages of genocide, admits these do not necessarily appear in sequential order.³ For that reason I have preferred to speak of two phases of genocide—the priming phase of genocide and the full-blown genocide phase when mass murder is happening.

This volume focuses upon transitional justice as a societal plan for ethical rehabilitation after a genocide. After a genocide reaches its crescendo, it leaves behind perpetrators, bystanders, surviving victims, and rescuers. They along with the generation that follows must come to terms with the loss of lives, their role within the tragic drama, and the damage to society. They must redress wrongs and begin to rebuild. The rebuilding is not simply a rebuilding of the infrastructure, but it is also a rebuilding of lives and trust. Ethical decision-making will have undergone a transformation in the sense that moral agents made decisions in the face of radical changes in society and interpersonal relations during the process of genocide. Many victims like mothers separated from their children in concentration camps were forced to make “choiceless choices.”⁴ All who survive a genocide must come to terms with those decisions and their consequences.

² See Neil J. Kressel, *Mass Hatred* (Connecticut, Massachusetts: Westview Press, 2002).

³ Stanton, “The Ten Stages of Genocide,”: <http://www.genocidewatch.com/ten-stages-of-genocide>.

⁴ The term “choiceless choices” was coined by the sociologist Lawrence Langer to refer to decisions that could be described as the best of the worst choice or the least bad of all bad choices. See Adam Brown, “Confronting ‘Choiceless Choices’ in Holocaust Video testimonies: Judgement, ‘Privileged’ Jews, and the Role of the Interviewer,” *Continuum: Journal of Media & Cultural Studies*, 24(1, 2010): 79–90.

II. LIFE IN THE WAKE OF GENOCIDE

Genocide does transform societies. Societal innocence has long ago been abandoned, and the society that survives can know itself only as a society that is capable of performing wicked offenses. The slogan “never again” must be recognized as a call for a moral commitment and not a statement of fact. The character of the society has become tainted, wretched, and despicable.⁵ Moral actors have been caught in a drama that forced them to make decisions they would otherwise have avoided for their lifetime. Those that survived find themselves needing to come to terms psychologically if not also morally with survivor’s guilt.

Contributors to *The Double Binds of Ethics After the Holocaust: Salvaging the Fragments* report how the Holocaust represented a failure of normative ethics. Granted the normative ethics that perpetrators and bystanders followed was a perverted ethics, faithfulness to perverted normative ethics resulted in unchecked wrongdoing and the murder of millions of innocents. Galbraith argued that deontological normative ethics failed when Nazis made use of a twisted Kantian ethics of duty. Those fulfilling the moral obligation of duty should never have ignored the value of humanity. This Adolf Eichmann did when he like many others ignored the dignity of humanity in the pursuit of duty. Galbraith says, “Eichmann’s universal law, however, departed from the most crucial tenet of Kant’s categorical imperative, namely the principle that the human person is an end in herself or himself and is thus worthy of respect.”⁶ Michael Gerber points out that utilitarian normative ethics failed humanity when it failed to propose an absolute value above utility such as respect for human dignity. Those committed to the greatest happiness of the greatest number should never have abandoned the ultimate worth of the individual. Gerber says, “Any utilitarian calculus to prevent or intervene against genocide is insufficient, as it doesn’t clearly propose a transcendent moral principle, an overarching normative ideal, or a theoretical ethical framework that can specifically guide human behavior to counter such cases as genocide.”⁷ In addition, I would observe that in the Holocaust the normative ethics of virtue theory

⁵ On moral taintedness see Anthony Apia, “Racism and Moral Pollution,” *Philosophical Forum* 18 (2/3, Winter1986/Spring 1987): 185–202.

⁶ Jennifer L. Geddes, *The Double Binds of Ethics after the Holocaust: Salvaging the Fragments*. 1st ed. (Palgrave Macmillan, 2009).

⁷ Geddes, *The Double Binds of Ethics after the Holocaust: Salvaging the Fragments*, 162.

failed when courage in conflict and loyalty to the Fuhrer were prized above kindness and sympathy for all humans including Jews, Roma, and Sinti.

The decimation of a social infrastructure and the damage to the environment were tremendous. In the Holocaust part but not all of the damages may be attributed to a world war. Individuals and collectives must shoulder the responsibility for the bulk of social and environmental damage created by the Holocaust. One rarely acknowledged victim in the Holocaust was the environment, the earth itself. For example, the Nazis created mass graves to hide their mass murder campaigns. These mass graves ceremonially defiled the land. Nazis' mass graves removed the hygienic danger of leaving unburied masses of corpses, but the toxins they released contaminated the land and the groundwater. When pressed to dispose of corpses quickly, the Nazis resorted to open bonfires of dead bodies that created a considerable environmental danger for air quality in the surrounding community. The bombs of war scarred the earth, but the mass murders of the Holocaust poisoned the earth as they poisoned the spirit of human good will.

Legal and moral judgments that aimed to identify and punish perpetrators were justified. Survivors in killing camps could act as vigilantes by making instantaneous decisions about the treatment of Nazi perpetrators who were still within arm's reach. Seeing that liberation was inevitable many perpetrators took flight. They would have to be tracked, captured, and brought before courts that were not yet assembled.

Post-genocide reparations must often take the form of triage. In the wake of the American Civil War emancipated slaves soon discovered that their newfound freedom exposed them to hardships of life they were not equipped to manage. Likewise, victims who were liberated from Holocaust killing camps soon discovered they needed deliverance from an empty liberty that left them exposed to life without vital resources.

To say that societal trust was undermined by the Holocaust is an understatement. Jews who returned to the homes they were forced to abandon found these homes occupied by other families or a pile of rubble. Soldiers for the conquering nations received heroes' welcomes upon returning to their homeland. Jews who returned to their homelands often encountered resentment and continued discrimination after the Holocaust ended. Liberation for survivors was life, but few survivors who were liberated could say they received a welcome return or "lived happily ever after."

III. HISTORY AND ETHICAL LESSONS

In his book *Lessons of the Holocaust*, Michael R. Marrus says, “As acknowledgment of the significance of the Holocaust has increased globally, an unfortunate accompaniment has been a loss of respect for detailed knowledge of what actually happened. I have seen too much of this. My principal lesson of the Holocaust is, therefore, beware of lessons.”⁸ Marrus advises readers to remain skeptical toward lessons from the Holocaust, and he urges historians to “get it right.” Marrus castigates historians and researchers who suggest that there is a single lesson or a mere handful of lessons to be derived from the Holocaust. I neither imply nor suggest that there is a single cause of the Holocaust or a single lesson to be learned from it. I respect the fact that the job of the historian of the Holocaust is to “get it right” in the sense that the historian offers the best possible description of a historical singularity. Marrus sees lessons as predictive and prescriptive. I agree with Marrus that the historian who ventures to offer predictions or prescriptions may have stepped out of his or her role.

My writings should be seen as falling into the category of normative ethical discourse. I am drawing the morals of the story. This discourse makes use of history, and to the extent that it does so it should be accurate. Yet, the normative ethicist trades in lessons, which are judgments and prescriptions. Within normative ethical discourse moral judgments are made regarding the praiseworthiness or blameworthiness of actions taken. Likewise, within normative ethical discourse prescriptions are made regarding actions that should be performed or omitted. Yes, a good dose of skepticism should accompany the examination of “lessons” drawn from the Holocaust, but that does not mean there are none to be found.

Marrus cites five “lessons” associated with the Holocaust that he finds to be historically suspect. I can appreciate how a historian would find fault with these lessons. Marrus says generally lessons are not clear and are often contradictory.⁹ From my perspective I see the five lessons he cites as examples of hasty generalizations. Hasty generalizations arise when one moves from the particular to the general, and they are identified as informal fallacies. Consider five lessons he cites. First, the Holocaust is said to be a school of tolerance. Morally speaking, it offers grounds for condemning intolerance, but it does not necessarily promote tolerance of wrongdoing

⁸ Michael Robert Marrus, *Lessons of the Holocaust* (University of Toronto Press, 2016), 160.

⁹ Marrus, *Lessons of the Holocaust*, 152.

or hatred. Second, the Holocaust is said to have begun with words. Morally speaking, words spoken are acts, and if they are harmful acts they may or may not precipitate bodily violence like beatings and murder. Hate speech is morally blameworthy. Third, the Holocaust is said to demonstrate that “all it takes for the triumph of evil is that good men do nothing.” Morally speaking, indifference to wrongdoing or omissions of interventive actions can be contributing factors in a mass atrocity. In a genocide, genocidals intend to exterminate their victims, and genocidals encounter no resistance from those who are indifferent. Fourth, in the Holocaust it is said that one person can make a difference. Morally speaking, that is a tautology since all persons are agents of good or bad, but turning the tide in the face of massive killing cannot be achieved by scattered acts of heroism or resistance. Fifth, the Holocaust is said to demonstrate the slogan “indifference and inaction always mean coming down on the side of the victimizer, never the victim.” Morally speaking, one must understand that the characterization of individuals as perpetrators or victims is not a simple matter. Indifference is attitudinal and not necessarily behavioral, and repression and avoidance can be mistaken for indifference. Furthermore, victims can become oppressors as resisters or oppressors within gray zones. The upshot of this reflection is that we should not engage in hasty generalization. However, for the sake of morality we should examine the facts to determine what actions were blameworthy, and on the basis of facts we should offer moral prescriptions intended to bring a halt to the process of genocide when we recognize that this process has begun.

IV. FINDING THE WAY OUT THROUGH TRANSITIONAL JUSTICE

The chapters that follow begin by examining the three activities within transitional justice that aim to move society beyond a legacy of genocide—memorialization, reparations, and lustrations. To begin our reflection on memorialization we step back and consider the tenth stage of genocide, denial. Denial presents a barrier to memorialization and the other steps that could propel a society or an individual forward after a genocide. After discussing memorialization we offer three chapters discussing reparations and three chapters discussing lustrations. The final four chapters of the volume are devoted to accompanying steps for individuals and collectives to move from transitional justice to genocide prevention.

While many of the activities that promote transitional justice are activities that collectives or community do, from beginning to the climax the acts of individuals support the transformations that transitional justice aims to achieve. For instance, at the outset individuals can join their voice with collectives to expose the falsity within denial. Individuals can cooperate with the processes of commemoration and lustration. They may offer critical testimony during lustrations carried out by the state. Likewise, individuals can support the full integration of peoples into societies that is crucial to the cessation of genocidal violence.

It is an oxymoron to say that genocide is a contingency that tests ethical decision-making while rejecting the norms. The armchair ethical theorist may insist that normative ethical right and wrong are absolutes, but these absolutes are tested in the forge of events that are associated with the process of genocide. Genocide demonstrates how in the context of international law the decision to change rules of custom at the whim of one or more states has dire consequences. In his book *Crimes Against Humanity*, Larry May says,

If even a small number of states change positions and now declare that they no longer acknowledge the norm as universal, then by these very declarations the norm would seem to lose its universal status. Yet surely this cannot be. If the norm is to be universally binding now, it cannot also be true that now states can make that norm not universally binding. Either the norm is universally binding, or it is not.¹⁰

Was ethics transformed, or was it the case that ethics was manipulated to become something other than it was? To restate the question: In the wake of mass atrocities like the Holocaust or the US 9/11 terrorist attacks are we encountering the emergence of a new normative ethic? After the 2001 terrorist attacks on the World Trade Center, some authors suggest that ethics have been transformed. I maintain that we find a perversion of normative ethics manipulated to serve the ends of a few. Readers who anticipate finding in this volume a different thesis will be disappointed. Instead, this study points to subtle processes that pervert normative ethics and may occur again and again given the right circumstances.

¹⁰Larry May, *Crimes Against Humanity* (New York: Cambridge University Press, 2005), 54.

In a post-Holocaust era some obvious and highly important transformations have occurred in ethics such as the transformation of rules governing informed consent. This is not a new normative right, but it is a new recognition of the ways a normative right to life should be honored. For instance, consent was overlooked and overridden when disabled individuals were euthanized as part of the T-4 campaign in Germany. Also during the Holocaust human subjects were utilized in experiments to test the resilience of humans in freezing waters, in G-force aeronautical conditions, etc. These experiments were conducted at the whim of Nazi doctors and scientists. The denial of rights of individuals to determine the fate of their body created outcries of immoral coercion. As a corrective, a concerted effort has been made to uphold the importance of gathering informed consent from individuals before they participate in human experimentation. We may consider this a transformation of practice for the better. Victims of coercion would consider it to be a transformation that happened too late.¹¹

In post-Holocaust legal and criminal proceedings of perpetrators of genocide an often-cited excuse was that subordinates were following orders. During his prosecution Adolf Eichmann's defense made use of this excuse. The defense argued that under the circumstances Eichmann's behavior was ordinary, that is, business as usual. On the surface Eichmann's behavior could be excused as ordinary or business as usual, but that ignores the subtle transformation of ethics driving the action. When orders are developed in response to faulty moral principles or practices, those orders can prescribe harmful and untoward behavior. For those following such orders wrongful behavior becomes ordinary behavior. This author assumes mass murder is ordinary only if and when ethical wrongdoing is twisted and deformed to be regarded as right behavior.

¹¹These transformations are observable in the ways individuals and collectives understand and act upon moral principles and guidelines. Attention shall not be given here to the possibility that these were meta-ethical transformations. These transformations are readily identifiable as changes in normative ethical behavior, that is, behavior governed by normative character, principles, and rules. It requires some amount of practical reasoning to bridge the divide between the abstract and the concrete. Actors operate under certain assumptions about the way the world works and the nature of the world. Thus, the metaphysical and epistemological presuppositions of moral agents directly impact how their normative behavior could be transformed.

A contributing cause may be that of the transformation of an individual's background beliefs about the world and the way it works. If the disabilities of the visually or the hearing impaired are seen as a threat to society, then the individuals who see them as harmful may take steps to eliminate that threat.

At first glance the notion that normative ethics may undergo transformations may puzzle and intrigue the ethicist. Is it possible that an ethical principle like respect for persons could undergo a radical transformation that would justify disregard of persons? No, and yes. A universal proposal to respect persons may be transformed to a hypothetical proposal to respect some persons and not others. Is it possible that a virtue like charity or hospitality could become a vice? Again, the answer is No, and yes. A virtue like hospitality may be transformed into a vice if the act of hospitality for some is declared illegal and it places the person and his or her goods at risk.

This volume assumes that a post-genocide society must come to terms with the perversions of normative ethics and justice it inherits. Individuals and collectives must acknowledge the wrongs of the past and aim to move forward toward the equilibrium of a just society. Acknowledging these past atrocities exposes a danger latent within the Holocaust as well as other genocides, and that is the danger of the repetition of mass atrocity. This is not a denial of the singularity of the Holocaust. Each war is unique, but wars can happen, and genocides can happen. As Elie Wiesel pointed out, "If it happened before, it could happen again." In its many operations transitional justice is an optimistic venture that acts upon the belief that humanity is not necessarily doomed to destroy itself. Speaking metaphorically, even though Cain killed Abel, we are not fated to live as murderers who shall destroy not only others but also themselves. We still can choose to value one another's lives.

V. LEGAL PROSECUTION OR ABSOLUTION

All work expended toward the restoration of justice is subject to the constraints of time. In time victims and perpetrators succumb to the vicissitudes of life. Likewise, all work to bring about transitional justice is subject to the constraints of the environment and the global economy. Some perpetrators of genocide would never be brought to a court of law for justice, since they died of natural causes before they could be tried. In

the wake of genocide those who would work for the restoration or creation of a just society must seize the opportunities to do so before they expire.

Scholars are not altogether agreed upon the notion of what constitutes transitional justice. In my discussion of transitional justice (TJ), I follow Alexander Hinton's trifold description of three primary fields of action—memorialization, reparations, and lustrations. The difficulty in identifying what transitional justice aims to accomplish may stem from the different expectations regarding the outcomes of transitional justice. Regarding lustrations, Ruti Teitel points out that responses to mass atrocities often fall into a punishment or pardon pattern.¹² Some legislators and politicians tend to favor legal prosecution to resolve the wrongs of the past. Punishment without some absolution is an extreme reaction. While the focus upon punishment does recognize the wrongs of the past, it may not promote healing. Instead it can foster the vice of cruelty and malice in the quest for vengeance.

Other legislators and politicians may believe that society can move forward only if it absolves wrongdoers of past transgressions. Of course, absolution may be pursued for selfish or ideological motives. In those cases, it relieves perpetrators and the complicit of responsibility for the past. Absolution appears to condone the wrongs of the past. If punishment alone promotes cruelty and malice, then absolution alone may promote the vices of leniency and insensitivity.

Attempts to simplify the nature of transitional justice can be misleading. However, an individual or a society willing to engage in the process of transitional justice should find themselves gaining a perspective on their past, present, and future in relation to genocide. This difficult task of knowing oneself should reveal how the individual or society has acted in the process of genocide, how they are acting in the aftermath of genocide, and how they plan to act toward the future possibility of genocide.

CONCLUSION

At the conclusion of a genocide first-order perpetrators may be identified for prosecution and punishment. Apart from first-order perpetrators the surviving population will consist of a mixture of surviving victims,

¹²Ruti Teitel, "From Dictatorship to Democracy," in *Deliberative Democracy and Human Rights*, edited by Ronald C. Slye (Yale University Press, 1999), 272.

surviving second-order perpetrators, bystanders, and rescuers. These have all lived through the genocide, and their normative ethical commitments along with their moral imagination have suffered the ill effects of genocide. After a war the infrastructure of a nation must go through a rebuilding process. Likewise, after a genocide those who survive it must go through an ethical rehabilitation. Often that ethical rehabilitation process takes place within the operations of transitional justice. This volume begins by looking at the way memorialization comprises a necessary step in the process and how it rebuts denial. Then reparations and lustrations are examined as necessary steps in the ethical rehabilitation process. After these three steps of transitional justice for ethical rehabilitation are examined, some recommendations to both nations and individuals are offered to safeguard individuals and society against a future genocide.

The scope of this work may seem daunting. One reader pointed out that an entire volume could be dedicated to any of the three main topics like lustrations, that is, the prosecution and punishment of genocidals. An example of a work devoted entirely to the topic of lustrations is *Hiding in Plain Sight: The Pursuit of War Criminals from Nuremberg to the War on Terror* by Eric Stover, et al. However, while each of the three main topics merits a study of its own, singling out any one topic would fail to provide the reader with a vision of the accompanying processes needed to move a post-genocidal society toward a restoration of justice.

When one or another of the three main topics becomes the focus of study, an accompanying question may not be asked: Where should society begin to work toward the restoration of justice? I have contended that there is an expediency that drives all three processes in the pursuit of transitional justice. For memorialization there is an expediency of reason. If you allow doubt to dominate conversations about genocide, the victims will be forgotten. For reparations there is an expediency of survival. If you procrastinate in giving aid to survivors and victims, you hasten their unnatural demise. For lustrations there is an expediency of justice to compensate for a natural statute of limitation. If you delay prosecution or public censure long enough, you give perpetrators a free ride. Why I place the expediency of reason high on the list of expediencies shall become more evident when I discuss denial in the context of memorialization.