

PLEASE NOTE: This is a rough draft of a chapter to appear in A. Jones, ed., *Genocide, War Crimes, and the West: Ending the Culture of Impunity* (London: Zed Books, 2002). Please do not cite without permission of author. Critical comments are very welcome: pstoe@vax2.concordia.ca

Shades of Complicity: Towards a Typology of Transnational Crimes Against Humanity

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Introduction

My title is immediately puzzling, perhaps, since this volume takes the more concise terms, genocide and war crimes, as central themes, and because of the inclusion of that rather open word, “transnational.” But in an effort to avoid the definitional debates so often surrounding genocide analyses, and to embrace without conceit all of the instances of violence that form the empirical basis for this volume, I opt to use the much more encompassing *crimes against humanity*, which I apply to mass human rights violations in or out of “wartime.”² Further, since our central meeting point is western complicity, I include the adjective *transnational* to suggest that we are dealing, ultimately, with the impact/guilt of actors and structures external to the immediate vicinity of atrocity, whether they be distanced by space and time, or are purposeful visitors; and as we shall see it would be unnecessarily limiting to discuss an international context only, for the inclusion of non-state actors is central to our understanding of contemporary human rights violations.

Mass murder and/or genocide are, of course the principal and most outrageous crimes against humanity, and there are others, such as torture and/or systemic rape campaigns, that illicit similar repugnance. Some nation-building processes, at certain times, have involved these policies – whether or not we suggest they were also intrinsic to the prevalent ideologies at the time. Separating atrocious policies for analysis is viewed as unnecessarily reductionist by some, and as integral to the legal pursuit of

¹ I am especially grateful for the research assistance of Michael Innes, M.A. Candidate in the Department of History, Concordia University, and a paper he prepared in this context: “Genocide and the West: A Survey of Recent Literature.”

² We could cover several volumes discussing the “proper” definitions of genocide, war crimes, crimes against humanity, “war time”, and other concepts. Space precludes elaboration, as we have more than enough conceptual complexity to manage. For relevant definitional discussions see Chalk and Jonassohn, 1990; Charny, 1994; Chalk, 1994; Stoett, 1994; Melson, 1996; Katz, 1996; and Palmer 2000; for a social constructivist approach see Berger, 1993; and for a fascinating soft critique of that approach in general see Hacking, 1999.

justice to others. Undeniably, it opens the door to an extensive discussion of what meaning we ascribe to such terminology. But I suspect this is not the space for rehashed arguments over meaning, my own exhausted patience for such debates aside. Rather, we seek here to open a much-needed discussion of complicity in crimes against humanity, a topic often under-analyzed, and a research agenda that receives comparatively little attention in literature on massive human rights violations. This dearth reflects an unwillingness to critically examine the foreign policies of western states, and a conscious effort to avoid accusations of engaging in conspiracy theorizing.

However, it is essential to the broader effort of promoting human rights and the avoidance of crimes against humanity that it be given due attention. Beyond the extended debate between universalism and cultural relativism – a debate often framed on a false dichotomy -- one of the principal complaints levelled against the formal human rights approach emanating from the west is that it is drowned in the waters of perceived hypocrisy. Open discussions of western complicity can sustain a more genuine and reflective debate, even if they open terrible wounds in the process. There is, to be sure, an angry element to the analysis of western involvement in atrocities that have disfigured the development of many peoples and states, and reparations movements have sought material recompense for past actions. But ending the culture of impunity is also a very forward-looking enterprise. It is also fraught with analytic dilemmas, however: and, beyond the demand that some form of intentionality can be discovered, we lack a clear typology of complicity.

Lest I become guilty of generating false expectations, I should state immediately that this chapter will not provide a *clear* typology, because to do would require great (and mid-air) acrobatic feats of the imagination. Precise, mutually exclusive, categories will elude us, and I seek only to furnish several generalizations here.

Complicity as a Theme

Curiously, despite repeated cases where western complicity has been in evidence, there are limited formal efforts to conceptualise compliance in crimes against humanity, especially in the international relations literature mainstream. I will return to this disturbing silence in my conclusion. However, it would be remiss to argue such efforts have not been forthcoming from genocide studies, a field where, it would seem, they are a more natural fit. This originates, perhaps, from efforts to ascertain the extent of public participation in the Holocaust, and related debates about the extent of civilian knowledge and the failure of the Allies to re-route parts of its war effort toward deliberately stopping the Final Solution. The anguished effort to understand the collective and individual mentality of the “bystander” as large-scale atrocity is committed is an older theme, but it reaches new heights of academic interest with the Holocaust because of the links between atrocity and normality (see Horwitz, 2000; Goldhagen, 1996).

There are at least two methods by which we can arrive at a typology of complicity in crimes against humanity. One the one hand we can struggle with the question of intentionality, mirroring the more specific debate that has surfaced with regard to the Holocaust. Here we are concerned with the larger ongoing ontological debate concerning agents and structures: can we ascribe intention to individual actors, or are crimes against

humanity the consequence of structural demands translated into psychotic behaviour? In the case of the Holocaust, the intentionalists see the anti-Semitic motives of Hitler himself at the apex of Nazism (Evans, 1989 for discussion). In contrast, the functionalist school see a largely unsystematic policy unfolding in the wake of bureaucratic competition to implement the Final Solution (see Burrin, 1994).³ An uneasy compromise can be reached with Frank Chalk's reminder that "systemic variables facilitate genocide, but it is people who kill" (2000:56).

This debate has preoccupied international relations theorists as well, but they have yet to apply it to the question of complicity in crimes against humanity committed "abroad." Alexander Wendt has modified his social constructivist views by adopting the term "supervenience", referring to a "nonreductive relationship of dependency [between structure and agent], in which properties at one level are fixed or constituted by those at another, but are not reducible to them" (1996:49). Unless one denies this compromise, it is indeed difficult to cast a typological mould based on intentionality or structure as the central organizing theme. While it would be plausible to argue that some theories about political violence favour structure over agency, it is equally demonstrable that political theorists such as Foucault (1977) reject such dichotomies and stress the inter-relationships between the two. We will return to this theme in our discussion of the globalization thesis near the end of this chapter, but leave it now.

The second approach, adopted here, emphasizes distance as the central organizing concept. This can be done through both time and space, or, in more structural and constructivist explanations, a collapse of time and space producing a historicized moment. Though the measurement of either time or space is perhaps best left to physicists, we can categorize acts of complicity with reference to the distance between the accomplice and the atrocity committed. This allows us to categorize cases where contributions to crimes against humanity are direct, indirect, in the past, and in the present.

If this sounds vague, it is. More precise attempts at defining complicity leave us with equal room for interpretation, however. For example, Charny establishes a sub-category for "Accomplices" in his broader effort to establish a generic definition of genocide. These are described as: "Persons, institutions, companies, or governments who knowingly or negligently assist individuals, organisations, or governments who are known murderers or potential murderers to gain access to mega-weapons of destruction, or otherwise to organise and execute a plan of mass murders...." Further, if this exhaustive list isn't enough, one can establish first, second, or third degree complicity to genocide by evaluating the extent of premeditation, totality or single-mindedness of purpose, resoluteness to execute policy, efforts to overcome resistance, devotion to bar escape of victims, and persecutory cruelty (Charny, 1994: 89). The line between assisting and committing the act remains unclear, and the "degree" of complicity typology presents insurmountable obstacles of information gathering to operationalize, leaving aside the

³ Balfour offers a succinct summary of the functionalist school: "Functional processes formed the foundation for the vast and systematic mass killing that defined the Holocaust and it cannot be understood apart from the role played by such relatively mundane operations. ... bureaucratic procedures carried out by regular civil servants were essential to both the formulation and implementation of the Holocaust...Existing organizations adapted themselves and contributed to the evolving task of separating Jews from the society of the Third Reich to the point where their destruction became the logical and efficient solution to an administrative problem." (1997:137).

ethical and judicial dilemmas associated with a definition including “potential murderers” and “resoluteness to execute policy.” Charny does offer a path toward the transnational understanding argued necessary here, however, including non-state actors, and it does take us beyond the problematic inclusion of all acts of war.

I now proceed to discuss the categories of complicity that are arbitrarily selected to facilitate a discussion of the responsibility for, and obligations of, external actors involved in crimes against humanity. They are arranged to reflect degrees of distance from the acts themselves. *Resonant complicity* rises from historical abuses, distant in time but still present in implication. *Indifference and selective intervention* refers to ethical claims that, though physical proximity to the acts may be extensive, there was a neglected obligation to intervene to stop them. Another category is most useful for describing *material contributions*, by way of technical and financial assistance or collusion. And the shortest distance, in time and space, is of course reserved for the category of *direct participation*, when external actors have pulled triggers, dropped bombs, and performed other acts of murder. In conceptual terms this category is the least interesting and will receive commensurate attention here, but it is certainly well-represented in other chapters in this volume.

A final category, which rests off the scale of distance and assumes a long-term process as well as normative proximity to structural violence, opens the debate as to whether we should declare *globalization as a destructive process*; it is argued this is less valuable as a category than as an area for heuristic discussion. Finally, we turn the question away from complicity and toward obligations, briefly introducing the themes of intervention and reparations.

Resonant Complicity

Inayatallah and Blaney, based on a prior assessment by Todorov, write of the Spanish explorer Cartes, and the “...unquestioned sense of superiority that limits his understanding of the other and permits their destruction” (Inayatallah and Blaney, 1996:75; Todorov, 1984; and for a similar treatment of contact between the British and Indians, see Nandy, 1983). The conditions for eliminationist policies are established with an ontological base, and such expansionist and imperialistic thinking resonates into the contemporary era. Charny defines genocide in the course of colonisation or consolidation of power; “undertaken or even allowed in the course of or incidental to the purposes of achieving a goal of colonisation or development of a territory belonging to an indigenous people, or any other consolidation of political or economic power through mass killing of those perceived to be standing in the way” (1994:80). The last words are the most suggestive; I would retain that they have a resonance that has characterised the reparations debates of today.

It is not intended here to suggest that the ethnocidal destruction of indigenous peoples is not a current problem. On the contrary, it continues with alarming speed; Helen Fein refers to this as developmental genocide (1990: 30, 82-83), a theme to which I return in the section on globalization below. The case of the Yanomami of Brazil and Venezuela is especially striking: between 1987 and 1991, roughly 12 to 13 per cent of the

population was lost, due primarily to predatory mining practices on traditional lands.⁴ But this can be related to a broader historic practise of conquering the Amazon and its people. Similarly, the contemporary plight of aboriginals in Australia and North America, Russia, and elsewhere, can be linked to colonial policies which resonate in today's understanding of their condition.

It is of course more contentious to argue, as does Ward Churchill, that such policies are best labelled genocidal. Churchill's work may be seen a double indictment: he takes some genocide scholars to task for promoting the refrain of so-called Holocaust uniqueness, and condemns recent policies towards North American First Nations (1998). As usual, the application of the term genocide raises analytic eyebrows. As Moses writes in the case of Australia's aborigines: "the difficulty in applying the UN definition of genocide to colonial cases of mass death rests on the fact that most of the indigenous fatalities were not usually the direct consequence of an intended policy of extermination. Disease, malnutrition, alcohol, a decreased birth-rate, and increased intertribal warfare accounted, in the main, for the catastrophic decline in the Aboriginal population in colonial Australia...." (2000:90). Similarly, Bartrop (1997) does not find the destruction of the Powhatans of Virginia to be a case of genocide. Chalk and Jonassohn insist on intentional physical destruction; cultural suppression may be ethnocide, but it's not genocide (1990:23).

Moses does conclude, however, that European policies and attitudes evolved in an "exterminatory direction" and, in an equation similar to the Wendtian understanding of supervenience outlined above, "the structure of the process became consciously incarnated in its agents, and this is the moment when we can observe the development of the specific genocidal intention that satisfies the UN definition" (2000:92). Mark Levene describes pre-genocidal policies "creeping" up to the more robust variety (1999a). Russell Thornton's book *American Indian Holocaust and Survival: A Population History Since 1492* provides a quantitative assessment of the native American population collapse following first contact and its recent resurgence. He argues that, "while warfare and genocide were not very significant overall in the American Indian population decline, they were important causes of decline for particular tribes. Some American Indian peoples were even brought to the point of extinction by warfare and genocide, or perhaps it is more accurate to say, by genocide in the name of warfare" (1987:47). David Stannard, in his book *American Holocaust: Columbus and the Conquest of the New World*, concludes that "firestorms of microbial pestilence and purposeful genocide began laying waste the American natives" almost immediately following first contact with Europeans. The two operated in an interdependent dynamic, within the overarching context of a European/Christian racist ideology, resonant in our present: "The murder and destruction continue, with the aid of and assistance of the United States And many of the detailed accounts from contemporary observers read much like those recorded by the conquistadors' chroniclers nearly 500 years earlier" (Stannard, 1992:Xiii; see also Jonas, 1991).

Elsewhere, Levene (1999b) links genocide to a crisis-mode of nation-building, while Astourian (1999) links the drive toward modern Turkish statehood with a racist nationalism, and Barta (1987) contends that Australians live in objective "relations of

⁴ *Report of the Special Commission to Investigate the Situation of the Brazilian Yanomami* (American Anthropological Association, 1991). <http://www.aaanet.org/committees/cfhr/docshist.htm>.

genocide” with Aborigines: European settlement sealed the fate of those who previously occupied land taken for pastoral purposes. The latter case has, perhaps, led to the most outright form of official denial beyond that of the Armenian massacres. The Human Rights and Equal Opportunity Commission’s 1997 *Bringing Them Home* report alleged that the forcible removal of 100, 000 children of mixed Aboriginal and White descent between 1910 and 1970 constituted a case of genocide, according to Article II(e) of the United Nations Genocide Convention.⁵ The government flatly rejected this condemnation, though a modest compensation package was produced (see Innes, 2001; and Reynolds, 2001) In Canada, the Report of the Royal Commission on Aboriginal Issues⁶ has acknowledged past governments’ policies of forced assimilation, producing some measure of transparency in dealing with ongoing cases.⁷

This is a category of complicity that is receiving increasing attention. Mark Cocker supplies one of the more comprehensive accounts in *Rivers of Blood, Rivers of Gold: Europe’s Conflict with Tribal Peoples*, utilizing several case studies, including the Spanish conquest of Mexico, the British treatment of Tasmanian Aborigines, Euro-American dispossession of the Apaches, and the German annihilation of the Herero and Nama in South-West Africa. Technological superiority facilitated eliminationist policies, in both the material and ideational sense: “[t]echnological inferiority equaled moral inferiority and, at times, moral worthlessness” (1998:364). Adam Hochschild’s critically acclaimed *King Leopold’s Ghost* (1999) contributes further to raising awareness of the ruthless policies of colonial expansion in southern Africa. No doubt, much more top-quality work on this theme will emerge as more historians become engaged with the issues. The resonance of historical injustice, meanwhile, will continue to galvanize activists as well.

Indifference and Selective Intervention

This category appears after the resonant complicity category in terms of chronological distance only, and it is by its very nature the most difficult to demonstrate. The essential suggestion here is that the west is often guilty by negligence: that by maintaining indifference as a policy direction, and limiting the cases where the west intervenes to stop crimes against humanity, it becomes complicit in the acts of violence themselves. Thus such a category is generally presupposed by a counter-factual claim that, had the west intervened, and had the west sent sufficient troops or aid, it would have made a substantial difference in genocidal outcomes. Surprisingly, and despite the

⁵ Sir Ronald Wilson, *Bringing them Home. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families* (Sydney: AU: Human Rights and Equal Opportunity Commission, 1997).

www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc.

⁶ Indian and Northern Affairs Canada, *People to People, Nation to Nation. Report of the Royal Commission on Aboriginal Peoples*. (Canada: Indian and Northern Affairs Canada, 1996).

www.ainc-inac.gc.ca/ch/rcap/index_e.html.

⁷ *Backgrounder: The Residential School System* (Canada: Indian and Northern Affairs Canada, N.D.).
www.ainc-inac.gc.ca/gs/schl_e.html.

traditional fixation on concerns of national interest, this category has emerged as a viable one due largely to the generation of human security analyses and rhetoric (see Hampson, 2001), and the outcome of two tragic recent events where the response of the international community was generally viewed as insufficient: Bosnia and Rwanda.⁸

Again, the theme of what “should have been done” is an old one: the Allies neglecting to bomb train-tracks leading to Auschwitz often comes to mind. But concern over lost opportunities in Rwanda has struck an especially disconcerting chord, and inspired a serious debate over the limitations of peacekeeping and humanitarian intervention. I return to the latter theme in our section on obligations, below, but maintain focus on the retrospection encouraged by the debacle in Rwanda, a clear case where the western world, with the self-interested exception perhaps of France, decided to do next to nothing, despite evidence of an unparalleled African genocide unfolding. The blame is shared widely here, from individuals intrinsic to the decision-making process, to the pathologies of bureaucracies in international organisations, socially constructed understandings that can lead to dysfunctional behaviour (on the latter, see Barnett and Finnemore; on constraints imposed by norms see Jones, 1992). According to Barnett, himself involved in the process, UN Secretary-General Boutros-Ghali initially “emanated indecision to the point of paralysis, if not complacency ... a disturbingly distant stance from the unfolding tragedy and ... a troubling abdication of responsibility and leadership”(Barnett, 1997:559).⁹ Barnett, and others, believe that an unspoken consensus, post-Somalia, emerged: put bluntly, “the UN had more to lose by taking action and being associated with another failure than it did by not taking action and allowing the genocide in Rwanda” (1997:561); while the Americans were reluctant to send troops into a war zone, resenting the suspicion that “the international community seemed willing to fight down to the last U.S. citizen” (1997:562).¹⁰

As Holly Bukhalter points out, the U.S. did become quite engaged, in a non-UN manner, in what she terms the fifth phase of the Rwandan genocide (July 1994), deploying soldiers in (the former) Zaire and even Rwanda itself to aid with relief efforts amongst refugee populations (1994). But its initial reluctance has led to much condemnation. As Samantha Powers points out, however, the saga of U.S. response to the genocide “is not a story of wilful complicity with evil. U.S. officials did not sit around and conspire to allow genocide to happen. But whatever their convictions about “never again,” many of them did sit around, and they most certainly did allow genocide to happen” (Power:s, 2001: 86). Others suggest that the media plays a role here as well; not just in the more obvious cases of state-sponsored broadcasts inciting Hutus to violence during the genocide of 1994, or Serb controlled television doing the same in the 1990s. “A force using the experts and the special technology of the former Western or Eastern blocs would actually find it easier to put such jamming equipment quickly into position than to establish a powerful broadcasting system capable of countering the perpetrator’s propaganda” (Chalk, 1999:197).

⁸ Note the evocative title of the volume edited by Cushman and Mestrovic, *This Time We Knew: Western Response to Genocide in Bosnia* (1996).

⁹ However it can be suggested that the Secretary General’s special envoy to Rwanda downplayed the crisis, suggesting it was evidence of a traditional war between the RPF and the army more than a genocide proper. See Bukhalter, 1994: 46.

¹⁰ On this theme see also Kuperman, 2000; Des Forges, 1999; Klinghoffer, 1998.

The fall of Srebrenica and other tragedies allowing for the perpetration of crimes against humanity in the former Yugoslavia has also caused concern that, while not necessarily reflective of indifference, international commitment is weak and exclusionary. Peacekeepers (Dutch troops in this episode) have been criticised in the Srebrenica case, despite being outnumbered twelve to one by advancing Serb troops, for failing to protect civilians or quickly pass on information that could:

Although they did not witness mass killing, they were aware of some sinister indications. It is possible that if the members of the battalion had immediately reported in detail those sinister indications to the United Nations chain of command, the international community might have been compelled to respond more robustly and more quickly, and that some lives might have been saved. This failure of intelligence-sharing was also not limited to the fall of Srebrenica, but an endemic weakness throughout the conflict, both within the peacekeeping mission, and between the mission and Member States.¹¹

It is, of course, difficult to establish the assertion that the troops could have made a difference had they reported things immediately, and one can expect too much of the UN and the Security Council, which is, after all, based on a unit-veto system that explicitly recognizes national interest as the guiding foreign policy theme, albeit within the context of the ideal of collective security. In cases of selective exclusion – where intervention is avoided by the great powers – they usually have some form of interest in the region at hand, and therefore these cases of neglect may overlap with our next category.

A final, and yet more controversial, inclusion: the case of economic sanctions imposed through bilateral or multilateral mechanisms which have exceeded the norm of proportionality and are perceived as excessively punitive. This goes beyond the silent genocides of neglect discussed by Henry Shue (1980) and others concerned with the impact of structural adjustment programmes. The most publicized case currently is, of course, the ongoing regime of sanctions against Iraq, which have according to some estimates resulted in over one million deaths (see the chapter by Haliday in this volume). While I would not be prepared to label this an act of genocide, it can be plausibly argued the policy denies the material needs of a population already struggling with a post-war economy and the continued dictatorship of a leader who, had the west demonstrated the necessary resolve during the Gulf War of 1990-91, would not be in a position to justify its continuation.

Material Contributions

¹¹ Report of the Secretary General pursuant to General Assembly resolution 53/35: *The Fall of Srebrenica*. UN doc A/54/549. (UN General Assembly, 15 December 1999) 105-106.

Many crimes against humanity are committed by governments and/or opposition forces that benefit from direct assistance from the west. Here, we enter again the thorny debate over intentionality; however, it is clear that support for genocidal regimes takes on a number of shades regardless of whether we ascribe the intention to commit such acts to western actors. While it would be remiss to allege that western powers were directly involved in the Rwandan genocide, analysts critical of both the aid and foreign policy community have contended that, prior to the large-scale massacres of 1994, "even though the Rwandan government was implicated in racist and genocidal violence against Tutsi, the international community, while pushing for peace and democratisation, also continued and even stepped up its military collaboration with the regime" (Uvin, 1998:96). Others point to American assistance to Israel and Egypt of cases where regimes using torture are receiving large chunks of the aid budget.

In the Rwandan case the figures do, perhaps, speak for themselves: Melvin cites an arms deal between Egypt and Rwanda in March 1992 for US \$6 million of light weapons and arms, including 450 Kalashnikov rifles, 2,000 rocket-propelled grenades, 16,000 mortar shells and more than 3 million rounds of small arms ammunition. The French state-owned bank, Credit Lyonnais, acted as guarantor for the deal, which involved the transfer of \$1million in cash instalments in London; again, the transnational character of complicity asserts itself (Melvin, 2000:66). On one level, then, we can obtain trade and aid statistics where activity preceded large-scale massacres, though of course in the Rwandan case the claim was made that such armaments were necessary to defend the state from further RPF invasion. It may be prudent to limit our charges here to such cases, lest this category become undistinguishable from the complaint that many governments have relations with states with dubious human rights records.

Another possible complication is that governments themselves do not always control what their nationals do in the international marketplace of capital investment. Shell's involvement with the Nigerian military in the oppression of the Ogani and other Niger Delta peoples has become infamous, but it would be difficult to charge either the British or the Dutch with complicity in this case. In the case of Talisman, the Canadian firm that has helped perpetuate the government of Sudan's genocidal policies in the south of that country, the Canadian government, though stopping short of demanding Talisman refrain from further investment, did condemn the investment in a report, but the company refused to pull out until their status on the New York stock exchange was challenged.

One can argue also that, beyond governments and multinational firms, even aid agencies and other non-governmental actors can contribute indirectly to exploitative situations where crimes against humanity are common, and this can go beyond the tragic circumstances of refugee camps hosting murderers after genocidal outbreaks. Here the Sudan may again prove illustrative: for example, Mark Duffield argues the problem there isn't the rush to cope with emergency situations, or complicity in perpetuating the civil war in Sudan, but rather that the efforts to obtain peace will result in the continuation of prior relations of exploitation and, by extension, genocidal policies not linked directly to the civil war effort. As he puts it, "goal-oriented humanitarianism in the transition zone can be argued to have reinforced those everyday relations that denote 'peace.' In other words, aid agencies have strengthened and tacitly supported those economic and political relations of desocialisation, subordination and exploitation that constitute normal life. In the transition zone, since the Dinka are enmeshed in such relations, aid policy has been

complicit in their oppression” (Duffield, 201:205). Similarly, Uvin charges the development community with a greater concern for continuing with a predetermined aid process than for the considerably foreboding storm clouds brewing prior to the genocide in Rwanda.¹²

In a more immediate sense it is evident that aid efforts can increase oppression and the opportunity of combatants to engage in war crimes and crimes against humanity. Aid commodities are often “stolen, diverted and manipulated to the interests of those at war. Warriors also use aid in indirect ways. By controlling the locations where they may be delivered, commanders manipulate population movements. By negotiating with aid agencies for the safe delivery of goods, commanders gain legitimacy in the eyes of those who depend on aid for survival and, sometimes, in the eyes of the international community” (Anderson, 1998:141). It may appear churlish to accuse western aid agencies as complicit in crimes against humanity, and such a charge must be taken very carefully, since aid organizations are indispensable in many emergency situations. Nonetheless, a critical perspective can strengthen their effectiveness in the long term.

Yet another transnational actor must be taken into account, further complicating the transnational landscape. The privatisation of security forces has become an increasingly pertinent theme, in the old-style sense of mercenaries involved in local conflicts with murderous outcomes (Sierra Leone, for example) and in the sense that such forces are gradually attaining the status of state apparati. There may be cases where such forces can, in fact, offer fruitful paths toward the cessation of crimes against humanity; but of course this is a double-edged sword. Private firms such as Executive Outcomes, the Control Risks Group, Defence Services Limited, Sandline International, and Saladin Security are expanding their markets and furthering a remarkable transition toward privatised security provisions, with British and American firms leading the way. In Colombia, in the mid-1990s, DSL was involved in coordinating the defence of BP’s oil infrastructure and personnel with the Colombian army and police, resulting in charges of complicity following human rights abuses by the Colombian authorities (see Duffield, 2001:66, and Vines 1999). (DSL also provided security and logistics personnel to the UN mission in the former Yugoslavia in 1992). An aggressive external expansion programme has been launched by the primary American firm, Virginia-based Military Professional Resources Incorporated (MPRI); MPRI assisted the modernization of the Croatian military in 1994 (Cilliers and Douglas 1999:115). It becomes apparent that such forces will be one-step removed from governmental oversight and, if they are involved in crimes against humanity in the future, it will be difficult to claim they have acted in the interests of “the west”, or its governments.

Direct Participation

This category is, of course, the most obvious inclusion. Here we have a wide array of possible shades of complicity, from the acts of occupying forces during wartime to the aerial bombardment campaigns conducted by NATO forces in Serbia, or American

¹² “Up to 1994, with few exceptions, projects in the pipeline were executed without change; no human rights conditionalities were added to overall aid disbursements or specific projects.” Uvin, 1998:99.

forces in Afghanistan. A 1993 decision by the IJC ordered Serbia and Montenegro to abstain from allowing its troops to commit genocide in Bosnia and Herzegovina (see Chalk, 1994:61). However, this was an unusual case. It is more common for the international community to accept the premise that “war is war” and civilian casualties are part of the price of victory.

The remaining articles in this volume will deal, at some length, with cases where direct participation of western governments in crimes against humanity have been alleged. These can take the form of active participation in coups which give rise to genocidal regimes, the supply of soldiers and/or military advice, the supply and delivery of arms (which I have also included in the above section, but in some cases it may be argued that this is such an integral aspect of large-scale campaigns it constituted direct participation), and at the far extreme the military application of force resulting in large-scale death and destruction. It should be clear at this point that this category is concerned largely with war crimes.

This is also a controversial issue, since war efforts generally (with prominent exceptions) generate patriotic fervour and, in cases where they were directed against genocidal expansionism, it becomes easier to dismiss their harsher consequences (see Langenbacher, this volume, for a treatment of the allies’ bombing of German cities). Journalist Christopher Hitchens has focused on the impact of American policy makers, such as Henry Kissinger, for decisions that may or may not have contributed to genocidal consequences in Vietnam, Cambodia, Bangladesh, and East Timor (Hitchens, 2001). Others, such as Daniel Goldhagen, author of the controversial bestseller, *Hitler’s Willing Executioners: Ordinary Germans and the Holocaust* (1996), and Samantha Powers, a former International Crisis Group consultant and currently Executive Director of Harvard University’s Carr Center for Human Rights, have called for an investigation into atrocities that U.S. Senator Bob Kerrey is alleged to have ordered while on combat operations during the Vietnam War.¹³ It is highly unlikely that either Kissinger or Kerrey is under any real threat of investigation by the U.S. government, of course; but such paper indictments do challenge the culture of impunity referred to by the editor of this volume.

There is room for much debate here, concerning the actual conditions of such intervention: whether direct contributions are co-ordinated with foreign states or are unilateral in nature; whether they precede an occupational force; whether they go beyond physical attack and extend to cultural and assimilative policies, taking us back to the first category introduced. In ethical terms, the debate over *jus ad bellum* continues.

Globalization as a Destructive Process

Finally, a general theme linking all the above types of complicity, and yet one with the least attractive analytic rewards, is that globalization is akin to murderous imperialism. Before briefly exploring this theme, I would like to make my own position clear. I would accept its inclusion, given my limited understanding of world history and current events, but would decline the temptation to advocate its adoption by analysts concerned with the criminality aspect of complicity in crimes against humanity.

¹³ Daniel Jonah Goldhagen and Samantha Power, “Kerrey Should Be Investigated,” *Boston Globe*, May 3 2001.

More than the others, then, this category is more of a position than an analytic tool, and it requires us to move beyond immediate intentionality and engage a more structural level of analysis. The opposition to globalization is eliminated by a combination of complicit acts of atrocity within the context of structural violence. An ideology which seeks the elimination of inefficiency and opposition to a market value system, as argued by philosopher John McMurtry (1998), is both ruthless and self-perpetuating. This is a process beginning in the industrial core, as Marx would describe in his chapter in *Capital* the “Bloody Legislation against the Expropriated from the End of the 15th Century” (1967: 717-44); it would continue with colonization, imperialism, market-induced structural adjustment programmes in the wake of the Third World debt crisis, the elimination of protest groups, and so on.¹⁴ Although the tendency to equate early campaigns for market expansion is usually portrayed as a European event, later episodes predominantly feature the United States, though smaller states such as Canada are clearly implicated as well (see Scharfe, 1996). One can, of course, argue that the nation-building exercise has been fuelled by eliminationist impulses, and the “mobilization of predatory identities” (Appadurai, 2000:132)¹⁵ to this end; why then would the global polity building exercise, stripped of its liberal veneer, offer a significantly different route?

This has much in common with the “pathology of modernity” argument, discussed by Steven Welch and others, related to the Holocaust and the “totalitarian potential of modernisation” (1999:2); mass murder could be seen as a product, not a failure, of modern society (Bauman, 1989). This can be taken from a materialist perspective as well, in the work of Aly and Heim (1988), who look at the implementation of the Final Solution in Poland as a rational by-product of capitalist organization. To move from here to a blanket condemnation of globalization, however, is a rather big leap. We can argue that the violence accompanying the process of globalization is indicative of an inhumane approach to governance, but to link this to western complicity is provocative at best.

Political violence can be seen as a “mode of transcription” that “circulates codes from one prescribed historiographic surface to another” (Feldman, 1991:7). In this sense it shapes our understanding of the past, but also colours the scale of options open to political leaders, international organizations, opposition movements, and others. Teleological beliefs that universal rationality will lead to technological and norm

¹⁴ McMurtry cites an analysis of the Chiapas rebellion in southern Mexico by Chase Manhattan Bank, and quotes as follows: “While Chiapas, in our opinion, does not pose a fundamental threat to Mexican political stability, it is perceived to be so by many in the investment community. The government will need to eliminate the Zapatistas.” (1998:231). This is a fascinating quote, given the starkness of the language; even if taken as benevolently as possible, elimination would require the destruction of a political organization with non-military means, and of course the Mexican government’s initial approach to the rebellion was anything but non-military. Problematically, however, the only source McMurtry offers is a newspaper article written by himself: “A Day in the Life of the New World Order”, *The Globe and Mail*, April 1, 1995, PA7.

¹⁵ Appadurai: “...most nations achieve their sense of their cultural homogeneity in the face of remarkable and known diversities and fierce micro-attachments that have to be erased, marginalized or transformed. ...Whether it is peasants being transformed into Frenchmen, Scots being turned into Britons, Hindus into Indians, for some nations to be imagined, others have to be deemed ‘unimaginable’” (2000:132). This is a troubled statement at best, and not because of the determinism creeping in at the end; it also overlooks the possibility of multiple political identities, and the resilience of traditional associations.

convergence has proven premature (and, it can argued, is in itself a form of epistemological violence). As Anthony Giddens cautions, political tension and violence may be more frequent in the context of globalization, since "...the centrifugal forces of dispersal within and between societies in the present day might prove too great to manage without explosions of violence, on the small and large scale" (1996:238). Other means of dispersing tensions, such as negotiation, may be too little too late, and advocates of unfettered global capitalism may not be rewarded with the Kantian peace-through-commerce outcome they anticipate.

To conclude this section: it is not enough to merely disentangle the many threads binding western governments to agents of genocide and crimes against humanity elsewhere. There are common, socially constructed, and quite persistent conceptual linkages as well: myths based on race, nation, rationality and science (see Peukert, 1993) state, security, progress, and globalization of norms and value systems which may advance human rights on the one hand, but justify the marginalization and neglect of entire populations on the other.

Obligations: Ending the Culture of Impunity?

In each of the categories presented above we can see points of entry: the policy of colonialist eliminationism, the decision to do nothing, or ignore the suffering caused by extant policies based on national interest, the material contribution to regimes and opposition forces committing atrocities, and the outright application of military force (in the "national interest") which can be said to constitute crimes against humanity. The chapters to follow capture case studies of each, but they go further, suggesting justice can be restored through a variety of means, including citizens' tribunals, reparations, and truth and reconciliation commissions (on the latter, see Deegan, 2001:136-164). A broader question involves that of obligation: what responsibilities do western states and civilians have in the battle against the culture of impunity? This question can be broken down into a discussion of intervention, and reparations.

On the more obvious side the west has an obligation *not* to intervene when doing so will only worsen the situation for civilians and combatants. As early as 1758, Emmerich de Vattel wrote: "To give help to a brave people who are defending their liberties against an oppressor by force of arms is only the part of justice and generosity. Hence, whenever such dissension reaches the state of civil war, foreign nations may assist that one of the two parties, which seems to have justice on its side. But to assist a detestable tyrant Would certainly be a violation of duty" (quoted in Moynihan, 1990: 175). Beyond this the duty to intervene is a hotly contested topic in circles of international lawyers and policy analysts. It is at best an imperfect duty, as described by international relations ethicist Michael Walzer, "which is to say, no one's duty in particular, so in fact the brutalities and oppression of international society are more often denounced than interdicted" (1997:107; see also Tamir, 2000:262). Despite the claim

advanced by Wheeler that a norm of humanitarian intervention is emerging, there is great division on this topic (see Vincent, 1986, and Wheeler, 2000).¹⁶

We can suggest, however, that there is an obligation, when intervention is the decided course in the event of crimes against humanity, to do it well. Harold Adelman suggests a complementary second-order norm is an obligation to strive for coherence on the part of the international community: “it is incumbent upon all parties to make their best efforts to arrive at a coherent policy when attacking the issue. Just as in an operating room, so in international interventions: You cannot have each of the parties pursuing different goals and following different procedures.” (2001:199). More to the point, one can argue there is an obligation to avoid duplicity; that arguing for peace in civilian conflicts and selling arms to warring parties in the region represents not only a breach of ethics, but is expensively counterproductive behavior.

Beyond the question of intervention is that of institutional responses. Since these are dealt with at length in the next chapter, I will move quickly here and suggest that the call for reparations for past atrocities presents the greatest analytic and policy challenge, though the establishment of an International Criminal Court may well have serious repercussions of how, exactly, we view complicity, though it would apply primarily, I suspect, to war crimes and not the less direct modes of complicity described above. Perhaps the most engaging treatment of the reparations question is offered by John Torpey, who sees reparation demands rooted in racial identity as the most promising in terms of galvanizing claimants (class-based demands present a much more complicated process of victimization). Torpey lists three sources of reparations demands, beginning with the relatively straightforward claims related to World War II, the therapeutic process of sorting out claims related to regime transition, and “clarifying the circumstances under which the victims of the regime suffered” (Torpey, 2001:335). Finally, there are claims related to colonialism (classical European expansionism, internal colonialism, and neo-colonialism). Claims can be further separated into symbolic/commemorative and antisystemic/transformational (see the table below).

For our purposes it is interesting that many of these claims involve a transnational element; this is evident in the slave trader, economic collaboration with Nazi crimes, and neo-colonialism. A discussion of the value of such claims as socialising agents is quite beyond the scope of this paper, but Torpey’s claim that, for many victimized groups, “the road to the future runs through the prolonged disasters of the past” (2001:337) suggests that this could be one avenue towards the avoidance of the homogeneity fostered by globalizing tendencies of the west, and should be taken seriously as part of a violence-avoidance dialogue. At the same time, admitting the legitimacy of such claims (beyond the extant patchwork of reparation agreements) opens a door most state leaders, including finance ministers, would rather leave only slightly ajar.

Table 1. Sources of Reparations Claims¹⁷

WORLD WAR II	“TRANSITIONS TO DEMOCRACY”	COLONIALISM
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¹⁶ See also the recently released report by the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*; available online at <http://www.sciss-ciise.gc.ca/report-e.asp>

¹⁷ Data from Torpey, 2001: 335-336.

<p>State-sponsored mass killing, forced labor, sexual exploitation (Axis Powers: Germany, Japan, Austria)</p> <p>Wartime incarceration of Japanese populations (Allied Powers: U.S., Canada)</p> <p>Economic collaboration With Nazi crimes (“Putatively Neutral” states: Switzerland, France, the Netherlands)</p>	<p>State terrorism, other authoritarian practices (in Latin America, Eastern Europe, South Africa)</p>	<p>Classical European Colonialism (Claims from formerly colonized against former colonial powers, eg. Africa, and from indigenous groups against states “dominated by the descendents of their European conquerors”)</p> <p>Internal Colonialism (Slavery, Jim Crow, Apartheid)</p> <p>Neo-Colonialism (Claims against international lending agencies, e.g. the World Bank, or IMF, seen as the partial cause of Third World poverty, population displacement, and environmental destruction, e.g. by funding dam construction)</p>
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Table 2. Types of Reparations Claims¹⁸

SYMBOLIC/COMMEMORATIVE	ANTISYSTEMIC/TRANSFORMATIVE
<ol style="list-style-type: none"> 1. Typically World War II-centred claims 2. “Backward looking”, intended to cultivate awareness of the victims’ suffering, explicitly involving the mobilization of ethnocultural consciousness 3. Material compensation secondary. Although some of the claimants -- Holocaust survivors, comfort women -- bear the physical scars of their torment, the benefits accrued to symbolic/commemorative claims are more of a psychological sort 	<ol style="list-style-type: none"> 1. Typically address colonialism-centred claims 2. “Forward looking”, often connected to broader programs of social progress. Intended to address injustice of past systems of domination (colonialism, apartheid, slavery, segregation) seen as contributing to ongoing economic imbalance and deprivation 3. Mobilization of ethnocultural victimhood of some claimants (Aboriginals, Black Americans) indicates a symbolic/commemorative element.

In terms of other obligations, it might be said that a recent decision by the Court of International Justice suggests there is an obligation to refrain from committing genocide by using nuclear weapons, and that the continuation of global warming, largely

¹⁸ Data from Torpey, 2001:336-337.

the result of western states, threatens the very existence of millions of inhabitants of small island states and coastal regions.¹⁹ In both these cases, however, we would have to expand considerably beyond a geographic or, even, socio-economic understanding of the “west”, and include states such as Russia, India, and China. However it is tempting to extend this discussion beyond crimes against humanity as commonly registered, and remind ourselves that the range of western obligations include elements demanding restraint, such as adherence to the precautionary principle.

Much has been written of the importance of definitions, generated by social constructions of difference, which allow for the contextual preconditions for genocidal behaviour.²⁰ Institutions do have the ability to construct and, even, structure knowledge (see Foucault, 1977); and this process might in itself cast the necessary light for the perpetration of atrocities. Barnett writes of “an intimate connection between the discourse of acting in the best interests of the international community, the bureaucratisation of peacekeeping, and the production of indifference” (Barnett, 1997; see also Rieff, 1995 on Bosnia). Perhaps the more demanding obligation, then, is to avoid the reflexive turn to what Herzfeld (1993), borrowing from Weber (1963), refers to as “secular theodicy”: the tendency to overlook evil in some places for the cause of the greater good of a collective identity, in this case that of the international community itself; or, put another way, for the cause of a constructed image of order which masks structural violence.

At the very least, western scholarship has an obligation to avoid the oversimplification of events; as Rene Lemarchand poignantly reminds us, the “Manichean dichotomy simply does not does not apply” in the Rwandan case (1998: 42). Casting foreign crimes against humanity as examples of bad versus good guys is beyond inaccurate, it is engaging an act of self-rationalization, precluding deeper understandings of the extent of our own complicity.

Conclusion

Accusations of complicity in something as horrendous as crimes against humanity are, to some degree, contingent on adopting a legal approach: events are seen largely as “crimes”, and not as historical processes. Therefore they are even further from constituting, in a material or ideational sense, a structure imposing the continuance of such a process on future generations. Though some would adopt this latter view, the first

¹⁹ The Court was asked for two opinions, one concerning the whether the use of nuclear weapons would be a violation of the World Health Organization’s constitution (this was rejected); the second asked whether or not the use of nuclear weapons would be a violation of international law. The Court declared that nuclear weapons are generally illegal, but did not conclude definitely on whether the threat or use of nuclear weapons would be lawful or unlawful in the “extreme circumstance of self-defence.” This ambiguous declaration has inspired disarmament activists, even though it is clear that the Court was divided over the issue of whether the right to self-defence or the principles of international law should prevail. See Grisdale, 1997.

²⁰ For example, Uvin discusses the debate about distinguishing Tutsi from Hutu: “Do the differences in stature ... reflect the fact that they are from very different genetic stock ... differences in diet, with Tutsi cattle herders living on an almost exclusive diet of milk products? Or are they the result of biased sampling (everyone who was tall was categorized as Tutsi, thus ‘proving’ that all Tutsi are tall)? (2001:???)”. Uvin cites Chapter Two of Taylor (1999) as an interesting discussion of this debate.

(criminality as the basis of discussion) enables us to be more specific with our admonition and, perhaps, criminal prosecutions and compensatory penalties in the future. One avenue takes us to a more operational understanding, but the other offers much more conceptual and historical breadth. It would be too easy to argue that one can represent agency, the other structure, within the context of the broader ontological debate in international/transnational relations, but the typology offered above does permit genuflection in this direction.

Ward Churchill believes that the “reproduction, evolution, and perfection of any hegemonic structure is inevitable, left to its own devices” (1997:3), and he wants to forge (1997:8) a “viable counter-genocidal praxis” (1997:8), much as Foucault and others write of counter-hegemonic understandings and readings of power. In the case of crimes against humanity, this must begin with an understanding of the extent of complicity of the west, whose narrative is essential to the modern state construction project. But it is as important to seriously challenge the accuracy and legitimacy of claims that western involvement necessarily denotes intentionality, or for that matter produces a corresponding obligation to provide reparations. This critical examination of critical theory, as it were, can be fruitful for the field of international and transnational studies, genocide studies, and legal approaches to deterrence. It can lead to some fundamental questions as well.

For example, if we accept Uvin’s troubling analysis, that (at least in the Rwandan case), development assistance contributes to structural violence (the latter after Galtung, 1969), which, when coupled with a culture of impunity, facilitates acute violence, it follows that we need to rethink the entire westernization project along a number of lines, to studiously and systematically avoid involvement where it can lead to complicity. The primary agenda for social scientists working in this area may well be to identify those moments when such complicity becomes possible, and to integrate their recognition into policy-making responses. The alternative is to wish away western involvement, an unlikely success path at this time; or to succumb to despair, accepting the inevitability of western collusion in crimes against humanity in the name of national interest or the pursuit of profit.

The purpose of this chapter was to stimulate further thinking of how we can conceptualize complicity in crimes against humanity, and not to argue in favour of one categorization or the other. This I leave to others more immediately concerned with strategies of prevention or prosecution. However, it is increasingly clear to me that while the categories invoking greater distance, such as resonant complicity and the embracing “modernity as genocide” perspective, offer great heuristic value and form part of the contextual backdrop of identity and norm formation, the more concrete and empirically oriented categories, as usual, offer greater operational value. The essays to follow manage to capture most of our categories, however, demonstrating their utility and variance.

There has, indeed, persisted a curious silence in formal international relations theory regarding crimes against humanity perpetrated in foreign lands. Though normative and critical theorists often assume such events occur, and often subsume them within the larger rubric of western expansionism, internationalized militarism, global patriarchy, and similar constructions, one can explain their relative inattention in the mainstream to a case of routinized negligence, or perhaps the deliberate avoidance of the ugliness in the

mirror. We do know, sporadic cases of “spontaneous communal violence” (Holsti, 2000:169) aside, most instances of violent civilian death since the larger inter-state wars have been cases of “death by government” (Rummel: 1994). This can only lead us towards a closer analysis of the complex links between such states and their allies in the west, and the more entrenched historically and less distanced presently these links are, the closer to complicity we come. The remaining chapters in this volume will pursue those links.

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