

Transitional Justice & Rwanda

David Hume And The Limits of Jus Post Bellum

By Professor Joshua Kassner (University of Baltimore)

September 13, 2016

This article is part of The Critique's September/October 2016 Issue "The Bright Continent: Illuminating The Challenges, Opportunities & Promises Of A Rising Africa".

I. Introduction

Over 100 days in the late spring and early summer of 1994, approximately 800,000 Rwandan Tutsis and Tutsi-sympathizers were slaughtered in a campaign of violence orchestrated by Rwanda's Hutu leaders in concert with a Hutu militia known as the Interahamwe. While the Hutu-extremists engaged in genocide, the international community stood idly by, hiding behind the moral cover of false histories, legal technicalities, and disingenuous claims that the choice not to intervene was a matter of respect for Rwandan sovereignty. Only after the Rwanda Patriotic Front had stopped the killing and defeated the extremist forces did France, under the guise of humanitarian concern, intervene. In reality, the French established a safe zone to protect their client – the Hutu-led Francophone genocidal government fleeing the country in defeat.[i]

Over the last two decades, there have been many questions raised by scholars from various disciplines. Political scientists and international relations scholars have sought to explain the power dynamics and political interests at play. Historians challenged the false histories used by leaders and diplomats around the globe to excuse their apathy in the face of such violence. Forensic anthropologists have been engaged in the difficult work of determining where and how people died. Others, like myself, have looked at the Rwandan genocide from the perspective of global and political ethics; trying to understand what, as a matter of morality, ought to have been done and what lessons we should take away from such an egregious failure by the international community.

There can be little doubt that these are matters worthy of our attention. Here, however, I will focus on a different question. Specifically, in the aftermath of a humanitarian crisis like the Rwandan genocide what constitutes a morally acceptable state of affairs? In other words, how should we assess justice post-humanitarian crisis?

Ultimately, I will argue that we should look to the field of transitional justice for our answer to this question. There is, however, some work to be done before the adoption of a perspective based in transitional justice can be helpful. For many who work in this field, transitional justice is less a philosophically grounded perspective than a set of legal and political practices and institutions employed to achieve a number of important post-crisis goals; including, stability, peace, justice, reconciliation, establishing an accurate record of the events that created and constitute the humanitarian crisis, the protection of human rights, and the establishment of democratic governance. What is lacking is a philosophical understanding that allows us to think about these practices and institutions and the objectives they are taken to serve in a coherent way. The discussion that follows provides a philosophical understanding and framework for thinking about what transitional justice demands.

In addition, with a philosophical understanding of transitional justice in hand, in an effort to connect theory to practice, the discussion will turn to an assessment of post-genocide Rwanda. Many, focusing on the strength and vitality of Rwanda's economy, look at the Rwanda created by Paul Kagame as a success. Others argue that the lack of political and civil rights and the all-too-often claims of intimidation and suppression of critical voices by Kagame's government demonstrate the lack of justice within Rwanda. Here, I will argue that the story is far more complicated and that the philosophical perspective on transitional justice enables us to deal with this complexity and offer a nuanced evaluation of justice post-crisis in Rwanda.

II. Preliminary Matters: Why Not *Jus Post Bellum* or an Orthodox Account of Political Justice?

Before, explaining and defending a philosophical perspective on transitional justice as the approach we ought to take to our efforts to understand justice post-humanitarian crisis, there are at least two alternative philosophical approaches that need to be addressed. Namely, it would be somewhat surprising if one did not find many pointing to either the literature on *jus post bellum* or the existing canon on political justice and legitimacy. Adopting either as the basis for our understanding of justice post-humanitarian crisis would be a mistake.

Looking first to *jus post bellum*, it is important to note from the outset that I am not alone in rejecting *jus post bellum* as the basis for assessing post-crisis justice. For example, regarding post-conflict justice more broadly, James Pattison argues that we ought to reject certain elements of traditional understandings of *jus post bellum*.^[ii] Primarily, he contends that the principle that belligerents ought to pay for the harms caused during war cannot be justified.^[iii] Pattison's main concerns with the belligerents pay principle are that it fails to actually achieve justice and that there are serious practical challenges to implementing it at all. These same objections could be raised against those who would look to *jus post bellum* as a guide for assessing justice post-humanitarian crisis.

Though I, in large part, agree with Pattison's argument, my rejection of *jus post bellum* is based on different considerations. First, *jus post bellum* is largely about how war ends and its immediate aftermath – who is going to pay, for what, and why. These are no doubt important matters to consider, but this shouldn't be the sole or even the primary concern of justice post-humanitarian crisis. What constitutes justice post-humanitarian crisis must give priority to the values and objectives essential to the recovery of a community and those that provide insurance against future crises. In Rwanda, for example, this would include the value of peace and reconciliation

alongside traditional understandings of retributive and compensatory justice. In the section that follows I will discuss how I think these, at times competing, values should be prioritized.

Second, *jus post bellum* is also concerned with the prosecution of war crimes. What is the justification for and how ought we hold those responsible for atrocities and violations of the law of war accountable for their transgressions? This aspect of *jus post bellum* is relevant to our efforts to address many of the concerns that come up in many post-humanitarian crisis situations. Again, looking to Rwanda, one cannot avoid the moral demand for accountability. The difference lies in the fact that seeking such criminal accountability has the potential to undermine the other important values to be pursued in a post-humanitarian crisis situation. As such, how those who have committed war crimes will be held accountable must be one of the areas where we need to set priorities due to the competing moral values being pursued in many post-humanitarian crisis situations.

Finally, *jus post bellum* fails to adequately capture the nature of many humanitarian crises. Establishing systems of compensatory and retributive justice fall well-short of dealing with the pressing individual, social and political challenges facing a community just emerging from a humanitarian crisis. Refugees who have fled economic deprivation, political tyranny, or violence need to be repatriated. Many humanitarian crises – like the Rwandan genocide – were caused by internecine violence, and societies must find a way to have perpetrators and victims live together. In the end, *jus post bellum* is an inadequate guide to assessing justice post-humanitarian crisis because there is a categorical difference between such crises and war, and the values served by *jus post bellum* are a mere part of those that ought to be served in the aftermath of a humanitarian crisis.

Having rejected *jus post bellum* as a guide for assessing justice post-humanitarian crisis, one might point to another alternative with deep roots in political philosophy. In short, one might argue that we ought to look to orthodox accounts of political justice

and legitimacy. There is much to be said for this view. At the very least, the underlying questions have been exhaustively debated for nearly two-and-a-half millennia. There is a well-developed canon on what justice and legitimacy demands to which we can appeal.

Looking to orthodox accounts of justice and political legitimacy would, however, be a mistake. To say that a state of affairs is just is to imply that it is entitled to our support and is, at least for the time, morally acceptable. If we take Hobbesian accounts of political legitimacy to represent one end of the normative spectrum past the threshold of anarchy and other competing accounts of political justice – social contract, hypothetical contract, and/or democratic theory – to represent the opposite end of that same spectrum, then the former asks too little and the latter too much.

Perhaps this can be best understood by considering the background conditions assumed by each theory. For Hobbes, those conditions are anarchic and violent, the “war of all against all.” Any form of order suffices as it is better than the alternative. Order and security are certainly important values in a post-crisis situation, but they are not enough. If stability comes at too great a moral cost, then it would be hard to argue that it should be supported. In addition, in most post-humanitarian crisis situations, it is not a war of all against all; rather, it is a moment of transition. The momentary snapshot of the extant state of affairs should not define what constitutes justice when so much more and better is achievable.

On the other hand, it would be wrong to use standards of justice defined by libertarians, liberal welfarists, or democrats to evaluate justice in a post-humanitarian crisis situation. We often forget that each of these theories rely on explicit and oft-times implicit assumptions about the conditions that must exist for their understandings of justice and the demands they make to be relevant to a given state of affairs. In a post-humanitarian crisis situation these idealized circumstances simply do not exist. As such, to employ accounts that presume the existence of such conditions is

to operate with an error theory – one in which the social and political circumstances under evaluation will always fail because discussion of justice so-defined is inapposite. These understandings should be thought of as aspirational, to what a post-crisis community ought to aspire.

III. A Philosophical Understanding of Transitional Justice: Hume's Circumstances of Justice

Having rejected *jus post bellum* and orthodox accounts of justice and political legitimacy, one will no doubt ask, "What is the alternative?" I agree with Colleen Murphy that we should look to transitional justice as a guide for assessing justice post-humanitarian crisis. [iv]

However, what I mean by transitional justice, though related to its normal usage, is quite different from the understanding presumed by others. When referring to transitional justice international relations scholars, political scientists, international lawyers, and other activists and organizations in the development community often mean an identifiable set of institutions and practices intended to aid a community as it transitions from some crisis to a more just and stable political situation, which is often thought to culminate in the establishment of some form of liberal democracy.[v]

How these practices and institutions ought to be used and implemented is controversial as different values are served by different practices /institutions. These values and the institutions that serve them are often argued to work at cross-purposes. Perhaps the most widely discussed example is the supposed dilemma between peace and justice. Criminal prosecutions intended to satisfy the demands of retributive justice may undermine efforts intended to promote peace. But practices that fail to hold offenders accountable in the name of peace and reconciliation are argued to undermine the moral demand that justice be served. As a consequence, transitional justice is often discussed as essentially a set of policy choices in the face of such dilemmas – a *positivist* understanding of transitional justice.

My approach and understanding is not as a political or social scientist, but as a philosopher and ethicist. I will argue that if one adopts a Humean perspective on justice, paying particular attention to Hume's discussion of the circumstances of justice, then the supposed dilemmas underlying the generally accepted understanding of transitional justice turn out to be false dilemmas. Once this is understood, the conceptual space is opened for an inquiry into a philosophical understanding of transitional justice.

3.1 Understanding the Dilemmas

The first step in this argument is to understand the bases for and nature of the dilemmas at the heart of, what I am calling, the positivist understanding of transitional justice. What are the underlying assumptions and beliefs about the values at play and the various institutions and practices constitutive of this understanding? Once we appreciate these background conditions, we can begin to critically assess the dilemma they are taken to generate.

Of particular importance are three assumptions implicit in the dilemmas around which the positivist understanding of transitional justice operates. First, it is assumed that the various values at play are equally important. Their importance is understood from, at least, two different perspectives. For one they are taken to be equally important *at the time*. In addition, they are taken to have roughly equivalent moral weight. If either of these propositions were not true, there is no dilemma. The practices and policies employed should pursue the more important values.

Second, the dilemmas at issue also rely on an assumption that the various moral demands being made are mutually exclusive. Returning to our previous example, the belief is that one cannot serve both justice and peace at the same time, that pursuing practices and institutions that promote retributive and compensatory justice will necessarily undermine the possibility of peace and reconciliation and vis a versa. If this were not the case, if it were possible to pursue peace without undermining justice, then – again – there is no dilemma.

Finally, though perhaps already an element of the previously noted assumptions, for these to be more than apparent dilemmas, the moral demands being made by these competing values must be simultaneous. In other words, it must be the case that at a *particular moment* in time two (or more) equally important and mutually exclusive values are placing demands on a community. If this were not the case, if, for example, the demands were made in a series, then the fact that they can't all be pursued at the same time or that they are equally important would not present us with a dilemma. This does not mean that determining what ought to be done at any given time is easy, but if any of these three assumptions is not justified then one is faced with a problem that is resolvable without moral sacrifice, not a dilemma.

3.2 A Humeian Understanding of Transitional Justice

Having identified the assumptions upon which the dilemmas underlying the positivist understanding of transitional justice depends, I can now turn to the construction of a philosophical understanding of transitional justice. There are, however, at least four different conceptions of justice at play in this discussion. As such, if we are to avoid confusion, we must differentiate between these different conceptions. First, there is a *broad conception* wherein justice simply means that to which one is entitled under a moral system. Second, *retributive justice* is that found within criminal law where the objective is to hold agents accountable for their actions, and to punish them according to their desert. Third, *compensatory justice* refers to the moral principle that demands that individuals are compensated for the harm caused to them so that they may be made whole again. Finally, *transitional justice*, as noted above, most often refers to the various institutions and practices employed in post-crisis situations as communities seek to recover.

Though these are distinct conceptions, one implication of the argument that follows is that a philosophical – rather than positivist – understanding of transitional justice enables the organization of these different conceptions into a coherent framework for assessing justice post-humanitarian crisis. In short, the philosophical perspective on

on transitional justice is a broad conception that helps to organize these other conceptions of justice into a coherent framework.

The argument begins with an appeal to Hume's discussion of justice found in *An Enquiry Concerning the Principles of Morals*. There, Hume argues that for questions of justice to be relevant – to be more than an academic exercise – justice must be able to make a difference in the circumstances in which it is invoked; it must be “useful”.^[vi] As such, Hume's approach to justice is not to offer a free-standing account of justice and then use that account to critically assess the practices and institutions being employed within a particular community; rather, he is concerned with identifying the conditions under which justice is practically relevant.

It is important to note that what Hume meant by justice had a lot to do with explicit understandings of entitlement within a moral system of property and liberty rights. As such, his argument can be understood in at least two ways. One might conclude that his account applies only to justice understood in this narrow way. Alternatively, one might understand Hume as making the broader claim that what constitutes justice – what one is entitled to – cannot be understood outside of an appreciation for the background conditions in which such claims to entitlement are being made.

I have adopted the latter interpretation for this discussion, and I have at least two reasons for doing so. First, the very point of Hume's argument, and a proposition that I will return to momentarily, seems to be that what one is entitled to is relative – that how we ought to understand justice within a moral system intended to guide our behavior cannot be understood in isolation from the very conditions in which it operates. Second, the latter interpretation is a reasonable one, and one that I believe is correct philosophically. I am not engaging in Humeian exegesis in this argument, rather I am relying on a reasonable interpretation of Hume as the foundation for the argument that follows.

Nonetheless, Hume's claim that justice is only relevant when it is useful, begs the question, what does Hume mean by "useful"? He seeks to explain and defend this proposition through a number of thought experiments. On the one hand, Hume asks us to consider whether we would need justice when no one ever wants for anything or when human nature is defined by unlimited benevolence.[vii] Would we need justice in paradise on Earth? In such circumstances invoking claims of entitlement would seem superfluous. Under such circumstances, justice is not useful because it is unnecessary.

Hume goes on to argue that justice is also practically irrelevant – useless – in much darker situations. Again, we are asked to imagine two scenarios intended to lead us to conclude that under either conditions, claims to justice would be hollow. If the circumstances are best thought of as a Hobbesian state of nature where there is an extreme scarcity of resources and one faces a constant existential threat or if human nature is defined by avarice, greed and cruelty without any other-regarding feelings, then it would be *irrational* for anyone to act in accordance with justice.[viii] Under these circumstances justice is not useful because it would be unreasonable to expect anyone to adhere to its demands.

In the end, Hume claims that "the rules of equity or justice depend entirely on the particular state and condition in which men are placed...."[ix]

What Hume means by justice is the broader notion of entitlement – to be given what one deserves and to give to others what they deserve. In other words, justice is, as a matter of practical efficacy, relative to the surrounding circumstances. As a consequence, one cannot meaningfully speak of the demands of justice without taking these background circumstances into account.

This is not a novel idea. Take for example John Rawls's account in his *Theory of Justice*, his argument is premised on a set of background conditions that make discussion of justice meaningful.[x] Included in Rawls's assumptions are that people are rational and self-interested and there is moderate scarcity; however, they all

benefit from living together in civil society. From this hypothetical situation Rawls concludes that the members of this imagined society, if they were placed behind his veil of ignorance, would select principles of justice that maximized equal liberty for all and allowed inequalities so long as they benefitted the least well-off, Rawls's "difference principle".[xi]

One might wonder, "Why should we adopt a Humeian perspective on the practical relevance of justice?" Justice, in all of its various forms, is not merely an interesting philosophical and ethical concept. Rather, justice is meant to be practical and normative. It is supposed to have a practical effect on the policies, practices, and institutions that govern our lives. For it to have this effect, justice cannot make unreasonable demands on individuals and communities. For example, it would be unreasonable to expect an individual or community to adhere to the demands of justice when doing so would be inviting an existential threat. As such, if we take the role that justice is supposed to play in the practical deliberations of individuals and communities into account, then adopting the Humeian perspective – as many have done – is essential.

What does this tell us about the supposed dilemmas around which the positivist understanding of transitional justice operates. Specifically, what implications does adopting the Humeian perspective have for the three assumptions upon which those supposed dilemmas are based; the competing values are equally important, mutually exclusive, and make simultaneous demands on the community in transition?

If we adopt a Humeian perspective on justice, whether we ought to accept the assumptions upon which the supposed dilemmas are based will depend on the nature of the circumstances defining a post-humanitarian crisis situation. There is no single narrative or description that captures the essence of such crises, rather there is a spectrum of needs and challenges facing different post-crisis communities. As such, one cannot justify a categorical rejection or acceptance of these assumptions.

Rather, for any particular situation one must assess where on the spectrum between Hobbesian state of nature and paradise on Earth it lies.

At any point along this spectrum different values and objectives are going to have greater and lesser priority and relevance relative to the surrounding circumstances. On the one hand, in situations closer to the Hobbesian end, peace and stability may have priority over retributive and compensatory justice because in such circumstances it may be unreasonable to expect individuals and communities to fulfill the moral demands made by retributive and/or compensatory justice. On the other hand, in situations nearer the utopian end, ensuring retributive and compensatory justice is essential to the justness of the community in question. In the end then, there are going to be few circumstances in which these assumptions hold.

“For any particular situation one must assess where on the spectrum between Hobbesian state of nature and paradise on Earth it lies”.

Ultimately what is needed is a moral understanding of transitional justice that recognizes that the transition takes time. Our account should accommodate the diachronic nature of the transition from post-humanitarian crisis to a functioning just – in the orthodox sense – society. More specifically, there is a need for an account of transitional justice that recognizes the different stages of transition, the values and objectives that have priority within each stage, and how one stage and the relevant values attached to it are conceptually and practically related to other stages.

It is also important that, consistent with the recognition of the diachronic nature of the transition process, our understanding of transitional justice should require that at each stage the practices and institutions should be assessed not only on their ability to deal with the most pressing moral demands within that stage, but should also have an eye towards the aspirations that remain. Without this condition, one state of affairs might be just in light of the surrounding circumstances; however, unless we have sufficiently

achieved the more aspirational understandings of justice or legitimacy, if the practices and institutions do not enable progress, then the situation is unjust.

As an example, think again of legitimacy and justice immediately after a hypothetical community has left a Hobbesian state of nature. At that moment, stability may be sufficient for justice. However, if the practices and institutions providing that stability are not also laying the groundwork for progress towards the other values and objectives making up our more aspirational accounts of justice, then the extant practices and institutions are unjust.

IV. Rwanda

Now, to connect theory to practice, as noted above, if we adopt this Humeian understanding of transitional justice, assessing the justice of a specific post-crisis situation will depend on the particular circumstances of the situation in question. Looking to Rwanda as an example, in the immediate post-genocide era, one would be hard-pressed to imagine a society much closer to the Hobbesian end of the spectrum than Rwanda. Nearly a million people – children, women and men – had been killed. Millions had fled the country; including, fully-armed genocidaires living as refugees just across the border. Many of those who remained were stained by the moral taint of complicity in state-sponsored mass-murder.

The threat of the former genocidaires only increased as they continued to organize and engaged in raids that resulted in the death of more Tutsis and sympathetic Hutus.[xii] In retaliation for these raids, Hutus suffered retribution at the hands of soldiers of the Rwanda Patriotic Front.[xiii] The Rwandan government denied that it had anything to do with this retribution, but regardless of their role in the rising violence, these attacks represented a precarious situation in which the fate of Rwanda hung in the balance. Thus, if we think of this as the initial stage of the post-humanitarian crisis situation, it would be unreasonable to expect that Rwandan government prioritize other values

ahead of security and stability. This is not to say that there are no moral limitations on their efforts to achieve security and stability, but those side constraints were not objectives, just limitations.

As Rwanda moved from this immediate post-genocide stage, as it defeated the remaining genocidaires and worked to bring its refugees back, the stability and security it had established formed the foundation for it to pursue other objectives essential to the reconstruction of its community. The Rwandan government, under the direction – if not the legal rule – of Paul Kagame, initially focused its efforts on rebuilding the economy and addressing pressing matters of social welfare.[xiv] In addition, Rwanda enacted a new constitution that included, at least formally, democratic procedures.[xv]

There are few who would doubt that Rwanda – despite the heavy odds against it – has been an economic success story.[xvi] It is also true that the policy choices of the Rwandan government have had a significant impact on many measures associated with social welfare. The rate of literacy and level of education has gone up. Poverty has been reduced, as has inequality and infant mortality. Rwanda has also been a darling of investors. Each of these achievements has enhanced Rwanda's standing in the eyes of many in the international community. Both critics and defenders alike recognize that the success of Rwanda is owed largely to Paul Kagame.

It is equally true, however, that the formal democratic provisions of the Rwandan constitution have not been fully realized in practice. For example, after his main rival for the Presidency was charged with corruption, Paul Kagame won the first “contested” election with well over 90% of the vote.[xvii] Then, seven years later, after most of his opposition was disqualified for one reason or another, Kagame again won with over 90% of the vote.[xviii] In addition to these questionable elections, Kagame's government has been quick to use Rwanda's anti-genocide laws to clamp down on political opposition and free speech – two elements essential to political legitimacy.

For example, the former manager of the Hotel Mille Collines, Paul Rusesabagina, the hero in *Hotel Rwanda* who is credited with saving hundreds of lives, became a critic of the Kagame administration and has been forced to leave Rwanda for fear of prosecution.[xix]

One final aspect of this interim period is an example of one of the dilemmas around which the positivist understanding of transitional justice operates. Once the Rwandan government had established stability and security, there was a growing need to address a number of moral demands related to the nation's recovery. To be specific, the government had to find a way to enable those complicit in the genocide to live in peace – often times literally – next to their victims. In tension with this demand for reconciliation was a moral demand for retributive and compensatory justice – for the perpetrators of the genocide to be held accountable for their behavior and for those harmed during the genocide to be compensated for their loss.

Kagame's government response to these competing demands was to follow a variety of different, but simultaneously operating tracks. On the one hand the leaders of the genocide were to be subjected to prosecution for war crimes and crimes against humanity in the United Nations Criminal Tribunal for Rwanda. Lower-ranking participants and those complicit in the violence would be dealt with through traditional tribal courts known as *Gacaca*.^[xx] These local courts did not follow strict legal and evidentiary procedures, nor did they often hand down severe punishments. It is through the *Gacaca* system that Rwanda sought to achieve both retributive and compensatory justice, and reconciliation.

Many at this point might argue that retributive and compensatory justice should take priority, and that reconciliation would have to wait. One version of this argument would appeal to many Kantians; since, as Kant argued centuries ago, we have a perfect duty to ensure that retributive justice is served, and as this duty is absolute it admits of no exceptions.^[xxi] This argument to unreasonable expectations being placed on the individuals and communities subject to them.

Alternatively, one might argue that retributive and compensatory justice ought to be given priority because dealing with such claims first is necessary to peace and reconciliation. Again, looking to the Humeian account of justice for guidance on this matter, how we ought to prioritize and understand these demands is dependent on the circumstances in which the determination is being made. In addition, it is also worth noting that for there to be a moral choice at all, it must be the case that one cannot pursue both objectives at the same time.

Thus, as we seek to assess the justice of the policy choices made by the Kagame administration during this interim period, we have to ask whether the choice to limit civil and political rights was justified, and whether the parallel legal processes pursued by the Rwandan government adequately balanced the demands of retributive and compensatory justice with the need for reconciliation. As to the former, under the circumstances, one must ask whether it would be unreasonable to expect the Kagame administration to have allowed broader political and civil rights.

Under the circumstances that the Rwandan government found itself in, the stability and security it had achieved was precarious. Since at the outset, the new Rwandan government had been beset by efforts by genocidaires-in-exile and their patrons to unseat the new government. This ranged from accusations that the Rwanda Patriotic Front was responsible for the death of President Habyarimana – which after a thorough investigation proved false – to continuous efforts to mount a military campaign to unseat the new government. Under such circumstances, it would be reasonable to expect that allowing for the level of dissent and criticism found in modern Western liberal democracies would prove deeply harmful to this nascent government and the progress it was achieving. As such, it would be unreasonable to expect the Rwandan government to have allowed such broad civil and political liberties.

What about the choice by the Rwandan government to pursue a legal process that balances retributive and compensatory justice with reconciliation? First, is there a

conflict between these objectives? If we think of retributive justice as primarily about holding perpetrators responsible under the law, and compensatory justice about making those harmed whole again; it would seem to be possible to pursue these while also seeking reconciliation.

As to retributive justice under the law, accountability is about identifying the responsible party and punishing them in proportion to their desert. The problem is supposed to arise because seeking reconciliation may require less than harsh punishment. This assumes too much. We can't simply assume that desert requires harshness. Again, under a Humeian account, desert will be dependent on the broader circumstances, and what is required is that perpetrators be given what they deserve under the law. In this case, it is reasonable for a government to establish legal desert that accounts for the broader circumstances, including the need for reconciliation.

As to compensatory justice, it may be impossible to make someone who has been raped, lost his/her home or family, or had their property destroyed whole again. As such, in post-genocide Rwanda, the proposition that compensatory justice can only be met by making individuals whole again would be unreasonable. It would, however, be appropriate for the government to find ways to help those harmed during the violence to recover and reconstruct their lives. One might argue, that the best way to accomplish this on such a broad scale is to engage in the very policy that has been pursued by the Rwandan government – economic development and investment in social welfare.

To this point, I have argued that a Humeian perspective on transitional justice supports the proposition that Rwanda's transition has largely been a just one. As was noted above, however, there have been a number of actions and policies that should give one cause for concern. Whether it is the apparent lack of punishment for those Tutsi who engaged in violence as vengeance against the Hutu after the genocide or the government's use of its anti-genocide laws to quash meaningful political opposition and undermine the political and civil right of individuals across the country, these are obstacles that, if not addressed, would support those who argue that the state of affairs

in Rwanda is an unjust one.

I am sympathetic to this concern, but whether that critical judgment is justified cannot depend on a snapshot of the present state of affairs. Up to this point, the choices made by and policies enacted by the Rwandan government, when considered under a Humeian perspective on transitional justice and in light of the surrounding circumstances, have satisfied what can be reasonably expected of a community in such circumstances.

This is not to say that one would be justified in concluding that the Rwandan transition will ultimately be just. In addition, though there is no specific time horizon one can point to as the moment in which such determinations are to be made, one can ascertain whether the existing practices and policies enable the community's transition to a more just state of affairs. In the case of Rwanda, there are laws and procedures that provide some hope. At present, the Kagame administration has arguably failed a benchmark test. The Rwandan constitution limited its presidents to two seven-year terms. In a referendum last year, the population is claimed to have supported (98%) a change in the constitution to allow Kagame to stand for a third term.

What is troubling is not that the constitution has been amended, but that such a momentous change has occurred in a community that has no real political opposition. In fact, the only opposition party, the Green party, has no representatives in the Rwandan parliament. The circumstances have changed and now what might have been unreasonable to expect is now reasonable. Rwanda will have to find a way to this next phase of its recovery if it is to continue to be the shining star of Central Africa.

V. Conclusions and Lessons Learned

In the end, there are a number of lessons to be taken away from this discussion about how we ought to assess justice post-humanitarian crisis. First, and perhaps most importantly, whatever perspective we adopt must accommodate the diachronic nature of recovery.

Judgments based on snapshots that fail to take into account where the community in question has been and what future it has enabled fails to capture the relevant empirical situation.

Second, there is little to be said for adopting *jus post bellum* or orthodox accounts of political justice and legitimacy. Rather, we ought to adopt a philosophical understanding of transitional justice when assessing justice post-humanitarian crisis. In addition, what we mean by justice must be malleable. There is no simple understanding that can be applied to all post-crisis situations. Our assessment of justice must be responsive to relevant differences in circumstances. It is not the case that one size fits all.

Finally, as to Rwanda, despite the fact that many have been critical of the Rwandan government's policy choices as it has emerged from the horrors of genocide and sought to reconstruct its society, in light of the surrounding circumstances the Rwandan government's choices have been reasonable. In addition, the expectations of many critics for fuller retributive and compensatory justice, greater civil and political rights, and more robust elections are unreasonable in light of the surrounding circumstances. With that said, it is far too soon to declare Rwanda a success. The circumstances have changed and now we should expect Rwanda to live up to the promise found – at least formally – in its constitution.

Whether one agrees with my moral assessment of the state of affairs in Rwanda, I believe that in assessing justice post-humanitarian crisis one should adopt a Humeian philosophical perspective on transitional justice. What this means as a theoretical matter is that our understanding of what is sufficient for justice is going to depend on the state of affairs under evaluation as well as the extent to which the policies and institutions being pursued enable progress towards a better state of affairs.

On a more practical matter, in most cases adopting this perspective will mean that the belief that moral sacrifices are required in post-crisis situations is unfounded. Finally, adopting such a perspective will allow our assessment and support or criticism of a post-crisis community to match the complexity of their recovery.

Footnotes & References.

[i] Stephen Kinzer, *A Thousand Hills* (Hoboken, NJ: John Wiley & Sons, Inc., 2008), 175.

[ii] James Pattison, “*Jus Post Bellum* and the Responsibility to Rebuild” *British Journal of Political Science*. November 2013, 1-27.

[iii] *Ibid.*

[iv] Colleen Murphy, “Political Reconciliation, *Jus Post Bellum* and Asymmetric Conflict” *Theoria: A Journal of Social & Political Theory*. Dec2015, Vol. 62 Issue 145, 43-59.

[v]Eisikovits, Nir, “Transitional Justice”, *The Stanford Encyclopedia of Philosophy* (Winter 2014 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2014/entries/justice-transitional/>.

[vi] David Hume, *An Enquiry Concerning the Principles of Morals* (Chicago: Open Court Classics, 1999), 15.

[vii] *Ibid.*, 16-17.

[viii]*Ibid.*, 18-19.

[ix] *Ibid.*, 20.

[x]John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971).

[xi] *Ibid.*

[xii] Kinzer, 209.

[xiii] *Ibid.*, 212-213.

[xiv] *Ibid.*

[xv] *Ibid.*

[xvi] Patricia Crisafulli and Andrea Redmond, *Rwanda, Inc.: How a Devastated Nation Became an Economic Model for the Developing World* (New York: Palgrave Macmillan, 2012).

[xvii] Kinzer, 229.

[xviii] Crissafulli, *et al.*, 18.

[xix] Kinzer, 246-248.

[xx] *Ibid.*, 257-63.

[xxi] Immanuel Kant, *Groundwork for the Metaphysics of Moral* (Cambridge, UK: Cambridge University Press, 2012).