My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity

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Introduction

'Ultimately, to determine the contribution that justice can make to survivors of mass violence, we need to understand what justice means to them.' (p. 12.)

My Neighbor, My Enemy examines prevalent theoretical assumptions regarding the emotive issues of justice, reconciliation, accountability and community-relations after armed conflict. Setting the text apart is it's questioning of the local impact of processes of international justice. As the editors state, 'assumptions about the effects that justice has on individuals and societies have gone unexamined and unchallenged far too long. Some of the most frequently repeated, and those that we perhaps most wish to be true, are due careful scrutiny' (p. 3.)

Of these assumptions, the most widely held by the international community is a belief that 'legal justice' can provide not just for the prosecution of perpetrators, but also for peace and reconciliation in countries affected by armed conflict. This link between legal justice and reconciliation is promoted through trials or truth and reconciliation commissions with the intent of 'forcing societies emerging from war or periods of political violence to ''come to terms'' with the past [and so] achieve ''closure'' and stability' (p. 13.)

But dictating the means for communities to reconstruct and reconcile through the work of distant legal justice in overseas courts is contentious. The editors find 'there is no direct link between criminal trials (international/ national, and local/ traditional) and reconciliation' (p. 323.) What needs careful scrutiny, therefore, are the notions of justice and reconciliation held by persons affected by armed conflict. Therefore, priority is given to close empirical studies of multiple, differentiated understandings of justice, reconciliation and social reconstruction.

However, the authors of *My Neighbor, My Enemy* do not offer an anti-law rhetoric. They recognise the importance of trials to prosecute the guilty, combat impunity and re-establish social order. But they do question the efficacy of legal justice for the persons and communities for which the Tribunals and other institutions have been established. By recognising that there are 'multiple levels of societal repair – from individual to family to neighbourhood to society' (p. 3), the collection critically evaluates the processes and procedures of international trials and their ability to promote peace, reconciliation and justice; the very objectives for which the United Nations established the Tribunal of the former Yugoslavia.

The book succeeds in questioning some widely held assumptions. The rule of law orientation of the international community is not accepted as the sole, or always the most appropriate, means to dispense justice. The gap between the notion of legal justice that the Tribunals aim to dispense and the way that this justice is perceived, felt and understood by the witnesses and victims is highlighted.

The book is based on detailed investigations over four years in the former Yugoslavia and Rwanda, conducted by ten multi-disciplinary research teams. Interviews, surveys and narrative analysis produced a wealth of quantitative and qualitative data. Witnesses to the International Criminal Tribunal for the former Yugoslavia (ICTY) were interviewed to establish the perspectives of the victims on legal justice. The authors also assess gacaca courts ('traditional' community trials held before judges elected by the village population) in Rwanda, Truth and Reconciliation commissions, and the benefits of reparations.

The view from below

The authors take 'the view from below.' The book examines 'up close, brutally up close, the aftermath of genocide and ethnic cleansing' (p. xiv.) Victims, Weinstein and Stover argue, must have their views heard and assessed, and such views must be prioritised over legal, political or bureaucratic opinion in the implementation of social reconstruction. This approach treats justice and reconciliation from the standpoint of the victims of atrocity, rejects glib assumptions about, and universal notions of, justice, and prioritises the subjective, contextualised 'needs and wishes of those most affected by violence' (p. 11.) The collection rejects the contention that an authoritative institution, such as international law, provides knowledge and procedures which must be unquestionably accepted. My Neighbor, My Enemy asks how we might engage persons – of different ethnic and religious groupings,

ages and regional locations – to become active agents in contributing their own perspectives on the institutions and processes of justice that have been set up in their name.

Victims lack of access and participation in international legal trials constrains the possibility of forging a connection between these forms of justice and reconciliation. Weinstein and Stover illustrate that in pursuing a rule of law approach, the international community has 'created institutions that by definition were geographically and, to a certain extent, linguistically remote from the regions of the conflict' (p. 11.) Compounding this problem has been the 'lack of access to accurate and unbiased information' (p. 330) for the communities of the former Yugoslavia and Rwanda.

Participation

Tribunals can be implemented without due attention to regional needs and wishes. The international community or the Government concerned, 'rarely consult local populations on what they believe is necessary' (p. 224.) As such, the rulings and judgements of the Tribunals fail to impact upon individual lives and community stability in the manner which the agents of these judicial processes hope they will. Justice deemed 'external' by the victims, and perhaps even an unwanted intrusion and imposition on the community, will fail to be internalised. It may be perceived as a process more orientated to the international community and advancement of international humanitarian law, than to the individuals and communities affected. One of the most disturbing findings of the book is that criminal trials, 'especially those of local perpetrators – often divided small multi-ethnic communities by causing further suspicion and fear' (p. 323.)

However, while highlighting deficiencies, the book also makes positive suggestions for ways in which the Tribunals could better aid social and personal reconstruction. By examining in detail certain aspects of the trial procedures and how they are experienced and understood by victims and witnesses, the authors develop insights into enhancing the efficacy of the processes for victims.

Victims articulate a desire to, one participate in the legal processes deemed to provide justice and two, access a system of reparations to aid personal and social reconstruction. These forms of justice present a framework for victims to engage in the process of rebuilding their lives, individually and on the community level. It

is significant that the International Criminal Court (ICC) has moved to embrace both forms of judicial procedure.

Participation in the justice process is not an entitlement within the procedures of the ICTY. The only means for a personal narrative to be heard when victims are called to testify as witnesses. Strikingly, witnesses at the ICTY, interviewed by Stover, question the 'rule of law' approach and contend that the Tribunal provides justice that is 'capricious, unpredictable, and inevitably incomplete' (p. 115.) For witnesses, '"full justice" was far larger than criminal trials and the ex cathedra pronouncements of foreign judges in The Hague' (p. 115.) Legal justice, therefore, does not live up to the claim that 'The ICTY guarantees that the suffering of victims across the former Yugoslavia is acknowledged and not ignored.' [1] One of the key findings of the book is that a process of participatory justice could help views and opinions to be heard that would produce a more contextualised notion of both criminal action and the impact it has on victims. '[T]rials provided ... victims with the opportunity to confront their tormentors' (p. 118.) However, the cathartic aspect of witnessing is resisted by judges who 'can – and often do – admonish witnesses who stray from the facts, which in turn can frustrate victims who have waited years to tell their story publicly' (p. 106.) In view of these disparities between the needs of the victims and the processes of the Tribunal, Stover suggests that the ICTY needs to take a 'proactive rights-centred approach to witnesses' and argues that victims and witnesses should be regarded as 'active and engaged participants in – not merely auxiliaries to – the criminal justice system' (p. 112.)

Innovatively, before the ICC, victims and witnesses are able to take a more engaged role and to have their views heard during the trial process through their own legal representation (Article 68 of the Rome Statute.) In this the ICC can be seen to value contextualised narratives of criminal atrocities and to place victims concerns in a more central position in the court.

Reparations

The second form of justice that is highlighted as lacking in the ICTY, but which has been implemented by the ICC, is a system of reparations. Roht-Arriaza presents a cogent analysis of reparations and makes a persuasive case why 'harms should be remedied' (p. 121.) Reparations are 'universally accepted as part of a state's human rights obligations' (p. 121), but this obligation has not meant that victims have been recompensed for their loss in any organised or effective way.

This is a pity as the provision of reparations could be used to focus upon the actual needs of the individuals and communities destroyed by conflict, promoting social reconstruction. The author asserts that reparations 'aim to recompense for loss' but also 'contribute to the future rebuilding of the country' (p. 122.) Everyday needs, such as healthcare, education and childcare, the key notions of 'full justice' as is found in Stover's interviews with witnesses of the ICTY, could be fulfilled by financial compensation. Moreover, in the case of Rwanda, compensation 'is consistent with historical practices of reconciliation' (p. 173.) Reparations, therefore, may provide a form of justice that is more readily accepted by certain communities and more effectively and adequately provides for loss.

The ICTY, however, does not provide a reparatory notion of justice. The only means for victims to gain financial recompense is through national courts. Such a deficiency can be contrasted to the ICC, as noted by Roht-Arriaza. The ICC not only provides a trust fund for victims and their families, but has also implemented an innovative procedure whereby perpetrators directly recompense the victims of their criminal actions. As such, reparatory justice offers a direct exchange between perpetrator and victim.

However, several problems remain even in the ICC's implementation of justice. Direct exchange between perpetrator and victim should not be taken to provide 'healing.' The ICC may order a financial exchange but this does not mean that remorse or regret will be forthcoming, or that any form of emotional or personal sense of justice will be experienced by the victim. Moreover, although victims will play a fuller role in trial proceedings, such a procedure is tempered by the more prevalent rights of the accused. Trials do not have a 'rights-centred approach to witnesses,' as Stover wants. They are ultimately a means to the legal prosecution of perpetrators. Practical constraints place limitations on the ability for victims to tell a complete narrative of their experiences and harms. And though reparations may contribute to the reconstruction of a community or enable an individual to finance education or healthcare needs, those same reparations will not bring back friends or family or erase the memory of atrocities.

Community justice

The book also presents an analysis of truth and reconciliation commissions and gacaca courts, the other main post-conflict institutions deemed to provide justice. Although these institutions are often proclaimed as being more attentive to victims

needs than legal prosecutions, being more participatory than criminal trials,[2] they do not appear to address the concerns of the participants as satisfactorily as advocates have hitherto suggested. Longman et al find that although generally positive, attitudes toward gacaca courts in Rwanda also suggest a level of distrust in the process. 35.6 percent of respondents stated that they agreed with the assertion that judges could be corrupt and 56 percent expressed concern that judges were not well qualified (p. 217.) In 2001, survivor organisations condemned the Rwanda Tribunal, 'after a stunning revelation that the court had unknowingly employed a Hutu defence investigator who was a high-level genocide suspect' (p. 335.) The authors, therefore, acknowledge deficiencies in both legal and community-based procedures which attempt to respond to human rights violations.

A note on method

It is common research practice to articulate the subjective views of respondents by using qualitative data not the complex graphical or statistical data offered in *My Neighbor, My Enemy*. But the book's rich quantitative data does manage to question more positive depictions of the dominant forms of international justice in ways that may assist future Tribunals. For example, the data on attitudes toward the ICTY by Biro et al, reveal differentiated views of legal justice based on nationality and will be beneficial for targeting out-reach projects of the Tribunal toward those that have the most uninformed or negative views. A high percentage of Rwandan respondents were found by Longman et al to have little access to, or understanding of, the work of the ICTR. This statistical data reveals starkly the problems of pursuing 'justice at a distance.'

However, certain aspects of the methodology were rather at odds with the research topic. For example, through multivariate factor and regression analysis, Biro *et al* break down the notion of reconciliation into three variables, producing a complex table attempting to establish statistically when a person will be ready for reconciliation. Such an effort is inappropriate. The table turns a subjective, personal notion of social reconstruction into a set of particular factors and variables that are chosen by the authors and which may not have value for the persons themselves. The method may have masked the complex legacies of mass atrocity. Including this overly statistical approach to a sensitive and subjective experience perhaps detracted from the core aim of the book to focus on personal opinions and viewpoints.

Leaving gender out

One noticeable absence is any examination of gender issues. Lacking is an analysis of how the International Tribunals prosecute charges of sexual violence or qualitative enquiries into how women have experienced gendered violations as a result of armed conflict. However, such analyses are particularly important as, in both the former Yugoslavia and Rwanda, widespread and extreme violence was used against women as a part of the 'ethnic cleansing' process. Indeed, these violations, particularly rape and sexual slavery, evidenced as occurring within the former Yugoslavia, were an important factor in the very establishment of the Tribunal. The Security Council of the United Nations referred to the prevalent rate of this crime of sexual violence, defining it as 'organized' and 'systematic' in the resolution that authorised the establishment of the Tribunal (Resolution 827, 1993.) In addition, the Tribunal has handed down important judgements in the area of sexual violence. It has affirmed that rape is a violation of the laws of war, and perhaps more significantly, determined that rape can be a crime against humanity. These judgements are important, not just for the women of the former Yugoslavia, but also for the precedents that they set in regards to the International Criminal Court. Kelly Askin has asserted that the laws of war have 'tended not to recognize the sexual abuses routinely committed against over half of the civilian population – the women.' [3] As such, the viewpoints of women in respects to judicial mechanisms and critical engagement with their views and opinions would have been a worthy inclusion in the book.

Conclusion

My Neighbor, My Enemy reveals popular attitudes toward legal and localised attempts to provide justice for survivors of armed conflict. The book succeeds in questioning and even overriding theoretical assumptions of legal justice by drawing our attention to the personal concerns and opinions of victims who often perceive themselves to be disconnected from the very legal procedures that are intended to bring reconciliation to war-torn societies. The authors provide an insight into the deep social and personal harms sustained through human rights violations and convincingly assess the local meanings of the complex concept of justice in their light. *My Neighbor*, My Enemy will aid future analyses of both international legal prosecutions and localised forms of reconciliation, reminding us that the profound insights of survivors in post-conflict societies must enrich abstract notions of justice.

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References

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Notes

[1] International Commission on the Former Yugoslavia (ICTY), no date.

[2] See Minow 1998.

[3] Askin 1997, p. 13.