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# polylog

ZEITSCHRIFT FÜR INTERKULTURELLES PHILOSOPHIEREN

## Gerechtigkeit und oder Versöhnung

Mit Beiträgen von FRANZISKA DÜBGEN, JAMES OGUDE, UNIFIER DYER,  
JOSEFINA ECHAVARRÍA ÁLVAREZ, NAOKO KUMAGAI, URSULA BAATZ,  
JAMES GARRISON und anderen

SUPPLEMENT

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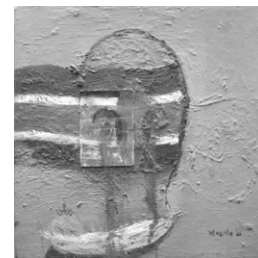
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ANKE GRANESS

## Versöhnung und/oder Gerechtigkeit?

Einleitung zum online-Supplement

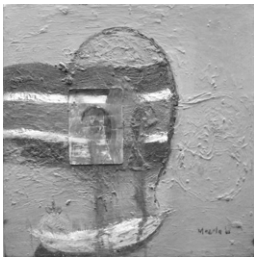
Dies ist eine Premiere, nämlich die erste online-Ausgabe unserer Zeitschrift POLYLOG. Sie ist das Ergebnis des 5. *Interkulturellen und Interdisziplinären Kolloquiums des Forums für Interkulturelle Philosophie* ([www.polylog.org](http://www.polylog.org)) zum Thema »Versöhnung und Gerechtigkeit«, das im Mai 2015 in Kooperation mit unserer Zeitschrift, sowie der Wiener Gesellschaft für interkulturelle Philosophie (WIGIP) und dem Forum Scientiarum der Universität Tübingen am Institut für Wissenschaft und Kunst (IWK) in Wien stattgefunden hat. Nachdem im Dezember 2015 bereits die Printausgabe des POLYLOG Nr. 34 unter dem Titel »*Versöhnung und/oder Gerechtigkeit*« ausgewählte Beiträge des Kolloquiums veröffentlicht hat, erscheinen nun hier weitere Beiträge dieses Kolloquiums. Neu ist in diesem Zusammenhang nicht nur der freie Zugang zu den Beiträgen über das Internet, sondern auch, dass die Beiträge in verschiedenen Sprachen erscheinen, nämlich auf Deutsch oder auf Englisch. Während unsere Printzeitschrift weiterhin auf Deutsch erscheinen wird, werden wir in Zukunft auf unserer Website vermehrt Bei-

träge in anderen Sprachen veröffentlichen. In diesem Sinne wird unser POLYLOG in den nächsten Jahren auch polyphoner.

In dieser online-Ausgabe finden Sie nun Beiträge von Francesco Ferrari (Universität Jena), Sergej Seitz (Universität Wien), Thaddeus Metz (Universität Johannesburg), Jonathan Chimakonam (Universität Calabar), Christine Schliesser (Universität Zürich) und Gail Presbey (Universität Detroit Mercy).

Die beiden Beiträge von Ferrari und Seitz beziehen sich auf zwei der großen europäischen Denker von Konzepten der Versöhnung, nämlich Paul Ricœur und Emmanuel Levinas. Während Ferrari sich in sehr detaillierter Weise mit Ricœurs Begriff der Versöhnung und der Frage, inwiefern Vergebung eine konstitutive Dimension von Versöhnung darstellt, auseinandersetzt, nimmt Seitz sich dem derzeit aktuellen Thema des Umgangs Europas mit der gegenwärtigen Flüchtlingssituation an. Dabei verweist er darauf, dass insbesondere die Trennung zwischen humanitären und politischen Fragestellungen sich im Hinblick auf den Umgang mit geflüchteten Menschen

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*Die Ästhetik der Macht  
Ein Überblick*

u.a.

als problematisch erweist, da im Zuge einer Fokussierung auf das eigene Gemeinwesen die ethischen Ansprüche Geflüchteter als nachgeordnet betrachtet werden. Mit Levinas argumentiert Seitz, dass die Bereiche des Humanitären und des Politischen keineswegs als getrennt, sondern vielmehr als ineinander konstitutiv verwoben zu verstehen sind.

Die folgenden Beiträge fokussieren nun vor allem auf Fragen nach dem Verhältnis von Versöhnung und Gerechtigkeit, wie sie sich heute im afrikanischen Kontext stellen. Thaddeus Metz unternimmt in seinem Beitrag den Versuch, auf der Basis von traditionellen afrikanischen Vorstellungen von Gemeinschaft eine Ethik nationaler Versöhnung zu entwerfen. Anhand von Fragen der Wahrheitsfindung, Vergebung und Amnestie, wie sie sich im süd-afrikanischen Kontext stellen, wird dieses Konzept dann einer Prüfung unterzogen.

Chimakonam setzt sich kritisch sowohl mit afrikanischen als auch »westlichen« Konzepten von Versöhnung und Gerechtigkeit auseinander und entwirft einen alternativen theoretischen Ansatz unter dem Begriff der Sequenztheorie. Dabei betont er die Notwendigkeit, Fragen der Gerechtigkeit und der Versöhnung in Postkonfliktsituationen gleichrangig zu betrachten.

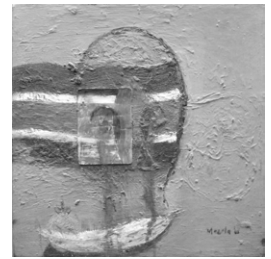
Ähnlich kritisch setzt sich auch Christine Schliesser mit der Spannung zwischen der Frage nach Gerechtigkeit und Prozessen der

Versöhnung auseinander, und zwar anhand der Politik der nationalen Versöhnung in Ruanda nach dem Genozid von 1994. Auch sie betont, dass ein Vorziehen von Versöhnungsprozessen vor Gerechtigkeitsfragen, ebenso wie das Vernachlässigen einer grundlegenden Auseinandersetzung mit Stereotypen von Tätern und Opfern, nicht zu einem nachhaltigen Frieden führen kann.

Gail Presbey nun widmet sich in ihrem Beitrag dem interessanten Vergleich zwischen Konzepten der Bestrafung und Vergeltung des kenianischen Philosophen Henry Odera Oruka, der afrikanische Entschädigungstraditionen den Formen europäischer Strafgerechtigkeit vorzieht, und dem Versöhnungskonzept Mohandas Gandhis und eröffnet damit eine weitere Dimension interkultureller Vergleiche und Theoriebildung, die ein fruchtbares Feld für zukünftige Forschungen bilden kann.

Die hier versammelten Beiträge bilden eine Ergänzung und Erweiterung des Prozesses eines kritischen Hinterfragens des Versöhnungsbegriffs und seines Verhältnisses zu Fragen der Gerechtigkeit aus der Perspektive verschiedener Kontexte, wie er bereits in der Printausgabe des polylog 34 begonnen wurde.

Unser Dank gilt hier allen Autorinnen und Autoren, die durch ihre Beiträge die Debatte bereichert haben, sowie Lara Hofner, die einen Großteil der editorischen Arbeit übernommen hat.



ANKE GRANESS

## Reconciliation and / or Justice?

Introduction to the online-edition

This is the launch of the first online-edition of our journal *polylog*. The edition is the result of the 5th Intercultural Interdisciplinary Colloquium of the Forum for Intercultural Philosophy e.V. ([www.polylog.org](http://www.polylog.org)) under the title „Reconciliation and Justice“ at the Institute for Science and Art (IWK) in cooperation with Viennese Society for Intercultural Philosophy (WiGiP), Institute of Philosophy at the University of Vienna, and Forum Scientiarum at the University of Tübingen in May 2015. The first part of the proceedings of the colloquium was published in our print issue of *polylog* No. 34 in December 2015 under the title »Reconciliation and /or Justice«. In addition to the printed issue, the online edition publishes now those excellent papers of the Vienna colloquium which have not been included in the printed issue due to the limitation of space.

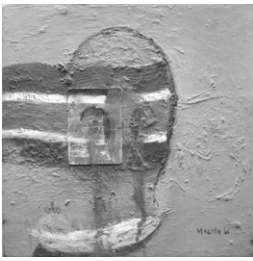
New in this context is not only free access to all articles, but that the articles are not published exclusively in German (like in our print issue) but in different languages, this time in German or in English. While the printed issue of *polylog* will continue to be published in

German only, the online edition will publish articles in different languages, and in this, our *polylog* will become in the coming years also more polyphonic.

Our first online edition includes contributions from the following scholars: Francesco Ferrari (University of Jena), Sergej Seitz (Vienna University), Thaddeus Metz (University of Johannesburg), Jonathan Chimakonam (University of Calabar), Christine Schliesser (University of Zurich), and Gail Presbey (University of Detroit Mercy).

The contributions of Ferrari und Seitz refer to two great European thinkers of the concept of reconciliation, namely Paul Ricœur and Emmanuel Levinas. While Ferrari explores in a very detailed way Ricœur's concept of reconciliation and the question if forgiveness is a constitutive dimension of reconciliation; Seitz turns to the currently topical issue of Europe's attitude towards refugees and asylum seekers. Seitz argues that the prevailing separation between humanitarian and political issues turns out to be problematic, for a focus on the own com-

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*et al.*

munity excludes the ethical demands of refugees as secondary. With Levinas he argues that the humanitarian and the political cannot be conceived as separated, but rather as constitutively interwoven.

The following contributions focus on issues of the relationship between reconciliation and justice in the African context of today. Thaddeus Metz undertakes the attempt to conceptualise on the basis of traditional African ideas of community a new ethics of national reconciliation. Moreover, he applies the new theory to burning issues in South Africa, such as truth-telling, forgiveness or amnesty. Jonathan Chimakonam takes a critical approach to African as well as Western conceptions of reconciliation and justice and suggests as an alternative theoretical approach a theory which he calls »sequence theory«. He argues, that in a post-conflict situation, issues of justice and reconciliation have to be considered in an equal way. A similarly critical approach takes the analysis of processes of reconciliation in

post-genocide Rwanda by Christine Schliesser. Schliesser pronounces that to favour reconciliation over issues of justice, and to neglect a confrontation with persisting stereotypes and animosities, cannot lead to a sustainable peace. Gail Presbey analyses in a comparative way concepts of punishment and retribution of the Kenyan philosopher Henry Odera Oruka, who favours African forms of compensation to forms of European criminal justice, with the concept of conflict resolution and reconciliation of Mohandas Gandhi. In doing so, Presbey opens a new field of intercultural comparative work which promises to be a fertile field for future research.

All articles contribute to a critical questioning and conceptualization of concepts of reconciliation and justice - a process which will hopefully be continued in the future.

Our thanks go to the authors who have enriched by their contributions the debate, and to Lara Hofner who was responsible for much of the editorial work.

CHRISTINE SCHLIESSER

# The Case for Transformative Justice in Reconciliation Processes

An Argument in View of Post-Genocide Rwanda

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## I. IN LIEU OF AN INTRODUCTION

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»It was an absolutely magnificent day in May 1994. The blue sky was cloudless; and there was a whiff of breeze stirring the trees. Most of the people in the surrounding villages had been slaughtered. In a few short weeks, it had become a lonely and forlorn place. Suddenly up ahead we saw a child wandering across the road. He was about three years old, dressed in a filthy, torn T-shirt, the ragged remnants of underwear drooping from under his distended belly. I got out of the vehicle and walked toward him. He was now at the entrance to a hut, and by the time I had caught up with the boy, he had disappeared inside. It was so dark inside that at first I smelled rather than saw the horror that lay before me. As my eyes became accustomed to the dark, I saw strewn around the living room in a rough circle the decayed bodies of a man, a woman and two

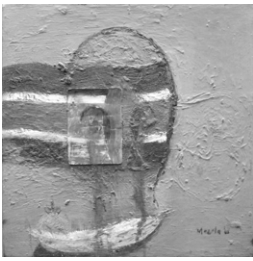
children, stark white bone poking through the desiccated, leather-like covering that had once been skin. The little boy was crouched beside what was left of his mother. I made my way over to him as slowly and quietly as I could and, lifting him into my arms, carried him out of the hut. I couldn't save Rwanda, but I could save this child. That dream was abruptly destroyed when a young RPF soldier, fast as a wolf, yanked the child from my arms and carried him directly into the bush« (Dallaire 2004, 1–4).<sup>1</sup>

Any speech of reconciliation and justice cannot remain in abstraction, lest it become meaningless. The incident with the little boy that Roméo Dallaire, commander-in-

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<sup>1</sup> In this book, Dallaire recounts his experiences during the genocide and points to the failure of the world community which could have stopped the killings.

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Any speech of reconciliation and justice cannot remain in abstraction, lest it become meaningless.

chief of the UN-AMIR forces stationed in Rwanda during the genocide in 1994, recalls, represents what is summarized in the term »Rwandan genocide.« It will serve as a reference point for my following deliberations. The genocide in Rwanda against the Tutsi and moderate Hutu has excelled in brutality, when in 100 days about 1,000,000 children, women, and men were brought to death. With this as a background, it is difficult to even speak of »reconciliation.« Is reconciliation even thinkable in this context? Let alone doable? And what is the place of justice? I will seek to answer these questions by explicating and defending my thesis: Reconciliation processes as the one in post-genocide Rwanda benefit significantly from a transformative understanding of justice supplementing our common understanding of justice as *iustitia retributiva*.

I will do so in three parts: *First*, I will briefly explore the meaning of reconciliation, before in a *second* part, I will turn to a specific understanding of justice, namely transformative justice. In a *third* part, I will test the relevance of what my discussion has yielded against the reality of post-genocide Rwanda.

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## 2. RECONCILIATION

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The term reconciliation, once primarily at home in religious contexts, has long since become established in historical and political discourse. Employed by societies in transition, reconciliation is meant to facilitate a »new beginning,« which includes stability, safety, and

(economic) growth after violent conflict, the South African Truth and Reconciliation Commission (TRC) being the most famous example (see Braun 1999). In the following, reconciliation is understood as a relational term that refers to both a procedure and a result. Reconciliation is thus a »reciprocal process between at least two parties, who in immediate or mediate contact with each other reflect on their mutual relationship, and who aim to design this relationship in a positive and new way by mutual acceptance, as well as the result of this process« (Van de Loo 2009, 16, my emphasis).

The following dimensions of reconciliation need to be considered in this context. *First*, reconciliation is no automatism. Reconciliation cannot be »made« and can therefore neither be decreed nor requested. This holds true on both levels the societal and the individual. Reconciliation always remains the original right of the victim. Psychiatrist Thomas Auchter is right when he points to what he calls the »limit of the principle of reconciliation«: »Whoever morally pressurizes traumatized victims of grave violence into requests for forgiveness and reconciliation, re-traumatizes these victims and commits in my view a culpable violation of these victims. Here, we encounter the limit of the principle of reconciliation« (Auchter 1997, 483). A *second* factor needs to be mentioned: stereotypes. Stereotypes are emotion- and value-laden ascriptions to groups of people. They are resistant to experience and rational criticism (see Hahn 2013, 63). Stereotypes as-



sume a crucial role in the continuing formation of our identity, as the perception of the other (heterostereotype) becomes a function of one's self-perception (autostereotype). In the context of conflict, this can lead to the creation of an »identity-in-enmity« (Falchner 1996, 470). Stereotypes are especially susceptible to being utilized as political and ideological instruments, for they can be easily and effectively employed to manipulate public opinion (see Kochanowska-Nieborak 2013, 109). Reconciliation processes therefore also depend on the willingness of each participant to allow a modification of their identity by questioning their own hetero- and autostereotypes. »Processes of reconciliation know neither victories nor defeats. They are processes, which include victories and defeats, yet their results always pertain to *both parties in the same way*. If this is not the case, all we are left with is a camouflage meant to push particular interests, which is nothing but an instrumentalization of the rhetoric of reconciliation« (Hahn 2013, 71, Footnote 5, my emphasis).

*Third*, reconciliation includes different elements. According to ethicist Fernando Enns (2013, 24), these include »elements such as the confession of guilt, atonement, asking and granting of forgiveness...up to a newly ordered relationship.« Enns particularly emphasizes the importance of justice for reconciliation due to the fact that each conception of reconciliation is shaped by the conception of justice underlying it as will be discussed in more detail in part 3.

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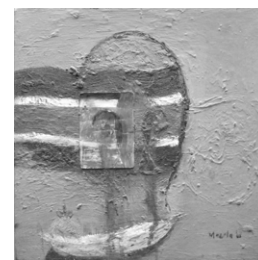
### 3. JUSTICE

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For our purposes, two concepts of justice are of particular relevance – retributive and restorative/transformative justice. A *retributive* understanding of justice forms the basis of most judicial procedures in the Western hemisphere, for instance, at the International Criminal Court at The Hague. Since 2002, crimes against humanity are brought to trial there and those responsible are subject to punishment. While the conception of justice as *iustitia retributiva* is both reasonable and well-established, it still contains certain weaknesses as sociologist Howard Zehr (2005) points out. These weaknesses of retributive justice entail, for instance, an abstraction of the victim, of the perpetrator, and of the crime itself, while both the injuries incurred and the affected community are neglected.

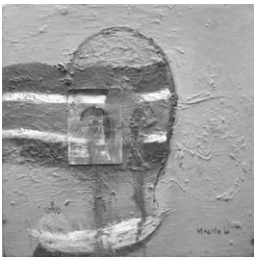
Zehr therefore suggests supplementing a retributive conception of justice with a *restorative* or *transformative* conception. In the following, I prefer the term transformative justice to restorative justice, since restorative justice might fall prey to misunderstanding it as aiming at the *status quo ante*, which, in the case of Rwanda, was permeated by injustice as well. Transformative justice, on the contrary, denotes the potential for a truly new beginning, the transformation of injustice into justice.

Zehr's premise is a relational understanding of crime and justice: »Crime violates people and relationships. It creates obligations to make things right. Justice involves



»Whoever morally pressurizes traumatized victims of grave violence into requests for forgiveness and reconciliation, re-traumatizes these victims and commits in my view a culpable violation of these victims.«

Thomas Auchter



the victim, the offender, and the community in a joint search for solutions which promote repair, reconciliation, and reassurance« (Zehr 2005, 37, Footnote 10). Among the principles of the transformative approach to justice are (Enns 2013, 32, Footnote 9):

(Principle 1) Crimes are violations of people and relationships.

(Principle 2) Violations result in obligations of the perpetrator towards the victim, and of the community towards both perpetrator and victim.

(Principle 3) The injustice done calls for compensation. This includes the victim's need for information, support, punishment of the perpetrator, repair, and security. The entire process is firmly located within the community.

According to Enns, the transformative approach to justice is particularly applicable in the context of violent conflict caused by civil war or racial injustice. For the aim there is not »only to come to terms with the past, but rather to establish just relationships and conditions as the prerequisite for sustainable peace in the sense of reconciliation« (Enns 2013, 33, Footnote 9). At the same time, however, one must beware of overestimating the transformative approach. The transformative approach is clearly meant as a supplement to, and not as a replacement for retributive justice. Nevertheless, the transformative approach contains certain elements such as its emphasis on relationships and community that makes it particularly helpful in view of situations like that of Rwanda. This claim will be supported

by utilizing the example of the so-called gacaca courts that are at the very heart of Rwanda's »National Politics of Reconciliation.«

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#### 4. TRANSFORMATIVE JUSTICE AND RECONCILIATION IN POST-GENOCIDE RWANDA

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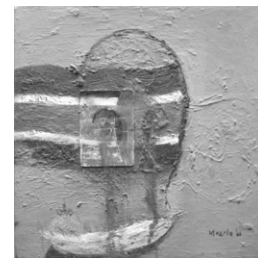
##### 4.1 THE CONTEXT

The 1994 Rwandan genocide distinguishes itself not only by its preventability, its systematic preparation, its brevity, and its intensity, but also by its cruelty. Victims were oftentimes beaten or hacked to death with machetes and thrown into latrines to die. The victims were mostly members of the Tutsi-minority, yet countless moderate Hutu, who would not have participated in the bloodshed, were murdered as well. It needs to be pointed out that Hutu, Tutsi, and Twa are no conventional ethnic descriptions. Rather, they refer to social groups sharing one and the same language and culture.<sup>2</sup> Perpetrators and victims oftentimes knew each other, being connected through friendship or family. The genocide thus left a country that is deeply traumatized even today, with much of the adult population being either perpetrator or/and victim. Since Rwanda is one of the smallest countries in Africa, about half the size of Switzerland, the Rwandan people today cannot escape, in the words of genocide survivor Esther Mujawayo (2007, 57),

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<sup>2</sup> These terms also served as descriptions of wealth. Those who had ten pieces of cattle or more were counted as Tutsi.

The transformative approach contains certain elements such as its emphasis on relationships and community that makes it particularly helpful in view of situations like that of Rwanda.



this »ghastly dilemma: having to live together – after and despite a genocide.« This country is too small and too crowded for perpetrators and victims to avoid each other permanently.

Reconciliation has therefore been declared a political goal in Rwanda. Current president Paul Kagame's »National Politics of Reconciliation« pushes reconciliation on several different levels: On a national level, for instance, Rwanda's *National Unity and Reconciliation Commission* (NURC) was established, which advances different reconciliation projects throughout the country, such as education and sensitization projects. The government further decided against an open ethnicity discourse and prohibited the use of the terms »Tutsi,« »Hutu,« and »Twa.« On the judicial level, Rwanda established the so-called *gacaca* courts. Their far-reaching impact for the societal process of reconciliation and justice necessitates a closer look.

#### 4.2 THE GACACA COURTS: PARADIGMS FOR RECONCILIATION AND TRANSFORMATIVE JUSTICE?

After the genocide, Rwanda's judicial system broke down. Most judges had been killed; prisons were overcrowded with up to 120,000 people. In its search for solutions, Rwanda turned to its traditional judicial courts: *gacaca*.<sup>3</sup> Since traditionally the *gacaca* courts were not envisioned for the purpose of dealing with

such large-scale crimes as genocide, they were slightly adapted before facing this enormous challenge. From 2001 until their official termination in 2012, there were about 11,000 *gacaca* courts throughout the country, with respected people serving as lay-judges to preside over hearings and to deliver judgments.

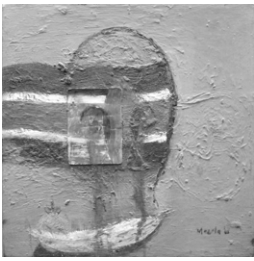
The *gacacas*' main objectives were: delivering justice and promoting reconciliation, accelerating the trials, assigning individual guilt and responsibility, finding the truth, creating a common culture of remembrance, engaging the population, and ending a culture of impunity, particularly for ethnically motivated crimes. The goal of bringing every person who had participated in the genocide to trial constitutes a clear rejection of any politics of amnesty.

Comparing *gacaca* courts as a means for achieving reconciliation and justice with the concept of transformative justice yields striking similarities: The *gacacas* connect to all of the three principles of the transformative approach.

Particularly by means of the *gacacas*' emphasis on relationships and community, the transformative approach proves itself quite at home in the Rwandan context. Much of African culture is shaped by *ubuntu*, the African concept of community, which lies at the very foundation of *gacaca*. According to Desmond Tutu (2008, 12), *ubuntu* »presupposes that we are all connected to one another. Nobody can be a human being by him- or herself.« This means, »my personality is bound up into yours. If I destroy your personality, mine will

This country is too small and too crowded for perpetrators and victims to avoid each other permanently.

<sup>3</sup> [ga'ʃaʃa]. The Kinyarwanda term means »grass« and refers to the place in the village where the traditional *gacaca* courts take place. For a detailed treatment of *gacaca* courts (see Friese 2010, 59–72).



eventually be destroyed as well» (Tutu 2008, 144, Footnote 17).

This view corresponds to Principle 1 of transformative justice, which regards crime as violation of people and relationships. Accordingly, the aim of both the *gacacas* and transformative justice is to restore destroyed relationships. Here, we need to keep in mind that life in Rwanda cannot be lived by the individual alone, but depends on the mutual support of the family and village structure. Even ordinary daily tasks such as fetching water cannot be carried out by one person, but instead require combined effort. Furthermore, now is the time that even long-term prison or labor sentences are drawing to an end. More and more discharged perpetrators are returning to their home villages, oftentimes the place where they committed atrocities and that is also the home of survivors. Against this background, the emphasis on a restoration of relationships, of people living together without fear and hatred, is of the utmost importance. Community, dependability, and mutual support are considered high social goods as Rwandan theologian Pascal Bataringaya emphasizes: »To us, social harmony is the »summum bonum« (Bataringaya 2012, 174).

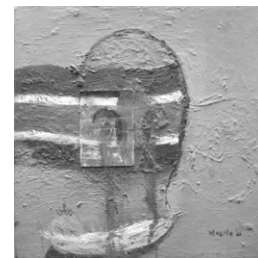
Principle 2 of transformative justice stresses that injuries result in obligations. These are twofold and refer (a) to the obligations of the perpetrator toward the victim and (b) to the obligations of the community toward both. While retributive justice focuses primarily on the crime, the perpetrator and the ensuing adequate punishment, transformative

justice shifts the focus to the victim, the injuries incurred and the resulting needs. The transformative approach pays attention to the fact that a crime entails consequences not only for the perpetrator and the victim, but also for the entire community. The *gacacas* take up these aspects, for instance, in their emphasis on reparation payments that a convicted perpetrator has to make to the victim. Depending on the crime, the perpetrator can also be required to help repair a destroyed house or to replace a ruined harvest or stolen livestock. The aspect of obligation is furthermore taken up by the institution of labor-camps. Partly also due to overcrowded prisons, perpetrators were often sent to labor-camps for social work to benefit the entire community. Again, the guiding principle is less retribution than the reestablishment of social peace and harmony.

Principle 3 emphasizes the victims' need for information, support, punishment of the perpetrator, repair, and security. All of these play a significant role in *gacaca* courts. The victims' need for information relates to the aim of finding out the truth, a major objective of *gacacas*, to learn »what they [the perpetrators] did, what they saw, how they killed their victims and where they buried them« (Mujawayo 2007, 164, Footnote 15). The victims' demand for punishment of the perpetrators corresponds to the empowerment of the *gacacas* to administer punishments that include prison sentences of up to 30 years as the highest possible verdict. The transformative approach further calls for the entire process to be located within the community. This

»My personality is bound up into yours. If I destroy your personality, mine will eventually be destroyed as well.«

Desmond Tutu



emphasis on participation and dialogue of all three parties involved – victim, perpetrator, and community – is at the very heart of the *gacacas* that took place in each village, in the very surroundings of where the atrocities had been committed.

To sum up, comparing the three core principles of the transformative approach and post-genocide Rwanda's *gacaca* courts has yielded significant parallels between both forms of alternative justice. Both aim less at retribution, and more at reconciliation along with the restoration of sustainable social peace within the community, by including all parties involved – the perpetrator, the victim and the community – in the process. This result points to a possible underestimation of the efficacy of this specific understanding of justice, i.e. transformative justice, in contexts of reconciliation processes such as that of post-genocide Rwanda.

The theoretical analysis, however, needs to be supplemented by a few remarks concerning the practical implementation of the principles delineated. In praxis, the effectiveness of *gacaca* courts suffered severely under a number of massive weaknesses. These include the partial inadequacy of the lay-judges, the lack of psychological and social care for the victims, judicial deficits, decreasing engagement of the population as the courts continued year after year, and problems in finding the truth many years after the crimes (Friese 2010, 73–85, Footnote 16). Without belittling these highly problematic shortcomings however, any final evaluation of the *gacacas* needs to keep the fol-

lowing two aspects in mind: First, some of the problems of the *gacacas* resulted less from problematic principles, but instead more from a problematic implementation of otherwise useful principles. Second, when »compared to its alternatives, *gacaca* should still be judged in a positive light. It is the only feasible and, therefore, the best solution to Rwanda's problems and the legacy of the genocide« (Molenaar 2005, 165).

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#### 5. RECONCILIATION OVER JUSTICE. RWANDA'S PROBLEMATIC »NATIONAL POLICY OF RECONCILIATION«

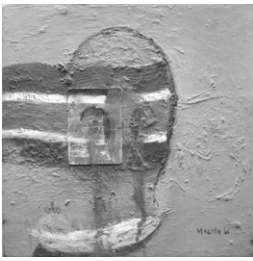
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Before closing, I would like to point out two particularly problematic aspects that find only insufficient consideration both in the *gacaca* courts and in Rwanda's national politics of reconciliation in general, and which pose serious problems for Rwanda's process of reconciliation:

(Point 1) An insufficient attention to stereotypes: Instead of critically examining deeply rooted stereotypes on both sides, Rwanda's official policy of banning the use of the terms »Tutsi,« »Hutu,« and »Twa« amounts to the forceful suppression of any ethnicity discourse, thereby burdening Rwanda's fragile present and future with an incalculable potential for conflict.

(Point 2) A problematic culture of remembrance: The politically correct terminology refers solely to the remembrance of the »genocide against the Tutsi.« Both, countless murdered moderate Hutu as well as the atroci-

This emphasis on participation and dialogue of all three parties involved – victim, perpetrator, and community – is at the very heart of the *gacacas* that took place in each village, in the very surroundings of where the atrocities had been committed.



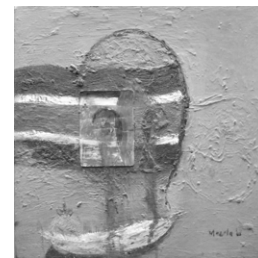
ties committed by the Tutsi RPF army thereby fall prey to what cultural scientist Aleida Assmann (2008, 274) calls »actively forgetting,« i.e. the deliberate destruction of memories.

Both of these deeply problematic aspects reveal the intrinsic relationship between reconciliation and transformative justice. If reconciliation is meant to be achieved by disregarding justice in its transformative capacity, the inevitable result will be »cheap« reconciliation.<sup>4</sup> »Cheap« reconciliation desires the prize, yet disregards the process. »Cheap« reconciliation desires the change of the other, yet disregards the change necessary in oneself (Point 1). »Cheap« reconciliation is reconciliation without transformation. It desires the future and disregards the past (Point 2). It will remain

superficial and will readily dissolve when old animosities and stereotypes are reignited. Reconciliation based on transformative justice, however, is a »costly« process, a process that spares neither the perpetrator, the victim, nor their community. Yet »costly« reconciliation built on this kind of transformation is the only variety of reconciliation that is enduring, rooted deep enough to transform past conflicts into future cooperation. While Rwanda has come a long way, including remarkable economic and developmental progress, it must be kept in mind that the establishment of sustainable peace depends on both reconciliation and transformative justice: The establishment of sustainable peace that depends on both reconciliation and transformative justice.

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4 The distinction between »cheap« and »costly« reconciliation draws on Dietrich Bonhoeffer's (2001, 43) well-known distinction between »cheap« and »costly« grace.



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