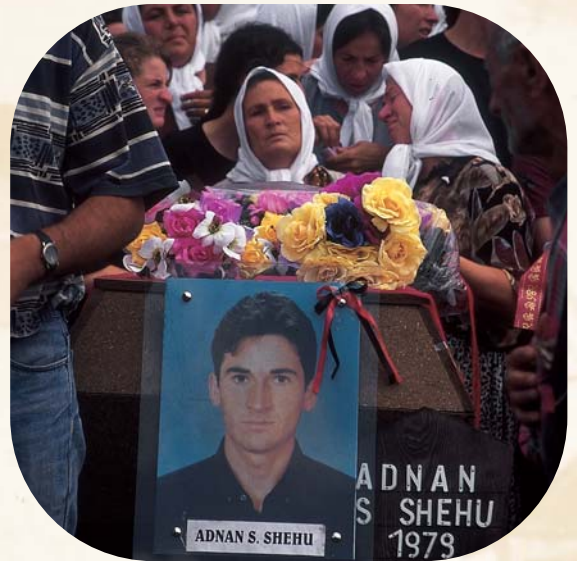


Human Rights: Scholars Explore the Meaning of “Justice”

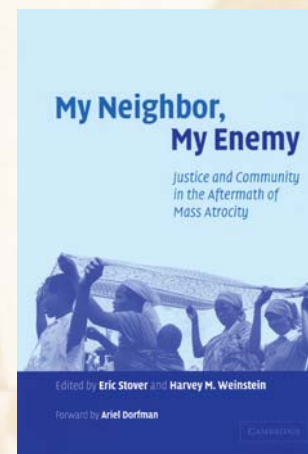


Eric Stover's images of a funeral procession in Kosovo convey the suffering caused by violent conflict. In the lower right, a family in Guatemala witnesses the exhumation of a murdered family member.



Public health and human rights are complementary—and occasionally conflicting—approaches to promoting and protecting human dignity and well-being. Because of their training, health practitioners are well-placed in society to promote human rights. Health care providers also have a duty to respect international standards of human rights and humanitarian law. **Eric Stover, M.D.**, and **Harvey M. Weinstein, M.D., M.P.H.**, and their colleagues have explored these linkages in their studies of the role of justice in the aftermath of genocide and war

in Rwanda and the former Yugoslavia. Stover is director and Weinstein associate director of the UC Berkeley Human Rights Center, and both are faculty members in the UC Berkeley-UCSF Joint Medical Program. Together they have edited the recently published book, *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge University Press), in which they and their colleagues from the U.S. and abroad discuss institutional approaches to justice, social reconstruction experiments, and the experiences of survivors following two major



human rights disasters of the 1990s, Yugoslavia and Rwanda. Writer [Cathy Cockrell](#) recently interviewed Stover and Weinstein for the campus newspaper, the *Berkeleyan*.

What prompted your research on how traumatized nations pursue justice and rebuild shattered communities?

Eric Stover: Following the crises in Bosnia in the early 1990s and Rwanda in 1994, the international community came together and said, “We’re going to set up ad hoc war crimes tribunals to deal with this.” They wanted to bring justice to the victims, promote reconciliation and healing, and restore peace and security. And they made claims that tribunals would accomplish these ends. At the Human Rights Center, we looked at the growth of these tribunals and the push to establish a permanent International Criminal Court, and we asked ourselves: what can we understand about these processes? We felt that enough time had passed that we could start studying what effect the ad hoc courts were having on these societies as they began rebuilding after war and genocide.

Were there particular incidents that made you begin to question whether trials were accomplishing all that was being claimed?

ES: In the summer of 1997 I was working in Bosnia with the photographer Gilles Peress. He and I were spending a lot of time with a group of Bosnian Muslim women, all of them refugees from Srebrenica. At one of our meetings, I said, “They’ve charged the highest Bosnian Serb leaders with genocide for the massacre at Srebrenica. What do you think of that? Will you participate in their trial?” Several of the older women became visibly upset; one of them started yelling and walked out. Later my interpreter said, “They want nothing to do with that U.N. tribunal in The Hague.” In effect, they were saying “the U.N. betrayed us by failing to stop the Serb forces when they were laying siege to Srebrenica

and massacring our men and boys. And now the U.N. wants to make up for it by setting up an international court, and call it ‘justice’?”

So I had been as bad as the diplomats. I had been working on this assumption, while investigating mass graves throughout Latin America, that most—if not, all—victims wanted trials. But, no, the reality is that people see justice in very, very different ways. So it was an awakening to me, and I became curious.

What did your research teach you about international trials and their effectiveness?

Harvey Weinstein: When we think of courts, we tend to think of the domestic legal systems we know. International courts and tribunals, on the other hand, are really new, and were set up to address situations of mass violence, ethnic cleansing, genocide, war crimes, and crimes against humanity. So people didn’t know enough about what those most affected by these horrendous experiences consider to be important in rebuilding their lives. They made a lot of assumptions about what these trials could accomplish.

The diplomats in particular took up this trope in the ‘90s: “We will have these trials, and they will lead to reconciliation.” Madeleine Albright, for one, is quoted over and over again making that claim. But in fact there’s no evidence to support that assumption. In the West we tend to think of retributive justice, of people having to get their due if they’re done wrong. Yet sometimes, for other people, justice is finding the bodies of their relatives who disappeared. Or getting a job. Or sending their kids to school every day and not worrying about it. And for them the idea of trials is not the most salient response to their pain.

And then there are some people who want a trial because they want to go and testify, as Eric found in his witness study. We had multiple studies in many sites led by different colleagues; in the witness study, we interviewed

87 people who served as witnesses at the International Criminal Tribunal for the former Yugoslavia (ICTY), to better understand the trials’ effects. [Stover’s book on this research, *The Witnesses: War Crimes and the Promise of Justice in The Hague*, will be published by University of Pennsylvania Press later this year.] We found that for some people there are altruistic reasons for going to testify in The Hague—because it would set the record straight for the betterment of everyone.

ES: Another key finding is that all memories are local, and especially in war. What you remember about the war is that you were in your house when those soldiers in those uniforms, or those paramilitaries, came and they did this to you. And that remains paramount in your mind. So while some people are willing to go to The Hague, for instance, to testify against a commander they never saw, it’s not over for them. They still want to see local trials; they don’t feel justice is done until you get to the lower-level people directly responsible for the crimes.

So what feels like a “just” response may be, in part, a matter of individual personality—and presumably there’s also a cultural component?

HW: Yes. It’s my sense that in Argentina, Chile, Latin America, formal trials are very, very important. In other parts of the world it may be different. For example, in Rwanda we found that there was much, much more support for legal proceedings that were local to Rwanda—such as the local alternative war-crime trials known as *gacaca*—than for high-profile trials held in another country. In fact, in one of our studies we found that 87 percent of Rwandans interviewed either were not informed or were poorly informed about the International Criminal Tribunal for Rwanda, held in Arusha, Tanzania; it didn’t mean much to them. So then you have to ask, “Why is the international community pumping millions of dollars into this process if it doesn’t change peoples lives? What are the goals here?”

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A forensic anthropologist presents x-rays of a skull revealing shrapnel from a .22 caliber weapon.

You’ve mentioned that there have been many assumptions about what trials accomplish—for instance that trials lead to social reconciliation. What are others?

HW: “Revealing is healing.” That was the motto of the South African Truth and Reconciliation Commission. Lawyers like to think that if testimony on the witness stand will lead to catharsis, then that is going to lead to healing. The history of psychotherapeutic treatment and our own research indicate that that is not the way it works at all.

ES: Some witnesses I interviewed talked about a cathartic experience. But many of them say that that momentary glow in the courtroom faded quickly as they returned to their destroyed communities. Some express real anger when they learn of the low sentences meted out to the defendants. Maybe it’s the commander of a patrol that killed members of your family, who only gets 12 years. And you go, “Well, that’s not justice! Why did I go and testify?”

So our point is please, let’s just give the word “reconciliation” a rest, let’s give the words “catharsis” and “closure” a rest, because empirically things don’t necessarily happen the way we wish they would.

HW: Another article of faith is that war-crimes trials lead to deterrence of war crimes and will help prevent future genocides. There is no evidence to back that up. It has not worked yet.

ES: Many of these traditional assumptions about the healing powers of international criminal justice are really only articles of faith. They have never been verified empirically. We simply want to believe these things. But that’s not good enough.

The two of you were in The Hague recently to share insights, based on research, with the International Criminal Court. What were some of your recommendations?

ES: One [recommendation] follows what we’ve just been talking about. When you go into a post-war society—especially when there’s been ethnic cleansing and genocide, especially when it’s so widespread and there are so many people involved—you really need to get an understanding of what the people themselves want. It isn’t useful to come in *ex cathedra* and announce, “We’re going to set up an international tribunal to establish the truth and help everyone reconcile their differences.”

Social rebuilding after genocide doesn’t work that way. War-crimes trials are important, but they are only one form of response. Many other responses—including rebuilding the economy and the national judicial system and bringing tolerance and democracy to the classroom—are equally important. It is a process that takes time and persistence.

Another recommendation is based on our work in the former Yugoslavia. We found that people there tend to have a very distorted view of the ICTY. All they see in the media is that prosecutors are coming to their communities to arrest war criminals: the hunter and the hunted. They don’t understand that the court also consists of judges and defense lawyers, and that there are strict rules of evidence and procedure to guarantee fair and public trials for the accused.

So you need to set up an outreach program to let people know how the court operates, and what its objectives and limitations are. In cases with local defendants, the court must be proactive and reach out to the community ahead of the trial, to inform people about the trial process and that the court is not infallible, that there are no guarantees as to how the trial will turn out.

HW: It’s critical to set up a parallel pedagogical process to teach people about war crimes and what these trials are about. And at the same time we must involve communities in ownership of the process. Unless there is ownership, it doesn’t mean much. So that’s been one of our recommendations. And the ICC gets it; they’re going to try to build on some of these mistakes and errors.

You write in your book about the need for an “ecological model” for rebuilding a society. What do you mean by that?

HW: If you think back to 9/11, that’s four years ago, and people here are still enraged about it. Can you imagine living in a country where everything is destroyed, and where there are people all around you who participated in the destruction? We have to think much more sensitively about what that means for a community.

In an ecological model, social reconstruction occurs at multiple levels and in many segments of society; there is constant awareness that change or interventions in any one domain have ripple effects across all of the other domains. Planning for change must take this into account. Further, we don’t tend to think in a very culturally sensitive, appropriate way about what it means to rebuild a society. Up until recently the international community has thought primarily about trials as the first step towards social reconstruction. 🌱

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