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INTERNATIONAL JUSTICE?
A CRITICAL REFLECTION OF CHRISTIAN RECONCILIATION AND THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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University of Virginia
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An abstract of
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Abstract

INTERNATIONAL JUSTICE?
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By Jenny R. Hernandez

This thesis challenges, from a Christian perspective, whether the work of the International Criminal Tribunal for Rwanda (ICTR) fosters and promotes national reconciliation. Drawing from Christian theologians and ethicists, it develops a model of Christian reconciliation, one that is process-oriented and includes confrontation, acknowledgment, accountability, and forgiveness. It is a process seeking to restore alienated relationships. It argues that in this relational process, justice and reconciliation are intimately intertwined within the Christian tradition. It then considers how this model may have relevance to international criminal law and its institutions, such as the ICTR. It proposes that through a process of civic reason, the Christian tradition and the liberal tradition that the international justice system is founded upon may engage with each other. It postulates the connection between the Christian tradition to the ICTR is its utility to offer an ontological sense of a "way of being" in the world that can inform the ICTR as to the deep principles of justice and reconciliation it seeks to realize. Having established the means with which the two can engage with each other, this thesis turns to evaluating three aspects of the ICTR against the Christian model of reconciliation. This evaluation finds that these features of the ICTR work against reconciliation as understood by the Christian tradition. It concludes with offering how these lessons from the ICTR may inform the future of international criminal law.

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My family, to whom I will be always grateful for their love, has provided unlimited emotional and moral support to me throughout this process.

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> As part of our mandate to contribute to lasting peace and reconciliation in the region, the Tribunal has given a voice to thousands of victims. The Tribunal has heard over 26,000 hours of testimony from more than 3,200 witnesses. Their testimony describing the horrific events of the genocide will remain forever engrained in the memories of all who have been a part of this important process. It is in their honor that during our final months, we work with a renewed vigor, rededicating ourselves to preserving the memory of the victims of the Rwandan genocide and leaving for posterity the lessons and experience gained at the ICTR
>
> - Judge Khan, Current President of the ICTR[1]

> "The entire staff is there solely to assist the judges in the trials and with the judgments. And not for any other reason. Not for peace. Not so that Hutus and Tutsis get along. Not for any of that; it is a tribunal."
>
> - Judge Lennart [2]

> "The tribunal was not set up for the people of Rwanda. It was set up to ease the world's guilty consciences, and in everything the court does, this shows."
>
> - Gerard Gahima[3]

INTRODUCTION

I looked at the screen again, trying to decipher the transcript on the computer for at least the third time in the past half hour. The testimony originally had been given in French and I, having no knowledge of French, was reading through the English translation. As was inevitable as I sorted through hundreds of pages of transcript, I could detect when I had come to a section that had been lost in translation. My supervisor had assigned me to search these trial transcripts and find relevant testimony that proved or disproved allegations within the prosecution's case. The trial had ended months earlier and I had not been present to witness any of these testimonies. But whatever I could find, regardless of the poorly translated English or the fact

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[1] "Address by Judge Khalida Rachid Khan, President of the ICTR, to the United Nations Security Council – Six Monthly Report on the Completion Strategy of the ICTR," United Nations International Criminal Tribunal for Rwanda, accessed March 28, 2012, http://www.unictr.org/tabid/155/Default.aspx?id=1244.
[2] Ibid.
[3] Samantha Power, "Rwanda: The Two Faces of Justice," *The New York Review of Books*, January 16, 2003, accessed March 26, 2012, http://www.nybooks.com/articles/archives/2003/jan/16/rwanda-the-two-faces-of-justice/?pagination=false.

that I had no first hand knowledge of any of these testimonies, would eventually influence the final judgment of the case.

It was the summer of 2011 and I had traveled from Atlanta, Georgia to Arusha, Tanzania to work as a volunteer law clerk for the judicial chambers of the International Criminal Tribunal for Rwanda (ICTR). My assignment was to assist in drafting one of the largest, drawn out cases in the history of the tribunal, *Prosecutor v. Edourd Karemera and Mathiuu Ngirumpatse*. The trial had concluded in the spring and my team was working to draft an approximately 400-page judgment in about six months. It was a multi-accused case against two prominent leaders of the political party that allegedly orchestrated the Rwandan genocide. The accused had been captured and arrested in 1998; but, due to prosecutorial and judicial misconduct in their first trial, their case had been tried twice before the Tribunal. Now that the second trial had ended, five interns from the United States (including myself), five legal officers from Europe and the United States, and three judges, collectively from Burkina Faso, Saint Kitts, and Denmark, were working to draft the judgment so that it could be released by December 2011, thirteen years after the accused had first been arrested.

For over seventeen years, the ICTR has been striving to complete its task mandated by the United Nations Security Council: to prosecute and try those persons most culpable for the violations of international humanitarian law that were committed in Rwanda in 1994. Throughout these years, human rights advocates have lambasted the Court for a variety of reasons – from the length of time it takes to process trials to mishandlings in its investigations.[4] However, when one considers the monumental task that the Tribunal had taken on, and the very little precedent before it, it at least puts the Tribunal's efforts in perspective. Yet as an aspiring

[4] See e.g. International Crisis Group, *International Criminal Tribunal for Rwanda: Justice Delayed*, June 7 2001, accessed March 26, 2012, http://www.crisisgroup.org/en/regions/africa/central-africa/rwanda/030-international-criminal-tribunal-for-rwanda-justice-delayed.aspx.

legal advocate for international human rights, nagging questions about the value of the ICTR and international justice mechanisms consistently sprang up in my mind. The never-ending question was how was I, an American international lawyer, truly helping Rwandans? Did public international law, as it was practiced at the ICTR, have any relevance to Rwandans who ironically enough were hundreds of miles away in a different country?

The Security Council established the Tribunal by means of UN Resolution 955, which in part reads, that the Security Council was, "[c]onvinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace."[5] Throughout my experience at the ICTR, I constantly questioned this assumption of the Security Council. Did establishing an international tribunal, to be run by the international community, and operating in the form of prosecutorial justice, bring "national reconciliation" to Rwanda? How effective are international justice mechanisms in addressing the concerns of post-conflict societies and communities such efforts seek to serve? And when one considers the complexities of running and managing the tribunal, we must ask is this how our concepts of justice, reconciliation, peace are intended to be enacted? If public international law has any moral underpinning, a moral mandate to realize justice and reconciliation, what moral standard of justice and reconciliation informed how the tribunal operated?

It is with these questions in mind that I began this thesis. It is a challenge to myself and to all international lawyers who seek a career in the pursuit of justice and reconciliation and the realization of human rights throughout the world. It is also a reflection for all moral and religious thinkers who develop provocative and complex theologies and theories on moral

[5] U.N. Doc. S/RES/955, 8 November 1994.

concepts such as justice and reconciliation but asks what do these ideas actually mean in the day-to-day realities of how we practice justice? Of how we turn to "legal, just" constructs in conflict ridden and divided societies?

International criminal law, like domestic criminal law, theoretically has certain objectives such as retribution, deterrence, rehabilitation and, as is much more largely discussed in the transitional justice context, peace and reconciliation.[6] Whether an enforcement mechanism such as the ICTR actually achieves one, all, or any of these objectives is the central concern of this thesis. This thesis focuses on the last objective, peace and reconciliation, and evaluates the ICTR's efforts as each relates to fostering reconciliation. It focuses on this objective for two reasons. First, it is a stated objective of the ICTR and thus should be evaluated as to how it is realizing this objective. And second, the action of reconciling implicitly involves the persons who it seeks to reconcile. As I am concerned with how relevant international criminal law is to the people and communities it seeks to serve, it is an objective I am most personally most concerned with.

"Reconciliation," however, is a loaded, frequently used, frequently ambiguous term employed in discourses within the fields of international and transitional justice. Though it is an explicit purpose of the ICTR, not one Security Resolution or UN document regarding the Tribunal defines the term. It is a term that has multiple moral and theological understandings. To develop a model of "reconciliation," this thesis chooses one of the many understandings of the term and unfolds its meaning through a Christian framework. Based on Christian theological and ethical thought, it will develop a model of reconciliation, specifically focusing on the role of justice in the reconciliation process. Through this Christian model, this thesis will evaluate how the ICTR fosters or discourages the process of national reconciliation in Rwanda. And while

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[6] Ronald C Slye and Beth Van Schaack. *Essentials: International Criminal Law*, (Aspen Publishers, 2009), 296-302.

this analysis will be critical of the ICTR, it also will reflect on how Christian thought is challenged and tested when its model strives to be applicable and relevant to international justice structures existing in dynamic local, national, international political realities.

Admittedly, choosing Christianity as the moral basis for reconciliation is problematic with regard to the Rwanda genocide. As one scholar noted, "Christian people and their institutions are deeply implicated in the genocide."[7] During the genocide, Christian leaders fostered the genocidal culture and were complicit in the genocide. The ICTR itself jailed nineteen Rwandan priests for suspicion of aiding in the genocide – among them Bishop Augustin Misago, whose diocese was the site of an estimated 150,000 murders.[8] But it is precisely because of the horrors committed within the tradition that we need to turn to the tradition to see what parts of it may apply to re-building and reconciling Rwandan society. If Christians were part of the problem, they must be involved in being part of the solution too.

Moreover, Christianity is one of the largest religions practiced in Rwanda - over 80% of the population is associated with a Christian tradition.[9] Phil Clark, a scholar who has done extensive studies on reconciliation through Rwanda's gacaca courts, has written that Rwandans' Christian faith plays a key role in fostering reconciliation.[10] Thus, turning to the Christian tradition has immediate relevance to this discussion. And from an international context, the Christian tradition is one of the largest, most practiced religions around the globe and thus it has relevance internationally.

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[7] Stephen Haynes,"'Death was Everywhere, Even in Front of the Church': Christian Faith and the Rwandan Genocide," in *Confronting Genocide: Judaism, Christianity and Islam*, ed. Steve Leonard Jacobs et al. (Lexington Books, 2009), 186.
[8] Ibid., 186-191.
[9] "According to a 2002 census, Roman Catholics constitute 57 percent of the population, main-line denomination Protestants, 26 percent; Seventh-day Adventists, 11 percent; and Muslims, 5 percent." U.S. Department of State, *International Religious Freedom Report 2010, Rwanda*, accessed March 26, 2012, http://www.state.gov/j/drl/rls/irf/2010/148714.htm.
[10] Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (Cambridge University Press, 2010), 286-290.

Through evaluating the work and structure of the ICTR by means of a Christian perspective, this thesis puts the two in dialogue for the purpose of one primary goal. This goal is to challenge the assumption that international justice mechanisms may serve their purposes of justice and reconciliation and based on this challenge, consider if and how the future of international criminal law, through institutions such as the International Criminal Court, are beneficial to humanity. As a corollary to this goal, this thesis also seeks to challenge the Christian model of reconciliation and understand how, and to what extent, it is actually applicable to the complex realities of human structures and experience at issue within the context of Rwanda and the Tribunal. The central inquiry is one of *how*?: How does the ICTR encourage, promote, realize reconciliation? How is a Christian framework of reconciliation applicable to the complex, political justice structures? How is its framework intended to be lived out in global, political realities?

In pursuit of these goals, this thesis will first provide a brief historical background to the events of the Rwandan genocide and the political circumstances surrounding the establishment and work of the International Criminal Tribunal for Rwanda. Second, drawing from contemporary Christian theologians and ethicists, it will explore how the term reconciliation is understood within the Christian tradition. It will develop of Christian model of reconciliation, focusing on the role of justice within this framework and the ability of the model to have relevance in a greater political context outside of the tradition. Third, it will explain the utility for engaging this Christian model with the efforts of the Tribunal and offer on what common basis the two may engage with each other. Fourth, it will then evaluate the Tribunal through the lens of the Christian model of reconciliation. It will explore three major features of the tribunal and question how each feature encourages reconciliation. Finally, it will offer my conclusions and lessons learned from this engagement.

CHAPTER 1:

POLITICAL - HISTORICAL CONTEXT OF THE RWANDAN GENOCIDE AND THE ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Any applicable discussion of reconciliation must be historically and contextually centered. The theologian John de Gruchy has noted, "Reconciliation is an action, praxis, a movement before it becomes a theory/dogma" and it "can't be reduced to an ahistorical idea that can be debated at length in the abstract."[11] Reconciliation is a process among specific peoples and historical experiences and it cannot be explored in the abstract. Therefore, to begin the discussion of reconciliation within the context of the Tribunal, this chapter discusses the political and historical circumstances surrounding the Rwandan genocide and the establishment of the ICTR. It will provide a brief background to the ethno-political conflict that gave rise to the 1994 genocide and the political and historical context regarding the United Nation's establishment of the tribunal. It will conclude with major accomplishments and criticisms of the Court and contextualize these observations within the political context of the Tribunal.

A. Brief History of Conflict between Hutu and Tutsis

In the spring of 1994, the Rwandan Hutu-dominated government orchestrated a systematic genocidal attack against a segment of its population, the Tutsis. Not only were military and government backed militias used to execute the genocide, but Rwandan Hutu civilians were engaged to assist in the genocide. Neighbors killed neighbors. Respected leaders of the communities, such as priests and doctors, used machetes to kill those in their community. By one estimate, close to half of the Hutu population participated in the genocide.[12] Systematic

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[11] John de Gruchy, *Reconciliation: Restoring Justice* (Minneapolis: Fortress Press, 2002), 20.
[12] Virginia Morris and Michael P. Scharff, *The International Criminal Tribunal for Rwanda*, (Transnational Publishers, Inc., 1998), 58.

rape and murder of Tutsi civilians (and those who supported them) were committed in broad daylight and in public spaces. All government resources were expended to seek out and kill Tutsis.[13] At the time, Hutu and Tutsis were pronounced to be completely different ethnic groups; the Hutu extremist government represented the groups as each being their own race and origins and mutually antagonistic toward the other.[14]

The division between Hutus and Tutsis, however, has a complicated history. Scholars have presented the historical relationship of Hutus and Tutsis as primarily one of class distinction and not a division based on ethnic or racial grounds. Pre-colonial times Tutsis were smaller in number and part of the ruling class while Hutus tended to be the class that worked and farmed the land. Historians tend to disagree to what extent the fluidity of exchange one could move between groups existed pre-colonial times, but clearly there was some movement. Whatever the extent of exchange, it is clear that it was in the presence and rise of colonial powers that brought a marked change in the relationship between Hutus and Tutsis.[15]

Colonial rule favored working with Tutsis and declared Tutsis "the superior race" to Hutus. By colonial decree, Tutsis were placed in positions of power, excluding Hutus completely from any possibility of political influence. However, when the colonial powers began exiting Africa in the 1950s and 60s and relinquishing control to indigent populations, they reversed their support and favored the establishment of Hutu control. And with the support of the European powers, Hutu backed political parties took political control. The sudden reversal of political power, along with decades of animosity within Hutu populations due to colonial exclusion and favoritism of Tutsis, set the stage for a divisive political environment between Hutus and Tutsis.

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[13] Des Forges, Alison. *Leave None to Tell the Story: Genocide in Rwanda*, (Human Rights Watch: 1999) 3-13.
[14] African Rights, *Rwanda: Death, Despair and Defiance* (African Rights 1995), 2.
[15] J. Tebbs, *Rwanda, War and Peace?!* (Global Law Association, 1999), 26-27.

And from then on, as an independent state, Rwandan politics would be dominated by the Hutu/Tutsi distinction.[16]

In the decades between Rwanda's independence and the rise of Hutu political control leading to the 1994 genocide, there were sporadic but prolonged violent conflicts between Hutus and Tutsis. Throughout the 1990s, this history culminated in periodic conflict and civil war between the Hutu government and Tutsi exiles living in the surrounding nations of Burundi and the Democratic Republic of Congo. Exasperating the situation was severe economic downturns and a steep rise in Rwanda's national debt.[17] Before 1994, the Hutu-dominated government and the Rwandan Patriotic Front (RPF), the organized militia of the Tutsi rebellion, had signed peace accords in Arusha, Tanzania (the current home of the ICTR). However, these agreements were fragile and in April 1994, it was clear all such attempts had been in vain.[18]

On April 6, 1994, the then Rwandan Hutu president, Juvenal Habyarimana, was assassinated when his plane was shot down and crashed. In the hours following Habyarimana's death, an interim Hutu-extremist government formed in Kigali. The interim government blamed the assassination of Habyarimana on the RPF. The civil war instantly re-ignited between the RPF and the interim government. And in the midst of the war, the government executed a mass strategy with military and civilian participation to slaughter, rape, and kill the Tutsi population. There has been ample evidence that this strategy had been planned and prepared for months, if not years, before the spring of 1994. The government's efforts succeeded in killing an estimated 800,000 Tutsis.[19]

In the midst of the genocide, the Tutsi-dominated RPF also killed an estimated 25,000 to 45,000 Hutu civilians from April to August 1994. Human rights reports have described these

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[16] Ibid., 31-38.
[17] Ibid., 23.
[18] Ibid., 109-120.
[19] Des Forges, *Leave None to Tell the Story*, 5-15.

massacres as "wide-spread, systematic and involved large numbers of participants and victims."[20] These reports allege further that these were not sporadic killings but that commanders and leaders of the RPF forces must have at least known of such practices.[21] The genocide came to an end by the RPF's eventual success in invading the Rwandan capital, Kigali, in July 1994 (although RPF massacres are claimed to have continued until at least August). Having defeated the interim government, the RPF gained power and control in the government and many Hutus fled Rwanda as a result. Since the beginning of the genocide in April, the RPF had petitioned the Security Council to establish a war crimes tribunal for Rwanda – a plea that was not answered until after the height of the genocide and conflict had subsided.[22]

B. Political Context of the Establishment of the ICTR: the Relationship between Rwanda and the International Community

On November 8, 1994, under the powers granted to it in Article 42 of the UN Charter, the United Nations Security Council passed resolution 955 establishing a tribunal "for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring states, between 1 January 1994 and 31 December 1994."[23]

There was an inherent irony in the international community's establishment of a tribunal to prosecute these crimes given its lack of attention and involvement to intervene during the three-month period of the genocide. The international community's knowledge of the genocide and its lack of action to prevent and/or intervene during the genocide has been thoroughly

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[20] Ibid., 734.
[21] Ibid.
[22] Morris and Scharff, *International Criminal Tribunal for Rwanda*, 62-63.
[23] UN Doc. S/RES/955, 8 November 1994.

documented.[24] Even before the genocide, the UN Peacekeeping Commission Commander in Rwanda, General Dallaire, provided ample reports to the UN headquarters in New York describing organized death squads for the purpose of killing the Tutsi population. And during the genocide, Dallaire reported the mass slaughters and repeatedly asked for more UN peacekeeping troops, estimating that 5000 troops could bring an end to the conflict. However, these requests were denied by the UN headquarters.[25] Thus, it was only through the victory of the RPF, and not through any action of the international community, that the genocide ended.

The general reluctance of the United Nations to take action in Rwanda thus provides the backdrop to the establishment of the Tribunal. It was only after the conclusion of the genocide, in June 1994, that the United Nations began considerations to establish a commission of experts that would examine the evidence of genocide and violations of international humanitarian law in Rwanda. These steps ultimately led to the ICTR's creation in November 1994.[26]

Interestingly enough, the only country to vote against the establishment of the Tribunal was Rwanda itself. Throughout the months leading up to the establishment, the RPF had fluctuated back and forth whether an international body or its national courts should try those for international crimes, mainly due to concerns of how long it would take the international community to actually conduct the prosecutions. But given the complete lack of competency of Rwanda's judicial system due to the civil strife and the fact that many suspects had fled to other countries, which would not extradite them, the RPF-backed government supported a tribunal. However, in the final vote for the establishment of the tribunal, Rwanda eventually opposed the resolution citing many concerns such as the location of the tribunal, the impermissibility of the death penalty, the jurisdictional time period of the Tribunal, among others. But even though it

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[24] See e.g., Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Harper Collins, 2002), 335-385.
[25] Ibid.
[26] Morris and Scharff, *International Criminal Tribunal for Rwanda*, 63.

maintained these objections, the Rwandan government pledged to cooperate with the Tribunal.[27] In the almost 20 years since the Court has been established, however, relations between the court and the Rwandan government have been strained and at times, simply hostile.[28]

C. Accomplishments and Criticisms of the ICTR

Since the ICTR's establishment, its achievements and successes have been widely debated. In June 2001, a widely circulated report by the International Crisis Group, entitled "The International Criminal Tribunal: Justice Delayed," detailed failures and needs for improvement of the court, citing its lack of competent infrastructure, internal power struggles, due process concerns over the length of its trials, politicization of justice, and its lack of connection with the Rwandan society to name a few.[29] Another human rights publication, *Court of Remorse*, has also re-iterated these concerns, recognizing the Court as a "victor's justice" and having very little relevance to Rwandans themselves.[30]

With regard to its accomplishments, however, the ICTR has paved the way for groundbreaking decisions in international criminal law. For instance, the Tribunal is the first international institution to convict an individual for genocide.[31] It has also managed the cooperation and coordination of multiple states to capture the accused, which would seemingly have been impossible in a national court of jurisdiction. And while it is known for its lengthy trials and due process concerns, the Tribunal's Office of the Prosecutor has located and begun

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[27] Ibid., p. 59-72.
[28] Lars Waldorf, "A Mere Pretense of Justice: Complementarity, Sham Trials and Victor's Justice at the Rwanda Tribunal," *Fordham International Law Journal* 33 (2010): 1228-1232.
[29] International Crisis Group, *Justice Delayed*, 5-45.
[30] Therry Cruvellier, *Court of Remorse: Inside the International Criminal Tribunal for Rwanda*, trans. Chari Voss. (University of Wisconsin Press, 2010).
[31] L.J. Van den Herik, *The Contribution of the Rwanda Tribunal to the Development of International Law* (Martinus Hijhoff Publishers, 2005), 87.

the prosecutorial proceedings of 83 out of the 92 persons originally sought after by its office. Forty-two cases have been fully completed.[32]

With regard to its accomplishments in the context of reconciliation, however, the tribunal's record is sparse. The International Crisis Group's report, "Justice Delayed," stated that the ICTR's contribution to reconciliation was "invisible."[33] Samantha Power has reported that victims have felt humiliated and scared in their testimonials before the Tribunal, particularly when subject to cross-examination by the defense.[34] Though ironically enough, the current President of the ICTR recently noted that the court is contributing to reconciliation by giving "a voice to thousands of victims." [35]

Meanwhile, there are many concerns as to the reconciliatory intentions of the Rwandan government itself, an entity the ICTR is extremely dependent on to carry out its task. In the twenty years since the genocide, the government has remained under RPF control. The RPF has refused to allow the ICTR to prosecute RPF crimes and thus the Court has been viewed by Rwandans and the international community as a "Victor's Justice." Moreover, outright public criticism of the RPF has led to government officials, such as Parliament members, leaving office and even the country.[36] The Rwandan government, however, has implemented many reconciliation initiatives such as the establishment of its National Unity and Reconciliation Commission and the use of traditional justice mechanisms, the Gacaca Courts, to institute a

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[32] "Status of Cases," United Nations International Criminal Tribunal for Rwanda, accessed March 28, 2012, http://www.unictr.org/Cases/tabid/204/Default.aspx

[33] International Crisis Group, *Justice Delayed*, 36.

[34] Samantha Power, "Rwanda: The Two Faces of Justice," *The New York Review of Books*, January 16, 2003, accessed March 26, 2012, http://www.chicagomanualofstyle.org/tools_citationguide.html

[35] "President Khan's Address to the ICTR Town Hall Meeting," United Nations International Criminal Tribunal for Rwanda, accessed March 28, 2012, http://www.unictr.org/tabid/155/Default.aspx?id=1254

[36] A former member of the post-genocide Parliament, Joseph Sebarenzi, has detailed his experience of having to flee Rwanda after having challenged RPF government officials and their decisions. Joseph Sebarenzi with Laura Ann Mullane, *God Sleeps in Rwanda*, (Atria, 2009).

form of participatory justice to try lower-level and civilian participants in the genocide that the ICTR does not prosecute.

Thus, the ICTR operates within a complex political dynamic and history. As an international institution, it carries complicated legacies of the European colonial powers which undoubtedly fostered the divisive Hutu-Tutsi political strife and of the inactions of the international community who did nothing to prevent the murder of hundreds of thousands Rwandans. Yet the ICTR seeks to bring "national reconciliation" to Rwanda despite such legacies. And bringing national reconciliation means addressing quite a complicated political historical dynamic within Rwanda. Rwandans have suffered horrific atrocities through a history of division and political power plays which include: a history where a state specifically coordinated attacks on a certain segment of its citizenry; a history where Hutus and Tutsis have known many periods of solidarity and other periods of the most atrocious acts committed in the name of mutual antagonism between the two; a history where state and civilian actors participated in one of the most devastating moments of the twentieth century.

Consequently, conceptualizing reconciliation within this history, the legacies of the international community, and the strained relationship between the Tribunal and the Rwandan government is quite a difficult task. If the Tribunal intends to contribute to "national reconciliation" – who is being reconciled to who? The individual perpetrators and their victims? The social groupings of Hutus and Tutsis? The international community with the Rwandans it abandoned? Tutsis and the institution of the state that orchestrated the genocide? The answers to these questions are not clear. But this complex, political story undoubtedly needs to be at the forefront if any "reconciliation" at any level is to be attempted.

CHAPTER 2:

JUSTICE AND RECONCILIATION WITHIN THE CHRISTIAN TRADITION

In relation to the re-building of post conflict societies, such as Rwanda, there has been increased discussion in recent decades in the fields of transitional justice, conflict resolution, peacemaking, and other related disciplines. Joanna Quinn has noted that "one unifying theme of the work that has been done in this area involves an emphasis on an important subset of transitional justice: reconciliation." [37] However, though there is a growing emphasis on reconciliation, Quinn recognizes that there is no settled concept or definition of reconciliation within this work, specifically because "reconciliation can mean very different things to different people."[38] There are multiple approaches and ways to understand what is intended by the term, particularly when reconciliation can have diverse objectives. For the South African human rights scholar, Charles Villa-Vicencio, depending on what parties are being addressed, reconciliation will have a varied definition and form: "Different kinds of conflict require different forms and ways of reconciliation. At individual and interpersonal levels, reconciliation may require the healing of deep psychological and emotional wounds. Political reconciliation demands a different focus, one that involves less forgiveness than a desire and opportunity for sustained any meaningful interaction."[39]

From Villa-Vicencio's point of view, there are clearly many aspects of reconciliation that can be debated: healing emotional and psychological wounds, meaningful interaction and/or simply co-existence. Discussions on reconciliation include a myriad of considerations such as

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[37] Joanna R. Quinn, "Introduction," in *Reconciliation(s): Transitional Justice in Postconflict Societies*, ed. Joanna R. Quinn (McGill-Queen's University Press, 2009), 4.
[38] Ibid., 5.
[39] Charles Villa-Vicencio, "Reconciliation," in *Pieces of the Puzzle: Keywords on Reconciliation and Transitional Justice*, ed. Charles Villa-Vicencio et al. (Cape Town: Institute for Justice and Reconciliation, 2004), 3.

invoking religious and moral thought to provide a basis for its pursuit; addressing interpersonal and societal wounds; creating political, legal and structural mechanisms to foster the process. The primary concern of this thesis, however, is how the International Criminal Tribunal for Rwanda, an international justice mechanism, contributes to national/political reconciliation. Thus this chapter will focus on the role of justice in the greater discussion of what is meant by reconciliation. It will first briefly outline the common understandings of reconciliation and the role of judicial mechanisms within the transitional justice and international criminal law field. Next, it will progress to offering a Christian model of reconciliation, providing the theological and ethical underpinnings for this basis. It will focus on pointing out the role of justice in this model and will offer suggestions as to how this model can speak to the greater social and political context outside of the Christian tradition.

A. Reconciliation and Justice within the Transitional Justice Field

In the myriad of peace processes and transitional justice literature regarding post-conflict societies, the term reconciliation is often employed to "imply a setting aside of past animosities and the possibility of former enemies working together in the future."[40] Past foes will somehow develop mutual accommodation for the other and create a shared vision for a future together.[41] Quinn sums these understandings of reconciliation as "the act of building or rebuilding relationships today that are not haunted by the conflicts and hatreds of yesterday." [42] Thus reconciliation many times implies "transforming relationships" to develop this shared future. However, others have proposed this holistic relational emphasis too lofty of a goal and

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[40] Brandon Hamber and Grainne Kelly, "Beyond Coexistence: Towards a Working Definition of Reconciliation," in *Reconciliation(s): Transitional Justice in Postconflict Societies*, ed. Joanna R. Quinn (McGill-Queen's University Press, 2009), 287.
[41] Ibid.
[42] Quinn, "Introduction," 4.

"coexistence" better qualifies what can be expected in a post-conflict society. And what such definitions – mutual accommodation, shared future, transformed relationships, coexistence - mean in practice is many times uncertain.[43]

And specifically, as in the case of Rwanda, when there is a deeply embedded history of violence and division among communities at issue, the concern for justice in the process of "mutual accommodation" and "working together for a shared future" raises many questions as to what exactly such a reconciliation will look like in practical measures. One primary concern often raised is that, in the pursuit of reconciliation, justice may be sacrificed and perpetrators will not held accountable for their atrocities. The two are commonly seen as opposed and reconciliation stands for a sort of pragmatic or lowest common denominator compromise. Even advocates for reconciliation, such as Villa-Vicencio, argue for an "appropriate balance" between accountability and human rights (justice) and peace and reconciliation.[44]

Another perspective sees reconciliation resulting from justice initiatives. This perspective argues that reconciliation is only possible once perpetrators have been held accountable for their crimes, insisting on retributive justice for reconciliation. This is the argument utilized specifically within the context of international criminal law as a mechanism for justice and reconciliation by Antonio Casses, first president of the International Criminal Tribunal for the former Yugoslavia. Casses postulates, "when the Court metes out on the perpetrator his just deserts, then the victim's call for retribution are met; by dent of dispensation of justice, victims are prepared to be reconciled with their erstwhile tormentors, because they know the latter have now paid for their crimes; a reliable record is established of atrocities so that future generations can remember and be made fully cognizant of what happened."[45]

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[43] Hamber and Kelly, "Beyond Coexistence," 287-289.
[44] Villa-Vicencio, *Walk with Us and Listen,* 32.
[45] Hamber and Kelly, "Beyond Coexistence" 288.

(Similar observations been made with specific regard to the ICTR which will be discussed further in Chapter 4.) There is no settled position within these debates and these perspectives exist in constant tension and dialogue amongst practitioners and academics.

B. Developing a Christian Model of Reconciliation

Christian understandings of reconciliation have had a significant role within these discussions of reconciliation in conflict-ridden areas. Indeed the term has carried with it a religious connotation, with Christian leaders such as John Paul Lederach and Desmond Tutu having an extensive influence. The Christian focus on forgiveness as a means to restore broken relationships and societies is often highlighted as marking the distinctiveness of a Christian model of reconciliation - due to influential works such as Desmond Tutu's *No Future Without Forgiveness*. This focus has led to criticisms within secular perspectives of reconciliation that an emphasis on forgiveness undermines "the anger or desire of victims of violence" and that it does not "require 'the involvement or even the knowledge of those who committed the perceived wrong.'"[46] Thus forgiveness and the quest for justice are understood to be mutually exclusive within these criticisms. However, the Christian model of reconciliation is more complex than these criticisms imply and indeed argues for a robust form of justice as part of the process of reconciliation. Recognizing the current involvement (and criticisms) of Christian perspectives within these debates on reconciliation then, this chapter now turns to developing the Christian model of reconciliation – one that puts the Christian emphases on forgiveness within the greater reconciling process.

Theologically, the whole story of Christianity is one of reconciliation: God reconciling Godself with the world and the world reconciling with God through Jesus Christ. Thus the life

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[46] Ibid., 287-288.

and existence of Jesus Christ as restoring the relationship between God and the world is the primary model Christian's turn to in understanding reconciliation. It is beyond the scope of this thesis (and my limited capabilities) to create a full sense of the world within the Christian framework, but central to our concern, as aforementioned, is the place of justice in reconciliation, specifically considering the Christian emphasis on forgiveness. Within the Christian tradition, reconciliation is key to an overall framework of restorative justice; it does not disregard justice. In what follows, this chapter provides a brief summary of the Christian story of reconciliation and explores the different aspects and processes that occur through the narrative to develop the Christian model of reconciliation. Next, it will discuss the relationship of justice and reconciliation within this model. And finally, it will suggest how based on this theological model of reconciliation, it can have political, worldly significance and speak to complex political realities of alienation and estrangement as in the case of Rwanda and the ICTR.

This discussion primarily draws from three Christian theologians and ethicists, John de Gruchy, Miroslav Volf and Stanley Hauerwaus. None of these Christian thinkers fully agree on what "reconciliation" means in the Christian tradition and each draws from their own particular experiences and aspects of the Christian tradition and its texts. I pull from all of them to create a framework of reconciliation which at least attempts to incorporate all of their insights into the Christian perspective. It is a developing model and framework. There is simply no easy and inherent way to approach this development and create a model that can speak to the complexity of human experience. Thus there is always room for critique and challenge in this model.

Before exploring the theological and ethical basis for Christian reconciliation, it is important to recognize what de Gruchy recognized in his discussion of reconciliation through South Africa's Truth and Reconciliation Commission - which is the distinction between primary

and secondary expressions of reconciliation. The general Christian rhetoric and dialogue exploring Christian reconciliation is concerned with the world being reconciled with God. These expressions are ones of faith and are primary expressions of Christian faith – of what has transpired between God and the world. As faith convictions, these expressions do not directly implicate social and political policy:

> "Primary expressions about reconciliation in the Christian liturgy and confessions of faith may well become carefully articulated doctrine, but they remain faith convictions and cannot be verified except on the basis of scripture. As faith convictions they cannot be directly equated with reconciliation as a political policy and objective without creating conceptual confusion. Secondary expressions on the contrary are visible in social and political reality even though, for the Christian, they have their basis in that which is beyond empirical verifiability." [47]

Primary and secondary expressions therefore are not the same. Secondary expressions can be visible and realized in the social political world but are not direct and explicit forms of primary expressions faith, though they are clearly informed by the primary.

C. Primary Expressions: A Christian Biblical Basis for Reconciliation

In Christian scripture, the apostle Paul proclaims, "All this is from God, who reconciled us to himself through Christ and gave us the ministry of reconciliation: that God was reconciling the world to himself in Christ, not counting people's sins against them. And he has committed to us the message of reconciliation."[48] This verse points to the central understanding of reconciliation in the Christian faith: that in Christ, God and humanity are reconciled – that "God was reconciling the world to himself in Christ." In the grand narrative of the Christian story, of God taking human form in Christ's existence and inhabiting the world, of dying on the cross and being risen again – in the central person of Christ, God and humanity were reconciled. Christianity itself is the event of reconciliation.

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[47] de Gruchy, *Reconciliation*, 18.
[48] 2 Corinthians 5:18-21.

According to Christian traditions, God and the world/humanity are estranged. The righteousness of God and the sinfulness/depravity of humanity stand as barriers between the two parties. And thus, the two are estranged and alienated from the other. But in Christ, of God taking human form in the world, there is a process of bringing together the estranged, of de-alienating the other. Christ's presence in the world and his death on the cross was the mediation between the alienated partners. Through Christ, God freely turned to humanity and brought God and humanity together. In the ultimate sacrifice of Christ on the cross, the sin, the alienation between the two parties, God forgave humanity of their sin and the two parties could finally turn to each other. Through this process then God and humanity, in the words of Miroslav Volf, "embrace" and engage in being reconciled.

This is a simplistic re-telling of the Christian story and undoubtedly theologians can find much to be debated in that presentation. However, its core premises are at the heart of the Christian faith and tradition: that there is alienation between God and humanity; and in God turning toward humanity in the life and death of God in human form, Christ, the parties' relationship is no longer estranged and they may reconcile. Using this story as the primary expression of the process of reconciliation then, key features need to be highlighted:

First, there is difference and distinction between parties in this story. At minimum, three entities, actors are involved in this story. There are the two estranged and there is the third, the mediator, Christ. Distinction and difference are central to the characteristics of each party. Reconciliation does not require setting aside difference; it does not seek to make parties "the same."

Second, there is a wrong, sin, an alienation that precedes the process of restoration and reconciliation and it must be addressed. This alienation, this wrong, resulted in alienation between the two parties, God and humanity. And it is through the act of God confronting

humanity, of turning toward humanity in the person of Christ, that acknowledges this alienation, that begins to restore this alienation.

Third, this is a story of a relationship. Reconciliation, if anything in the Christian tradition, contemplates the relation of God to humanity. It is a relational model. It involves how persons relate and interact with the other. It is a personal and intimate encounter and interaction between beings.

Fourth, reconciliation is a process – a dynamic, evolving process. It is "forward-looking" but only with regard to processing the past and orienting it to a different place. The term "process" implies this dimension of time. Reconciliation is not a "state."[49] Christians have been, are, and will be reconciled with God. It is constantly occurring – it occurs the present and it will occur in the future. Reconciliation exists, in the state of process, in the tension between the here and now.

Thus this theological model of reconciliation recognizes the difference and distinction between parties and does not seek and the necessity to overcome estrangement/alienation. It promotes a model that is relational and process-oriented.

D. Justice and Reconciliation within the Christian Tradition

For the task at hand, the greater question to be addressed in this framework is what is the role of justice in this story? There is no court, no judge, no sentencing one to be held accountable for their wrongs. Thus, it is not immediately apparent where justice's role is in this relational process of reconciliation. It is beyond the scope of this work to delve into the centuries of discussions of what is meant by "justice" but it can be suggested that justice requires

[49] De Gruchy, *Reconciliation*, 28.

a balance, a symmetry.[50] A party, a person, an institution wronged another and a counter action must occur to (at least to attempt to) "right" it – balance, symmetry. Within a post-conflict society, the demand for justice is great: that those who have committed atrocities are held accountable for their actions. To understand the role of justice in the theological story told above, one must focus on the person of Christ. In the story, Christ is the mediator, the integral bridge between God and humanity. God did not simply forgive and embrace humanity in its state of alienation and sin. But an event, a confrontation, then a mediation of forgiveness occured to address the sin, the wrong that estranged God and humanity. The very presence of Christ in the process demonstrates that reconciliation does not simply mean a disregard of the nature of the estrangement.

God came in human form and opened Godself, through Christ, to embrace humanity. Volf argues that Christ's sacrifice and death on the cross allowed God and humanity to be reconciled. He explains, "At the heart of the cross is Christ's stance of not letting the other remain an enemy and of creating space in himself for the offender to come in. "[51] What is important to note is that God could not simply embrace humanity without this confrontation, this work of Christ. According to Volf, the offense of the cross was critical to create this space. Christ on the cross recognized the enmity and depravity of man and sought to address it and build the bridge between this enmity. The depravity and enmity of man was acknowledged, held accountable in the cross, and forgiven.[52]

Thus, what occurs in this Christian story of reconciliation is a confrontation of a state of alienation, an acknowledgment and accountability of this estrangement, and ultimately forgiveness. It is a process that works to restore the imbalance, the enmity between God and

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[51] Miroslav Volf, *Exclusion and Embrace: A Theological Exploration of Identity, Otherness and Reconciliation* (Nashville: Abingdon Press, 1996),125-126.
[52] Ibid.

humanity. The "balance" that is sought however, is the balance in between the relationship between the estranged parties. Justice, balance, is relational; it seeks to balance, restore the alienation relationship between persons. It does not seek to balance a wrong in the abstract, without regard toward the relationships that are harmed. Justice, as understood as restoring balance from a relational perspective then, is integral in the process of reconciliation – as it seeks to restore and reunite. The theologian Paul Tillich refers to this work of justice as "creative justice":

> "As in its application to man, so in its application to God, justice means more than proportional justice. It means creative justice and is expressed in the divine grace which forgives in order to reunite. God is not bound to the given proportion between merit and tribune. He can creatively change the proportion, and does it in order to fulfill those who according to proportional justice would be excluded from fulfillment. Therefore the divine justice can appear as plain injustice. . . . the divine justice is manifest in the divine act which justifies him who is unjust. This, like every act of forgiveness, can only be understood through the idea of creative justice. And creative justice is the form of reuniting love."[53]

Thus the form, the posture of justice is ultimately about restoring the balance in between two estranged parties. In the Christian tradition, this means forgiveness plays an essential role – it is an act of "creative justice" that testifies to the work of reuniting, of reconciling. But forgiveness always occurs within a greater process. Forgiveness happens in conjunction with the act of confronting the unjust, addressing the enmity, the alienation. The creative justice of forgiveness then does not, as critics argue, negate "the involvement or even the knowledge of those who committed the perceived wrong." The wrongs must be addressed and accounted for, for true forgiveness. Acknowledgement and accountability and ultimately forgiveness – all are actions of "creative justice" or restorative justice that take part in the dynamic process of reuniting, reconciling the estrangement of God and man.

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[53] Paul Tillich, *Love, Power, and Justice: Ontological Analyses and Ethical Application* (Oxford University Press, 1954), 66.

E. Secondary Expressions: Toward Political, Social Relevance

Theologians often use this grand narrative of the relationship between God and humanity in Christ to demonstrate the Christian story of reconciliation. However, it is so steeped in Christian doctrine and eschatology, there is a limit to its usefulness in understanding its application to the world, or to how it can provide a "secondary expression" to the socio-political world. To create a more practical picture of justice and reconciliation, one that can more easily translate to the political, social world this section focuses on the work of Christian ethicist, Stanley Hauerwas. Hauerwas' interpretation of the Gospel of Matthew's account on forgiveness shows how the justice and reconciliation process is lived out in amongst humanity, a process which shares characteristics with the primary expression of God reconciling with humanity.[54]

In explaining a Christian perspective of peacemaking, Hauerwas draws from the New Testament text, Matthew 18:15-22. The text begins with Jesus' teaching to the apostle Peter:

> If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained a brother. But if he does not listen, take one or two others along with you, that every word may be confirmed by the evidence of two or three witnesses. If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, let him be to you as a gentile and a tax collector. Truly, I say to you whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven. Again I say to you, if two of you agree on earth about anything, it will be done for them by my father in heaven. For where two or three are gathered in my name, there am I in the midst of them. Then Peter came up and said to him, "Lord how often shall my brother sin against me, and I forgive him? As many times as seven times? Jesus said to him, "I do not say to you seven times, but seventy times seven."

Upon first reading, the text may appear very different from all that has been discussed thus far. But what it is demonstrating is a process by which Christians are required to deal with

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[54] Hauerwas, however, provides his interpretation of this passage on forgiveness with the understanding that it is a model for the Christian church; he does not consider this model as working outside of the Church. Stanley Hauerwas, "Peacemaking: The Virtue of the Church," in *The Hauerwas Reader*, ed. John Berkman et al. (Durham: Duke University Press, 2001). Nonetheless his understanding of the practice of peacemaking and forgiveness helps create a fuller Christian account of reconciliation and thus why I use him here.

each other when a wrong, a grievance exists between them. And central to this process, Hauerwaus points out is that those who have wrongs, grievances against another, are "obligated to confront the one you believe has sinned against you." While the text obviously talks about forgiveness, Jesus is also instructing that one "cannot overlook a fault on the presumption that it is better not to disturb the peace."[55] One is required to forgive one's brother but one is also required to confront that brother – repeatedly – for the sake of addressing the wrong, the grievance. As Hauerwas says, "You cannot overlook a fault on the presumption that it is better not to disturb the peace. Rather, you must risk stirring the waters, causing disorder, rather than overlook the sin." [56]

Hauerwas argues that "confrontation is at the heart of what it means to be a peacemaker." [57] Hauerwas argues strenuously that the confrontation is not a suggestion. One must go and speak to the one he/she has believed has wronged him/her. And if the wrongdoer will not admit to his/her transgressions, one must bring witnesses and perhaps even bring the whole matter before the whole church. The church, the community "cannot afford to 'overlook' one another's sins because they have learned that such sins are a threat to being a community of peace." Thus in the process of reconciliation, of peacemaking, conflict is not to be ignored or denied, but rather, conflict is to be forced into the open. Confrontation, accountability and forgiveness all go together in the process of peace, of reconciling. Christians forgive in this process because ultimately this is how they may live together and be reconciled. Genuine peace, being reconciled, is not simply forgetting and forgiving past wrongs, but rather it is a process that encompasses these wrongs, acknowledges them, and forgives to restore the broken relationships, to bring the balance of justice.

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[55] Ibid., 321.
[56] Ibid., 319.
[57] Ibid.

Here, Hauerwas's interpretation of this passage contributes to the earlier discussion of justice and reconciliation. Previously, it was noted how accountability, acknowledging a wrong, and forgiveness work to restore, reconcile the relationships between the alienated state of God and humanity. In this passage, Jesus commands the same process to be lived out within humanity. When one has wronged another, there is an estrangement, an alienation. Confrontation, conflict is required to address this wrong; there must be an acknowledgment and accountability of the wrong. To restore the alienation between the persons, forgiveness is also central as part of the process – but recognize the process never suggests that "forgetting" or just "moving on" is the way in which to engage in the process of reconciliation: "Peacemaking is not a passive response, rather, it is an active way to resist injustice by confronting the wrongdoer with the offer of reconciliation. Such reconciliation is not cheap, however, *since no reconciliation is possible unless the wrong is confronted and acknowledged* . . . Peacekeeping requires the development of the processes and institutions that make possible confrontation and resolution of difference . . . " [58]

Thus within the reality of human encounters, justice, acknowledging and confronting a wrong with the offer of forgiveness, and reconciliation are not juxtaposed against each other. One does not happen at the expense of the other, rather the two are intimately intertwined in the creative justice to reunite estranged parties.

F. Christian Reconciliation within the Socio-Political Contexts

De Gruchy noted that the Christian model of reconciliation always begins with "overcoming alienation and estrangement between God and ourselves." Hauerwas'

[58] Ibid., 326.

understanding of reconciliation assumes division and strife amongst humans. Thus reconciliation always assumes distinct, different persons and a state of alienation – immediately when put this way "we recognize this is a claim that has social and political consequences." [59] The political world is defined by difference and distinction amongst groups. As the political philosopher Carl Schmitt has rightly observed, whatever "political" means, it automatically assumes difference. Politics, may be more, but it is no less than groups making social distinctions between each other, defining themselves as what others are not.[60] And certainly within the case of Rwanda, the distinction between political groupings, Hutu and Tutsi, demonstrates the reality of difference and alienation in the political sphere.

Since the Christian model of justice and reconciliation recognizes distinctions and alienations between parties, it arguably has potential to speak to the political sphere. This model is process-oriented and concerned with restoring relationships. It includes confrontation between estranged parties, acknowledgement and accountability of the reasons, the wrongs, that are the mark of the estrangement, and ultimately forgiveness for the purpose of restoring balance, reconciling.

However, the translation of this Christian model to the socio-political world cannot nearly be so simple as to implant it to the complex world of human experience, particularly in conflict-ridden societies seeking broad objectives such as national reconciliation. Within the case of Rwanda, there are multiple parties, each at different levels with the political sphere that are estranged and alienated. The model discussed in this chapter is very simplistic in only contemplating the estrangement of two parties, and assuming that it can be easily distinguished who is the perpetrator and who is the victim within this estrangement. Moreover, there are complex political structures at play in ICTR's efforts of reconciliation, such as the role of the

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[59] de Gruchy, *Reconciliation,* 1.
[60] Carl Schmitt, *Concept of the Political* (Chicago: University of Chicago Press 1996, 2007), 26-27.

Rwandan state, the international, Western-style legal litigation apparatus, political and legal constructs that are intimately intertwined in the context of Rwandan reconciliation. The model that has been explored above appears very far-removed from contemplating and having direct relevance to these realities.

De Gruchy, however, has recognized that when bringing the Christian model of reconciliation to bear on the political sphere, there are four interrelated ways to consider its relevance:

1) Theological, referring to reconciliation between God and humanity.
2) Referring to estranged relationships between individuals
3) Referring to alienated communities and groups at a local level
4) Referring to the political process of national reconciliation considering alienation and division of national sectarianism and division[61]

The Christian tradition most easily speaks to reconciliation as it pertains to points one and two; it is quite a challenge for political theologians and the Christian tradition in general to speak to the complex spheres of human experiences compounded in points three and four. However, all of these are interrelated ways to accomplish reconciliation and thus the potential for Christianity to speak to the first two opens the possibility for it speak to all. There is a dynamic exchange among all these different ways of reconciliation. And by engaging the Christian model of reconciliation with an actual political structure such as the ICTR, Christian thought can be challenged and expanded to understand how its model addresses the real concerns of the world today.

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[61] de Gruchy, *Reconciliation,* 27.

CHAPTER 3:

ENGAGING THE CHRISTIAN TRADITION WITH INTERNATIONAL LAW

The previous chapter concluded that the Christian model of reconciliation has the capability to apply to the greater socio-political sphere. Christian reconciliation may speak to legal, political structures such as the International Criminal Tribunal for Rwanda, but the question remains is why should it? Why should a political, international law mechanism such as the Tribunal be evaluated against this Christian perspective? And why should the Christian tradition concern itself with engaging with the Court, with international law? Moreover, once it is determined that the two can or should engage with each other, the concern arises as to how the tie between the secular-political and the theological-ethical can be made/connected so to provide a basis for this engagement.

International criminal law exists within the liberal tradition of respect for human dignity and rights within the pluralistic, global context. Thus, this chapter argues it must take into account and engage with a variety of moral, ethical frameworks, such as the Christian tradition, through the process of civic reason, to ensure its purposes of justice and reconciliation actually respect the practices and traditions of the humanity it seeks to dignify. Ultimately what this dialogue allows is for international law mechanisms, such as the Tribunal, to understand a way of being, to realize justice and reconciliation. The Christian tradition, in turn, benefits so that its tradition does not exist in a vacuum but can re-evaluate itself among the diversity of human experience encapsulated in the practice of international law through the Tribunal.

A. Difference and Commonality within Law and Christianity

Legal positivists have long argued there is no inherent connection between law and morality and consequently law and religion. With regard to international law, positivism supports state

sovereignty as the ultimate basis for law and that states are not subject to any moral authority above them. Thus positivism directly refutes notions of natural law – that states and their actions and law (and their laws) should stem from an outgrowth of universal values and norms.[62] While in an ever-growing pluralistic world, with multitudes of perspectives of what even are these "values" and "norms," the positivist position offers a distinction that simply cannot be ignored – "law" and "morality" simply cannot be equated. Even if morality (which often stems from religious frameworks) informs aspects of law – there is such a number of understandings of what is moral or what is ethical that the two simply cannot be equated. In the case of international law and Christianity, it is perhaps better to understand the two are their own distinct normative systems – each based on their own authority and legitimacy. Though the two are distinct, both normative systems share common goals of exerting "justice and reconciliation." These common goals allow for the possibility of the two to interact and engage with each other.

B. Authority and Legitimacy within International Criminal Law and the Christian Tradition

The International Criminal Tribunal for Rwanda is an ad-hoc institution established to enforce violations of international criminal law. International criminal law is a subset of the large body of public international law and the authority and legitimacy of public international law is continually questioned in modern world of state sovereignty. However, throughout the progression and growth of public international criminal law, a hybrid of justifications for its authority and legitimacy has developed. The positivist understanding that international law can and only does exist when states have signed a treaty and willingly ceded their power informs much of, if not most, international law's legitimacy. However, with the rise of human rights

[62] David Bederman, *International Law Frameworks* (New York: Foundation Press, 2006), 1-6.

advocacy and the appalling acts committed in the name of state sovereignty, there is also an element of natural law undergirding at least an aspect of public international criminal law. International human rights and criminal law have clearly found a basis in some form of natural law that recognizes the inherent worth of human beings – outside of the state actor. Human rights and international criminal law have developed to hold accountable the state actor due to a universal understanding of the value of "human dignity." A natural law notion of the belief in human dignity, not state action then, underscores, at least in part, the authority and legitimacy of international criminal law.[63]

Arguably then, the Tribunal finds its authority and basis both in positivists and natural law authority. How the tribunal executes international criminal law is through a liberal, Western common law tradition – based on establishing accountability to this law by means of individual prosecution for the individual violation of international criminal law. The means by which the Tribunal carries this out of course speaks to its goals for "the fundamental purpose of any system of law is to further desirable social outcomes."[64] Within the context of the Tribunal these social outcomes are "justice" and "reconciliation." But what is the standard of justice and reconciliation that informs these goals? How do we know if the tribunal has met the "desirable social outcome" of international criminal law?

One way to begin to answer these questions is to look to the religious model of Christianity as a standard for evaluating the answers to these questions. However, Christianity finds its legitimacy and authority in its in its monotheistic faith in Jesus Christ. Thus Christianity begins from a very different starting point than international criminal law. Any ethical and moral understanding of "law," or "justice" can only be understood as each relates to God embodied in Jesus Christ. Christianity can only understand any moral endeavor such as justice and

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[63] Ibid.
[64] Ronald C. Slye and Beth Van Schaack, *Essentials: International Criminal Law* (Aspen Publishers, 2009), 295.

reconciliation in this light. Thus the authority and legitimacy of international criminal law and Christianity clearly appeal to two different authorities and find legitimacy though different means. While some may argue the "natural law" basis of international law, the concept of universal norms and values based on inherent human dignity, may suggest a similar starting point for the two, how each defines and understands "human dignity" does not start from the same basis. Christianity can only understand human dignity as it relates to Jesus Christ and international law must understand it through a pluralistic lens of many moral traditions and religious viewpoints.

Still, while each have different authority and legitimacy, it is also clear that each has a long tradition of seeking to establish "justice" and, to a lesser degree "reconciliation." And as international criminal law has developed in the liberal tradition of promoting equality, dignity and individual rights amongst diversity and plurality, it then must also take into account to a plurality of different views to realize its purposes of justice and reconciliation. It constantly should exist in a dialectical tension of engaging different voices in the international, public sphere to realize and understand its content and purposes.

The distinction I am drawing here may be illustrated by a contrast between Rawls and An-Na'im on public vs. civic reasons. In the liberal tradition, this process is most notably described through John Rawls' theory of "public reason." Rawls argues that citizens must engage in public reason with the concern to address public good and matters of fundamental justice. The content of public reason "draws from society's conception of political justice."[65] Rawls, however, fundamentally disagreed with one's religious perspective having any bearing on a "public matter of fundamental justice" as he viewed religion to be "non-public." The Rawlsian liberal tradition creates a dualism between law and the public square and religion and the private sphere. It is

[65] Daniel Philpott, "Beyond Politics as Usual: Is Reconciliation Compatible with Liberalism?" in *The Politics of Past Evil* ed. Daniel Philpott (Notre Dame: University of Notre Dame, 2006), 30.

what has in part encouraged the "era of the dualism of spiritual and secular authorities."[66] But in the actual reality of lived human experience in state law and religious conviction, this dualism is neither helpful nor true. A realistic observation of the individuals liberalism seeks to dignify demonstrates that religion is an important matter both private and publicly for individuals and societies. As a practical matter, it simply must be allowed in the public square because religion is simply too important for many populations across the globe.

In contrast, An-Na'im's civic reason departs with Rawlsian public reason in that An-Na'im recognizes the private and public importance for religion to have a place in the public square. Recognizing the "compatability dialectic of legal and normative systems," An-Na'im's civic reason encourages religious perspectives in the public square and to utilize the language of shared common discourse to foster this reason.[67] An-Na'im recognizes that all perspectives, even religious ones, must try to engage in dialogue through a common discourse. While Christianity and law have different authority and legitimacy claims, there must be efforts to work within a common discourse so that they two may understand each other in this dialogue. And it is in this exchange of dynamic discourse in the public square – between law and religious perspectives (and other civic perspectives) that perhaps a synthesis can be created where the two can both exist and learn and inform and challenge the other through civic reason. It is with the vision of this synthesis that this thesis strives to put a Christian model of reconciliation in dialogue with the International Criminal Tribunal for Rwanda.

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[66] Harold J. Berman, *The Interaction of Law and Religion* (Abingdon Press, 1974), 109.

[67] Abdullahi Ahmed An-Na'im, "The Compatability Dialectic: Mediating the Legitimate Coexistence of Islamic Law and State Law," *The Modern Law Review* 73 (2010): 1-5.

C. The Problem of God and Human Dignity

Civic reason encourages religious perspectives to engage within the liberal tradition of international law. However, as previously noted, the Christian tradition's perspective of justice and reconciliation is bound up in an eschatological vision of the relationship of God and humanity. There needs to be a way to understand how this foundation of God is relevant to the Tribunal's liberal tradition of respecting human dignity. In what grounds can Christian reconciliation be meaningful, much less fruitful, in the political order? For as Scott Appleby proposes, "if theology is to serve as a foundation for a public ethic of justice and reconciliation, the one must eventually address the problem of God. All talk of divine forgiveness, grace and reconciliation rings hollow to those who do not believe in God."[68] Must then the secular order itself, then be transformed if the Christian tradition is to having meaning and applicability?

Appleby proposes that a way to understand this connection is if we can equate "God" with "that which is real."[69] For theology presupposes ontology as language about God is always also language about being. Christian's theological views informs the truth of nature of being, and which extends to all realms of existence – from the individual to the political. The nature of being determines the truth of all realms of existence, from the religious to the political. If people seek to achieve justice, they must know what is just in the order of being within all spheres of existence.[70]

And it is these "deep principles of justice" about a just order of being that are the surest common ground for engaging in public discourse. Thus international criminal law benefits from a Christian perspective because it offers these "deep principles of justice:" "What religion and theology bring to the debate is insistence on the depth dimension, the immutability and eternal

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[68] R. Scott Appleby, "Conclusion: Reconciliation and Realism," in *The Politics of Past Evil* ed. Daniel Philpott (Notre Dame: University of Notre Dame, 2006), 228.
[69] Ibid., 228-29.
[70] Ibid., 238.

nature of these principles."[71] Christian theology is useful to the discourse on political reconciliation within the context of the Tribunal to the extent that it sheds light on the nature of reality itself. This is the usefulness of other theological, cultural, and philosophical traditions: their political "utility" rests precisely on the resonance and validity of their "cosmology" or "ontology' - their capability to inform reality and especially, the human condition, in its depth dimensions.[72] These traditions, by disclosing and providing insight into the ontological basis of being, provide a foundation for correct and political effective thinking on "deep principles of justice" such as the inviolability of human rights and equality.[73] This is how the basis for a shared common discourse can be understood and why international justice mechanisms, such as the Tribunal, benefit from engaging in this discourse.

And the Christian tradition benefits from this endeavor as it engages with real, practical mechanisms of reality, such as the Tribunal, that challenge its theological model of the "nature of reality" to be applicable within the practical day-to-day realities of living out such "deep principles of justice." Engaging with a political, legal structure such as the International Criminal Tribunal allows Christianity to challenge its own process of understanding how justice and reconciliation, and understand how such a model should negotiate complex human experiences and structures such as the work of the Tribunal.

Thus, it is in the spirit of civic reason, and in seeking to realize a deep principle of justice and reconciliation, that this thesis engages the Christian perspective on justice and reconciliation with the work of the Tribunal. Obviously there are many forms of religious and non-religious traditions to choose from for this endeavor: secular humanism, Abrahamic faiths, Hinduism, Buddhism. No one set of understanding can be the standard, the objectivity from which to

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[71] Ibid.
[72] Ibid.
[73] Ibid.

evaluate these terms. It embarks on this task because all perspectives have an important understanding of these moral terms and since all of humanity is within the continual moral journey, all can learn from each other. It seeks to to be part of the greater dialogue in the dynamic relationship of law, morality and religion which plays out everyday in all societal contexts.

CHAPTER 4:

RECONCILIATION AND THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

As stated in the introduction, the primary goal of this thesis is to challenge the assumption that international justice mechanisms, such as the ICTR, may actually serve its purposes of justice and reconciliation. To do this I ask how has the ICTR endeavored to foster justice and reconciliation and do these endeavors measure up to the Christian model of reconciliation? Thus far, this thesis has provided the political and historical context of the Rwandan genocide and the establishment of the Tribunal, recognizing the different layers of alienation amongst persons and communities within the Rwandan experience. It has then provided a Christian model of reconciliation as a frame of reference to consider what the reconciling of this complex web of estranged relationships would involve. And third, it argued that this Christian model is relevant to engaging with an international law institution such as the ICTR and considered how to understand the connection between the two as a basis for engagement, noting the Christian ontological basis for "deep principles of justice and reconciliation." Thus having established the means to engage the international criminal law with the Christian model of reconciliation, in this chapter, I now address my goals directly and evaluate ICTR's efforts against this Christian reconciliation framework .

The international community assumed that holding culpable parties accountable in an international court would inherently contribute to reconciliation. Was this the correct assumption? Do the inherent political and practical issues that arise in the running of an international court impede any hope for reconciliation? Does its work speak to the deep principles of justice and reconciliation from the Christian perspective? While the Christian reconciliation model offers these principles for the restoration of alienated communities and

relationships, what happens if it is applied to the complex structures of the world, composed of individual, local, communal, national and international bodies?

This chapter will begin to discern the answers to these questions. Recall the observations I made about reconciliation in Chapter 2: there is difference and distinctions in parties; there is a turning toward the other, a confrontation so that wrong is acknowledged and addressed. There is a mediation, a "creative justice" in the form of forgiveness to balance the imbalance, the alienation between parties. It is a model concerned with relationships and engaging in a process of restoration; it is not necessarily focused on an outcome. To apply a Christian model of reconciliation, we must understand this personal, intimate understanding of relationships as between persons. Thus to answer the above stated questions, this chapter will focus on how the ICTR addresses restoring relationships; how it changes the imbalance, the alienation within the complex sphere of estranged relationships in the Rwandan context.

To address the different complexities and levels of such relationships, recall that there are four interrelated ways to think about reconciliation: relations between individuals, alienated communities and groups at a local level, and an overarching political reconciliation amongst all individuals and communities within the political sphere. The Tribunal's mandate to "contribute to national reconciliation" does not contemplate which of these levels is its focus. With regard to Rwanda, there are many possibilities: relationships between the actual persons of victims and perpetrators; the relationship between alienated communities, such as Hutus and Tutsis, relationship between victims and the state which the state abused; the relationship between the Rwandan state and the international community. To speak of national reconciliation, then, may be to speak of all these relationships and in turn all should be considered in evaluating the work of the Tribunal.

One thing is key to consider: relationships involve persons. Thus when we speak of the relationship of citizen to state or the Rwandan state to the international community, we speak of the citizen as a person and those people within the state apparatus. When we speak of the Rwanda state to the international community, we speak of the people that comprise each of these institutions. If reconciliation is a relational process of restoring relationships amongst alienated persons and communities, then to understand the ICTR within this model of reconciliation is to consider how its structure and efforts facilitate and create spaces for the process of restoring these relationships amongst peoples. For instance, "forgiveness" is one of the components of reconciliation that is hotly debated in the Christian model of reconciliation, but forgiveness can only occur between person to person, between the violated and the violator. It belongs only to the violated to forgive.

The ICTR, as a structure, can neither forgive nor be forgiven[74] – the people who encompass it may be forgiven and forgive but it is not the task of this thesis to delve into that most intimate endeavor or to evaluate whether such events have occurred. When examining a structure like the ICTR, the issue to consider is how is it creating the space, facilitating the process for persons, for communities (composed of persons) to confront, acknowledge, mediate, forgive to engage in the process of reconciling? The concern is how its structures, the way it has executed international law, encourage this process and place the alienated parties in the posture to restore relationships, to seek justice, to forgive – to reconcile.

This thesis is primarily concerned with the role of the international community in facilitating such a dynamic - specifically how its involvement and how it has applied international

[74] However, it should be noted here that Christian thought has advocated for a kind of "political forgiveness" in which perhaps the state potentially may "forgive" for a whole community. See e.g. Daniel Shriver, *An Ethic for Enemies: Forgiveness in Politics*. (Oxford University Press, 1995); Daniel Philpott, "Reconciliation: An Ethic for Peacebuilding," in *Strategies of Peace: Transforming Conflict in a Violent World*, Daniel Philpott et al. ed. 91-118 (Oxford University Press, 2010).

law through an international institution fosters this process. This chapter first considers how international actors, as managers and those who compose the body of the tribunal, have aided or hindered in creating the space and encouraging this intimate process of restoring relationships within Rwanda. Second, since a main reason for the involvement of the international community is its ability to be "neutral" in executing justice, it will discuss the inherent political complications in exercising such "neutrality," focusing on the ICTR's "Victor's Justice" and challenging the assumption that the ICTR's form of "neutrality" encourages the space and process for reconciling relationships. And finally, it will investigate how the Court's Western common law tradition of retributive justice and individual accountability structures a space and process for alienated relationships to reconcile. It would be impossible to discuss all the aspects of the ICTR that are relevant to addressing its objective of reconciliation. I chose these three aspects to investigate because all three are characteristics of the Tribunal by virtue of it being an international institution.

A. The Disconnect between International Actors and Rwandans at the ICTR

The ICTR seeks to bring "national reconciliation" – whatever this means, from the Christian perspective, it includes restoring divided, estranged communities within Rwanda. But the immediate question arises is how does involving outside, international actors contribute to this process? As the primary managers and decision makers of the Court's functions, the international community has in many ways served to alienate the Court from Rwandans, failing to foster the process of reconciliation.

The most notable criticism of the Tribunal has been its invisibility to everyday Rwandans. As Samantha Power has observed, "The UN court is a world away from the people

whom international justice seeks to serve."[75] Indeed for many years, many Rwandans did not know of the its existence, and while outreach has somewhat increased in the past years, knowledge of the Court's actual proceedings and prosecution has not been extensive in Rwanda.[76] What is even more troubling is the complete lack of involvement by Rwandans in the Court's processes. This lack of involvement and general remoteness of Rwandans is in large part due to the explicit decisions of the international community and by the very nature of the court being an international institution.

In the immediate aftermath of the genocide, due to concerns of very hostile Tusti-Hutu tensions and other practical considerations, the United Nations, against the wishes of the Rwandan state, decided to place the court outside of Rwanda and in a neighboring country, Tanzania.[77] Thus from its very inception the court has been very physically remote from Rwandan communities. In 2003, for a Rwandan to visit the Court, he/she had to take a bus through four countries to get there – from Kigali, Rwanda to Kampala, Uganada, to Nairobi, Kenya, to Arusha, Tanzania. The journey took two days, and costs around $40 for the bus ticket and $20 for a Kenyan transit visa. In total, this is more than most Rwandans earned in a month. These travel expenses and burdens make it virtually impossible for average Rwandans to visit the Court.[78] Thus by virtue of the Court being in Tanzania, trials are not held in the presence of Rwandans and Rwandans are virtually excluded from the Court's proceedings. The strained relationship with the Rwandan state and the Tribunal has only furthered this exclusion. As

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[75] Power, "Rwanda: The Two Faces of Justice."
[76] International Crisis Group, *Justice Delayed*, 36; Power, "Rwanda: The Two Faces of Justice."
[77] For a comprehensive explanation for the decision of the ICTR to be placed in Tanzania, see the Secretary-General's Report on recommending Arusha, Tanzania as the seat of the Tribunal, UN Doc. S/1995/134, 13 February 1995, paras. 35-45.
[78] Power, "Rwanda: The Two Faces of Justice."

aforementioned, the Rwandan government has periodically criticized the Court and even refused to cooperate with its proceedings.[79]

The one way that Rwandans do have an actual physical involvement in the Court's proceedings are when they serve as witnesses in trials. With regard to its contribution to reconciliation, it is this witness testimony that members of the Tribunal refer to as its reconciliatory mechanism, proclaiming the Tribunal has offered 26,000 hours of testimony given by 3200 witnesses.[80] In section C of this chapter, I discuss, however, how this involvement only furthers divides between victim and perpetrator. Moreover, victims testify at the bequest of the Prosecution and have no control over the process of when and how they will testify.

The Court has been run and managed by international lawyers and judges from all different areas of the globe. In 2010, the Chambers of the ICTR was composed of seventeen judges representing nations from Pakistan to China to Jamaica.[81] It has become an institution developed by the international community and a unique space where different legal traditions have coalesced to make up new rules and laws with regard to the Court's operations. Diverse Western legal traditions inform multiple decisions of the Court from deciding what evidence rules should apply to whether both counsel for prosecution and defense may stand when addressing the Court or if one shall always remain seated.[82] As one scholar has described it, it has become "continuity and improvisation" by lawyers from all legal traditions - constantly making up the law and procedure of the court.[83] There is no official training for judges or for any one

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[79] Cruvellier, *Court of Remorse*, 9-14, 102-14; Waldorf, "A Mere Pretense of Justice," 1229-1230.
[80] "Address by Judge Khalida Rachid Khan, President of the ICTR, to the United Nations Security Council – Six Monthly Report on the Completion Strategy of the ICTR," United Nations International Criminal Tribunal for Rwanda, accessed March 28, 2012, http://www.unictr.org/tabid/155/Default.aspx?id=1244.
[81] United Nations International Criminal Tribunal for Rwanda, *The Legacy* (2010 pamphlet), 21-24.
[82] Nigel Eltringham, "Judging the 'Crime of Crimes': Continuity and Improvisation at the International Criminal Tribunal for Rwanda" in *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, ed. Alexander Laban Hinton. (Rutgers University Press, 2010), 206-221.
[83] Ibid.

who comes to work at the Court. According to the ICTR Statute, judge are only required to be a person of "high moral character, impartiality and integrity" and to have met the required qualification in their respective countries for appointment to the highest judicial office.[84] Similarly, defense attorneys are only required to speak one of the languages of the Tribunal and have at least seven years of experience in the practice of law within their perspective countries.[85] Thus the Court is run by a conglomerate of persons, with varied skills and legal backgrounds from around the globe, creating and making an institution that is steeped in outside practices and traditions from the community it seeks to serve.

While these observations about the Tribunal create quite a fascinating picture of the ability and resolve of international persons working together for a specific goal, the issue is how the involvement of international persons promotes and encourages the reconciliatory process – at any level. The process of reconciliation can only be encouraged by creating spaces where estranged parties may turn to and confront to the other –and perhaps ultimately embrace and restore their relationships. But these parties must actually be present in the space for this to happen. At the ICTR, there is no space, there is no involvement that meaningfully engages Rwandans. The entire Tribunal is operated and run by outsiders – creating law and rules in the name of "neutrality – but at the expense of exclusion. Obviously the assumption behind having the Court run by the international community is that it creates an environment of fairness, of impartiality. But from a reconciliation perspective, neutrality cannot be the governing dictate of "justice." Neutrality is useful to the extent it can create a safe, conducive space where true balance, justice and the process of turning to the other, confronting can occur.

Of course, what a "neutral" space looks like that fosters such a process is again complicated in the historical, political context of the Rwandan genocide. The United Nations

[84] Article 12 of the ICTR Statute.
[85] Rule 45 of the ICTR's Rules of Procedure and Evidence.

had very real concerns for placing the tribunal in Tanzania in the aftermath of the conflict. And the role of the international community does provide a legitimacy to the proceedings of the court. Both the international community and Rwandan government agreed that having the international community conduct the trials would give a semblance of a justice.[86] Thus such efforts of the Court exist in a tension of neutrality alongside concerns for relevance and meaningfulness for the actual community being served. But at the very least, knowledge and dissemination about the workings of the Tribunal needed to be more widespread throughout Rwanda. A former prosecutor at the ICTR has acknowledged that "justice without a systematic effort aimed at the widespread dissemination of knowledge about the trials" perhaps is not truly justice.[87] But for many years, the trials were not provided in the national language of Rwanda, Kinyarwanda, and overall outreach was extremely low. Admittedly, changes have been made over the years as the court has made efforts to educate Rwandans on its accomplishments. For example, it has established an information center in Kigali, the capital of Rwanda, which holds a legal library and printed and audio-visual Tribunal material. And recently screenings of audio-visual documentaries on the Tribunal are held in various communes in Rwanda.[88] However, many of these materials, such as a recently published current cartoon book about the history and accomplishments of the Tribunal, are suspect as they ultimately always praise the ICTR and do not provide Rwandans their own perspective to actually participate and evaluate the Court.[89]

Reconciliation is about addressing alienated relationships. Thus, the persons in this relationship must be a part of the process of reconciliation. In the case of Rwandans and the

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[86] Morris and Scharff, *International Criminal Tribunal for Rwanda*, 69-72.
[87] Payam Akhavan, "Justice and Reconciliation in the Great Lakes Region of Africa: The Contribution of the International Criminal Tribunal for Rwanda," *Duke Journal of Comparative and International Law*, 7 (1997): 345.
[88] UNICTR, *The Legacy*, 51.
[89] In 2011, the ICTR released a cartoon book, *100 Days in the Land of a Thousand Hills*, to explain the Rwandan genocide to children. The book concludes with the accomplishments of the Tribunal in prosecuting those who orchestrated the genocide. It also shows Rwandan children visiting the court and seeing the trials which is not a frequent occurrence at the court and I have found no documentation that such visits have ever actually occurred. An electronic version of the book may be accessed on the ICTR's website, www.unictr.org.

ICTR, there is no systemic effort to involve the alienated communities of Tutsi and Hutus. The general population of Rwanda has no meaningful engagement in the Court, making it quite difficult to begin addressing the alienation among communities – at any of the levels of individual perpetrator and victims, alienated communities, the state and its citizenry. The immediate testimony to this is the lack of physical presence of Rwandans among the Court. While the trial itself arguably allows for a perpetrator and victim to be in the same space the trial itself is designed to keep a separation between the two. Victims serve as witnesses for the prosecution and the defense attorneys cross-examine their testimony in the efforts to discredit the testimony as being applicable to the accused.

Moreover, since Rwandans are not present at the Tribunal, there can be no general sense of any persons or persons, whether at the level estranged individuals or communities, confronting the other, acknowledging accountability, and being in the posture to forgive. This is simply not a process that is encouraged or communicated in the remoteness of the Tribunal and the nature of it being run by international actors. This remoteness and international nature, moreover creates a separation between those international lawyers, judges and staff who conduct the Tribunal and the Rwanda it seeks to serve. These international actors create their own rules and guidelines with no eye toward these communities themselves and its relevance to them. If the work of the Tribunal is not relevant to Rwandan society, to the relationships it seeks to restore, its efforts at reconciliation seem more than just remote, but perhaps impossible.

B. Victor's Justice: The Politics and "Neutrality" of the ICTR

As referenced above, one of the main arguments in favor of an international tribunal conducting trials is due to its perceived ability to be a neutral party. This argument assumes that an international body would be a "neutral" apparatus that could conduct trials and weigh and

evaluate the evidence against the accused in an impassioned manner; trials run by a Rwandan judiciary system with Rwandan judges would simply be too biased. While this argument may be true in the isolated instance of a trial of one accused, when one considers who the accused that are brought (and not brought) for trial the perception of international neutrality becomes much more suspect. Since the Nuremburg trials, the application of international humanitarian law through a judicial body has been criticized as a form of "Victor's Justice."[90] These same criticisms have been applied to the ICTR because the Tribunal has only tried state actors from the interim government who orchestrated the genocide, but has not addressed allegations of violations of international humanitarian law by the opposing RPF.[91] A "Victor's Justice" does not imply neutrality. Moreover, this victor's justice potentially re-asserts divides between communities and political segregation, failing to encourage a process for reconciling and restoring relationships between persons and communities.

At the ICTR, the Prosecution's office has only tried *genocidaires,* the government and military leaders of the Hutu-extremist Interim government (and some civilians who were not necessarily government and military leaders) that orchestrated the genocide during the civil war.[92] But it has also been documented and circulated that other violations of humanitarian law occurred in Rwanda by the RPF. These allegations are most thoroughly documented in Alison des Forges' Human Rights Watch report, *Leave None to Tell the Story*. Des Forges reports that during the civil war and the genocide the RPF "took no care to distinguish militia who were armed and potentially dangerous from civilians."[93] Des Forges alleges that the RPF went from house to house killing unarmed inhabitants in some prefectures; killed Hutu civilians with posed

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[90] Martha Minnow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence.* (Beacon Press, 1998), 25-51.
[91] See e.g., Waldorf, "A Mere Pretense of Justice."
[92] A comprehensive list of those who have been tried before the Tribunal can be accessed on the ICTR's website, www.unictr.org.
[93] Des Forges, *Leave None to Tell the Story,* 704.

no immediate danger in several encounters; and generally showed no posture to take prisoners but rather to kill and conducted "deliberate slaughters of noncombatants."[94]

And while the ICTR statute clearly allows for the prosecution of all violations of international criminal law committed in Rwanda in 1994,[95] the ICTR has failed successfully prosecute any member of the RPF. Though this does not mean it has not tried. In 2000, the prosecutor's office began indicting certain RPF members for violations of international criminal humanitarian law. However, prosecutions depend heavily on the cooperation of the Rwandan government to conduct investigations, questions witnesses, among other activities. By 2002, the prosecution's office was unable to continue its prosecutions due to lack of cooperation by the Rwandan government (which has been controlled by the RPF since the end of the civil war in 1994). The Rwandan government imposed burdensome travel restrictions that prevented prosecution witnesses from going to Arusha to testify, which had the effect of adjourning trials for lack of witnesses.[96] The RPF controlled Rwandan government explicitly opposed prosecution of RPF crimes, stating the "Government of Rwanda believes that politically motivated pursuit of members of the RP[F] by the ICTR is not conducive to stability and national reconciliation in Rwanda."[97] Though the prosecutor's office appealed to the Security Council effectively no international pressure was placed on Rwanda to cooperate and the prosecutor put an indefinite hold on its RPF prosecutions.[98]

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[94] Ibid., 705.
[95] The Statute of the Tribunal states that the ICTR "shall have the power to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committeed in the territory of neighboring States between 1 January 1994 and 31 December 1994." Article 1 of the ICTR Statute. The Statute explicitly gives the Tribunal power to try persons responsible for violations of any humanitarian law violations; thus it is not limited to only trying persons for genocide.
[96] Waldorf, "A Mere Pretense of Justice," 1229-34.
[97] Reply of the Government of Rwanda to the Report of the Prosecutor of the International Criminal Tribunal for Rwanda to the Security Council, at 5, U.N. Doc. S/2002/842 (July 26, 2002).
[98] Waldorf, "A Mere Pretense of Justice," 1232-34. The Rwandan government eventually agreed to conduct its own trials in Rwanda for RPF crimes however these trials have been denounced as "sham trials" and ended in acquittal for all accused. Ibid at 1257-58.

The Rwanda government's political will, dictated as the victors of the civil war, the RPF, thus has significant control over the Tribunal. The lack of RPF prosecutions, despite the prosecution office's efforts, demonstrates how connected the "neutral, international" body of the ICTR is to the governing political elite within Rwanda. The tribunal simply cannot conduct trials unless the RPF government approves/d of it. As one legal scholar, Waldorf, states in his critique of the ICTR, "The need for international tribunals to secure state cooperation means that international justice is inherently political."[99] Therefore while the neutrality of the international body may ensure a more "fair and impartial" trial for an individual accused, ultimately all such "fair and impartiality" is put into question when this inherent connection between politics and international law is so blatant in the running of the ICTR.

The politics surrounding the neutrality of the Tribunal causes great concern for the realization of reconciliation. While it is not so simple to equate the RPF to Tutsis and the Hutu interim government to Hutus, the fact that these two political actors are not treated the same under the ICTR has the potential to re-enforce divides within Rwandan communities and politics. The RPF crimes were primarily instituted against Hutus and the Interim government's against Tutsis. For the court to acknowledge only the harm suffered by the Tutsi population sends a message that Hutu victims' grievances are not important. This is of course not to say that those who orchestrated the genocide are the same as the RPF members who violated international humanitarian law. As Des Forges said: "To insist on the right to justice for all victims . . . is not to deny the genocide, nor does such an insistence equate war crimes with genocide; it simply asserts that all victims, regardless of their affiliation, regardless of the nature

[99] Ibid., 1263.

of the crime committed against them, and regardless of the perpetrator, must have equal opportunity to seek redress for the wrongs done to them." [100]

Reconciliation demands that all wrongs, violations are addressed and accounted for. All must be confronted, acknowledged for the alienation to be overcome, to be forgiven. For the ICTR to encourage a process of reconciliation, it must be an institution that recognizes all pertinent grievances (in this case violations of international humanitarian law which is what it has jurisdiction over) so that it promotes all parties to turn toward the other, confront and acknowledge wrong. In the victor's justice of the ICTR, the incapability to bring a certain segment of perpetrators that committed crimes further facilitates Hutu-Tutsi division and alienation, actively working against a reconciliation model.

If RPF crimes were at least addressed at the Tribunal, then a national process within Rwanda would implicitly be encouraged. It would promote that all alienated parties must confront, acknowledge and address the barriers that alienate. In the current instance, tons of victims that have a legal right under international law to have the wrongs committed against them affirmed are excluded. These victims cannot confront, cannot even have an acknowledgement of any wrongdoing. And as already alluded to, from a reconciliation perspective of addressing alienated communities, the Hutu identity of the excluded victims' voices encourages a divide between a long history of estranged Hutu-Tutsi relations within Rwanda.

Another dimension of estrangement further complicating this process is the Rwandan citizenry's estrangement from its state government. In all of its reconciliation initiatives within Rwanda, the RPF government will not permit these crimes to be discussed and will not acknowledge wrongdoing on its part. For example, in Rwanda's gacaca courts which have tried

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[100] Des Forges, *Leave None to Tell the Story,* 90.

thousands of Hutu civilians who participated in the genocide, the RPF crimes are not allowed to be acknowledged.[101] Thus there is an implicit alienation between its citizenry and the government. Again, by being forced to comply to the demands of the RPF government and failing to address the all of the harm amongst the Rwandan citizenry, the ICTR further implicitly fosters this estrangement by not acknowledging accountability of the RPF.

The ICTR operates in a complex political, international sphere that is extremely influenced by the RPF government. The ICTR cannot separate itself and be "neutral" from the complexities of the Rwandan political and social realities. And by virtue of this trait, it participates in the common post-conflict problem of how to truly seek justice. It has endeavored to by an institution of "neutrality," but political realities have prevented this realization. Whatever "neutrality" the ICTR has as an international institution is only useful to the extent it creates and encourages the process of facilitating the confronting, acknowledging, holding accountable the nature of estrangement between persons and communities. However, the realities of the complex political context of the Rwandan experience truly challenge as to how this could even be possible in a practical, political structure such as the Tribunal.

C. The Western Legal Tradition and Retributive Justice at the ICTR

Another legacy that the ICTR carries with it by virtue of it being an international institution is its operating primarily in the Western legal tradition's retributive justice model. The primary basis for this model is one that assumes individual accountability for violations of crimes and having once proven guilt, the individual is punished and sentenced. Individual criminal

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[101] Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (Cambridge University Press, 2010) 252.

responsibility is proven primarily through a common-law litigation process where the prosecution has the burden to prove guilt and the defense, working in opposition to the prosecution, may cross-examine and challenge evidence to establish the failure of the prosecution to prove guilt. The rights of the defendant counterbalance all of the prosecution's efforts. If the panel of judges, who are hearing the case, determine the prosecution has proved guilt, the accused is then sentenced to a certain number of years (and perhaps life) imprisonment. It is retributive justice as it focuses on proving a violation and determining a punishment for the violation. With regard to how the Christian model of reconciliation challenges this practice, this section focuses on two aspects of the retributive justice tradition: the separation this process encourages between perpetrators and victims and the limits of individual accountability to address the interrelated levels of alienation to promote political reconciliation.

The ICTR's retributive justice model is structured to keep the victim and the perpetrator estranged from each other. It is not a model concerned with their relationship. With regard to the process, victims only participate in the accused's trial to the extent of providing witness testimony for the purpose of providing evidence against the accused. As a result, witnesses never confront the accused, never are in the posture to address the accused him/herself so to begin establishing a relational means to reconcile. Rather, victims are subject to cross-examination by the defendant's attorney for the purpose of undermining and question the veracity of the victim's testimony.[102] Reconciliation, as a process, simply does not occur on this individual level between victim and perpetrator.

Moreover, the ICTR has developed explicit protective measures so that victims do not have to show their face before court and may testify behind a curtain for the purpose of

[102] Rule 90 (G) (i) states that cross-examination shall consist of, among others, "matters affecting the credibility of the witness."

remaining anonymous. These protective measures are invoked for a variety reasons such as in the case of rape victims to respect their privacy and the humiliating nature of their injuries or to protect witnesses from facing retaliation by the accused.[103] However, as victim's testimonies are "opposed" to the defendant's interest in establishing innocence, their testimony is obviously subject to cross-examination by the defense. Women have reported feeling even more humiliated and embarrassed at having to explicitly explain their injuries for the defense:[104]

> . . . but when [Uwayesu, a protected witness] took the stand, testifying anonymously from behind a curtain, she broke down. She told the court that she had been *gufatwa ku ngufu*, the Rwandan expression for rape, which translated directly, means "held by force." The defense counsel pounced. According to Uwayesu, they demanded to know exactly what she meant by "rape." She remembers, I told them, "men took their private parts and put them in my private parts." But they said that was enough. They wanted to use the real worlds. But I couldn't Everyone knew what rape was, but they pushed me for more and more detail. I just couldn't.."[105]

Moreover, some legal scholarship has argued that the witness protection instruments and rules invoked by the Court greatly threaten the rights of the defense to fully confront the evidence against him/her and called for more strict rules governing the use of such parameters.[106] Thus the involvement of victims in the trial process only further establishes the division between the relationship between the perpetrator and his/her victims. It only encourages opposition between the two and does not create any space where the perpetrator and victim may confront, acknowledge and possibly forgive.

Once guilt has been established; there is again no space or process for any victim to and perpetrator to partake in the reconciliatory process. It is up to the judicial panel that heard the

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[103] Goren Sluiter, "The ICTR and the Protection of Witnesses," *Journal of International Criminal Justice*, accessed March 31, 2012, http://jicj.oxfordjournals.org/content/3/4/962.full.
[104] Power, "Two Faces of Justice."
[105] Ibid.
[106] See e.g., Joanna Pozen, "Justice Obscured: The Non-Disclosure of Witnesses' Identities in ICTR Trials," *International Law and Politics* 38 (1996): 282-322.

accused's trial and rendered his/her guilt to sentence the perpetrator. Once sentencing has been conducted, the victim and the perpetrator are never to see each other again. Most guilty perpetrators are transferred to different countries other than Rwanda to serve their sentences. The process of punishment and sentencing ensures that victims and perpetrators will never confront each other and thus never be reconciled.

Martha Minnow captured the non-reconciliatory reality of trials best in her description of trials as occurrences that mark a state between vengeance and forgiveness:

> "A trial in the aftermath of mass atrocity, then, should mark an effort between vengeance and forgiveness. It transfers the individuals; desires for revenge to the state or official bodies. The transfer cools vengeance into retribution, slows judgment with procedure, and interrupts, with documents, cross-examination, and the presumption of innocence, the vicious cycle of blame and feud. *The trial itself steers clear of forgiveness, however. It announces a demand not only for accountability and acknowledgement of harms done, but also for unflinching punishment.* At the end of the trial process, after facts are found and convictions are secured, there might be forgiveness of a legal sort: a suspended sentence, or executive pardon, or clemency in light of humanitarian concerns. Even then, a process has exacted time and agony form, and rendered a kind of punishment for defendants, while also accomplishing change in their relationships to prosecutors, witnesses and viewing public. *Reconciliation is not the goal of criminal trials except in the most abstract sense.* We reconcile with the murderer by imagining he or she is responsible to the same rules and commands that govern all of us; we agree to sit in the same room and accord the defendant a chance to speak, and a chance to fight for his or her life. *But reconstruction of a relationship, seeking to heal the accused, or indeed, healing the rest of the community, are not the goals in any direct sense.*[107] (emphasis added)

Minnow's observation highlights the complete lack of attention in the trial to the relationship between the perpetrators and their victims. Thus such trials do not encourage the restoration of alienated relationships nor place the parties even in a position to confront, acknowledge wrongs and open the possibility for forgiveness.

However, international lawyers have also argued that this "abstract sense" of reconciliation is very real and thus that a retributive form of justice can contribute to national

[107] Minnow, *Between Vengeance and Forgiveness,* 26.

reconciliation. Payam Akhavan, a former prosecutor at the ICTR, has argued that the ICTR addresses the culture of impunity in the wake of a mass atrocity and restores a foundation for respect of human rights amongst all individuals. She states, "It is impossible to build a state of law and arrive at true national reconciliation" without eradicating the "culture of impunity" which has characterized Rwandan society for so long.[108] Those "who were taught that it was acceptable to kill as long as the victim was from a different ethnic group or from an opposition party, cannot arrive at national reconciliation unless they learn new values" which can only be achieved "if equitable justice is established and if the survivors are assured that what has happened will never happen again."[109] Through punishment of "those responsible for the Rwandese tragedy," the Tribunal "will help national reconciliation and the construction of a new society based on social justice and respect for the fundamental rights of the human person."[110]

The reconciliation model contemplated in this thesis, in theory, does not disagree with Akhavan's assertion. It also advocates for the realization of countering the "culture of impunity" – confronting and addressing the atrocities that occurred. Punishment for these crimes may counter such a culture, but the focus of this process is not concerned with directly addressing the harms between the victim and the perpetrator. In fact, Akhavan argues that the needs of the victim cannot be central to the process as it could jeopardize the impartiality of the tribunal. She argues a balance must be struck between the integrity of the judicial process and the appeasement of victims' grievances. There must be "no illusions about the limited extent to which a fair and impartial judicial process can accommodate popular sentiments."….although

[108] Akhavan, "Justice and Reconciliation in the Great Lakes Region of Africa," 325-348.
[109] Ibid.
[110] Ibid.

every effort must be made to vindicate the suffering of the victim..it's ultimately about what the accused did or didn't do, not about the victim's suffering."[111]

What the accused did or did not do, from a reconciliation perspective, matters directly because of how it affected the relationship between the victim and the perpetrator. Akhavan's analysis simply fails to understand that punishing for the sake of punishing an act does nothing for reconciliation unless it includes a perspective of how to address what this act did between estranged relationships.

The reconciliation model this thesis proposes thus is most in line with a restorative justice model, where the harm of the victim is the central concern of any judicial proceeding.[112] Restorative justice advocates for confrontation and accountability between the victim and the perpetrator. Its primary focus, however, is with regard to the victim and seeks to address how the victim may be healed from the harm.[113] Restorative justice opens the possibility thus for a posture of forgiveness and restoration between the victim and the violated.

However, when this model is considered within the context of the ICTR and the immeasurable atrocities and harm that occurred in 1994, the practicalities of fostering such a model become apparent. Some of the accused, the perpetrators at the ICTR are estranged from a whole nation of peoples they have harmed. Decades of resentment and animosity exist on both sides. The idea that perpetrators and victims could actually occupy the same space, confront and acknowledge these atrocities, this estrangement toward each other, and perhaps forgive and reconcile seems essentially absurd. Moreover, the accused must accept his or her guilt which obviously will not be the case in many instances. But given these political realities, if

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[111] Ibid.
[112] Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002) 22.
[113] Ibid.

reconciliation is to remotely be a goal, efforts to at least encourage such a model need to be in place, of which there are none at the ICTR.

This discussion on retributive justice has focused on the relationship between one perpetrator and his/her victims. This is due to the design of Western tradition system which focuses on individual accountability. The individual criminal focus cannot capture the whole web of connections attributing to mass atrocities:

> "The central premise of individual responsibility portrays defendants as separate people of autonomous choice – when the phenomena of mass atrocities render that assumption at best problematic. Those who make the propaganda but wield no physical weapons influence those with the weapons who in turn claim to have been swept up, threatened, fearful, mobilized. Those who frame the trial do so to shape a public memory and communal solidarity – yet the focus on select individuals cannot tell the complex connections among people that make massacres and genocides possible."[114]

Because individual accountability does not address the complex connections that led to the horrific harms (and thus estrangement), it also fails to directly address the interrelated ways to encourage political reconciliation: between alienated communities, between the state and its citizenry. Reconciliation demands that the full nature of the estrangement be addressed for alienated persons, communities, societies, nations to reconcile. The individual focus of the trial fails to be able to address the extent of the interwoven societal, communal factors at play within the Rwandan genocide context. When an estimated half of the Hutu population participated in the genocide, the Rwandan experience challenges, as Helena Cobban has observed, the West's cosmological and ethical assumptions about the nature of individual responsibility – genocide is not a "normal" crime.[115] For all the reasons one can list that led to this mass participatory effort to slaughter a population, there is clearly a deeply connected psychological, sociological, political,

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[114] Minnow, *Between Vengeance and Forgiveness*, 47.
[115] Helena Cobban, "The Legacies of Collective Violence: The Rwandan genocide and the limits of Law," *Boston Review*, April/May 2002, accessed March 27, 2012, http://bostonreview.net/BR27.2/cobban.html.

communal interplay of factors accounting for each individual's crimes. This is not to say an individual should not individually be confronted and held accountable but that only pursuing individual accountability fails to address the deeper complex psychological, sociological and political factors that need to be accounted for within the process of reconciliation.

Moreover, since individual responsibility only considers the estrangement between the perpetrator and the victim, it fails to directly address the multiple levels of alienation in the political sphere. It does not, nor is it feasible/capable within the structure of an institution such as the ICTR, to bring together entire communities or social grouping and collectively foster a process of confrontation, acknowledgment, forgiveness and collectively reconcile the relationship between these different entities of the political sphere.

The Western tradition of retributive justice with a focus on individual accountability ultimately does not measure up to promoting a reconciliation process. However, from a practical perspective admittedly, the sheer size and magnitude of the crimes that occurred in the Rwandan context do not make it immediately apparent as to how to construct an institution focused on a restorative justice model or one that can directly address all the different political, complex connections and levels at issue in the Rwandan context of mass atrocity and genocide. There are no easy solutions or "fixes" to these complications, but what is clear that the retributive justice model that pits perpetrator and victim against each other– with no potential for confrontation between the two – actively works against reconciliation.

While this chapter has focused on the many shortcomings of the ICTR to foster reconciliation, one fact is for certain, the establishment of the ICTR, as Martha Minnow has said, departed from doing nothing.[116] The establishment of the ICTR was in itself, at the very least, an act of acknowledgment that a wrong had occurred and needed to be addressed.

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[116] Minnow, *Between Vengeance and Forgiveness*, 1.

However, as stated, reconciliation is a process – an interconnected process of confrontation, acknowledgment, accountability, forgiveness, a process whose focus is on restoring relationships. The explicit acts and decisions of the Tribunal – from creating an institution with no eye toward Rwandans themselves to its retributive justice model – fail to recognize that accountability and acknowledgement testify to reconciliation only when fostered within the greater context of this process.

CONCLUSION

After almost 20 years of this international justice experiment, the ICTR is finally closing down. All but two of its cases have concluded the trial stage and UN management is executing a completion strategy to officially bring an end to the ICTR's workload.[117] The ICTR has even begun recommending cases to the Rwandan national courts.[118] It is an end of an era in the history of the development of international criminal law. What remains now is to reflect on the practices and lessons of the ICTR and consider how each may speak to the future of international criminal law, specifically with regard to the International Criminal Court (ICC), currently the most permanent fixture in the international criminal justice system.

The debate about the utility of international justice mechanisms exists in a much larger debate within the transitional justice and peace-building field. Perpetual discussions are in play as to whether truth commissions, retributive justice trials, reparations, traditional justice mechanisms or some other means are most conducive to promoting justice and reconciliation in a post-conflict society. I do not believe there is one answer, one way to foster these objectives but as a concerned, aspiring international human rights lawyer, I believe it is the duty of all those who participate in such efforts to evaluate and reflect on the efforts of such initiatives.

Within the current context of the rise of the popularity of the ICC, these lessons of the ICTR to international law and this greater debate are important. Within the past month, a massive campaign has been launched throughout the world, calling for the arrest and

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[117] "UNICTR Senior Management Retreats on the Completion Strategy," United Nations International Criminal Tribunal for Rwanda, press release, accessed on March 28, 2012, http://www.unictr.org/tabid/155/Default.aspx?id=1264.

[118] "Cases Transferred to National Jurisdiction," United Nations International Criminal Tribunal for Rwanda, accessed on March 28, 2012, http://www.unictr.org/Cases/tabid/77/Default.aspx?id=7&mnid=7.

prosecution of the infamous Ugandan rebel leader, Joseph Kony. Millions of cries throughout the world have demanded for Kony to be brought to "international justice."[119]

With regard to the development of the international criminal law, international lawyers must question how such institutions truly create space and encourage peace and reconciliation in the world. From a Christian reconciliation perspective, the answer is incredibly complicated – such efforts must consider the political and practical interplays of all levels and spheres of influence of human experience that an institution enters in a post conflict society – from individual victim and perpetrators to the political dynamic of segregation and alienation amongst societal sectors. These complex spheres and levels of human experience must be taken into account. And the efforts to address such spheres must encourage a process of restoring relationships through a turning toward each other, confronting, acknowledging, holding accountable, to ultimately having the space to forgive – this is the dynamic process of reconciling.

The remoteness and exclusion of the ICTR from the Rwandan peoples offers a major warning to an institution such as the ICC, which is based in the heart of the Western World, in Europe. Currently all of the cases being pursued by the ICC are related to conflicts within African nations.[120] ICC lawyers are literally "pursuing justice" a continent away from the societies this justice is most pertinent to. Thus, by simple virtue of its location, international criminal lawyers must realize the ICC's efforts have very little relevance to these African communities. Villa-Vicencio calls these estranged efforts an "imposed justice" when they fail to enjoy local ownership in their proceedings.[121]

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[119] David Goodman, "Backlash Aside, Charities See Lessons in a Web Video," N.Y. TIMES, March 16, 2012, http://www.nytimes.com/2012/03/16/us/backlash-aside-charities-see-lessons-in-a-web-video.html
[120] "All Cases," International Criminal Court, accessed April 1, 2012, http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Cases/.
[121] Villa-Vicencio, *Walk with Us and Listen*, 15-16.

Though there are many political and practical concerns for not necessarily actively engaging the local communities in these international justice processes, such as in the case of ICTR and the deeply imbedded hostilities within Rwanda at the time of the Court's establishment, we must recall that such institutions are seeking transitional justice and reconciliation. If there is no local ownership in these proceedings, if they are completely remote from these communities, how can there be a "transition"? Who is transitioning and to what are they transitioning to? How can there be transition and reconciling when those persons are not involved who these efforts are for?

Ironically enough, the international community and thus these international mechanisms that are "separate" from the local experience are at least usually understood as beneficial because they foster neutrality in these proceedings. However, though they are physically remote and divided from local communities, they are undoubtedly tied to these political realities and can fail to offer such neutrality. This case of the ICTR demonstrates how tied "international justice" is to the Rwandan government to complete its task - it undergirds a concept of Victor's justice and potentially reinforces divides among alienated Hutu-Tutsi relations and the division between the controlling RPF dominated state government and its citizens. Similar issues have arisen in in the efforts of the ICC to "bring to justice" the warlord Thomas Lubanga from the Democratic Republic of Congo. In trying Lubanga, the prosecutor deliberately disregarded facts that Lubanga's Union of Congolese Patriots, a rebel army responsible for murder, rape and torture, was backed by the Uganda and Rwanda. The prosecution ignored this fact because "it would have jeopardized his good working relations with Ugandan officials," as the prosecutor needs the help of the Ugandan government for the pursuit of other cases.[122] Political realities dictate the work of international justice mechanisms and thus "neutrality" cannot be understood as the

[122] Phil Clark, "State Impunity in Central Africa," N.Y. TIMES, April 1, 2012, http://www.nytimes.com/2012/04/02/opinion/02iht-edclark.html?_r=2.

driving dictate to justify the work of international tribunals. For the future of international criminal law, neutrality must be re-conceptualized so to assess how to create a space and a process that fosters, and does not work against, the process of reconciliation

Moreover, like the ICTR, international criminal law in the ICC is practiced within the Western legal tradition of retributive justice and individual accountability. And like the ICTR, international law, indictments from the ICC, are only triggered once a very complex political and social situation has occurred to bring about mass violence and atrocity. Individual accountability simply fails to address such complexity. And in the wake of mass violence and conflict, where it is most practical that estranged and alienated communities need to confront, acknowledge and perhaps forgive each other if for the purpose of co-existing and living together, the divisive mechanics of retributive justice work completely against this process. International criminal law must reflect on the experience of the ICTR and consider the current utility of how it functions and what hope, if any, it has to truly realizing justice and reconciliation. As it stands now, it shares many features in common with the ICTR and has no vision toward encouraging the restoration of estranged relationships and communities. It is simply not a system or mechanism that contributes to reconciliation and needs to re-evaluate its efforts with an eye toward overcoming the alienation and estrangement of the actual communities it seeks to immediately serve.

While the Christian perspective of reconciliation has offered a useful criticism to these features of international criminal law institutions and hopefully challenges its growth and progression, I must recognize the limits of the model offered in this thesis. Reconciliation within the Christian tradition provides a paradigm for contemplating "a way of being" in the world – a way to understand "deep principles of justice and reconciliation" in an ontological sense. However, this "way of being" does not provide specific guidance on how to negotiate the

complex spheres of human existence, of being, within the world. While Christian reconciliation demands involvement of the persons seeking to be reconciled, it does not necessarily provide a clear view as to how to involve such persons in the immediate aftermath of conflict, where hostility and vengeance marks the nature of the relationships. Nor does it provide a concrete view to what extent any of the actors considered in this thesis - the international community, the state, the local community, individual perpetrators and victims – should be involved in the process of reconciliation. Nor does it necessarily prescribe what to do when for an array of political and practical reasons, a victim and perpetrator cannot feasibly "confront" each other. What it provides is a vision for actual human structures, such as international criminal law and its institutions, to consider when constructing their efforts to create space and encourage reconciliation. The challenge for Christian thought is to understand how to negotiate this vision for a "way of being" in the interconnected, complex social and political spheres of humanity.

When my time at the ICTR concluded in August 2011, I departed Arusha with conflicting sentiments regarding the contribution of my work and the efforts of international justice mechanisms – and with the capability of any moral or religious framework to address the complexities surrounding the Rwandan experience. I knew that the ICTR had in so many respects worked against reconciliation amongst Rwandans. I also knew that many of its features – from establishing the Court in a country other than Rwanda to instituting a Western legal retributive justice system – were, at least in part, a result of complex social and political factors that did not immediately make it clear how to encourage reconciliation.

But one thing I was certain of – that particularly in the case of genocide and international war crimes, where humanity is left speechless as to the acts it is collectively capable of (and collectively capable of ignoring) - we must recognize the need to pull from our religious and moral traditions to begin addressing how to ever realize our objectives for justice and

reconciliation. The need for civic reason, to draw from all of human experience to understand how to bring about law's goal of justice and reconciliation, is simply required in our ever growing pluralistic and interconnected international world. And all religious and moral thinkers should be challenged by the complexity of human experience to develop ways to negotiate their traditions within the particularities of conflict societies. The future of international criminal law, the realization of justice and reconciliation throughout the world, depends on it.

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