

## REPARATIONS, OR HUSH MONEY?

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What is the cost of your self-identity?

Unfortunately, minorities have been a target of atrocities since the beginning of time. Knowledge of these atrocities depends on international acknowledgement and the censorship of history by its perpetrators. In an attempt to offer solace to victims, survivors, and descendants of victims and survivors, some nations practice giving some sort of reparation.<sup>2</sup> Reparations vary from judicial accountability to monetary damages. Monetary damages have gotten considerable attention in recent years, and they have begun conversations around the world, but monetary reparations are not always the answer.<sup>3</sup> Each case is unique, and in some circumstances, judicial accountability is worth more than any dollar value given to dead relatives and lost legacies. When an atrocity is not as well known, or is contested, the mere acknowledgement and criminal liability of the perpetrator, the criminalization of denial, and the shining of a light on the atrocity for the world to see, is priceless.<sup>4</sup>

In this note, I am going to discuss examples of judicial reparations, their successes, their failures, and how they can be fixed or modified. Some mass atrocities received more attention than others,

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For my great-grandparents; with this paper, your story will not be forgotten.

<sup>2</sup> Claire Andrieu, *Two Approaches to Compensation in France: Restitution and Reparation*, ROBBERY AND RESTITUTION: THE CONFLICT OVER JEWISH PROPERTY IN EUROPE 134 (Martin Dean, Constantin Goschler, and Philipp Ther eds., 2008), <https://www.jstor.org/stable/j.ctt9qdfpf.13>. France separates Restitution and Reparation.

<sup>3</sup> Mariama Diallo, *Reparations: Can Money Absolve the Sins of the Past?*, VOICE OF AMERICA, [https://www.voanews.com/a/usa\\_race-america\\_reparations-can-money-absolve-sins-past/6208006.html](https://www.voanews.com/a/usa_race-america_reparations-can-money-absolve-sins-past/6208006.html) (last visited March 13, 2021). Not everyone agrees on the issue of reparations, some nations have paid monetary reparations, and others consider any money as “blood money.” *Id.*

<sup>4</sup> Raul C. Pangalangan, *The International Criminal Court and the Burden of Non-Traditional Expectations*, 55 GONZ. J. INT’L L. 237, 246 (2020).

and the ones that did not receive the attention are either still contested to this day or deemed trivial. Whether an atrocity is acknowledged or not, the victims, survivors, and descendants of survivors want some sort of consolation. One contested act of brutality is the genocides against the Christian Minorities of the Ottoman Empire. For a period of time between World War I and the early 1920's, the Ottoman Empire transitioned into the Republic of Turkey which we see today.<sup>5</sup> What most people do not know is what went on behind the scenes to create this "Republic." The Government of Turkey to this day refuses to acknowledge the actions of the Young Turks Army one hundred years ago, and this denial of acknowledgment has led to more actions taken on the part of the government regarding other minority groups, and blatant acts of disregard of other minorities.<sup>6</sup> The denial of an atrocity from the past makes it a living issue. When a government refuses to even accept fault and instead continues to abuse its power and flex its muscles, descendants of victims and survivors (from one hundred years ago) implore for acknowledgment and knowledge, not for money. It is the best way that their families' legacies may not be forgotten. It is imperative to let descendants of past atrocities know that their stories matter, and they do not have to carry the wrath of generations before them.

## I. CLARIFICATIONS

Judicial reparations are not the answer to all situations, monetary reparations are still extremely crucial and beneficial. When possible, they should be implemented together, not one over the other. This paper is to demonstrate the power that judicial reparations can have in certain instances, and, in other cases, how they can act as a precursor to any possible monetary reparations.

In some cultures, monetary reparations are seen as a form of "blood" money, and a way for perpetrators to get out of accountability. When governments are responsible for wrongs against a group,

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<sup>5</sup> George N. Shirinian, *The Background to the Late Ottoman Genocides*, GENOCIDE IN THE OTTOMAN EMPIRE: ARMENIANS, ASSYRIANS, AND GREEKS, 1913-1923 (George N. Shirinian ed., 2017).

<sup>6</sup> Neophytos G. Loizides, *State Ideology and the Kurds in Turkey*, 46 MIDDLE E. STUD. 513, 514 (2010) (noting that near Turkey's border with Iraq, there is a Kurdish minority where "[T]he Turkish state has denied basic human rights to its Kurdish-speaking citizens by banning publication of books and newspapers, television broadcasting, religious preaching, and education in their native tongue.").

“money emerges as the potent remedy,” but participation in this is “the calculating, materialist, instrumental monetization of sufferings.”<sup>7</sup> The American Civil Liberties Union produced a partial record of Pentagon payments which totaled \$32 million for the years of 2005-2006 for civilian deaths in Iraq and Afghanistan.<sup>8</sup> This record also included depictions of civilian deaths in Iraq, along with the statement that “[n]o statements from Iraqi witnesses were taken,” which would mean that “the wads of cash were neither reparations nor blood money, but a Pentagon-approved system of ‘condolence’ payments to silence victims and hold no perpetrator accountable.”<sup>9</sup> Perhaps the victims and the families of the victims would prefer judicial accountability on behalf of the perpetrators, as opposed to giving the perpetrators the opportunity to not be held accountable.

Some scholars and people may rightfully argue that this has been attempted in the past, and it has not been successful. This was attempted in South Africa in the 1990’s when the apartheid regime fell, when the South African government created the Truth and Reconciliation Commission (TRC), which was in place from 1994-1998.<sup>10</sup> The TRC functioned by “offering amnesty to perpetrators for full disclosure of previously disavowed perpetrations of human rights violations,” letting people share their stories, and eventually try to establish a common past felt by all South Africans.<sup>11</sup> The TRC was staged as a public event because, in doing so, it tried to “restore public confidence in the legal system of South Africa,” which throughout history denied any human rights violations.<sup>12</sup> While there were some beneficial aspects to the public during hearings, what most people did not anticipate was the mistranslation, the cherry picking of stories to be told, the media creating a theatrical attitude of the hearings, and the limited access to archives.<sup>13</sup> The TRC has been criticized by scholars for its approach to analyzing the past crimes of the South African

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<sup>7</sup> Susan Slyomovics, *American “Blood Money” and a Question of Reparations*, in MIDDLE EAST REPORT, SUMMER 2011, No. 259, NORTH AFRICA: THE POLITICAL ECONOMY OF REVOLT 45 (2011).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Yvette Hutchinson, *The Truth and Reconciliation Commission’s Reconfiguring of the Past: Remembering and Forgetting*, in SOUTH AFRICAN PERFORMANCE AND ARCHIVES OF MEMORY 23 (2013).

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 27-28, 31, and 39-40.

government, and has been accused of downplaying apartheid by showing “little understanding of the legal machinery through which the crime against humanity was perpetrated in the guise of a rule of law.”<sup>14</sup>

We should look to the TRC as a prototype, not as a model. We should look to the process of sharing stories and publicization of the human rights atrocities, but we should not allow the perpetrators to be absolved of all faults in exchange for their cooperation and stories. While a commission within a nation can be successful, an independent court or historical tribunal which renders judgments, is a better option.

## II. METHODS TO REMEMBER AND CONSIDER

The idea for an international court to hold perpetrators accountable is not a new one.<sup>15</sup> Most famously, after World War II, there were proceedings both in Nuremberg and Tokyo which criminally prosecuted several officials who “had authorized policies leading to major war crimes, crimes against humanity, and aggression.”<sup>16</sup>

In 2002, the International Criminal Court (ICC) was created, and its message was to ensure that heinous crimes that concern the world do not go unpunished.<sup>17</sup> The ICC practices “individual responsibility,” rather than holding an entire state responsible, and instead of punishing a government or regime, it only punishes an individual.<sup>18</sup> In the ICC’s courtroom, victims recount the horrors of what has happened to them, and such horrors “are documented with credible evidence, tested and vetted through cross-examination,” which makes the Court be seen as a source of “communal therapy” for victim communities.<sup>19</sup> Aside from being seen as a place of therapy, the ICC courtroom is the place where victims can see the documentation of “a mass atrocity crime,” and an area “for recording

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<sup>14</sup> Mahmood Mamdani, *Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)* 32 *DIACRITICS* 32, 58 (2002).

<sup>15</sup> David P. Forsythe, *Human Rights and Mass Atrocities: Revisiting Transitional Justice*, 13 *INTERNATIONAL STUDIES REVIEW* 85, 86 (2011).

<sup>16</sup> *Id.*

<sup>17</sup> Raul C. Pangalangan, *The International Criminal Court and the Burden of Non-Traditional Expectations*, 55 *GONZ. J. INT’L. L.* 237, 238 (2020).

<sup>18</sup> *Id.* at 242-243.

<sup>19</sup> *Id.* at 244.

history with authoritative record of the evidence.”<sup>20</sup> Victims and families of victims are often told that what happened to them was a myth or in their imagination, so in some instances, “just finding and recognizing the truth of what happened to their loved ones is a form of justice.”<sup>21</sup> In the case of victim communities, “these records are a repository of collective memory, and can bring closure to a traumatic episode in their lives.”<sup>22</sup> The ICC is unique because it works together with the Trust Fund for Victims, which helps victims while their trial is pending, and it also assists victims with reparations which are fitting for each unique situation.<sup>23</sup>

The ICC is a better representative of the methods that should be taken. It is an independent court which not only acts as a body of law, but also as a place of confession and therapy.

### III. HISTORICAL CONTEXT

In 1453, the Byzantine city of Constantinople fell to the soldiers of Mehmed the Conqueror, the leader of the Ottoman Turks.<sup>24</sup> The fall of the Ottoman Empire began in 1912, during the First Balkan War of 1912, when the Ottomans were defeated by Bulgaria, Greece, Serbia, and Montenegro, and they lost their territories in the Balkans.<sup>25</sup> Greece, Serbia, Montenegro and Bulgaria had their own internal conflicts, along with conflicts amongst each other, and in these countries gaining their independence, the Ottoman Empire saw that they were starting to lose their influence in the region.<sup>26</sup> Unfortunately, one thing that occurred during these years was a pattern of migrations of ethnic groups, in the nations that just declared their independence, which were welcomed by many of these territories because they wanted ethnically homogenous nations.<sup>27</sup> Various negotiations took

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<sup>20</sup> *Id.* at 245-246.

<sup>21</sup> *Id.* at 246.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 247.

<sup>24</sup> Aeneas Silvius Piccolomini, *The Fall of Constantinople, in EUROPE (c. 1400-1458)* 93 (2013).

<sup>25</sup> PHILIPP THER, *Ethnic Cleansing as an Instrument of International Politics: 1912-25, in THE DARK SIDE OF NATION-STATES: ETHNIC CLEANSING IN MODERN EUROPE* 59 (2014).

<sup>26</sup> *Id.* at 60-64.

<sup>27</sup> *Id.* at 61 (noting that after the Second Balkan War, there was a huge increase in refugees, and “Serbia, Greece, Bulgaria, and Turkey took advantage of the refugee movements” in order to “populate their newly gained territories with their own nationals.”).

place with the Ottomans and Greece, Bulgaria, Montenegro, and Serbia, but at that moment, “minorities at this earlier stage were not driven out of the affected areas wholesale,”<sup>28</sup> they still remained in their respective homelands.

#### IV. THE DOWNFALL OF THE OTTOMAN EMPIRE

Prior to World War I, one arrangement for the flow of refugees was “population exchanges,” which at the time were voluntary.<sup>29</sup> The organized “resettlement of refugees came to a standstill.”<sup>30</sup> During World War I, Armenians and Greeks were “threatened with deportation from the Ottoman Empire,” and at the same time, Armenian Nationalists were campaigning for an autonomous Armenian state, which fueled the Turkish fear of succession.<sup>31</sup> The Young Turks Army, in response to these movements towards an Armenian State, ordered a deportation of Armenians to the Eastern Anatolian Front (near what at that time was Russian Armenia, and Iran).<sup>32</sup> Knowing that the Armenians would not survive the crossing of the Anatolian Highlands, they encouraged pillaging of the Armenians by local Turkish and Kurdish populations.<sup>33</sup>

In 1919, Greek troops, with the aid of the British, landed in Smyrna, Asia Minor, which they justified due to the large Greek population in that city.<sup>34</sup> The two nations had failed talks and treaties, and later in 1921, the Greek troops marched further into Anatolia, where they were defeated by Kemal Pasha (later Mustafa Kemal Atatürk).<sup>35</sup> Once they were defeated, the Greek troops and almost all of the Christian civilians fled the area from a fear of sharing a fate as the Armenians.<sup>36</sup> In 1920, the Treaty of Sèvres was passed between the Allied Powers during World War I and the Ottoman Empire, which included a passage regarding “mutual and voluntary emigration” of respective minorities over respective borders.<sup>37</sup> The New Turkish

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 63.

<sup>30</sup> *Id.* at 64.

<sup>31</sup> *Id.* at 65.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 75.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

leadership, along with Kemal Pasha, did not agree with the term in the Treaty which protected the minorities of the nation.<sup>38</sup> According to Lieutenant Aaron Stanton Merrill of the US Army, who was sent to observe the situation at the time, “[t]heir slogan is ‘Turkey for the Turks.’”<sup>39</sup> He went on to say that the Ottoman Empire and its military believed “all their troubles during the past 40 years can be attributed to the propaganda spread by the Christian minorities and their only solution is to remove these minorities.”<sup>40</sup>

## V. THREE GENOCIDES

The word “genocide” comes from the Greek *genos* (meaning race) and the Latin *cide* (meaning killing).<sup>41</sup> It is the destruction of a nation or an ethnic group.<sup>42</sup> It is not simply the “immediate destruction of a nation,” which would be accomplished by mass killings, but it is rather to signify “a coordinated plan of different actions aiming at the destruction of essential foundations,” with the “aim of annihilating the groups themselves,” leading to a destruction of “political and social institutions, culture, language... health, dignity, and even the lives of the individuals belonging to such groups.”<sup>43</sup> In the Ottoman Empire, the primarily ethnic Turks were in the ruling class, and the non-Muslim minorities of Armenians, Assyrians, Greeks, and Jews were conquered peoples and had inferior status.<sup>44</sup>

The first ethnic group to be targeted by the Young Turks Army was the Armenians.<sup>45</sup> On April 12, 1909, in Adana, Anatolia, Southern Turkey, 20,000-25,000 Armenians were killed.<sup>46</sup> The perpetrators of these initial massacres included Turkish Troops under the command of the CUP (Committee of Union and Progress, a Turkish Nationalistic Organization formed in 1889).<sup>47</sup> They were a political party which was

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Steven Leonard Jacobs, *Lemkin on Three Genocides: Comparing his Writings on the Armenian, Assyrian, and Greek Genocides*, in *GENOCIDE IN THE OTTOMAN EMPIRE: ARMENIANS, ASSYRIANS, AND GREEKS, 1913-1923*, 257 (George N. Shirinian ed., 2017).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Shirinian, *supra* note 5, at 20.

<sup>45</sup> *Id.* at 40.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 38.

based on the ideology of Turkish racial supremacy).<sup>48</sup> In 1914, Armenians were subjected to violence by the Kurds, which was ignored by the Ottoman authorities.<sup>49</sup> At the outbreak of World War I, Armenian men aged 15-20 and 45-60 were organized into labor battalions and had to fight without proper equipment.<sup>50</sup> In 1915, there was a major defeat for the Ottomans at Sarikamiş (North East Turkey close to modern day Armenia), and the Young Turks Army “convinced themselves that the defeat could only have been caused by the treacherous minorities.”<sup>51</sup> Beginning in February of 1915, there were Armenians revolting against the Young Turks Army, which led to them being sent again to the labor battalions.<sup>52</sup>

In April of 1915, the “political, religious, and intellectual leaders of the Armenian community throughout the whole empire were rounded up, imprisoned, some were put on trial, and most were killed.”<sup>53</sup> The Armenians in the military were murdered.<sup>54</sup> The remaining population were forced to leave their homes, abandon almost all of their belongings, and take deportation routes that led to their death, “through mass murder, starvation, exposure, and disease.”<sup>55</sup> As the Armenians continued these forced marches, the deportees continuously had their property taken, were slaughtered, and women and children “were taken into Muslim households, where they were either adopted or became ‘slave’ labor or concubines.”<sup>56</sup> In the end, by the July 24, 1923 signing of the Treaty of Lausanne, “up to one and a half million Armenians had perished.”<sup>57</sup>

The next group to be targeted were the Assyrians.<sup>58</sup> In October of 1914, Assyrians were forcefully deported from the Eastern city of Van, and in March of 1915, they began to be massacred, together with the Armenians.<sup>59</sup> By the summer of 1915, the killings became a full-blown genocide, with mountain tribes and non-combatant farmers in

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<sup>48</sup> *Id.* at 38-40.

<sup>49</sup> *Id.* at 45.

<sup>50</sup> *Id.* at 46.

<sup>51</sup> *Id.* at 48.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 49-50.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 50.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 50.

<sup>59</sup> *Id.*



Anatolia being targeted by the Ottoman Army.<sup>60</sup> They were subjected to the same atrocities as the Armenians.<sup>61</sup> One thing that separated them from Armenians was that instead of being deported, they were massacred in their own villages by the Kurdish tribes which were organized by the local militia.<sup>62</sup> By 1919, an estimated 250,000 Assyrians were murdered.<sup>63</sup>

The final group to be targeted were Greeks.<sup>64</sup> The Greek genocide was done in three phases: before, during, and after World War I.<sup>65</sup> Beginning in 1913-1914, the Turkish majority was trying to push out Greek and Armenian upper-class persons, so they began to place posters in schools and mosques, which called on Muslims to exterminate the Greeks.<sup>66</sup> Newspapers, in turn, published fabricated and inflammatory articles which aroused their readers to persecute and massacre Greeks.<sup>67</sup> In 1913, there was already an initial push to emigrate Greek Christians out of the country and to bring in Muslim refugees.<sup>68</sup> Before the entry into the war, a total of 350,000 Greeks were forced into the Aegean Sea (the sea between Greece and Turkey).<sup>69</sup> The deportations were halted during the Empire's entrance into the war, but they commenced again in 1916.<sup>70</sup> From 1914-1917, half a million Greeks were forced from their homes and deported to the middle of the country.<sup>71</sup> In the middle of the country, the Greeks were killed, their villages were destroyed, and there were rampant rapes and murders.<sup>72</sup>

The last, and most bloody phase of the killings began after World War I.<sup>73</sup> The two countries (Greece and Turkey) entered the Greco-Turkish War.<sup>74</sup> One of the most infamous moments during the

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<sup>60</sup> *Id.* at 51.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 51.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 43-44.

<sup>67</sup> *Id.* at 44.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 51.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 53.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 54.

<sup>74</sup> *Id.* at 55.

war was the destruction of the city of Smyrna in 1922.<sup>75</sup> One historian described the situation as:

[w]hat happened over the two weeks that followed must surely rank as one of the most compelling human dramas of the twentieth century. Innocent civilians – men, women, and children from scores of different nationalities- were caught up in a humanitarian disaster on a scale that the world had never before seen.<sup>76</sup>

Between September 16, 1922, and October 13, 1922, an estimated over one million “destitute” refugees fled to Greece at that time.<sup>77</sup> Thousands of the people who fled died of diseases.<sup>78</sup> The Turkish Interior Minister, at that time, declared that “his government had decided not to allow the further presence of Greeks on Turkish soil.”<sup>79</sup> On November 21, 1922, peace negotiations began in Lausanne, and it is there that Turkey obtained full sovereignty over most of the territory which we see today as the Republic of Turkey.<sup>80</sup> It’s also there where Turkey refused to pay any reparations for their victims.<sup>81</sup> On January 3, 1923, Greece and Turkey signed the treaty that arranged for compulsory exchanges of populations between the countries, and at the end of the persecution, an estimated 1,085,000 Greeks lost their lives.<sup>82</sup>

## VI. REACTIONS AT THE TIME

As mentioned earlier, Turkey refused to offer reparations to any of its victims, people who lost their homes, families, and dignity. They refused to be held accountable for the horrors they inflicted onto victims and families of victims who could have benefited from some money, after being forcefully displaced. Not one other nation tried to hold Turkey accountable for what happened. These refugees were welcomed into Greece and Armenia, and they were helped as much as the countries could.

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 55-56.

<sup>78</sup> *Id.* at 56.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

The treaty of Lausanne had several provisions intact to protect non-Muslim religious minorities (Armenians and Greeks), but “these protections fell far short of providing anything resembling political autonomy, let alone a national home.”<sup>83</sup> Turkey had then become a religiously “homogenous state as a combined result of the war, genocide, and then the League-administered exchange of populations with Greece.”<sup>84</sup> The League of Nations felt a sense of moral authority to help the Armenian victims, since “they were a ‘stateless’ but deserving people, made up primarily of widows, orphans and young women.”<sup>85</sup> The League of Nations, together with its high commissioner for refugees Fridtjof Nansen, created the Nansen International Office for Refugees.<sup>86</sup> The first act of the office was to create a League-administered travel document (the Nansen passport) for formerly Ottoman Armenians in May 1924.<sup>87</sup> It was basically a travel document, and holders of the passport had the ability to: (1) travel from their place of refuge to a second country, usually to look for work, without the fear of not being allowed to return to their country of refuge; and (2) possibly move on to another third country.<sup>88</sup> This should not be thought of as reparations, since it did not come from the Republic of Turkey. This should be thought of rather as a helping hand.

These three genocides did not get the same reaction across the globe. Some people were inspired by the success of the genocides, and were impressed with how the perpetrators managed to escape consequences.<sup>89</sup> Margaret Lavina Anderson, in her review of Stefan Ihrig’s novel *Atatürk in the Nazi Imagination*, says that Ihrig brings to light “the German Right’s ‘obsession’ with Turkey, which culminated in a Mustafa Kemal Atatürk cult comparable to that of the Turkish Republic,” in the years between 1919 and 1945.<sup>90</sup> Turkey at the time in 1920 was “repeatedly depicted on the Right as a role model for Germany,” and that “The New Turkey was everything the Weimar

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<sup>83</sup> KEITH DAVID WATENPAUGH, *BREAD FROM STONES: THE MIDDLE EAST AND THE MAKING OF MODERN HUMANITARIANISM* 165 (University of California Press 2015).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 166.

<sup>86</sup> *Id.* at 169.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 171.

<sup>89</sup> Margaret Lavina Anderson, Stefan Ihrig, *Atatürk in the Nazi Imagination*, 49 *CENTRAL EUROPEAN HISTORY* 138-139 (2016).

<sup>90</sup> *Id.* at 138.

Republic was not,” because Atatürk “abolished opposition parties, introduced an autarchic economy, and ruled an ethnically cleansed, racially pure population of farmer-warriors.”<sup>91</sup> Anderson went on to explain that Ihrig clarified that instead of Hitler being inspired by Benito Mussolini of Italy, Hitler was inspired by Atatürk, who was “the German leader’s ‘star in darkness’ during the long years before 1933.”<sup>92</sup> By evading any form of consequences, Kemal Atatürk, who committed genocides, was hailed as a hero and visionary by other optimistic dictators.

Recognition of the Greek,<sup>93</sup> Armenian,<sup>94</sup> and Assyrian<sup>95</sup> genocides are dismal, and many say that the reasoning behind this is the Turkish Government’s vehement denial of any of the genocides, because “Turkey adopted a shell of complete and utter denial.”<sup>96</sup> Instead of trying to come to terms with what was done in the early twentieth century, “Turkey has actively endeavored to uproot this genocide from its national consciousness by essentially rewriting history in its educational system and international image.”<sup>97</sup> The current administration of Turkey succeeds in silencing the genocides by implementing “fierce diplomatic relations” with countries that openly acknowledge the Armenian Genocide.<sup>98</sup> Other than two Hollywood films (Elia Kazan’s *America, America*,<sup>99</sup> which depicts both the Greek and Armenian Genocide; and Terry George’s *The Promise*,<sup>100</sup> which depicts the Armenian Genocide), descendants of

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Greek Genocide Recognitions*, GREEK GENOCIDE RESOURCE CENTER, <https://www.greek-genocide.net/index.php/overview/other/greek-genocide-recognitions> (last visited December 1, 2021).

<sup>94</sup> *What Countries Recognize the Armenian Genocide?*, DIGITAL DAY BOOK, <https://digitaldaybook.com/what-countries-recognize-the-armenian-genocide/> (last visited December 1, 2021).

<sup>95</sup> *Assyrian Genocide in Modern History*, ASSYRIAN POLICY INSTITUTE, <https://www.assyrianpolicy.org/genocide-recognition> (last visited December 1, 2021).

<sup>96</sup> Samuel E. Plutchok, *Denial is Not an Option. Or is it? How the Turkish Denial of the Armenian Genocide Blocked Recovery in the United States*, 13 U. MASS. L. REV. 234, 237 (2018) (citing *Davoyan v. Republic of Turkey*, 116 F.Supp. 3d 1084, 1103 (C.D. Cal. 2013)).

<sup>97</sup> *Id.* (citing Richard G. Hovannisian, *Denial of the Armenian Genocide in Comparison with Holocaust Denial*, in REMEMBRANCE AND DENIAL: THE CASE OF THE ARMENIAN GENOCIDE 201 (1999)).

<sup>98</sup> *Id.* (citing *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1077 (9th Cir. 2012)).

<sup>99</sup> AMERICA AMERICA (Athena Enterprises and Warner Bros 1963).

<sup>100</sup> THE PROMISE (Babieka, Survival Pictures, Wonderful Films 2016).

these genocides have nothing to refer to in order to show public recognition of what happened to their ancestors.

## VII. HOLDING DEAD PEOPLE ACCOUNTABLE FOR THEIR ACTIONS

The fact that the perpetrators of a genocide are long gone should not preclude the judicial accountability of these persons. Some scholars agree that “[i]n consequence, reparation demands for past genocide are ‘more effective than the mechanism[s] designed to stop genocide in the present.’”<sup>101</sup> Something that is sometimes forgotten about atrocities is the psychological trauma it can have on survivors, and in other cases, the psyche of an entire nation and its people. When survivors and descendants of survivors have nowhere to point to in order to demonstrate written proof of what they or their ancestors endured, it can lead to feelings of constant dismissal... and rage. The rage that ensues due to constant dismissal can lead to “[r]elentlessly dwelling on inherited grievances” which in turn “idealizes perpetual victimhood.”<sup>102</sup> To simply determine that the time frame for any sort of relief has extinguished only perpetuates a feeling of hopelessness and a loss of faith in survivors and descendants of survivors.

The actions of people and governments from decades (and even centuries) ago should not be imputed onto present day common people. Rather, “collective culpability seems appropriate for ancient wounds,” that lead to “enduring costs.”<sup>103</sup> This should not be taken to mean that everyday persons should be held personally liable for what other people did in the past, rather that everyone has the duty to understand what happened and have an open enough mind to listen to other stories.

While international criminal courts currently adjudicate present cases and incidents, perhaps these courts should “adjudicate” on cases even further back in history, cases where perpetrators and victims have since passed on. While this may sound unconventional, it is something that should nonetheless be considered. An uninterested international court can find dictators, politicians, and political movements guilty of crimes against humanity, and enter judgments against them. These judgments will have no effect in granting

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<sup>101</sup> David Lowenthal, *On Arraigning Ancestors: A Critique of Historical Contrition*, 87 N.C.L. REV. 901, 924-925 (2009) (citing JOHN TORPEY, MAKING WHOLE WHAT HAS BEEN SMASHED: ON REPARATIONS POLITICS 36 (Rutgers University Press 2006)).

<sup>102</sup> Lowenthal, *supra* note 101, at 925.

<sup>103</sup> *Id.* at 902.

monetary reparations to the victims, since they have passed on and their descendants are multiple generations removed from them. They will, however, be public records, and they may have other effects, such as forcing latter generations of the guilty party (for example: present day governments that have risen from the actions of the perpetrators) to admit guilt on behalf of their predecessors, and criminalizing the denial of these atrocities, because “injuries done in the name of states should be expiated by subsequent state agents.”<sup>104</sup>

By remaining with an independent third party, the probability of these records being silenced decreases substantially, and the records will be open to the entire world by demand. By forcing present day successors to admit guilt on behalf of their predecessors, descendants of victims will finally have the closure that they crave. The violent actions their ancestors faced will no longer be hidden. The criminalization of denial ensures that descendants of victims will never have to feel the need to constantly prove what happened to their relatives because it will forever be treated as a *crime*, not a *contested period of history*. Descendants of victims can have the confidence that they can let go of the anger they were born and bred to carry because of people denying what happened to their flesh and blood, the people of their DNA who came before them.

The publicization and memorialization of acts of brutality committed by a guilty party can also lead to present day people being more aware of actions being taken by the present-day successors of the guilty parties. This helps prevent the vicious cycle of a government committing atrocities and evading the consequences. The public will be on alert for previously guilty parties, be able to detect if they are continuing their actions, and the public will be knowledgeable of past atrocities and will be able to identify *even new* parties, which have not been guilty in the past, following in the footsteps of previous offenders. While these everyday people cannot do something themselves to prevent more atrocities being committed, they can raise awareness, and their governments and elected officials can take actions against present day perpetrators.

By not facing the consequences and not being held accountable for the actions of their predecessor institution, the Republic of Turkey has continued to persecute minorities in its nation.<sup>105</sup> During the

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<sup>104</sup> *Id.* at 948.

<sup>105</sup> Loizides, *supra* note 8, at 514.

persecution of its Christian Minorities, ethnic Kurds of southern Turkey were enabled by the Turkish government when they harassed and beat the Christian minorities marching to new lands.<sup>106</sup> During the 1840s, many Armenians and Assyrians lived in areas in Eastern Anatolia (southeast Turkey) heavily populated by Kurds, where the Kurdish states set up their own independent states, and the Kurds massacred many Armenian and Assyrian Christians, which the Ottoman government ignored at the time.<sup>107</sup> Now, ethnic Kurds are being targeted by the current Turkish government.<sup>108</sup> The people whose actions were condoned are now the victims themselves. According to a report from the US State department:

Turkey has long denied the Kurdish population basic political, cultural, and linguistic rights, tolerated extra-judicial killings and torture of civilians by the special police and paramilitaries and forcibly evacuated an estimated 560,000 people from their homes during the 1990s.<sup>109</sup>

The most logical explanation to the Turkish Government's ability to carry out these persecutions against Kurds, is the fact that they have never been held accountable for their previous actions. This only enabled them to continue their persecutions, and this also led to the adoption of a politically incorrect and racially insensitive term which is still used today. Merriam Webster dictionary translates "young Turk" as "one advocating changes within a usually established group,"<sup>110</sup> and has been used to describe movements within a political group that are pushing for progress and change. The Young Turks were the army who committed the three genocides during the beginning of World War I and using their name to describe something as progressive is offensive to survivors and descendants of survivors of atrocities committed by them.

Perhaps if the Young Turks Army and Kemal Atatürk were to be held criminally liable for crimes against humanity, then the international world may be able to curb the current persecution of the Kurdish population in Turkey and be aware of the insensitivity of the usage of the term "Young Turk."

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<sup>106</sup> Shirinian, *supra* note 5, at 45.

<sup>107</sup> *Id.* at 29.

<sup>108</sup> Loizides, *supra* note 8, at 514.

<sup>109</sup> *Id.* at 520.

<sup>110</sup> *Young Turk*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/young%20Turk> (last visited March 14, 2022).

**VIII. WHERE SOCIETY CAN GO FROM HERE**

“Political forgiveness must have a public dimension, for politics itself is public speech of a certain kind.”<sup>111</sup> In order for political forgiveness to have a public dimension, the action must be brought forth to the light. People must remember that “acknowledgement and recognition are possible, and this rudimentary requirement of justice may be a constitutive feature of a larger pattern of political forgiveness,”<sup>112</sup> and they can be the foundation of a new type of reparations: one of judicial accountability and social awareness / awakening. The ethic of responsibility in war “holds that should a nation or group of nations be the victims of systematic, egregious, and continuing violence, the international community has a responsibility to do something about that situation.”<sup>113</sup> Yes, other countries may impose sanctions on perpetrator nations, and the Human Rights Council of the United Nations and other International Courts may put these criminals on trial, but what can be done for people who are long gone, atrocities committed generations ago which have completely shaped the identity of nations and the identity of people of a certain ethnic background?

International criminal courts must consider tackling past atrocities, and if not the courts specifically, perhaps a historical tribunal which adjudicates on past crimes and holds the records available to all people who wish to learn about a politician or movement which has been found guilty of crimes against humanity. The “[r]emembrance of violent deeds goes forward in all its fullness and detail. A recounting of events serves as an ongoing judgment upon those most responsible, which is tied at the same time to a tragic recognition that some wrongs cannot be righted.”<sup>114</sup> Sometimes, “full reparation and compensation are not in the cards,”<sup>115</sup> because the people who have been affected by these acts are too many generations removed from the actual victims, and in some of these cases, victims and descendants are far removed from the point of origin.

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<sup>111</sup> Jean Bethke Elshtain, *Just War and an Ethics of Responsibility*, in *ETHICS BEYOND WAR'S END* 132 (Eric Patterson ed., 2012).

<sup>112</sup> *Id.* at 139.

<sup>113</sup> *Id.* at 124.

<sup>114</sup> *Id.* at 135.

<sup>115</sup> *Id.* at 139.



The historical tribunal / international court should be composed of qualified judges from across the globe. These qualified judges will have cases brought forth to them by nations or ethnic groups, and the judges will consider the evidence before them. Aside from physical evidence (the number of victims, the historical background of the region at the time, and all other relevant historical factors), there will also be proof of how the atrocity is taught, treated, and processed in these countries or amongst these victim ethnic groups. By marrying both the actual evidence of the events and how the aftermath has shaped descendants and societies, the judges will be able to see how certain acts have impacted the psyche of both nations and people. Although the “other side” is no longer alive, their defense may be brought forth by present-day successors, who will have the burden to prove the victims wrong (as opposed to a conventional criminal court, where the defendant is innocent until proven guilty). Once a decision has been made, after the production of all relevant evidence and testimonies, if a movement or person in history has been found guilty of crimes against humanity, the present-day successor will be required to acknowledge the verdict, impose the verdict onto its own society, and if it does not acknowledge the verdict, be faced with sanctions. These records will be kept with the historical tribunal, with public access, so that everyday people may read the crimes and be informed.

Monetary reparations have been attempted by Armenian Americans, but they have failed.<sup>116</sup> When the perpetrator refuses to accept fault of what they did, the issuance of monetary reparations is difficult, particularly since the three minorities targeted one hundred years ago were forcibly removed from Turkey and no longer there to represent themselves and demand action. Instead, a historical tribunal or international court can take the issue of the three genocides, analyze the impact they have on Greeks, Armenians, and Assyrians today, along with the impact on their governments, and adjudicate on the matter. If the tribunal were to find the Young Turks Army and Kemal Atatürk guilty of crimes against humanity, then the stories of these horrific acts of brutality will finally be on public records, available to the public, and the Republic of Turkey will be forced to finally acknowledge the actions of its predecessor. The idea of finally having

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<sup>116</sup> See generally *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067 (9th Cir. 2012) (rejecting the California statute’s jurisdiction over Armenian Genocide victims and consequently, rejecting Plaintiff’s claims to insurance policy benefits issued in the Ottoman Empire between 1875 and 1923).

a place to direct someone's attention to for proof is the first step in justice being served.

As mentioned earlier, international courts serve as both a form of therapy, and a form of justice. The public sharing of stories, and the consideration of evidence can give a sense of closure to people who have been appointed with the task of remembering what happened to their ancestors centuries ago. The idea of holding dead people accountable may seem unconventional, but it is the best way for justice to be rendered.