

From ideological fixity to moral argument

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Today, international law – and international human rights law in particular – provides the dominant frame, often augmented by negotiations, for responding to acts of genocide. While this frame is necessary, it may not be sufficient to address the deeper emotional and psychological scars associated with the 1904–1908 genocide in erstwhile German South West Africa. This is because the colonial project's ideological fixity deeply implicates aspects of international law. Moreover, legal agreement often fails to result in a fair and just outcome. To achieve the latter, moral arguments seem unavoidable.

Moral arguments come from an older tradition that attempts to think in terms of what is right and wrong in war, dating to at least the 17th century and even earlier in the case of some philosophers. Moral arguments, notwithstanding their contested nature, attempt to bring some order, clarity and moral principles to the problem of war. Questions of when a war is just, or what counts as “just acts” in the conduct of war, are ancillary to legal and political questions. While critics may rightly argue that moral principles are not law, if they are applied consistently and justly, such principles are not only a tribute to justice, but to humanity. They are a recognition of the oneness of humanity. Morally, genocide is a form of evil and a crime, an excess in the words of moral philosopher Emmanuel Levinas.

The moral case against the German state

The moral question is not simply *what* the former political and military leadership did in the name of the German state, but *why* it did what it did. The *why* part of the question left the deepest wounds, for it points to casting the Ovaherero and Nama communities *outside of the circle of “civilized” humanity* – fated as uncivilized and inferior to Europeans, belonging to Frantz Fanon's “*zone of non-being*.”

There is another reason the moral argument matters. This relates to the concept of *moral responsibility*, distinct from legal responsibility. Moral responsibility can be seen as prospective responsibility, meaning that individuals have a moral duty to care for or attend to someone or something. Moral responsibility is also retrospective, arising when a person's actions are adjudged morally *wrong*. That person then deserves to be blamed, held accountable or punished for their actions. This is certainly the case with respect to genocide.

Mindful of the [United Nations Convention on the Prevention and Punishment of the Crime of Genocide \(1948\)](#), the legal definition of what constitutes “genocide” is clear. To see the hard truth about the *morality* of Germany's infamous “extermination orders” (*Vernichtungsbefehle*) against the Ovaherero and Nama peoples, the moral question of the *proportionality of means* in relation to the threat posed by the

Ovaherero and Nama communities, is but one part of a more complex argument. The actions of the German state also violated the “laws of humanity and the public conscience,” as put forward in [The Hague Convention of 1899](#), to which Germany was a party. There was a *moral culpability of killing by design*, which made the issuing and fulfilment of the extermination orders a *moral crime*.

Based on the contours of the argument presented above, we can answer the following questions:

Were the extermination orders necessary? — No.

Were they proportionate to the threat? — No.

Did they go against the drive of humanitarian principles’ aim to enunciate a way of controlling and limiting war? — Yes.

Did the genocide violate general moral standards recognized and agreed upon by Western civilization? — Yes.

Was it morally wrong? — Yes.

The presence of the past: into the future

In essence, this paper argues for the necessity of a moral argument in war; to suppose that there is no need for a moral argument in war is to condone barbarism. It is the mark of humanity to make an effort to act morally. Reparations cannot be the end of the relationship between Germany and Namibia, but they could and should form part of a process of reasserting our common humanity. Achille Mbembe is right when he says,

restitution and reparation, then, are at the heart of the very possibility of a construction of a common consciousness of the world, which is the basis for the fulfillment of universal justice. The two concepts of restitution and reparation are based on the idea that each person is a repository of a portion of humanity. This irreducible share belongs to each of us. (Achille Mbembe, *Critique of Black Reason*, WITS University Press, 2017, p. 182)

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