

Restorative Justice in the Face of Atrocities

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Abstract

The traditional justice serves the justice of the accused, while the restorative justice serves the justice of the victims, which is particularly important to the victims of war and has the function of containing the war. With the development of human society, war is inevitable, but the form will change. Restorative justice will ensure the vulnerable groups and warn the war initiators.

Keywords: war, restorative, containing, justice

1. Introduction

After the Second World War, disputes on the treatments of former Nazi soldiers has heightened debates internationally. According to many, the crimes of these soldiers as well as their impacts are incurable; therefore, it is justified for Nazis to receive retributive justice- a form of justice “morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers.¹” Before, during the Second World War and long after, anti-semetic sentiment towards the Jewish community was always high since the Nazi had sought all means to deprive the Jewess of their personal rights and freedom. German invasion of other nations as well as their brutality towards captives and the innocents were also outrageous to many. However, as the trial that followed the end of the War, commonly known as the “Nuremberg Trial,” unfolds, the concept of “restorative justice” emerged, a novel definition of justice which allowed for criminals to repair the harms caused by their behaviors.² Justice Jackson, the Chief United States Prosecutor at the Nuremberg trials, chose to actively implement restorative justice despite its controversy and unconventionality. This decision has not only reformed the mindset of the people then, but has also paved the way to how people view and define justice in the present day. The Nuremberg Trial had reconstructed and redefined traditional justice, and which immediate and long term impacts have affected not only Germany, but many more countries through its application today.

Papers on similar subjects include *Restorative Justice for Victims of War Crimes* by Juliet S. Sorensen, *Nuremberg or The South African TRC: A Comparison of the Retributive and Restorative Models of Justice* by Brendan Gooley, *The Romance of Nuremberg and the Tease of Moral Justice The Nuremberg Trials: A Reappraisal and Their Legacy* by Thane Rosenbaum, and many more. Perception of “justice” has been narrowly defined before the Nuremberg Trial from November 20th, 1945, to

October 1st, 1946.³ Prior to the trial, the idea of “retributive justice” was predominating in the law court. This form of justice often takes on an element of punishment or vengeance, a retribution to what the criminal had done. The term also denotes “harsh treatment” because, according to the Stanford Encyclopedia of Philosophy, retributive justice always comes with “cost or hardship” for the criminal.⁴ In addition, these hardships are imposed by will upon the guilty rather than accidental. In other words, the adverse effects which the use of retributive justice had purposely inflicted can be justified as “punishments” rather than “harms.⁵” This is no different than dating back to the treatment of “an eye for an eye, a tooth for a tooth” in the Babylon era.⁶

However, the violent intention of retributive justice often brings forth more tragedy than peace. Although “retributive justice holds that it would be unjust to punish a wrongdoer more than she deserves,” navigating the line between morality and immorality can be difficult. Moreover, instead of forward looking to benefit society as a whole, retributive justice looks only at the crime and its surrounding circumstances at the time and produces a punishment that fits the crime and possibly only the crime. Furthermore, vengeance is an evident factor in retributive justice that can bring forth a cycle of hatred. The Nazis, for example, are still seen as the symbol of absolute evil nowadays. “We are going to be doing one thing, and one thing only - killing Nazis.”⁷ These words, spoken by Lt. Aldo Raine in Quentin Tarantino’s 2009 film “Inglourious Basterds,” represent one popular conception of justice against these war criminals, and depict how retributive justice for Nazi war criminals would likely result in a repetition of vengence. In the film, a squad of Jewish soldiers kill many Nazis by methods that would qualify as cruel and unusual (clubbing, strangling), and in the last scene pump Hitler, Goebbels and Bormann full of bullets and then burn them alive in a theater. Similar scenes of

mayhem are featured in the long-running Wolfenstein video game series⁸, in which an American soldier shoots Nazi soldiers from a first-person perspective. As quoted from Mahatma Gandhi, "an eye for an eye only ends up making the whole world blind."

The Nuremberg Trials gave the concept of restorative justice the biggest stage possible, implemented in response to the world's greatest known atrocity at the time, immediately after humanity had so miserably failed the six million Jews murdered by the Nazis. The term, first invented by Mark Yantzi, which focuses on healing the people and communities involved rather than implementing immediate punishments to the victims. In other words, restorative justice "seeks to return the situation to the way it was."⁹ As Elazar Barkan notes, restorative justice "includes reparation, restitution of property, restitution of cultural property, historical commissions and apologies as a form of atonement."¹⁰ Despite skeptics who deemed the Nazis' crimes too "big" for the judicial system, the prosecution team led by Judge Jackson made a valiant effort to prove that justice becomes even more important in the face of crimes against humanity.

The Nuremberg Trials were by no means inevitable. The context of the post-war debate on whether to try Nazi war criminals in a court of law is crucial to fully understanding what Judge Jackson meant by "grave responsibility"¹¹. Both Winston Churchill and Henry Morgenthau advocated summary executions of Nazi leaders without trial. Many proponents of such frontier justice believed the Nazi leaders' guilt were so obvious that they were not deserving of due process¹². These proponents could not understand why the world should waste any time or resources dispensing justice for mass murderers. Summary executions offered an attractively swift and efficient resolution. The Trials proved that genocide is indeed different. Judge Jackson's opening speech at the Nuremberg Trials provides an antidote to these popular conceptions of retributive justice. It reminds us of how revolutionary the Nuremberg Trials were in attempting to move from retributive to restorative justice, to supplement punishment with repair. The Nazis war crime cannot be prosecuted like an ordinary crime, seeking only revenge for an individual - "an eye for an eye." Instead, the world community as a whole has the obligation to uphold justice and impose a universal set of laws to ensure that the tragic history does not repeat itself. Within this framework, justice is not only owed to the individual victim but also the world and its history, which receive the benefits of victims' stories told and true accounts publicly memorialized, so that posterity may apply the lessons that humanity learned and avoid repeating their mistakes.

In the end, the restorative vision prevailed over a revenge-based response. Instead of quick frontier justice, Nuremberg was slow and deliberative in delivering justice. This was where "grave responsibility" came into play. The trial was conducted with painstaking care to ensure that it was not just meaningful for the direct victims of Nazi war crimes, but also for those who need to know what is meant by justice decades into the future. The volume of evidence was overwhelming. Equally compelling was how meticulously they were compiled and recorded for future generations. The prosecutors were literally making history. The evidence served both immediate and longer-term purposes. The immediate purpose was to ensure that the proof withstood the test of time. The dead and the survivors of the Holocaust deserved to know that the prosecutors were establishing the Nazis' guilt with the utmost objectivity, precision, and transparency. They needed to know that the judgment against the Nazis would be uncontested. The longer-term purpose was innovative and made the Nuremberg Trials the forefather of all subsequent models of restorative justice. By telling the victims' stories to an international audience, the trials made a record for future generations who need to know what happened during World War II, how it happened, and what the world did in its aftermath. Future generations also needed exhaustively-detailed reminders of how their ancestors were once outrageously complacent and indifferent to the genocide of European Jews.

2. CONCLUSION

The Nuremberg Trials also wrote important chapters in the Germans' history books. Merely "killing Nazis" without trial would have squandered the opportunity to put the world on notice that there are serious legal and moral consequences to genocide. By setting the trials at the scene of the crime on German territory, they gave Germans daily reminders that they were much more than naive bystanders and therefore must deal with the consequences of the corrupt and brutal regime that they voted into power. The voices of human testimony, the presentation of unimpeachable proof, and the worldwide media coverage helped push reminders of the grotesque corruptions of humanity under the Third Reich into the face of the offending nation, forcing its people to confront the scale and evil of their crimes. In sum, the Nuremberg Trials changed the way the world looked at justice and gave rise to a new vision of moral responsibility among nations designed to prevent future tragedies¹³.

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