

Negotiating on Behalf of Previous Generations: Justice in Post-Conflict Contexts

*Unhouseled, disappointed, unaneled.
No reckoning made, but sent to my account
With all my imperfections on my head.
Oh, horrible, oh, horrible, most horrible!
If thou hast nature in thee, bear it not
(...) Fare thee well at once.
The glowworm shows the matin to be near,
And 'gins to pale his uneffectual fire.
Adieu, adieu, adieu. Remember me!¹*

Introduction

“Remember me”. After these words, the ghost disappears and leaves Hamlet on the ramparts. Knowing that his father was murdered and condemned to purgatory due to his inability to receive his last rites, Prince Hamlet immediately agrees to avenge his father: “Remember you! Yes, you poor ghost, as long as I have any power of memory in this distracted head. Remember you! Yes, I’ll wipe my mind clean of all trivial facts and memories and preserve only your commandment there”. Despite his uncertainties regarding the ghost’s reliability, Hamlet is determined to implement his plans for revenge. Nothing will stop him anymore: “Now it’s time to deal with the vow I made to my father”.

This dialogue from Shakespeare's *Hamlet* was written more than four centuries ago and has, at first glance, nothing to do with international negotiations. However, the tragedy reveals the strength of the loyalty that can bind human beings to dead ancestors. This article questions the potential impact of this particular bond on conflict resolution. It is an issue largely overlooked in relation to international negotiations. However, the main hypothesis underlying this article is that this kind of loyalty matters. In the aftermath of an international and/or civil war, loyalty towards past generations often reinforces conflicting notions of justice, and therefore jeopardizes peace processes.

¹ *The Tragedy of Hamlet, Prince of Denmark*, William Shakespeare, Act 1, Scene 5, page 4,
http://nfs.sparknotes.com/hamlet/page_66.html

The starting point of this study is the duration of intractable conflicts. As we can observe in the Middle East, in the African Great Lakes region, or in East Asia, intractability often implies more than one generation of society members (Bar-Tal 2013: 58). The notion of “generation” has been studied by several sociologists (Mannheim 1952; Pichler 1994). Yet it has been far less studied in the field of international negotiation (Sabbagh and Schmitt 2016). However, the involvement of two, if not three, successive generations has a critical impact on negotiation processes. Such a long duration of the process unsurprisingly determines approaches to the conflict in terms of justice. As we will see, when two – or even three – generations are involved, parties rarely agree about what qualifies as injustice. Moreover, the mere passage of time has no magical effect on conflicting notions of justice. On the contrary, a succession of crises and tensions accentuates entrenched positions concerning what are presented as historical grievances. Therefore, it seems useful to try to better understand the consequences of explicit or implicit promises made to those who are considered – by one party at least – to have been unfairly treated.

The study is guided by the following questions: how do parties negotiate justice on behalf of previous generations? Does loyalty based on tragic past events systematically prevent negotiating parties from rapprochement? As these questions suggest, the aim of this article is not to consider historical injustices as a whole, but to focus on those issues of justice which are brought to the negotiating table.

To address these questions, at least four scenarios can be identified. The first scenario regards negotiations related to the legacy of international conflicts. At the end of the Second World War, to take only one example, parties negotiated a system of state-to-state reparations with a common objective: to avoid the perceived mistakes of the Treaty of Versailles (1919). The second scenario concerns processes initiated during or after a civil war. It is exemplified by the Peace agreement signed in November 2016 by the Colombian Government and the FARC (Revolutionary Armed Forces of Colombia). After four years of negotiation in Havana, the parties formally agreed to end a conflict that had lasted over half a century. With regard to justice, the parties recognized “the rights of victims of any age or generation to truth, justice and reparations”, and more specifically “the right to exemption from liability for acts committed by earlier generations”².

The third scenario focuses on negotiations undertaken in a post-colonial context. The

² Preamble of the “Final agreement to end the armed conflict and build a stable and lasting peace”, 24 November 2016.

Matignon Accords (1988) and the Noumea Accord (1998) between France and New Caledonia illustrate this scenario. In acknowledging the “long lasting” impact of colonization (Preamble to the Noumea Accord), the parties take into consideration the intergenerational dimension of the colonial legacy. French representatives did acknowledge the “traumatic effect” of colonialization on the Kanak community but they refused to allow the possibility of reparations to the victims’ descendants. In Australia, New Zealand, and Canada, the intensity of public debates about justice in relation to the historical experiences of Indigenous peoples reflects the constraints faced by practitioners dealing with reparative claims for injustices committed long ago.

The last scenario concerns post-dictatorship contexts. Negotiations leading to a transition from dictatorship to elected government inevitably raise the question of justice. Whether or not accountability processes, truth-seeking, memorials or reparations programs are established very much depends on whether or not the old political elites stay in place. A whole range of possibilities exists, as is illustrated in Argentina, Chile, Brazil, El Salvador, Haiti, as well as the countries of Eastern Europe and the former Soviet Union. In all cases, parties referred to past generations in order to justify the measures that were chosen.

Despite their specificities, these scenarios share common ground: the distributive dimension of the processes, the pervasiveness of justice claims, and the highly emotional character of the dynamics. These elements are intimately intertwined. The scope of the violations and consequential losses and sufferings is such that all trust has been destroyed. The conflicts are identity-based and intensified by the transmission of incompatible narratives. In these circumstances, how can conflicting notions of justice be managed?

The issue can be examined from at least three perspectives. First, as in any other negotiation, the processes through which parties defend a particular notion of justice on behalf of previous generations can be analyzed as rational games depending to a large extent on parties’ interests. Second, these processes can be evaluated from a moral perspective. Rather than insisting on strategic dynamics based on political uses of the past, we can emphasize the ethical quandaries related to the “paradoxical absence” of those who remain at the center of the justice claims. Third, rather than simply comparing rational and moral dimensions, we can underline the emotional weight of traumatic events and their long-lasting impact on victims’ descendants. Each of these perspectives will be developed in this article.

1. Strategic game

As with any other kinds of negotiations, negotiations devoted to the “rectification” of mass human rights violations can be analyzed taking a structural approach. Parties who call for/resist rights to compensation for past wrongdoings are unequal. We should distinguish between at least two possible contexts in order to understand the dynamics of concessions and counter-concessions and the frequent deadlocks that characterize these processes: (1) negotiations where parties disagree on the extent of the past violence and/or the issue of responsibility, and (2) negotiations where there is a relative consensus among parties about the nature of the violence that was committed in the past and the related responsibilities. The first are highly distributive and rarely lead to any zone of possible agreement (ZOPA). The second might appear to be less competitive. However, the existence of a minimal consensus regarding historical facts and political responsibilities does not systematically mean that parties agree on the most appropriate notion of justice. Moreover, agreement on the meaning to be given to justice does not impact the outcomes in a deterministic way: none of the processes in which victims’ descendants are involved can fully be understood without considering power asymmetries.

The first type of context is often exemplified by the Turkish-Armenian case. In October 2009, after two years of talks, Turkish and Armenian officials signed two protocols in Zurich. These agreements demonstrate that compromises can be found despite a deep gap between the two parties’ representations of the past. By most historical accounts, more than one million Armenians were killed. Since the 1960s, the Armenian diaspora has lobbied for international acknowledgement of the massacres that took place in the years after 1915. As a successor state to the Ottoman Empire, Turkey has recognized that atrocities took place, but has consistently refused to acknowledge the existence of an Ottoman policy of genocide aimed at the Armenians (Aybak 2016). Government officials in Ankara have offered condolences to the descendants of the Armenian victims, but they dispute the number killed and the circumstances of their deaths, emphasizing that hundreds of thousands of Ottoman Muslims died during the same period.

This ambivalent position and the existence of intense emotions on both sides are not the only elements that explain why the protocols signed in 2009 immediately faced intense criticism. From a structural perspective, the Turkish Parliament refused, as a result of Azerbaijani demands, to sign the protocols since these protocols did not refer to the conflict between Azerbaijan and Armenia over Nagorno-Karabakh. As for the Armenians, they accused their government of selling out. The landlocked mountainous region of Nagorno-Karabakh remains

the subject of an unresolved dispute between Azerbaijan — in which it lies — and its ethnic Armenian majority, backed by Armenia. In 1988, Azerbaijani troops and Armenian secessionists started a bloody war. A truce was signed in 1994, but the negotiations have so far failed to produce a permanent peace agreement. Since then, Azerbaijani authorities never stopped fighting against any kind of Armenia-Turkey rapprochement, considering that progress on the Nagorny Karabakh conflict was a *sine qua non* condition of the normalization of the relations between their partner and their enemy. The Azerbaijan reluctance is based on the fear that the opening of the Armenia–Turkey border would make Armenia much more intransigent in the negotiations about Nagorny Karabakh. Knowing that Azerbaijan is a major gas supplier of Turkey, Baku’s influence on Turkish domestic politics is not completely surprising. This example illustrates how much power asymmetries matter in negotiating justice.

The second type of context (where there is a consensus among parties about the past) can be illustrated by the negotiations between the German government and international organizations over reparations for the victims of Nazi atrocities during World War Two. In this case, all parties placed a strong emphasis on justice and remembrance as primary goals. They repeated that the negotiations had nothing to do with money, but that they were based on the need for justice as an acknowledgement (Adler and Zumbansen 2002). Nonetheless, it is difficult to deny that money remained a primary concern for parties – even though it was not the only issue. In 1998, Swiss banks agreed to settle a \$1.25 billion class action lawsuit brought by those whose assets had been stolen by Nazis and then held in Swiss banks. In exchange for the settlement amount paid by the Swiss banks, the plaintiffs and class members agreed to release the banks, the Swiss government, and other Swiss entities from all claims relating to World War Two. To manage the flood of claims, German companies sought alternative resolutions and initiated negotiations with the United States.

American government officials, trial lawyers representing victims, executives of German firms, leaders of the American Jewish community, and foreign representatives from several nations began negotiations in 1999. After a couple of months, the parties settled on a total of 10 billion Deutsche marks (DM), with half the total coming from the German government and half from seventy German companies. Besides external criteria based on the need to acknowledge and to compensate the crimes of the Nazi regime, the whole process was decisively precipitated by the threat of litigation. National Courts - in Switzerland, in Austria and in the US - played a critical role in forcing the German representatives to accept a compromise far more demanding than they had expected (Hamber 2000).

As all these illustrations remind us, negotiation processes related to compensation can hardly be understood without considering power asymmetries. The distinction between the two major contexts highlighted above (contested entitlements *versus* indisputable entitlements) is itself directly related to the political context, and to the respective interests of the parties. For instance, it would be difficult to compare the way in which Turkey and Germany dealt with the past without emphasizing the crashing defeat of Germany in 1945. The revelations of the concentration and death camps explain why Germany had not only to face a military defeat, but also a moral one. Thus, even though the German population initially avoided addressing the issue of their active role in the horrors of the Nazi-era, there was a broad and strong consensus as to the identity of the perpetrators and of the victims. By contrast, despite the increasing international pressure regarding the “recognition of the Armenian genocide”, Turkey was never literally forced to acknowledge the crimes that were committed in the past.

2. Moral issue

To find suitable approaches and avoid counterproductive processes, scholars suggest drawing a distinction between justice claims oriented towards the past (how to address the wrongs committed), and justice claims oriented towards the future (how to favour forward-looking outcome processes) (Zartman & Kremenjuk 2005; Meister, 2012: 253; Llewellyn & Philpot 2014: 6). However, this distinction is often challenged by representatives of victims, who consider that reparation policies belong not only to the first category, but should also be thought of as a forward-looking measure. The mandate of the Truth and Reconciliation Commission (TRC) established in Canada (2008-2015) is emblematic in this respect. Conceived as a part of a comprehensive response to the Indian Residential School legacy, its mandate was to (re)build the current and future relationship between Aboriginal and non-Aboriginal Canadians: “There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future”³.

The same comment could be made regarding the establishment of the Colombian Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz*) in 2017. In the Preamble to the Final Agreement negotiated in 2016, all parties agreed to stress “the idea that the political community is not simply a union of contemporary peers but also a link between generations over time”. As in the Canadian case, notions of past and future are not strictly differentiated.

³ To read the full mandate of the Canadian TRC, see http://www.trc.ca/websites/trcinstitution/File/pdfs/SCHEDULE_N_EN.pdf

From this perspective, the distinction between backward-looking and forward-looking outcome processes (with the second prevailing over the first) could be challenged: both dimensions are seen as simultaneously relevant.

The study of the positions adopted by most descendants of victims reveals two specific notions of justice (1) justice rooted in *accountability* and *redress*; (2) justice as *equity*. (1) To victims' descendants, inaction and silence concerning past violence – let alone denial – are morally illegitimate. In their eyes, if we ignore gross violations of human rights and act *as if* nothing had happened, we are performing an additional act of violence that symbolically annihilates the victims a second time. Therefore, they expect a form of acknowledgment, to restore the dignity of those who were abused and/or murdered.

(2) In an increasing number of cases, victims' descendants argue that acknowledgement is not in itself sufficient, without concrete action to compensate for the harm done. This expectation, however, is often questioned (O'Neill 2016). Can the descendants of victims make reparative claims when the injustice was committed long ago? Who is responsible for reparation?

Regarding the legitimacy of the victims' representatives, some argue that descendants are not entitled to reparation because the injustice was not committed against them directly.

Descendants involved in reparation talks retort that the historical injustice has harmed their own interests since they still suffer from its effects. Some of them even argue that their status as heirs of victims gives them an entitlement to claim possessions that were expropriated from their forebears (Thompson 2001).

Their posture is based on counterfactual reasoning. According to them, most victims' descendants lack resources or opportunities that they would have had if the injustice had not taken place. Arguing from a concept of justice as equity, they claim that they should be compensated for being born into a disadvantageous social position. However, the causal link between a past injustice and present harm remains problematic in many ways. Even though the “contagion of injustice” argument is plausible, how do we know with certainty what situation descendants would be in if the injustice had not occurred? Some philosophers suggest moving beyond this debate, and propose a “theory of justice for an intergenerational society” (Thompson, 2001). In their view, children and grandchildren should be entitled to reparation. Numerous contexts, though, have an issue with more ancient injustices (see the case of slavery in the US). What should negotiators and mediators do in these circumstances? Should they adopt an inclusive definition of victimhood to address the transgenerational impact of collective violence, or should they narrow the scope of eligible victims, to ensure a feasible response?

The issue of legitimacy could also be approached from a broader perspective to ask who, ultimately, can credibly judge whether this is “just enough”. Various answers could be given. According to the realist school, the evaluation process is directly dependent on the most powerful party. Others could emphasize the role of third parties, be they mediators and/or experts. Yet other voices could argue in favour of a popular consultation (the question of legitimacy is again relevant here: victims’ representatives, beneficiaries’ representatives, potential by-standers, etc.). All case studies confirm that there is much at stake, as an acceptable agreement is not systematically a “just” one.

The issue of legitimacy is not the only one to be addressed. Parties involved in negotiations about post-violence reparations also have to identify who is responsible for harm done long ago. To deal with this challenge, parties can refer to the notion of institutional continuity. Should Russia, for instance, assume responsibility for crimes committed against the Poles during the Soviet period? If so, how? A whole range of attitudes is highlighted by scholars and practitioners, from acknowledgment to official apologies or even tangible reparations. Morally speaking, various postures are possible. Two major arguments often conflict: entitlement to reparation *versus* freedom from ancestors’ guilt.

In addition to this tension, parties must negotiate effective and equitable policies regarding burden-sharing. From the perspective of political theory, no single approach is sufficient to “identify in a fair way” the agents that should bear the financial burden of historical injustices (Page 2008). In this regard, various approaches could be analyzed, such as ability to pay or ‘the beneficiary pays’ reasoning. The absence of consensus as to who should bear the burden of historical injustices explains the arduous character of negotiations focusing on the question of whether compensation should be paid and by whom.

As we already suggested in the first section, the positions adopted by government officials cannot be fully understood from an exclusively moral perspective. All case studies indicate that their attitude towards the national past is directly driven by domestic and international circumstances. Yet national interests and moral concerns are not systematically incompatible. As for as the victims’ associations, their moral stance can also evolve. For instance, after World War Two, it was controversial whether Jews should accept what they considered as “blood money”. The idea of compensation, it was claimed, was almost indecent due to the severity of the crimes committed. A change of perceptions explains why survivors and their descendants gradually came to consider that refusing compensation was in fact immoral, since it allowed perpetrators to live in the quiet enjoyment of their spoils (Rosensaft and Rosensaft 2003: 9-10).

This example reminds us that moral changes can happen. They are, however, rather unusual. When parties feel preeminently loyal to past generations, their attitude is rarely flexible and pragmatic. Promises made to the dead are particularly binding. In most negotiation processes, parties represent a constituency that is potentially able to understand changes in the context and the existence of new constraints limiting negotiators' room for manoeuvre. In negotiations on behalf of past generations, parties represent people who can no longer be convinced. The situation is particularly tense if parties perceive themselves as the representatives of mistreated ancestors. In these circumstances, they often focus on a specific notion of justice, based on the need to redress and compensate for the stigmatization, humiliation or dishonor of their ancestors. Chinese foreign policy provides plenty of examples of this (Wang, 2012). Thus, in June 2015, Chinese Foreign Minister Wang Yi explained to academics and former officials that China's demands for sovereignty over the Nansha Islands will never fade: "otherwise we would not be able to face our forefathers and ancestors" (see Blanchard 2015 and Welch 2015).

3. Emotional claim

The significance of passions (Hassner 2005) such as guilt, humiliation, anger, hatred and sorrow explains to a large extent why negotiating justice in the aftermath of a war cannot be reduced to any other form of bargaining. As well as considering rational and moral dimensions (which remains critical), an understanding of post-war negotiations requires insight into psychological processes that are not always taken seriously in international relations. In this regard, practitioners and clinicians recall that family memories are often passed on to new generations below the surface of conscious cognition and reflection (Kronendorfer 1995; Rosenblum 2009; Thompson 2012).

The notion of "transgenerational transmission" of trauma (Alexander *et al.* 2004; Volkan 2006) is admittedly debatable. Some skeptical voices argue that children of survivors do not systematically inherit their injuries (Winter 2017). However, even if we do not consider that "traumatic memories" are literally passed on to one's children and other loved ones, it is difficult to deny that younger people who live with survivors of war and genocide feel the emotional pull of their elders' suffering to such an extent that they can appropriate the memories of the first generation as their own (Argenti & Schramm 2010). According to Daniela Jara, who worked on the long-term effects of State violence in Chile, the children of the "second generation" have inherited a "diffuse feeling of personal shame", a "form of pollution" which is "neither physical nor psychological, neither political or moral, but both" (Jara, 2016: 4 and

25). Numerous studies in social psychology demonstrate that the second and third generations still have strong feelings of shame, guilt or victimisation, especially when past injustices have not been adequately addressed by their parents' generation (Klar & Branscombe 2016).

The persistence of an "inherited mark" (Jara 2016: 25) made up of intense emotions has critical consequences for the negotiation process. It limits the ability to make concessions and explains to some extent why certain issues remain non-negotiable for decades. The question is "until when"? This long-term perspective is particularly tangible when the actors place an emphasis on the notion of eternity. An analysis of the narratives (speeches and testimonies) collected as part of this research suggests that both government officials and individuals underline the expression "for ever". In May 2015, for instance, German Chancellor Angela Merkel took part in a ceremony in the former German Nazi concentration camp in Dachau to mark the 70th anniversary of the liberation of the camp by the U.S. army in 1945. Facing 120 elderly survivors from 20 nations and six US soldiers who helped liberate the camp, she described death camps as "eternal reminders" of the Nazi regime's brutality (Dachau, 3 May 2015). "There were unfathomable horrors everywhere," insisted Merkel. "They all admonish us to never forget. No, we will never forget. We'll not forget for the sake of the victims, for our own sake, and for the sake of future generations."

Similarly, the word "never" is highly significant in justice claims all over the world. In the Middle East, the deadlock in the peace process undeniably accentuates the emphasis put on the endless or perpetual dimension of respective claims. Thus, Zakaria al-Agha, a senior Fatah leader, explains that sixty-eight years after the Nakba, "our people will *never* forget their homeland, Palestine". "We will return to it by using all methods, and the world shall know that we will *never* accept an alternative to our homeland," he repeated. "We have lived on memories and dreams for 68 years - elders will die, but the youngsters will *never* forget or give up" (quoted by Omer 2016). Two years later, those who describe themselves as "the 4th generation of Palestinian refugees" are still claiming their right to return their land. Their argument is simple: justice does not mean money, but return. "I want my land, my honor, my dignity", explains a Palestinian from Bethlehem (*France Culture*, 20 April 2018). At the same time, people gathered in Jerusalem to celebrate the 70th anniversary of the creation of the State of Israel also refer to justice, paying tribute to the Israeli law of return. All protagonists seem to share a principle of justice anchored in the past, but the two sides are referring to different

time frames. For one side, the reference point is 1948. For the other, justice is presented as resulting from “two thousand years of wandering”⁴.

This insistence on incompatible principles of justice is very frequent on the ground, and doubtless has an impact on the negotiating table. At first glance, the issue is one of numbers. In addition to the tens of thousands of original refugees who are still alive, Palestinian representatives say that some 5 million of their descendants should have a “right of return”. However, besides this pragmatic aspect, the issue has a clear emotional dimension, not only for the Palestinian descendants of the first generation-refugees. The same is true for Jewish descendants, who have to deal with complex layers of memories. The variety of psychological dynamics at play cannot be reduced to a binary distinction between victims and perpetrators, the most relevant level of analysis in this regard being the individual one (from a clinician’s perspective). Moreover, it is striking that some emotions, among which shame and guilt, seem to be common among all descendants, whatever the attitude of their forefathers.

The duration of the observed processes raises multiple questions for practice and theory:

What is the time frame? Should we consider immediate descendants of victims, perpetrators and bystanders, or adopt a longer-term approach? What are the differences in terms of justice in these two approaches? If we try to assess the long-term impact of a war, how can we detect emotional and even unconscious processes of transmission between generations? How can we measure the transformation of representations from one generation to the next? These questions do not invalidate this approach. On the contrary, they point to a need to improve the methods currently available to build bridges between the fields of negotiation, memory studies, and transitional justice.

* *

*

This article focuses on the relationships between different levels of intergenerational justice: the State/international level (between governments or state level representatives); the domestic level (the public at large, as discussed with reference to the Colombia Peace referendum) or private companies (post-WWII compensation); and the individual level (emotional dynamics). At all levels, actors explicitly refer to past generations when they

⁴ See the Jewish agency, <http://www.jewishagency.org/first-steps/program/5131>.

consider justice. The processes needed to overcome conflicting notions of justice are in many ways specific to each level. However, it would be too theoretical to define clear-cut categories. International, domestic and individual levels interact and share common challenges when trying to bring conflicting notions of justice to an agreement.

As this article suggests, political, ethical and emotional dimensions are intimately linked. They can reinforce each other. This is, for instance, the case when the official authorities emphasize the necessity to move on. In terms of *Realpolitik*, there are few incentives to acknowledge the most embarrassing pages of the past. Morally speaking, eagerness to look forward can be based on the duty not to shame ancestors (“let bygones be bygones”). From an emotional viewpoint, a forward-looking attitude means that one is not confronted with shame and guilt. In some circumstances, though, these three dimensions are inconsistent. External pressure to acknowledge past crimes can prevent the denial of political responsibility. Moral arguments and the emotional need to respect the memory of the victims can then strengthen the pressure put on individuals. Thus, a whole range of scenarios are conceivable.

One of the most striking elements emerging from this study is the existence of a paradox. Most case studies seem to be inexorably characterized by deadlocks and stalemates. On the other hand, this analysis points out that the political, moral, and emotional dimensions are dynamic. Dichotomies such as victims/perpetrators, victors/vanquished, occupiers/occupied are not set in stone once and for all. It is therefore crucial to further explore the specific tools that parties can use to avoid a repetition of the Hamlet scenario: duel, poisoning, and bloodbath.

Among these tools, an intergenerational extension of justice might help to break the deadlock. The possibility of considering justice not only through the lens of past generations, but also in terms of the current and next generations opens up the game in a subtle manner. In this respect, the testimonies gathered from the members of the *Parents circle*, a grassroots organization of bereaved Palestinians and Israelis, show that the loss of a close family member killed in the conflict can also result in a forward-looking attitude. For Robi Damelin, spokesperson and director of international relations at the Parents Circle Families Forum, “each of us will have to give up on our dreams for the future of the children who are our responsibility”⁵.

This shift of posture can certainly not constitute a norm to be imposed on individuals. Violent

⁵ Meeting in Bologna, July 2015. See her testimony on http://theparentscircle.org/en/stories/robi-damelin_eng/. The idea is similar when the Israeli writer, Sami Michael, argues in favour of “Letting go for the sake of life”, *Haaretz*, Sept. 24, 2004.

conflicts provoke an infinite series of individual fires that need to be extinguished one by one. The response to past atrocities is thus ultimately an individual one. Keeping that in mind, though, it might be inspiring to question the scope and limits of a potential enlargement in terms of loyalty. Nobody could decently deny the appropriateness of a certain loyalty towards past generations, especially when the rights of these generations were violated. However, negotiating on behalf of past generations can be puzzling. In some cases, the intention of the dead seems obvious. Hamlet is a caricature in this respect. In other cases, it may be much trickier to determine the intention of the deceased. Revenge is an option. Justice, another. How shall we know what they would have expected? People frequently speak on behalf the dead. This is a powerful rhetorical argument. Morally speaking, though, it might be appropriate to base the negotiation process on a duty to prevent the parties falling prey to the “tyranny of ghosts”.

Yet, such a broader notion of *loyalties* – in the plural - is not a panacea. The arguments emphasized by the Chinese authorities in relation to the South China Sea are again good examples. When Foreign Minister Wang Yi explained why China deserves special treatment to make up for historical injustices, he not only referred to its duty to honor its ancestors, but also stated that China could not face its children and grandchildren if “the gradual invasion of China’s sovereignty” was allowed to continue (*Reuters*, June 27, 2015). In this case, the eagerness not to shame both ancestors *and* descendants jeopardizes any attempt to favour a rapprochement (Wanglai, 2009).

This example reminds us that besides the contextual factors that are critical in any negotiation process (conflict dynamics, legacy of the end of conflict, role of other/external actors, to name but a few), certain cultural factors can explain the emergence and reinforcement of conflicting notions of justice. However, it is probably wise not to reduce the whole issue to cultural specificities. These features should be neither denied, nor overemphasized (Fang 2003). An increasing number of anthropological studies demonstrate that even the meaning given to the notion of ancestors evolves (Campbell 2016). This dynamic aspect prevents us placing too much emphasis on cultures. Their sacred dimension “here and now” does not mean that they will remain non-negotiable in the long run.

Quite aside from all cultural differences, the reparation issue is one of the “most difficult hurdles in the negotiation process” (Colvin 2006: 178). Knowing that it will always be impossible to fully compensate in proportion to the harm suffered, it is not surprising that it takes a long time to resolve. After the loss of a parent, a child or a spouse, justice cannot mean *restitutio in integrum*. The irreversibility of the crimes means that many victims’ descendants

cannot come to terms with the past. In such circumstances, parties and mediators can admittedly neither try “to repair the irreparable” (de Greiff 2006: 568), nor to “heal” all the wounds of the past (on the danger of pathologizing historical experience, see Argenti and Schramm 2010: 15-16). But they can try to identify the notions of justice driving the parties. In the aftermath of mass atrocities, these notions are unsurprisingly conflicting. However, all sides have certain things in common. They all express a strong need for redress, recognition and acknowledgement. They all consider justice as a question of honor and dignity. In these circumstances, one of the most delicate challenges is to convince all sides that they can reach an agreement for the sake of current and future generations without feeling “complicit” in betraying the memory of their missing relatives.

Bibliography

- Alexander, Jeffrey C. *et al.* (2004) *Cultural Trauma and Collective Identity*, Berkeley: University of California Press.
- Aybak, Tunç (2016) “Geopolitics of denial: Turkish States’ ‘Armenian Problem’.” *Journal of Balkan and Near Eastern Studies*, 18 (2), pp. 125-144.
- Argenti, Nicolas and Katharina Schramm (eds) (2010) *Remembering Violence. Anthropological Perspectives on Intergenerational Transmission*, New York: Berghahn Books.
- Bar-Tal, Daniel (2013) *Intractable Conflicts: Socio-Psychological Foundations and Dynamics*, Cambridge: Cambridge University Press.
- Blanchard, Ben (2015) “China says changing position on Sea dispute would shame ancestors”, *Reuters*, <https://in.reuters.com/article/southchinasea-china/china-says-changing-position-on-sea-dispute-would-shame-ancestors-idINKBN0P70BJ20150627>.
- Campbell, Roderick (2016) “Memory, Power, and Death in Chinese History and Prehistory.”, in Erika and Hageman, Jon B., *The Archaeology of Ancestors: Death, Memory and Veneration*, Gainesville: University Press of Florida, pp. 81-101.
- Colvin, Christopher J. (2006) “Overview of the reparations program in South Africa.”, in Pablo de Greiff (ed.), *The Handbook of Reparations*, Oxford: Oxford University Press, pp. 176-214.
- De Greiff, Pablo (ed.) (2006) *The Handbook of Reparations*, Oxford: Oxford University Press.
- Fang, Tony (2003) “A Critique of Hofstede’s Fifth National Culture Dimension.”, *International Journal of Cross Cultural Management*, 3, pp. 347-367.
- Hamber, Brandon (2000) “Repairing the irreparable: Dealing with the double-binds of making reparations for crimes of the past.” *Ethnicity and Health*, 5 (3/4), pp. 215-226.
- Jara, Daniela (2016) *Children and the Afterlife of state Violence*, New York: Palgrave MacMillan.

- Klar, Yechiel and Nina R. Branscombe (2016) "Intergroup Reconciliation: Emotions Are Not Enough.", *Psychological Inquiry*, 27(2), pp. 106-112.
- Krondorfer, Björn (1995) *Remembrance and Reconciliation: Encounters Between Young Jews and Germans*, New Haven: Yale University Press.
- Llewellyn Jennifer J. and Daniel Philpott (2014) *Restorative justice Reconciliation and Peacebuilding*, Oxford: Oxford University Press.
- Mannheim, Karl (1952) "The Sociological Problem of Generations." in Paul Kecskemeti (ed.), *Karl Mannheim: Essays*, London: Routledge, pp. 276-322.
- Meister, Robert (2012) *After Evil. A Politics of Human Rights*, New York: Columbia University Press.
- Omer, Mohammed (2016) "Pain of Nakba: Young Palestinians 'will never give up' dream of return", *Middle East Eye*, 20 May, <http://www.middleeasteye.net/news/gaza-pain-nakba-and-yearn-return-still-felt-next-generation-1528933686>.
- O'Neill, Onara (2016) *Justice across Boundaries. Whose Obligations?*, Cambridge: Cambridge University Press.
- Page, Edward A. (2008). "Distributing the burdens of climate change", *Environmental Politics*, 17:4, pp. 556-575.
- Pichler, Jane (1994) "Mannheim's Sociology of Generations: An Undervalued Legacy." *British Journal of Sociology*, 45/3, pp. 481-495.
- Rosenblum, Rachel (2009) "Postponing Trauma: The dangers of Telling". *International Journal of Psychoanalysis*, 90 (6), pp. 1319-1340.
- Rosensaft, Menachem Z. and Joana D. Rosensaft (2003) *A Measure of Justice: The Early History of German-Jewish Reparations*, New York: Leo Baeck Institute.
- Sabbagh Clara and Manfred Schmitt (eds.) (2016), *Handbook of Social Justice Theory and Research*. New York: Springer.
- Thompson, Janna (2001) "Historical Injustice and Reparation: Justifying Claims of Descendants." *Ethics*, 112 (1), pp. 114-135.
- Thompson, Janna (2012) *Taking Responsibility for the Past. Reparation and Historical Justice*, New York: Polity.
- Volkan, Vamik (2006) "The next chapter: Consequences of Societal Traumas", keynote address at *Memory, Narrative, and Forgiveness*, University of Cape Town, Nov 22-25, <http://www.vamikvolkan.com/The-Next-Chapter%3A-Consequences-of-Societal-Trauma.php>.
- Wang, Zheng (2012) *Never Forget National Humiliation: Historical Memory in Chinese Politics and Foreign Relations*, New York: Columbia University Press.
- Wanglai, Gao (2009) "Negotiating with China in Power Asymmetry: The Case of Sino-British Negotiations on the Handover of Hong Kong", *International Negotiation*, 14 (3), 475 – 492.
- Welch, David (2015). "Who owns what in the South China Sea?", *The Diplomat*, 9 July, <https://thediplomat.com/2015/07/who-owns-what-in-the-south-china-sea/>
- Winter, Jay (2017) "La Première Guerre mondiale, suicide l'Europe." in Etienne François et al. (eds.), *Europa. Lieux de mémoire européens*. Paris: Les Arènes, pp. 35-53.
- Zartman, William and Viktor Kremenyuk (eds.) (2005) *Peace versus Justice. Negotiating Forward-and Backward-Looking Outcomes*, Lanham: Rowman & Littlefield.

