

XIII. DEALING WITH INTERNATIONAL CRIMES: TOWARDS A CONCEPTUAL MODEL OF ACCOUNTABILITY AND JUSTICE¹

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1. INTRODUCTION

In her Postscript to *Eichmann in Jerusalem*, Hannah Arendt (1963, 186) wrote, ‘I held and hold the opinion that this trial had to take place in the interests of justice and nothing else’. She went on to conclude that many aspects of the trial itself demonstrated ‘the inadequacy of the prevailing legal system and of current juridical concepts to deal with the facts of administrative massacres organized by the state apparatus’ (Arendt 1963, 294). In this she illustrated a central problem in addressing international or state crime. Justice requires the use of law. Yet the law possesses insufficient tools to address this kind of crime. I am not sure that in the meantime much has changed. While we have developed new forms of legal institutions to address crimes committed by the state, most notably the truth commission, we are still grappling with addressing the institutional dimensions of crimes such as genocide. As such, we have not developed new juridical concepts. We are still, largely, putting our hope in individualized legal mechanisms. Our conceptual frameworks are still somewhat limited.

We can identify two sets of problems in how law has in the past, and still today, addresses these kinds of crimes perpetrated by the state. The first is that the particular dimensions of international crime are inadequately addressed through legal processes. By this I mean that the focus is still predominantly on the individual. These are ideological, state driven or state complicit, nation-building exercises. Individuals killing individuals is not what identifies this kind of crime. How to deal with the institutional parameters of international crime is one key

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challenge for a criminological paradigm (by institutional parameters I mean both the utilisation and/or establishment of institutions to perpetrate state crime, as well as its structural causes).

The second is that our approach to the use of law in addressing international crime lacks specificity. By this I mean that in our thinking about how law may best address these kinds of crimes we fail to distinguish between different kinds of international crime and what they may require in adequately tackling them. We have no typology of international crime to which we can connect our various legal responses. These two problems are the focus of this chapter.

In taking into account the institutional parameters of international crime, we may find that new juridical concepts are necessary to properly establish accountability and enable restoration/reconstruction. The chapter suggests the concept of civic liability as a framework for institutional responsibility and accountability. Further, in matching our responses more exactly to the type of crime committed, we may find ourselves suggesting a redefining of justice that, in taking into consideration the varying demands of accountability, reconstruction and prevention in the wake of international crime, takes a pluralist approach to encompass its specific structural, institutional, and individual elements.

The chapter begins with a discussion of the particular parameters of international crime, followed by an outline of current approaches to the legal redress of international crime. This is followed by a discussion of distinguishing between and remitting individual and institutional accountability, focused on the notion of civic liability. Next the problem of matching our legal redress to specific kinds of international crime is considered, with a call for an integrated typology of international crime, followed by a discussion of a broader understanding of justice, including social justice, in the wake of conflict.

2. 'IN THE NAME OF THE STATE'. INTERNATIONAL CRIME AND ITS PARAMETERS

Law is increasingly being used to address state crime – repression, human rights violations, genocide. While few such conflicts were addressed through legal means post-World War II (of the estimated one hundred and eighty two conflicts from 1945 to 1996, just twenty-nine – one sixth – had some legal redress), since the 1980s, this ratio has been changing.² This includes truth commissions, criminal trials – local and international –, specific legislation such as lustration and compensation legislation, reparations claims, and amnesty legislation. In

² Reanalysis of data, primary sources of which are documented in Balint (1996).

some conflicts, only one legal tool was used – in others there has been a combination.

Since the first South American truth commission in Bolivia in 1982 (this was the second truth commission after Idi Amin's 1971 Ugandan truth commission) – which, while not successful itself, was influential on later and more successful truth commissions – we find that a much higher proportion of conflicts involving state crime have been subject to a post-conflict legal process. Compared to the one sixth addressed post-1945, an estimated half has been the focus of legal redress post-1982. Of the forty-three internal conflicts underway from 1982 to 1996, an estimated twenty-two have been addressed through legal means.

The evidence thus is that law is increasingly being called upon as a tool to address the post-conflict situation. Law is playing an ever-increasing role in the redress of acts involving the perpetration of human rights violations by the state. Since 1996 when I tabulated this data, we can add a host of other legal proceedings: Guatemala, Sierra Leone, East Timor, Iraq.

Does our legal redress, however, address the particular dimensions of these kinds of crimes?

The parameters of international crime are structurally different to those of ordinary domestic or national crime. These are crimes, drawing on the genesis of the international legal concept of crimes against humanity, that are violations of human rights on a *sufficiently savage or systematic scale* (see Goldenberg 1972, 13, and Schwelb 1946). When systematic violations are committed by the state or emerging state, this requires the participation of some if not all of the institutions of the state, necessitating the potential transformation, in whole or in part, of some if not all of these state institutions, and/or the development of institutions by the state or branches of the state for this purpose. We see this in the formation of the *Interahamwe* eighteen months prior to the Rwanda genocide, and its transformation into an armed militia by the ruling post-independence party in Rwanda, the MNRD. Further, what we often see are complicated and complex relationships between perpetrators, victims, bystanders including a particular historical relationship. A change of regime will not necessarily mean the harm has been redressed. That discrimination in the areas of education, training, and government employment against the Tutsi minority in Rwanda effectively ceased with the change of government in 1994, as noted by a US State Department report, is no surprise (Bureau of Democracy, Human Rights, and Labor 2003).

What makes these crimes particular is not necessarily their numbers, but rather their place in the life of a nation: these are crimes committed generally 'in the name of the state' (the existing state or state to be), utilising state or state-like institutions, and committed as part of state or emerging state policy. They are not rape plus murder plus displacement, but crimes committed as a whole package of destruction and displacement of nations, groups and peoples. Of necessity they

harness and transform institutions and engage and are rooted in particular ideologies and structural inequalities and histories.

This point of the institutional parameters of such crime is made clear in the context of Rwanda by Alison des Forges and René Lemarchand, both long time scholars of Rwanda. Lemarchand (1995, 8) writes:

'The Rwandan genocide is neither reducible to a tribal meltdown rooted in atavistic hatreds nor to a spontaneous outburst of blind fury set off by the shooting down of the presidential plane on April 6, as officials of the Habyarimana regime have repeatedly claimed. However widespread, both views are travesties of reality. What they mask is the political manipulation that lies behind the systematic massacre of civilian populations. Planned annihilation, not the sudden eruption of long-simmering hatreds, is the key to the tragedy in Rwanda'.

Des Forges (1995, 44) notes:

'Extremists used its administrative apparatus, its military and its party organizations to carry out a "cottage-industry" genocide that reached out to all levels of the population (...). Those with state power used their authority to force action from those reluctant to kill'.

We see it too in the motivations and structure of the Armenian genocide, described in its wake by the Ottoman Senate president as an 'officially' (*resmen*) sanctioned 'state' crime (*devlet eliyle*) (Dadrian 1994, 10). The later aborted Courts-Martial proceedings acknowledged this: one witness spoke of 'doing government business' (Höss 1992, 220). It is clear that the destruction of the Armenians was a policy of the Turkish state at the time. As Stephan Astourian (1992, 69) notes, the *Aghed* is an essential part of Kemalist Turkey's birth certificate. It was integral to the pan-Turkish ideology of the state, a 'mystical vision of blood and race' which sought a Greater [homogenous] Turkey and was a repudiation of Ottomanism (Astourian 1992, 69). It was carried out by individuals, yet not just any individuals, but soldiers and officers in the Turkish army. As such, it was carried out within the framework of the institutions of the state.

And while Head of State Hitler never signed his name to documents regarding the deportation and extermination of Jews and others, it is known, through knowledge of the command structure of the German state, that such documents had Hitler's implicit approval and that they were carried out in the name of the German state, within the framework of the institutions of the German state, and according to its ideology of National Socialism. The murder of civilians was state policy, and as such, although perpetrated and orchestrated by individuals, constituted an act of state.

An argument for the state (and non-state) institutional parameters of the crime to be recognised is not an argument for the abolition or the tempering of individual responsibility. Tim Mason makes this point clearly in a discussion of the deficiencies of the ‘intentionalist’ approach to the Nazi regime in comparison with the ‘functionalist’ approach. Mason (1981, 30) notes:

‘To argue that the dynamic of Nazi barbarism was primarily institutional and/or economic does not entail any denial that Hitler was a morally responsible political leader who made choices which were inspired by distinctive malevolent intentions – it is only to insist that his will cannot carry the main burden of explanation’.

As Mason (1981, 30) stresses, ‘explanation is one thing, responsibility something else’.

3. INDIVIDUALS AND INSTITUTIONS. LEGAL APPROACHES TO INTERNATIONAL CRIME

When international crime has been addressed, what then have been the main approaches? We can characterize them roughly as follows:

- *Addressing individuals as individuals, yet still in their organizational capacity.* International Criminal Tribunal for Yugoslavia, International Criminal Tribunal for Rwanda.
- *Addressing individuals as individuals who perpetrate crime.* Rwandan national criminal trials.
- *Addressing individuals as members of organizations.* International Military Tribunal at Nuremberg, Turkish Special Military Tribunal, Lustration processes in post communist Eastern Europe, the Dergue military council on trial in Ethiopia (the Dergue trial), some joinder indictments at the International Criminal Tribunal for Rwanda.
- *Addressing the state as the state.* International Court of Justice case: Bosnia and Herzegovina v. Serbia-Montenegro.

And what we see emerging:

- *Addressing institutions and individuals.* South African Truth and Reconciliation Commission, East Timor Commission for Reception, Truth and Reconciliation.
- *Addressing individuals as members of communities.* Rwandan *gacaca*, East Timor *nahe biti* (within truth commission process).

- *Addressing structural dimensions to state crime.* Guatemalan socio-economic accord, East Timor Truth Commission recommendations. We can add here new constitutions, new legislation, new citizenship requirements.

When institutions have been addressed, what has this looked like? Institutional responsibility has been addressed in three main ways:

- *Criminalisation of institutions addressed through collections of individuals.* International Military Tribunal at Nuremberg.
- *Institutions as groups of individuals with a 'common plan'.* International Criminal Tribunal for Rwanda, the 'joint criminal enterprise' of the International Criminal Tribunal for the former Yugoslavia, the 'common purpose' in the Statute of the International Criminal Court, Dergue trial, United States Nuremberg War Crimes Trials.
- *Institutions made up of criminal individuals.* Lustration, denazification.
- *Institutions addressed in a non-criminal manner.* South African Truth and Reconciliation Commission, East Timor Commission for Reception, Truth and Reconciliation.

The individual war crimes trial is the common image of the approach taken to addressing international crime. And largely this is correct. The dominant approach, mostly, has been to address these crimes through putting individuals on trial. However, if we look through our case studies beginning with the Ottoman Courts-Martial at the end of World War I, we can see that quite often there has been some attempt to place these individuals within their organisational role – as Heads of States, as Army commanders, as state officials. In this way, it could be argued, there has been some attempt to get to the institutional state nature of this kind of crime. Slobodan Milosevic was brought to trial as former Head of State – and his charges (for Kosovo, Bosnia-Herzegovina and Croatia) were deliberately joined (see *The Prosecutor v. Slobodan Milosevic*). The first two judgments of the International Criminal Tribunal for Rwanda, the Akayesu (*The Prosecutor v. Jean-Paul Akayesu*) and Kambanda (*The Prosecutor v. Jean Kambanda*) judgments, illustrate clearly the manner in which the Rwandan genocide was perpetrated and locate the crimes committed by these two officials within the wider context of the genocide.

Of course, testimony in the trials to which people with no command responsibility for the genocide were brought (for example the Rwandan national criminal trials) can provide information that sheds further light on the perpetration of the genocide. Yet while an individual judgment may importantly help furnish an account of a particular conflict, the nature of the criminal trial

means that any accountability will rest only with the individual – there is no possibility of the allocation of a wider accountability.

At the Ottoman State Special Military Tribunal in the wake of the Armenian genocide (briefly held, then aborted), the institutional dimension can be seen in the defendants being grouped according to their position in the state, and according to the institution to which they belonged. This was explicit recognition of the connection between individuals and the institutions to which they were affiliated and which constituted their identity during this period. Individuals were grouped and put on trial in the following categories: Ministers of the two Wartime Cabinets, Ittihadist Leaders, Central Committee Members, Responsible Secretaries and Delegates, and various local officials.³ Amongst its findings, the Court found the Cabinet Ministers guilty both of orchestrating the entry of Turkey into World War One, and of committing the genocide of the Armenians. At the International Military Tribunal at Nuremberg the main group of defendants was linked to a list of organisations and institutions of Nazi Germany, yet still tried as individuals: the indictment of the International Military Tribunal against the twenty four former Nazi officials was directed against them 'Individually and as Members of Any of the Following Groups or Organisations to which They Respectively Belonged (...)' (*Trial of the Major War Criminals* 1947, 27). The idea there was two-fold: both to demonstrate a 'common plan'⁴ and to make it a criminal offence to have been a member of organizations declared criminal as a result of the trial – making it easier for subsequent trials. Further, the plan was to find particular organizations to be criminal as such.

The judgment of the International Military Tribunal found the following organizations to be criminal: part of the Leadership Corps of the Nazi party, the Gestapo, the SD, and the SS (*Trial of the Major War Criminals* 1947). These organizations were then banned. The Tribunal found the SA, the Reich Cabinet, and the General Staff and High Command not to be criminal in character. It has been argued that if the Tribunal had found the General Staff and High Command to be criminal, then it would have had to find the equivalent in other countries, namely the Allies' bombing of Dresden for example, criminal as well. As it was, the finding that the Wehrmacht was not a criminal organization created a long lasting public impression both inside and outside Germany (in part never refuted) that the Wehrmacht were not involved in the systematic persecution of Jews and others. The criminalisation of institutions risked authorising the principle of 'collective responsibility' – yet it also resulted in absolving certain institutions –

³ For an English translation of the Indictment and Sentence of the main trial, see Kazarian (1971). For information on the trials, see Dadrian (1997).

⁴ See Minutes from the International Conference on Military Trials, London, July 2, 1945, Justice Jackson explaining the American proposal, which was accepted in the face of Soviet opposition to trying organizations, in 'Related Documents', French (1972).

notably the Wehrmacht – of their responsibility, and putting no onus on them to institute change.

More recently, judgments of the International Criminal Tribunal for the former Yugoslavia have used the concept of ‘joint criminal enterprise’ (evolving from the ‘common plan’ at the Nuremberg International Military Tribunal). The Statute of the International Criminal Court (Article 25 (3)(d)) speaks of ‘common purpose’. As the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the *Tadić* case noted, ‘(...) Whoever contributes to the commission of crimes by the group of persons or some members of the group, in execution of a common criminal purpose, may be held to be criminally liable (...)’ (*The Prosecutor v. Dusko Tadić*, para 190).⁵

Attempting to establish a ‘common plan’ can also be seen in the ‘joinder’ indictments at the International Criminal Tribunal for Rwanda and the Dergue trial in Ethiopia. Indicted as a group, yet judged separately after joint hearings, the idea is that the common crime – for example genocide – has a greater chance to be proven through the illustration of a ‘conspiracy’ or ‘common plan’. Each may not necessarily be accused of the same set of crimes, but potentially a different configuration of crimes. It answers what defence lawyers have argued: that it is impossible for one individual to commit genocide. The ‘joinder’ approach was anticipated at the onset of both the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia: both sets of *Rules of Procedure and Evidence* made provision for such an approach (see Rules 48 and 49).⁶ The MRND (the single party of President Habyarimana, many of whom were the organisers of the genocide) indictment grouped together eight former Rwandan politicians (*The Prosecutor v. Augustin Bizimana et al*). Another joinder focused on four key military leaders (*The Prosecutor v. Théoneste Bagosora et al*). Another indictment was filed for accused from the Butare region (*The Prosecutor v. Pauline Nyiramasuhuko et al*). A further joinder linked three media figures (*The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*). The argument made by the Prosecutor’s Office of the International Criminal Tribunal for Rwanda was that without a joint indictment, the charge of conspiracy cannot effectively be demonstrated, and that the conspiracy to commit genocide necessarily involves more than one person. As Senior Trial Attorney James Stewart (cited in *Ubutabera* 1998) noted, ‘Individual trials are no longer effective; they do not represent the theory of the criminal responsibility of accused’.

⁵ For a useful discussion of the doctrine of joint criminal enterprise, see Powles (2004).

⁶ Rule 48, ICTY and ICTR: Joinder of Accused. Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried. Rule 49, ICTY and ICTR: Joinder of Crimes. Two or more crimes may be joined in one indictment if the series of acts committed together form the same transaction, and the said crimes were committed by the same accused.

The important potential of the ‘joinder’ indictment is a demonstration of the scope of the crime. Joining significant individuals can illustrate the systematic and coherent nature of the killing and dispel the myth of its ‘inevitable’ nature. In demonstrating the planned nature of the genocide (and other international crimes), its institutional parameters (the executive, the military, and the media, for example, as key players) may be illustrated.

A similar approach to the joining of individuals was taken by the United States military prosecutors in the post-World War Two trials of German war criminals in Nuremberg. The twelve war crimes trials were based around significant associations in Nazi Germany: the Medical Case, the Milch Case, the Justice Case, the Pohl Case, the Flick Case, the I.G. Farben Case, the Hostage Case, the RuSHA Case, the Einsatzgruppen Case, the Krupp Case, the Ministries Case, and the High Command Case (*Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*). The individuals were tried in groups according, in the main, to a central affiliation and association, both state and non-state. Undoubtedly the trials served to prove another point: the penetration of Nazism through all layers of German society. The prosecution of I.G. Farben directors, however, resulted in more than individual accountability: the corporation was broken up into smaller entities, and all its board members were imprisoned.

The process of lustration can be considered a further mechanism that addresses institutional complicity. In the post-communist context lustration has also been termed ‘decommunization’, and in the Nazi context, ‘denazification’. In the post communist context, as Jirina Siklová (1999, 248) notes, it is the process of screening individuals in positions of political or economic influence in order to determine whether they once had ties to the former state security service. It is an attempt both to ‘cleanse’ institutions and to penalise individuals for belonging to certain organisations, declared criminal. In its practice it includes the removal of certain persons from public positions, as well as the barring of certain persons from holding public office in the future. It has been shown, however, that in its focus on individuals staying in particular office, it has not been effective in either the transformation of these organizations or in the curtailing of individual activities. In regard to the screening laws of the Czech Republic, Siklová (1999, 255) notes that it does not affect high-ranking Communist Party members, or StB (the former state security service) officers for whom spying was a job description. In the Polish case, as illustrated by Maria Los and Andrzej Zybertowicz (2000), former high-ranking Communist Party members do not seek employment in the public sector – rather they have entered the private sector, and form the present *nomenklatura* network of patronage. The South African Truth and Reconciliation Commission chose not to follow a policy of lustration. Desmond Tutu, in his

introductory statement, did state, 'It is suggested, however, that when making appointments and recommendations, political parties and the state should take into consideration the disclosures made in the course of the Commission's work' (Truth and Reconciliation Commission of South Africa 1999a, 3).

There has been little conceptualisation of international crime as state crime (the recently concluded International Court of Justice case brought by Bosnia-Herzegovina against Serbia-Montenegro being an important exception (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide – Bosnia and Herzegovina v. Serbia and Montenegro*). Nor has there been much attempt to address the structural causes of international crime. While it may be too simplistic to argue that the dominant approach to war crimes trials and international crime in general has been 'putting individuals on trial', we can question the extent to which the dominant approach has indeed been one that conceptualises international crime as acts perpetrated within the framework of a state body, within state policy, and reliant on the institutions of the state to perpetrate it. Most legal approaches have used the institution as a tool of organization in putting individuals on trial, rather than addressing it as such.

We can also question the extent to which these processes recognise the structural and historical dimensions to these kinds of international crime. This is exemplified by the approach taken to World War II crimes in Germany. While international trials were held early on, and an extensive program of local trials held later, and while the Nazi party was outlawed, Germany's citizenship provisions have only relatively recently (January 2000) been changed, with the principle of birth (being born in the country) making individuals eligible, rather than, as was formerly the case, the principle of descent. This I would suggest constitutes a significant change to the body politic in Germany, allowing for the political inclusion and recognition of those who had previously not otherwise been considered properly 'German'. Focusing on the particular institutions and individuals that constituted Nazi Germany, it could be argued, is not sufficient to provide a basis for reconstruction, if we are to consider systematic discrimination suffered by Turkish immigrants. In order to achieve both accountability and reconstruction (a hope for 'never again') the structural dimensions to this crime need to be addressed. Citizenship – or the understanding of who may properly be a citizen – can be considered a key part of this. In the context of redress for the long-standing crime of apartheid in South Africa, Mahmood Mamdani has pointed out that – regardless of the institutional hearings – the focus on individual violations in the Truth Commission process missed the larger structural dimensions of apartheid (the Pass Laws, the forced removals) and the impact of the apartheid policy not just on individuals but on communities (Mamdani 2000). How redress can take into account both the individual, as well as the communal

and institutional dimensions when considering the perpetration and impact of these crimes, is a core challenge.

We are seeing the introduction of measures that recognise both individuals and communities – the *gacaca* proceedings in Rwanda purport to be communally based, as were the East Timorese truth commission *nahe biti* reconciliation hearings. Yet, as we have heard from individuals subject to those processes, while these may be one layer of reckoning and accountability, the other of structural change is considered to be of utmost importance. In the context of post-independence East Timor, in a study of community views of the truth commission's community reconciliation process, Lia Kent (2004) found that many victims were frustrated with the lack of attention to continued economic inequalities. As she noted, several victims expressed the view that the deponents are still 'living well' (i.e. prosperously); working in civil service positions, as teachers and for the police; while those who were pro-independence continue to be *aat nafatin* (still living poorly). As one man noted (Kent 2004), 'Economic issues need to be resolved before anything else. We can't just leave the problems of justice but we can't talk about justice if we are hungry'.⁷

We are seeing the introduction of some measures that recognise the structural dimensions to state crime: the South African Truth Commission institutional hearings and subsequent recommendations, the East Timor Truth Commission and subsequent recommendations, the socio-economic accord struck in the wake of the conflict in Guatemala. We can place here also new constitutions, new legislation, new citizenship requirements. The context of these is, however, critical. This is evident if we look at how the Rwandan government has used its 2001 law (Law No 47/2001 of 18/12/2001) punishing any speech or action that promotes discrimination or sectarianism as a tool of intimidation. This law, which may appear to counter the discriminatory propaganda used as a key tool in the 1994 genocide, is now said to be used itself as a means of government repression (Amnesty International 2004).

The decision to investigate some of the key institutions in South Africa under apartheid entailed a recognition of the framework within which such dehumanisation and oppression was possible, the institutional parameters of such crime. It involved a recognition of apartheid as a crime formulated by the state executive, implemented by the state legislature, and complied with by a number of state institutions such as the judiciary, the armed forces and the police,

⁷ Lia Kent, PhD candidate in the School of Political Science, Criminology and Sociology at the University of Melbourne, is currently expanding this study to examine the relationship between local, national and international understandings of transitional justice in Timor-Leste.

and a crime which was also supported by a number of non-state institutions (albeit with strong links to the state) such as the Church.

While the bulk of the South African Truth and Reconciliation Commission hearings were individual hearings, the Human Rights Violation Committee also established 'institutional', 'group', and 'special event' hearings. These hearings were designed to illustrate and examine the structure of apartheid – to examine the main state and non-state institutions in apartheid South Africa, to illustrate those groups particularly affected by apartheid or who were not well enough highlighted in the individual hearings, as well as to focus on particular 'special' areas or events, which may be seen as a microcosm of the functioning of the apartheid system and/or which were seen as warranting special attention. The institutions selected were those the Truth and Reconciliation Report termed 'influential sectors of the apartheid society'. These were all sectors, the Report noted, which had 'come under attack for what was seen by some as their complicity with the apartheid system' (Truth and Reconciliation Commission of South Africa 1999b, 2).

The institutions and sectors identified by the Commission, and made the subject of hearings, were the media, business, prisons, the faith community, the legal system, political parties, the armed forces, the State Security Council, and the health sector. All hearings were reported on in the Final Report, and comprehensive recommendations made. The Commission also convened hearings on three areas that they believed warranted special attention: compulsory military service, children and youth, and women. Each of these hearings received attention in the Final Report. In addition, they convened what were termed 'special event' hearings: the Trojan Horse Hearings, the Caprivi Hearings, and the Mandela United Football Club Hearings.

The failure of the Truth and Reconciliation Commission to focus more directly on state institutions was an unfortunate omission. Separate hearings on the police, for example, would have provided stronger and more consistent recommendations for the South African police force, as well as a truthful accounting of their role during the apartheid era. Separate hearings on the secret service would also have been an important contribution. Similarly, although separate hearings were held for the Armed Forces and the State Security Council, these were not recorded separately. Rather, the findings were recorded within a wider discussion of the state in the Final Report. The important role played by these institutions, and the way in which they were harnessed and transformed to apply apartheid policy, as well as how they interpreted it themselves, would seem to warrant separate treatment in order to highlight the integral role these institutions played.

That said, the inclusion of particular groups and institutions within the Truth and Reconciliation Commission truth-finding process is an important model for

including institutions, not only individuals, within such a process. It is an attempt to investigate more fully the parameters and the components of state crime, and to establish accountability across the spectrum. The Truth and Reconciliation Commission is one clear, non-criminal, example of institutional inclusion in addressing the crimes committed. Yet the Commission has no inherent power to follow up its own recommendations. Nor is there any regulatory structure to ensure such follow up. Its final recommendations were intended to be taken up by Parliament and the institutions themselves.

Importantly, the institutions harnessed by the state, that make it possible for state crime to be committed, are not always strictly state institutions. They may include religious institutions, the institutions of business, and other institutions of civil society and public governance. Some of these were indeed targeted by the South African Truth and Reconciliation Commission in its institutional hearings (as well as more recently in the hearings of the East Timorese Truth Commission, findings that have not been embraced by the ruling Timorese government – despite being presented to the President at the end of October 2005, who presented it to the Parliament at the end of November 2005, the report is yet to be discussed in Parliament). The role of the Catholic Church in the deeper acceptance and promotion of discrimination against and exclusion of Jews in Germany from 1933 has been explored by many scholars (see, for example, Lewy 1964). Equally, the role of the Dutch Reformed Church in the apartheid era was investigated by the Truth and Reconciliation Commission. So too has the participation of the medical profession, particularly in the Holocaust and the Armenian genocide (see, for example, Dadrian 1986; Lifton 1986; Müller-Hill 1988). With regards to the Catholic Church, some of these issues were explored internally in the wake of the Holocaust, culminating in the apology for the silence of the Catholic Church during the Holocaust given by the Vatican in May 1998.

4. CIVIC LIABILITY. CONSIDERING INSTITUTIONAL ACCOUNTABILITY

As demonstrated by the South African Truth Commission model (and most recently by the East Timor Truth Commission hearings), addressing state crime requires unravelling the institutional responsibility of the state and civil institutions, and providing for the possibility of institutional transformation. We need to determine how institutional accountability may fit in with overall accountability for state crime. Further, we need to work out ways of addressing the *institutional dimensions* of state crime. It is necessary to acknowledge the different components of state crime and seek remedial paths that may encompass these layers. We can allow for a combination of accountabilities – social, political

and legal – for which law can establish an important framework. This requires an understanding of the different layers of responsibility, complicity and accountability.

In recognising these different types of responsibility and accountability we must firstly distinguish between – and remit – individual and institutional accountability. Secondly, in considering the particular justice demands of different kinds of international crime, we must reconceptualise our understanding of post-conflict justice. This section will consider the first proposition. The outcome I am suggesting is a distinction between criminal liability (key leaders) and civic liability (key institutions).

The importance of specifically addressing institutions is demonstrated by José Zalaquett, activist and lawyer during the Pinochet regime, who later served on the *Rettig Commission*, the Chilean Commission on Truth and Reconciliation:

'(...) from an ethical position, the ultimate purpose of dealing systematically with past human rights abuses is to put back in place a moral order that has broken down or has been severely undermined, or to build up a just political order if none existed in historical memory. Building or reconstructing a morally just order entails developing a political culture and setting in place values, institutions and policies that will guard against the repetition of the type of atrocities committed in the past. This has an assertive role in that certain values and institutions are affirmed. It also has a preventive role: one may not be able to ensure that these atrocities will never happen again, but at least one can create a system to act as a bulwark against their recurrence.' (Zalaquett 1995, 45)

It has been suggested that criminalisation of institutions is a risky path. Like lustration, it runs the danger of operating on an assumption of guilt and some level of collective responsibility. The danger too (as we saw in the case of the German Wehrmacht) is that if institutions are not found to be criminal this can lead to the potentially erroneous conclusions that they are in no need of transformation nor bear responsibility for the harm perpetrated. It is, however, important that institutions be addressed. Civic liability is put forward as a way to conceptualise institutional non-individual accountability, a core component of international crime.

Institutions cannot be part of the criminal justice process. They can however be part of a process of *transitional justice*. As such, they can incur what may be termed *civic liability*.

Civic liability derives from the fundamental responsibility owed by state and non-state institutions to the society in which they are located. Civil society depends for its well-being upon a framework of strong institutions. The abrogation of the responsibility of such institutions to the wider civil society through their participation in the perpetration of gross violations of human rights means that

they fail in their duty of care and assume a civic liability. Examples of this include the failure of law to give victims the protection they are entitled to within the existing national legal system. It also involves the failure of the United Nations to effectively intervene and to protect. The concept of civic liability is, therefore, a way in which the institutions of the state – and the state itself – may be allocated responsibility. It distinguishes the liability of the institution from the liability of the individual. It is a way of demonstrating that liability for state crime does not lie solely with the individual (adopting the first step of Fisse and Braithwaite's (1993) corporate crime Accountability Model – identifying institutions and organisations as participants in state crime).

Civic liability offers a framework within which an investigation of how such offences were committed and/or supported by these institutions can take place, and secures a process whereby reforms are explored and implemented. It may be possible, and desirable, to put certain key members of the organisation or institution on trial for these crimes: clear cases are key strategists of the executive, the military, and the police, or individuals within other less central institutions such as the church or the medical system for their own participation.

A priest who gives a sermon in Rwanda supporting the killing of Tutsis, bears both personal responsibility and is an agent of institutional responsibility. For the former, criminal liability may be allocated – for the latter civic liability. Institutions which carry out or more indirectly support genocidal policies do bear an important responsibility for state crime. While individuals may come and go, institutions remain through changes of regime. It is therefore crucial that they be addressed as part of a matrix of accountability for state crime. The giving of an apology by a current state leader for crimes committed by previous executives is an example of this.⁸

Civic liability can thus be broken down into three stages: the selection of key members of particular organisations and institutions for individual criminalisation (criminal liability); the transformation of institutions through the assumption of responsibility by institutions for their actions in an active manner; and the external and internal monitoring of this. That is, institutions are not simply held passively responsible under law for the past; they are invited to manifest the virtue of taking active responsibility for a transformed, substantive rights-respecting future.

The term 'civic liability' originates from this duty of institutions, state and non-state, to protect and nurture civil society, a duty failed during the perpetration of state crime. Institutions can fail in both an active and a passive manner: either

⁸ See further, Nesam McMillan's work, PhD candidate in the School of Political Science, Criminology and Sociology at the University of Melbourne, on the role of apology and acknowledgment in relation to the Rwandan genocide (part of a wider project on the international response to the genocide).

as a core institution such as the police, the military, and the executive that actively plans and participates in the crime, or possibly a less core institution such as the church or a national association that may be less active, but still supportive in a secondary manner of the crimes committed.

How to acquit this civic liability? Through participation in truth-finding processes such as truth commissions, in which the workings of the institution and its precise role are identified. Through internal transformation, whereby recommendations are implemented. Through using current international human rights frameworks as benchmarks. Through civil compensation whereby institutions remit some type of debt to victim groups. This is not to abrogate their criminal liability, focused on the key individuals in the institutions; rather it is a different level of liability more appropriate to the institution or association and its role in the society. Civic liability is connected to institutional transformation.

Civic liability applies to both state and non-state institutions and organisations. However, whereas with state institutions, transformative practices can be imposed, this is more difficult with non-state institutions which may enjoy a special status or not have any kind of formal relationship with the state (the difference between a private security organisation which needs to be registered with the state, and the church which does not). It is with these non-state institutions that a process of institutional hearings such as that employed by the South African Truth and Reconciliation Commission can be most effective: a state framework for the review of these institutions and their role, and the provision of recommendations for change. The final set of recommendations in the Report of the Commission highlighted the importance of economic justice in achieving a strong and meaningful human rights culture in order to ensure no repetition of the past and called on the business community to implement particular changes. These investigative hearings contain an expectation of transformation.

Civic and criminal liability – institutional and individual – can make a powerful and effective combination. In the case of individual liability, law can reach behind the veil of potential absolution (as a church leader, a doctor, a lawyer) provided by their institution, and identify individuals in these institutions for criminal action. In such a context, in 1999 the Rwandan President Pasteur Bizimungu stated that no Rwandan is above the law. Addressing a reburial ceremony for 20,000 victims in April 1999 in Kibeho, Gikongoro prefecture to mark the fifth anniversary of the genocide, he asked how long the Catholic church would ‘continue to ignore accusations by Christians’ against Gikongoro’s bishop, Augustin Misago. The bishop, who was present at the ceremony, has been accused of involvement in the killings. ‘The Rwandan state did not place Bishop Misago above the law and is not afraid of him,’ Bizimungu said, according to Rwandan radio. ‘We shall only intervene if the church continues to do nothing’ (Integrated

Regional Information Network for Central and Eastern Africa 1999). A few days later, the bishop was arrested on genocide charges.

A two-phase accountability process can be identified:

- (1) The immediate project of legal remedy. This is the establishment of causation, responsibility, and potential liability. It includes in its approach both the recognition of the parameters of a state crime, and significant addressing of key perpetrators and remedies for victims (thus both 'specific' and 'societal' remedies) for the offences committed, including the establishment of a regulatory framework for institutional reorganisation and transformation.
- (2) The ongoing forward-looking project of transformation (societal and institutional) and the assumption of responsibility for redress for what has occurred. This second stage includes an emphasis on broader societal and state reconstruction.

There are clear and necessary links between the projects of immediate legal remedy and societal transformation. Civic liability is one important link between the two phases – establishing a framework for transformation. The concept of civic liability is put forward as a way in which the institutions of the state may be allocated responsibility within law. It is a way of demonstrating that liability for such crime does not lie with the individual only.

A further plank in the project of accountability and societal transformation is matching our legal redress to the specificity of the crimes, connecting the particular causes of crimes to their legal redress, leading to a possible redefining of post-conflict justice. The next section will consider this proposition.

5. A TYPOLOGY OF INTERNATIONAL CRIME? MATCHING LEGAL REDRESS TO SPECIFIC CRIMES

In thinking about the relationship between international crime and legal redress, it seems important to consider the differences and similarities between the different types of international crimes. One failure I would suggest in our approach to addressing international crime is the lack of specificity in approach. What would seem to me to be important is the development of a typology of international crime that identifies different causes, different structures, different victim groups, different motivations. This is both if justice in terms of strict accountability and any broader reconstruction is to be achieved – goals that are increasingly put forward as central in the wake of state orchestrated harm. While we can identify

certain similarities between international crimes, we can also find particular differences, requiring a different matrix of legal redress. Not all genocides are the same, nor all crimes against humanity. A typology of international crime would cut through in a different way the core crimes of genocide, crimes against humanity, and war crimes. The current lack of specificity in what we are addressing means the redress is less effective in terms of accountability, reconstruction and prevention. What we can observe is that there have not really been typologies of international crime developed in the way that there have been typologies of genocide – this would be a useful project for a supranational criminology.

We have part typologies of these crimes. There have, for example, been typologies of genocide: Ward Churchill's (1986) and Israel Charny's (1994, 1999) 'degrees of genocide', and Helen Fein's (1990), Leo Kuper's (1981), Barbara Harff and Ted Gurr's (1988, 1989), and Vahakn Dadrian's (1975, 1976) contextual typologies. These typologies include acts commonly termed 'international crime' – yet give us causal explanations that we do not generally find in, for example, the transitional justice literature.

Harff and Gurr's typology, for example, is important in its distinction between hegemonial and xenophobic genocide,⁹ and in their identification of politicide in which the victims are distinguished, they note, not primarily by communal identity but by their political orientation. This becomes important in terms of the extent to which these crimes are systemic, or an isolated case. Raphael Lemkin's (1944) definition of genocide was itself a kind of typology of destruction. R.J. Rummel (1994) proposed the term *democide* to denote killing by governments, demonstrating that there are subsets of state crime. Irving Horowitz (2002) and Pieter Drost (1959a, 1959b) recognized the link to the state.

'State crime' itself has been defined and conceptualised by a number of authors. Connecting the conceptual work done on state terror and state crime to a matrix of international crime more narrowly defined would be a useful exercise in determining accountability and prevention strategies. We can usefully draw on these for a causal typology of a more narrowly defined 'international crime'.

Gregg Barak (1991a, 1994) argues the necessity of focusing on the structural and organisational nature of governmental abuse, drawing a spectrum from proactive state criminality such as the repression of the Chinese demonstrators in Tiananmen Square in 1989 and the Iran-Contra affair, to crimes of omission in the context of the US such as the denial of sufficient and adequate housing to the homeless and the informal economy and the traditional forms of criminal activity it produces, and the denial of the fundamental right to work for an adequate

⁹ 'In the former the primary motive is to subordinate a communal group by killing enough of its members that the survivors have no will or capacity to resist, whereas in the latter ideology calls for the elimination of the offending communal group.' Harff & Gurr (1988, 368).

income. He connects a concern with state criminality to class and social justice worldwide.

Kauzlarich (1995) and Kauzlarich et al's (2001) typology based around victims and types of state crime is another useful starting point. Kauzlarich et al's (2001) finding that victims of state crime are easy targets for repeated victimization is an important finding for our learning on what needs to be taken into account in redressing these crimes. As they note in their discussion of poverty, institutional sexism and racism, institutional and structural change is generally not forthcoming.

Michael Stohl's and George Lopez's (1984) conceptual work on state terror and their distinction between oppression, repression, and terrorism is useful to consider. Lopez's (1984) framework for the classification of government terror in which he identifies and analyses its key factors – the prevailing political climate (in particular the manner of institutionalising state terror), its ideology, its particular character (in particular internal and external support systems) and its outcomes – would be an important contribution to a causal typology. The crossover work of Barbara Harff (1986) on genocide as state terrorism, in which she poses national structural upheaval and the existence of sharp internal cleavages as key factors to compare across genocides is another contribution – particularly in her positing of the question as to why genocide as a policy choice and not repression.

John Torpey's (2001) reparations typology in terms of the sources of reparations claims is another useful starting point. In identifying the different sources of reparations claims (state-sponsored mass killing, wartime incarceration and economic collaboration in World War II, state terrorism and other authoritarian practices, classical European colonisation, internal colonialism and neo-colonialism) Torpey (2001) provides a useful typology of the different state-sponsored international human rights violations that require redress and the different kinds of redress required for each. Some (e.g. typical World War II claims) he suggests require a more 'symbolic' or 'commemorative' response, and others (e.g. colonial crimes) a more 'antisystemic' or 'transformative' response. Whether these crimes take place over a longer or shorter period, necessitating institutional change, is a further question. Elsewhere I have suggested that a combination of these two is often most appropriate: a backward looking and a forward looking set of legal responses (Balint 1996), also that the manner in which these crimes are ended can be significant in terms of what will be most effective (Balint 2001).

There exist significant points of meeting and departure between genocide and other forms of state crime. Most notably, the institutional nature of such crime is an important meeting point. So too is the perpetration of such acts for the broader purposes of state consolidation and state power. A point of dissimilarity, however,

is what is intended for the targeted groups – subjugation in the case of apartheid for example, or destruction as in the case of genocide. This distinction throws up different issues again for legal redress and, in particular, reconstruction and reconciliation in the wake of such crime. We can draw further distinctions between crimes ‘in the life of a nation’ (genocide, apartheid, totalitarianism, some crimes against humanity) and crimes committed in pursuit of conventional war (war crimes). Where war crimes may be served by a trial (and civic liability processes), other crimes perpetrated against a state’s own civilians may be better served by a raft of legal processes that address both the crimes as such, and their underlying causes. We saw this happening, for example, in the case of the truth commission process in South Africa that included institutional hearings aimed at transformation of institutions central to the apartheid policy such as the education, health and legal sectors. In Guatemala, this manifested in the drafting of a socio-economic accord which focused on addressing the poverty, discrimination and social and political marginalisation in that country, which the accord recognised as key contributing factors to the conflict. We could further distinguish between crimes in the course of colonisation, and crimes in the course of communism.

All of the types of crimes mentioned above have been termed state – or international – crime. One of the weaknesses of the current dominant approach – and where criminology and socio-legal studies could make a significant contribution – is a lack of specificity in approach to different types of state crime. In addressing international crime, we need to be specific and recognise the differences within crimes (genocide, crimes against humanity, war crimes) in terms of their causes, and their intended aims. We can then figure out redress that will address these crimes in their particularity and as international crimes.

Matching the types and causes of crimes to redress is important not only in establishing true accountability, but also in establishing a preventative foundation for the future. We see this in the case of many state crimes, that these are not necessarily isolated incidents. They are crimes directed at traditionally marginalised groups and thus redress that will endure must address this. Establishing a typology of types and causes of crimes to legal redress is a project that could lead to a redefining of justice. If individual punishment is our only goal, then it probably does not matter. But if we want to fulfil the increasing demands that law does more, that it be an active player in reconciliation, reconstruction and prevention, then it does.

6. RECONSTRUCTION AND PREVENTION. JUSTICE AS SOCIAL JUSTICE?

If we do take this path of considering the goals of post-conflict justice to be that of both accountability and the bound up together goal of reconstruction and prevention, then it seems necessary to conceptualise justice as multi-faceted. The consequences of putting post-conflict reconstruction on the law agenda would seem to mean that we broaden our understanding of post-conflict justice.

In our thinking about how law may best address these kinds of crimes we have largely failed to distinguish between different kinds of international crime and what they may require to adequately tackle them. In matching our responses more exactly to the type of crime committed we may find ourselves suggesting a redefining of justice to include for example social justice.

The particular relationship between post-conflict legal processes and a broader societal impact has been the subject of some discussion, with suggestions that post-conflict legal processes do not necessarily lead to structural transformation (see, for example, Lambourne 2004; Mamdani 1996). It may be that the transitional justice model is wrongly focused in order to initiate larger and long-lasting change. Kriger (2000), in the context of Zimbabwe, notes the deep socio-economic problems of post-colonial Zimbabwe, in particular land ownership, and how the transitional justice model with its general focus on individual rights does not provide the framework to address this. Land was also seen to be a key cause of the conflict in Rwanda (Bigagaza & Abong et al 2002). Political inclusion and exclusion as a legacy of colonialism was another significant factor at play in Rwanda. In thinking about establishing accountability and initiating reconstruction, in addressing both individual and institutional responsibilities, as well as structural conditions, we may need to be conceptualising justice somewhat differently and in a more pluralist sense to include social justice.

At the South African truth commission institutional hearings into business, various strategies for redress and as a contribution to reconstruction were suggested. These included social responsibility investment programs, support for non-governmental organisations, and improved employment equity programs. They also included proposals such as the cancellation of all apartheid debt, the introduction of a 'wealth tax', and the establishment by business of a reparations fund. As the Report noted, an alarming gap between rich and poor exists in South Africa, one aggravated by the fact that wealth and poverty are very largely defined in racial terms (Truth and Reconciliation Commission of South Africa 1999b, 21–22). The final set of recommendations in the Report of the Commission highlighted the importance of economic justice in achieving a strong and meaningful human rights culture in order to ensure no repetition of the past. Recognising that it is impossible for the public sector alone to find the resources

required to expedite the goal of economic justice, it urged the private sector in particular to consider a special initiative in terms of a fund for training, empowerment and opportunities for the disadvantaged and dispossessed in South Africa (Truth and Reconciliation Commission of South Africa 1999c, 349). The Report noted that it does not seek to prescribe one or other strategy, rather recommends that urgent consideration be given by government to harnessing all available resources in the war against poverty. It did recommend a scheme be put into place to enable those who benefited from apartheid policies to contribute towards the alleviation of poverty (Truth and Reconciliation Commission of South Africa 1999c, 349). As such, it urged that consideration be given to the most appropriate ways in which to provide restitution for those who have suffered from the effects of apartheid discrimination. These were listed as: a wealth tax; a once-off levy on corporate and private income; each company listed on the Johannesburg Stock Exchange to make a once-off donation of one percent of its market capitalisation; a retrospective surcharge on corporate profits extending back to a date to be suggested; a surcharge on golden handshakes given to senior public servants since 1990; the suspension of all taxes on land and other material donations to formerly disadvantaged communities (Truth and Reconciliation Commission of South Africa 1999c, 3).

While there is a broader recognition of the necessity of tying social justice concerns to post-conflict reconstruction, the role of law in this has largely not been addressed. Rama Mani (2002) in a study of the meaning of post-conflict justice, notes the complexity of justice needs post-conflict, particularly in low-income societies, and argues that the underlying causes of conflict, the structural and systemic injustices such as political and economic discrimination and inequalities of distribution, have not been addressed by national and international post-conflict practitioners. J.P. Lederach (1999) has identified the importance of socio-economic justice to peace. The search for social justice post-conflict has been a key feature of studies of post-military regime South America (see, for example, Eckstein & Wickham-Crowley 2003).

In considering the dual aims of accountability and reconstruction in the wake of conflict, it seems necessary to conceptualise justice as multi-faceted. We can usefully draw on Rama Mani's three-fold typology of justice, justice as rectificatory (addressing the direct consequences of conflict-perpetrators and victims), legal (establishing rule of law patterns), and distributive (addressing structural and systemic injustices and distributive inequalities). What seems to me critical is that we attempt to more accurately match the particular international crimes to appropriate and specific redress. In recognizing that different crimes (different genocides, different crimes against humanity) may have different causes, we can determine what needs to be addressed – structurally – in the hope of reconstruction and prevention. In creating a typology of international crimes, their causes, and

matching these to potential legal (and non- or quasi-legal) redress, we may find ourselves conceptualising justice more broadly, and ultimately, more accurately.

7. CONCLUSION

If accountability is to be accurate, then it needs to be comprehensive. For reconstruction to succeed – with a hope that the society can prevent further crimes of this nature in the future – then a broader conceptualisation of justice is required. Solely addressing the individuals will not achieve this. For this, we need to identify the particular dimensions of each international crime. This can be different between crimes, and between particular case studies.

We need to develop a framework – that we may consider as legal pluralist – that brings together the many different legal and quasi-legal processes that address these crimes – and consider new ones that address these acts both precisely (leading to reconstruction), and in their entirety (for accountability). Developing the notion of civic liability can help us with the latter; including social justice in the justice spectrum, with the former. Widening the parameters, however, is not incompatible with establishing individual liability. The International Law Commission in its deliberations on this topic explicitly stated that state responsibility should not replace individual responsibility (Spinedi 1989). A kind of collective liability is not what is sought, the ‘responsibility of all and hence the responsibility of none’ (see Macdonald 1957, 34). Rather, it is to point to the particular characteristics of such crime, and thus to a different remedial path to that ordinarily taken with domestic crimes of individuals or international crimes such as bribery of foreign public officials or drug offences which, while defined as international crimes (see, for example, Bassiouni 1999), are not necessarily crimes of state in a way that genocide and apartheid are.¹⁰ It is a path which asks that we look to the multi-layered components of the crime (individual and institutional) and to remedies which both allocate responsibility and seek the assumption of responsibility, criminal and non-criminal. It is a path which has been suggested and taken with regard to corporate crime (see Fisse and Braithwaite 1993).

These are particular crimes that have been largely left out of mainstream legal or criminological analysis. As ‘administrative massacres organized by the state apparatus’ they need to be analysed as such – as *sui generis* yet using our criminological, socio-legal tools to shed light on how best they may be addressed in the interests of bringing to account and preventing further atrocities. We could use the approach ‘these are murders, these are rapes, these are kidnappings’ yet in so doing we fail to conceptualise these crimes in their entirety. In not recognising

¹⁰ We could, however, expand this framework to consider the addressing of torture – see the contribution of Huggins in this volume.

that these crimes are ‘more than’, we miss an important dimension to them, their ideological and institutional nature. The fulfilment of a decree that ‘a people should not exist’ (Jaspers 1966, 35) (in the case of genocide), or that a people is less than (apartheid) or invisible (in the case of war crimes). The cooption and transformation of state and non-state institutions, the utilisation of a state structure towards these ends.

Both institutions and individuals, according to their placement, role, and activity, bear differing levels of responsibility and potential liability for international and state crime. While addressing the individuals – the key perpetrators and masterminds behind these acts – and the victims and survivors – is critical, in order to fully address these kinds of crimes their institutional dimensions must be recognised. This is both if justice in terms of strict accountability and any broader reconstruction is to be achieved. Individual responsibility and individual justice are not adequate in meeting our goals, either strict accountability or broader reconstruction. We must look simultaneously to the institutional and the individual levels in addressing international crime, and develop a framework in which addressing the institutional dimensions is not an ‘add on’ but a core part of the enterprise. In so doing we may find that our justice is ultimately more enduring.