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A little girl is sold into debt bondage and sexual exploitation in Thailand to pay off the debts of her poverty-stricken parents. Her enslavement is sanctioned by her society’s long standing cultural values and religious convictions, and is part of the hugely profitable sexual tourism industry in Southeast Asia.
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Abstract

Modern slavery is defined as human exploitation over a period of time effectuated through coercion, fraud or trickery. An estimated 12.3 million people worldwide are held in some form of modern slavery, including forced labor, bonded labor, forced child labor, and sexual servitude. Children and women bear the brunt of modern slavery. Divided into three stages—trafficking, exploitation, and post-conflict—modern slavery has attracted much scholarly interest in recent years. However, relatively little scholarly attention has been given to the post-conflict stage. This article attempts to initiate such discussion by drawing upon the reparative framework crafted in the years since the Holocaust by myself and other international redress scholars. Redress scholars study post-conflict justice and human development. The reparative framework that comes out of that scholarship consists of criminal and civil redress models and their concomitant commitments to retributive, compensatory, restorative or redistributive justice in the aftermath of atrocities like the Holocaust, Apartheid, the Comfort Women, Japanese-American Internment, and, American Slavery. My ambition in this article is to extend that human-rights perspective and analysis to the post-conflict stage of modern slavery. Specifically, the article focusing on the largest and most vulnerable victim groups—children and women—in two very different and difficult contexts—the former child soldiers in African countries and sexual slavery in Thailand. With respect to the former child soldiers, the article argues that retributive justice is an unjust post-conflict
resolution of the atrocities committed by these perpetrators because they are also victims. Retributive justice also collides with restorative justice, the highest development of humanity in the aftermath of an atrocity. Compensatory justice is similarly rejected on grounds that it is largely unachievable and too backward-looking to meet the forward-looking needs of the society as a whole. The article opts for restorative justice under the “atonement model” not only because the former child soldiers are both perpetrators and victims, but also because they should be reunited with their families and reintegrated into their societies. Sexual slavery in Thailand is more complex. Preliminarily, the atrocity has to end. Although it might seem inconsistent with the gender-equality reparations proposed in the article (such as, victim-directed (compensatory) reparations that include educational, employment, and medical services for former sex slaves), legalizing and then regulating prostitution may be the only way to end sexual slavery in Thailand. Most particularly, regulation would remove from prostitution (certainly lessen) the opportunity for sexual exploitation. Sexual slavery and prostitution are not coterminous. Give the people something large (prostitution, which has deep cultural and religious roots in Thailand) in exchange for the elimination of a small and unsavory piece of it (sexual slavery). Although regulating rather than trying to eliminate prostitution goes against United States and international norms, it moves Thai society closer to gender equality. Once sexual slavery ends, reparations designed to promote restorative justice should be offered to the victims. These include the above-mentioned victim-directed (compensatory) reparations as well as community-directed (rehabilitative) reparations (e.g., affirmative action) that seek to prevent future sexual exploitation. In calling for restorative justice, the article rejects retributive justice under the criminal redress model on the grounds that such redress is largely unavailable due to the sheer
number of low-level perpetrators and immunity that will surely be granted to governmental and other high-level perpetrators. The article also rejects compensatory justice under the “tort model” on grounds that, *inter alia*, litigation would put the victims through a situation of having to re-live their atrocities. By illuminating questions of post-conflict justice that might arise when scholars begin to turn their attention in earnest to the aftermath of modern slavery, the article seeks not only to improve our understanding of this little-discussed stage of the atrocity, but also to add much-needed intellectual heft to our analysis of the end stage of modern slavery. Accordingly, the article’s most important objective is to further our thinking about human development in the aftermath of this ongoing atrocity by imbibing a post-Holocaust spirit of heightened morality, egalitarianism, identity, and restorative justice.

Introduction

Modern slavery can be defined as human exploitation, occurring over a period of time, effectuated through some form of coercion, fraud or trickery. A more detailed definition might incorporate the three stages of modern slavery—*trafficking, exploitation* (or bondage), and *post-conflict*—recognized in international law. Trafficking is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”\(^1\)

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\(^1\) This definition is taken from Article (3)(a) of Protocol to Prevent, Suppress and Punish
Exploitation is benefitting from the work or services of another unjustly. The work or service unjustly extracted most often involves sex, debt bondage (often “paid off” through sexual services), involuntary servitude, forced labor, and peonage.\(^2\) Post-conflict, the final stage of modern slavery, is defined as the end of exploitation. It occurs when the victims are no longer under the thumb of the perpetrator. Either the perpetrator has been put out of business or the victims have escaped or have been allowed to leave. As the atrocity has ended for the victims, 


Article 3(b) provides that “[t]he consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.” Article 3 (c) and (d) specifically deal with children, the former stating that “[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article”; and the latter defining “child” to “mean any person under eighteen years of age.”\(^2\)

\(^2\) Protocol, supra note 1, at art. 3(a). When trafficking crosses national borders, the exploitation takes place in a state other than the victims’ home state. Sometimes, three states can be involved: the victims’ home state; the transit state, which holds the victims; and the destination or receiving state, which receives the victims from the transit or home state.
the healing should begin.³ Both the short definition and the more detailed international definition of modern slavery find expression in numerous domestic⁴ and scholarly definitions⁵ of the term.

³ Article 6 of the Protocol, titled, “Assistance to and Protection of Victims of Trafficking Protocol on Trafficking,” suggests some of the features that might give content to the post-conflict stage. It provides in relevant part:

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;
(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
(c) Medical, psychological and material assistance; and
(d) Employment, educational and training opportunities.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Protocol, supra note 1, at art. 6.

⁴ For example, consistent with the definition provided by the Protocol on Trafficking, the United States government lists a number of acts that constitute modern slavery, including “involuntary

5 Kevin Bales defines it as “a relationship in which one person is controlled by another through violence, the threat of violence, or psychological coercion, has lost free will and free movement, is exploited economically [for other people’s profit], and is paid nothing beyond subsistence.”
Modern slavery is so pervasive as to strain credulity. According to the International Labor Organization (ILO), 12.3 million people are estimated to be held in forced labor, bonded

Kevin Bales, Modern Slavery: The Secret World of 27 Million People31 (2009). See, e.g., Kathleen Kim, The Coercion of Trafficked Workers, 96 Iowa L. Rev. 409 (2011); Lukas Knott, Unlocal Revisited: On the Difference Between Slavery and Forced Labor in International Law, 28 Wisconsin International Law Journal, 201 (2010). For a general discussion, see Silvia Scarpa, Trafficking in Human Beings: Modern Slavery (2008). For an example of such a relationship, see, Dana Littlefield, Couple Plead Not Guilty to Enslaving Girl, 12, San Diego Union Tribune, Dec. 19, 2012, at B3 (describing an incident where a couple who legally emigrated from Mexico to the U.S., promised a relative, who was still in Mexico, a better life and education in the U.S. The couple brought the girl relative to the U.S. illegally, forced her to cook, clean, care for their young children, have sex with the man, and was even occasionally sold to other men for sex. The slavery ended when the couple beat the girl so horribly that authorities removed her from the home.)

6 Modern slavery has long been proscribed in international law. As early as 1930, for example, the International Labor Organization (ILO) provided that: “Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.” Forced Labour Convention, International Labor Organization, art. 1(1), 1930. The International Labour Organization has returned to the matter in follow-up reports. See, e.g., Declaration of Fundamental Principles and Rights at Work (1998), Stopping Forced Labour(2001), and A Global Alliance against Forced Labour (2005), Int’l Labour Org.,
labor, forced child labor, and sexual servitude at any given time.\textsuperscript{7} In addition, the United States Department of State calculates that about 600,000 to 800,000 people are annually trafficked across national borders, as distinguished from the millions trafficked within their own countries.\textsuperscript{8} Females and children bear the brunt of this atrocity: approximately 80 percent of the victims worldwide are women or girls and approximately 50 percent are minors.\textsuperscript{9} There is little doubt


\textsuperscript{8} \textit{See Id.}, at 35.

that modern slavery can be found in every nook and cranny of the world; even in a progressive state like California: “9 out of 10 products eaten in Southern California [are] picked by someone who was trafficked.”

Most of the scholarly attention given to modern slavery has focused on the trafficking and exploitation stages. Relatively little attention has been given to the end stage. In this paper

10 Spring Valley Citizens Association, Human Trafficking Forum, June 16, 2011, Spring Valley, California, USA. In 2010, the President of the U.S., Barack Obama, stated: “The United States was founded on the principle that all people are born with an inalienable right to freedom . . . . Yet even today, the darkness and inhumanity of enslavement exists . . . Fighting modern slavery and human trafficking is a shared responsibility . . . Together we can and must end this most serious, ongoing criminal civil rights violation.” Presidential Proclamation – National Slavery and Human Trafficking Prevention Month, Jan. 4, 2010, http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-slavery-and-human-trafficking-prevention-month.

Later that year, the Attorney General of the U.S., Eric H. Holder, similarly asserted: “There is no more basic human right than freedom from slavery . . . Yet, in its modern form of trafficking, this cruel practice persists on an enormous and alarming scale . . . [C]ombating the entrapment, abuse, and exploitation of trafficking victims is one of this Justice Department’s highest priorities.” Address of Attorney General Eric H. Holder, Jr., National Conference on Human Trafficking, May 2010.

I should like to explore the post-conflict stage of modern slavery through the prism of the International Redress Movement (IRM). I am particularly interested in determining the extent to which the victims of modern slavery can benefit from the IRM’s teachings about justice and humanity in post-conflict resolution. Using the reparative scheme developed by the IRM in the years since the Holocaust—criminal redress and civil redress models and their concomitant commitments to justice (retributive, compensatory, restorative, or redistributive)13—I argue that the global community should strive for the highest expression of human development in post-conflict resolution. My ambition has always been to maximize the protection of human rights and the overall development of humanity in the aftermath of atrocities like the Holocaust, Apartheid, the Comfort Women, Japanese-American Internment, and, American Slavery.14 Now I wish to extend that sentiment and analysis to the post-conflict stage of modern slavery.


12 See infra Part I.

13 See infra Parts II and III.

I begin in Part I with a brief overview of the IRM. This movement of scholars, activists, and government officials developed as an area of specialty in international human rights in the years after the Holocaust, the atrocity of the 20th century. Parts II and III discuss the reparative framework that comes out of the IRM. This framework consists of criminal (Part II) and civil (Part III) redress models—the latter consisting primarily of the tort model and the atonement model—and their accompanying forms of post-conflict justice. In my view, restorative justice is the highest form of reparative justice because it has a conciliatory nature that affirms our deepest sense of humanity. For that reason I will always attempt to apply the atonement model when it makes sense to do so. Part IV applies criminal and civil redress models, including the atonement model, to modern slavery involving children and women in two very different and difficult contexts. The first concerns the former child soldiers in African countries, and the other looks at sexual slavery in Thailand. My objective is to illuminate questions of post-conflict justice that might arise when scholars begin to turn their attention in earnest to the aftermath of modern slavery. Such discourse will not only improve our understanding of this little-discussed stage of the atrocity, but it will also add much-needed intellectual heft to the end stage of modern slavery, and, more importantly, further our thinking about human development in the aftermath of this ongoing atrocity.

Part I

Overview of International Redress Movement

In 1952, the global community was still staggering with intense fear, shock, dismay, and disgust from its discovery of the Holocaust at the end of the Second World War. It was at this time that Konrad Hermann Joseph Adenauer, who was elected the first chancellor of the Federal Republic of Germany, declared to the world: "In our name, unspeakable crimes have been committed and demand compensation and restitution, both moral and material, for the persons and properties of the Jews who have been so seriously harmed."\(^\text{15}\) Significantly, Adenauer was

\(^{15}\) This quotation is taken from a report by the United States Department of Justice Foreign
speaking not just for himself personally, but on behalf of the German state—the people, laws, institutions, and culture of Germany. These words take on greater significance when one considers Adenauer’s personal history.

A German citizen and political leader, Adenauer had no personal involvement in the Holocaust. He was a lawyer and politician whom the Nazis had in fact replaced as mayor of Cologne when they came to power. In addition, Adenauer was briefly imprisoned in 1934. He was later arrested by the Gestapo in September 1944 after being suspected of some level of involvement in the failed bomb plot against Hitler in July of that year. Yet Adenauer, as head of the new German government, assumed moral responsibility for the German state—the populace, laws, institutions, and culture of Germany—recognizing that the people once in charge of the state—the government—had driven the state off a cliff. While Adenauer may not have held this moral position when Germany’s new government was established in 1949,¹⁶ that is quite beside


¹⁶ The statement was, in fact, made a few years after the founding of the Federal Republic in 1949. More significantly, his government initially sought to dismantle the Allied program of purges and reeducation of former Nazis and Nazi supporters, including judges, political officials, and teachers, as well as soldiers. Those implicated in Nazi crimes could lose their government jobs or their property as well as face imprisonment. Adenauer thought it more politically expedient to forgive and move on, rather than pursue denazification. Whether he came around willingly to his subsequent position of moral accountability is a matter of some debate among historians. For an engaging discussion, see, e.g., Norbert Frei, *Adenauer’s Germany and*
the point for present purposes. As has been observed on another occasion: “Wisdom too often never comes, and so one ought not to reject it merely because it comes late.”

With his moral stance, Adenauer helped to reshape the mood and mindset of the community of nations coming out of a period of such blatant disregard for human life. One could have easily fallen into the abyss of post-Holocaust despair—a foreboding sense that we are all “pale and inert victim[s] of existentialism,” that “the universe is empty of meaning and so am I.” Adenauer’s words of redress and human rights set a different course. They established a tone of redemption and, hence, restored our faith in human development. Those healing words, spoken on behalf of the perpetrator of one of the worst atrocities in the history of the world, reset the world’s moral compass. Eschewing despair, Adenauer imbued the community of nations with a post-Holocaust vision of heightened morality, egalitarianism, identity, and justice. If there is a beast in all societies waiting to be unleashed by an extraordinary event—fear, greed, anger—redress (“both moral and material”)

Informed by this post-Holocaust spirit, two broad strategies of redress have emerged in the decades following World War II. These strategies—one involving the criminal process and the other the civil process—seek to advance human development in the aftermath of an atrocity.

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17 BROOKS, ATONEMENT AND FORGIVENESS, supra note 14, at xv (quoting Justice Felix Frankfurter).


19 See supra text accompanying note 15.
They provide a double antidote for collective amnesia that can smother any redress efforts in the aftermath of an atrocity. Criminal redress seeks, in the main, retributive justice in the form of state prosecution of crimes under both domestic and international law. Individual perpetrators are fined, imprisoned, or executed. Civil redress, in contrast, is an avenue for private redress. It operates for the benefit of the victims as opposed to the state. The forms of civil redress are unlimited; they come in a variety of measures—such as apologies (both state and individual), reparations (issued without an apology, referred to as the “tort model,” or with an apology, called the “atonement model”), truth trials, truth commissions, protests, and other innovations limited only by the human imagination. Justice under civil redress covers the entire spectrum—retribution, compensation, restoration, and redistribution. Like criminal redress, civil redress is a vindication of human rights and a recognition of the need for human development in the aftermath of an atrocity. Criminal and civil redress, especially the latter, form the centerpiece of the IRM.

Part II

Criminal Redress

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20 See infra Part II.

21 See infra Part III.

22 ALFRED L. BROPHY, REPARATIONS PRO & CON (2006); TAKING WRONGS SERIOUSLY: APOLOGIES AND RECONCILIATION (Elazar Barkan & Alexander Karn eds., 2006).
Criminal redress is the state or government’s prosecution of individual perpetrators. If convicted under international or domestic law, the perpetrators of the atrocity are subject to fines, imprisonment, and, rarely if ever today, execution. Criminal redress mainly serves the ends of retributive (or punitive) justice—an eye for an eye. As we shall see, criminal redress can conflict with forms of civil redress that invest in the belief that an eye for an eye can blind us all.

The Nuremberg and Tokyo war crime trials at the end of the Second World War may be the best known, certainly the prototypical, implementations of criminal redress. Since then, a number of international tribunals have been established to prosecute the perpetrators of past atrocities. The International Court of Justice (ICJ) has jurisdiction over all matters specifically provided for in conventions, such as the Convention on the Prevention and Punishment of Crimes of Genocide,23 or customary international law.24 Members of the United Nations are de


24 Article 38(1) of the Statute of the International Court of Justice delineates the sources of international law it applies:

1. The Court, whose function is to decide in accordance with international law

2. such disputes as are submitted to it, shall apply:

   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

   b. international custom, as evidence of a general practice accepted as law;

   c. the general principles of law recognized by civilized nations;

   d. subject to the provisions of Article 59, judicial decisions and the
facto signatories to the ICJ Statute and, hence, may refer cases to the ICJ. An example is the prosecution of genocide in Bosnia.

Teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

3. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

The Statute of the International Court of Justice, U.N. Charter art. 110, para. 3. The Statute can also be found at http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0. Some academics and international lawyers would argue that international customary law is not synonymous with jus cogens, which are more peremptory norms of international law from which no derogation is allowed. In contrast, international customary law is seen as the accepted, but necessarily peremptory, practices among nations. For further discussion, see, e.g., ANTHONY D’AMATO, THE CONCEPT OF CUSTOM IN INTERNATIONAL LAW (1971); Lucas Bastin, International law and the International Court of Justice decision in Jurisdictional Immunities of the State, 13 Melb. U. Int’l. L.J. 774 (2012).

25 U.N. Charter, art. 93, para.1; Statute of the International Court of Justice, art.36(1).

26 See, Application of the Convention on the Prevention and Punishment of the Crimes of Genocide (Bosn. & Herz. v. Serb. & Montenegro), 2007 I.C.J. 91, ¶ 277 (Feb. 26); “The Genocide—or ethnic cleansing, as it has been commonly known— that befell the Muslims of Bosnia-Herzegovina was not simply the unintentional and unfortunate by-product of combat or civil war. Rather, it was a rational policy, the direct and planned consequence of conscious policy decisions taken by the Serbian establishment in Serbia and Bosnia-Herzegovina. This
The United Nations Security Council has authority to create ad hoc tribunals to prosecute war-time atrocities where local tribunals are nonexistent or unable to provide a credible prosecution of serious crimes. In 1993, the Security Council authorized the creation of the International Criminal Tribunal for the prosecution of serious violations of international human rights committed in the former Yugoslavia (ICTY). The court’s jurisdiction was later extended to cover violations of international human rights that took place in Kosovo during 1999.27 Similarly, in 1994 the Security Council established the International Criminal Tribunal for Rwanda (ICTR) to prosecute the Rwandan atrocity in which an estimated 800,000 Rwandans were killed in a 100-day period between April and June of 1991.28 The ICTR was the first policy was implemented in a deliberate and systematic manner as part of a broader strategy intended to achieve a well-defined, concrete, political objective; namely, the creation of a expanded, ethically pure Greater Serbia.” Norman L. Cigar, Genocide in Bosnia 5 (2005) (Stating in the decades before genocide, all three ethnic groups (Serbs, Croats and Muslims) had lived peacefully in the former Yugoslavia under Tito’s communist rule).


international tribunal to convict perpetrators for the crime of genocide and to recognize systemic rape as a crime against humanity.\textsuperscript{29}

U.N. ad hoc courts are sometimes a disappointment. The experience in Sierra Leone, one of the poorest countries in Africa, readily comes to mind. The Special Court in Sierra Leone was established to prosecute war crimes growing out of the country’s civil war. Its performance has been criticized on a number of grounds.

After Alhaji Ahmad Tejan Kabbah was sworn in as Sierra Leone’s president in 1996, he petitioned the U.N. Secretary General to establish a Special Court to “try and bring to credible justice to those members of the Revolutionary United Front [RUF] and their accomplices responsible for committing crimes against the people of Sierra Leone.”\textsuperscript{30} President Kabbah stated in his petition-letter that Sierra Leone was incapable of conducting such trials on its own


and that the crimes committed by the RUF were the worst committed in any civil conflict. Hence, the trials were needed, he argued, to vindicate international human rights law.31 U.N. Security Council Resolution 1315 responded favorably to President Kabbah’s request and outlined the initial framework for the special court.32 A compromise regarding the characteristics, parties, goals, and enforcement of the Special Court was agreed upon by the government of Sierra Leone and the Secretary General of the United Nations. After the civil war officially ended in 2002, the bilateral agreement was solidified in statutory form pursuant to which the Special Court in Sierra Leone was established to “prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.”33

The Special Court has been a disappointment to many human rights scholars and activists. Although completely funded by outside donations, the Special Court was expensive to operate—$212 million. By Sierra Leone standards, this amount was especially astronomical.34 Many argued that this money could have been spent to alleviate the suffering caused by the war. Additionally, despite the incredible amount of violence, only eleven indictments and seven

31 Id.
convictions were obtained.\textsuperscript{35} Two of the most notable indictments, that of Foday Sankoh and Sam Hinga Norman, never went to trial as both men died before that time.\textsuperscript{36} A measure of justice was achieved when the infamous Liberian leader, Charles Taylor, whose National Patriotic Front of Liberia [NPFL] committed untold atrocities in the Sierra Leone Civil War, was eventually convicted.\textsuperscript{37}

In contrast to ad hoc courts, the International Criminal Court (ICC) is a permanent tribunal with authority to prosecute individuals who commit genocide, crimes against humanity, war crimes, and the crime of aggression.\textsuperscript{38} An important boost to international human rights law, the ICC became operational on July 1, 2002, when its enabling statute was ratified by sixty states.\textsuperscript{39} Although the ICC’s official seat is in The Hague, Netherlands, it can conduct proceedings in other parts of the world. The majority of cases referred to the ICC have primarily dealt with African states—such as, Northern Uganda, Darfur (Sudan), Kenya, and the Congo.\textsuperscript{40}

\textsuperscript{35} Id. at 449-51.

\textsuperscript{36} Id. at 405, 407-08.

\textsuperscript{37} Second Amended Indictment, \textit{Prosecutor v. Taylor,”} SCSL-03-01-PT, The Special Court for Sierra Leone (March 7, 2003); \textit{Prosecutor v. Taylor,} SCSL-03-01-T, (May 18, 2012).

\textsuperscript{38} Rome Statutes of the International Criminal Court, art. 5, Nov. 10, 1998.

\textsuperscript{39} Id. at art. II. The ICC only has prospective jurisdiction; in other words, jurisdiction over crimes committed on or after its date of enactment. In contrast, The Special Court in Sierra Leone had retrospective as well as prospective jurisdiction. See supra text accompanying note 29.

\textsuperscript{40} See Rome Statutes of the International Criminal Court, supra note 34, at art. 62. Although the ICC may hear cases outside its home state, a review of the court documents for the 23
Many major members of the United Nations, including the United States and China, have not signed or ratified the Rome Statutes, the ICC’s enabling legislation. Given the fact that nonsignatory states typically do not arrest alleged criminals within their borders or otherwise participate in enforcing the Rome Statutes, the failure of countries like the United States and China to signed the Rome Statutes limits the jurisdictional reach of the ICC. The Court’s jurisdiction is further limited by its mandate that authorizes it to act only when domestic courts are unwilling or unable to investigate or prosecute statutory crimes. Hence, primary jurisdiction to investigate and punish crimes covered by the Rome Statutes is left to the states.

Indeed, domestic prosecution is the primary means of effectuating criminal redress of human rights violations. On March 17, 2011, for example, a French court found Radavan Karadzic, the Bosnian Serb leader in the 1992-95 war, guilty of wartime abuses against a Bosnian family and awarded the victims 200,000 euros in damages. Karadzic is also on trial for genocide at the International Criminal Tribunal for the former Yugoslavia (ICTY).

Indictments brought before the ICC suggests that the court has continually sat in The Hague. Furthermore, there has been some controversy over the court holding its future hearings in Kenya. 

41 Rome Statutes of the International Criminal Court, art. 17, 18.

43 Id. See supra text accompanying note 27 for further discussion.
Argentina provides another illustration of domestic criminal prosecution of human rights violations. Raul Alfonsin, Argentina’s democratically elected president who took office in January 1984 after the Junta’s disastrous invasion of the Falkland Islands brought an end to military rule, instituted criminal trials to prosecute those accused of human rights violations during Argentina’s Dirty Wars (1976-83). The perpetrators were mainly military officials who were accused of such atrocities as the infamous “death flights,” in which dissidents were thrown into the ocean from airplanes.44 Initially signaling a bold human rights initiative, President Alfonsin ordered the prosecution of the nine leaders of the Junta. Public trials were held from 1983-1985. The six-judge panel, selected by the president and approved by the Senate, decided that rather than prosecute the defendants for genocide or crimes against humanity under international law, the trials would be based on Argentine national law, under which the defendants would be tried for acts of torture, theft, kidnapping, and murder.45 Five of the nine defendants were convicted, and some were given life sentences. But when the military strongly objected to the trials, Alfonsin, in an attempt to appease the military forces and save a fledgling democracy, pushed through a series of laws (such as the “Full Stop Law” and the “Due Obedience Law”) designed to end the prosecution of military officers, effectively granting amnesty to the defendants. Further undermining human rights, the next president, Carlos

44 See infra text accompanying notes 66-70 for further discussion. See also, WHEN SORRY ISN’T ENOUGH, supra note 14, at 512.

Menem, who took office in 1989, pardoned all members of the military. The lesson here is that if criminal redress is to be an effective human rights measure, criminal prosecutions must be permanent and insulated from political pressure.

The victims of Argentina’s Dirty War demonstrated a strong desire for retributive justice. They wanted to punish the perpetrators. Yet, the government’s response was nonlinear at best. President Néstor Kirchner took office in 2003 with an eye toward repealing the Alfonsin/Menem laws. The new president’s wife and successor, Cristina Fernández de Kirchner, would continue this effort. It is fair to say that these efforts might not have been made without the extraordinary activism of the judiciary.

Federal judges began to take charge of the matter in 2001. In that year, a federal judge ruled that the amnesty laws were unconstitutional and, on that basis, went on to convict two military officials of illegal arrest and torture under international law. The Argentine constitution had been amended in 1994 to provide that “international law and treaty obligations take precedence over domestic law.” The judge described the crimes committed by the military officials as crimes against humanity in violation of Article 7 of the Rome Statute.

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affirmed by the Supreme Court in 2005, which in the process validated legislation repealing the amnesty laws Congress had enacted in 2003. The final vindication of criminal redress came in 2007 when a federal court ruled that former President Menem’s pardon of one of the original nine top military officers, General Videla, was unconstitutional. This ruling was upheld in 2010 by the Supreme Court. General Videla was sentenced in December of 2010 to life in prison for the torture and death of 31 prisoners.

Although the amnesty laws in Argentina were eventually repealed, amnesty has been used in other redress movements as one ingredient of post-conflict justice. The South African Redress Movement is one example. The use of amnesty as a redress measure was highly problematic, but may have been necessary to move South Africa from Apartheid to democratic government and racial reconciliation. As I have said:

49 Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 14/6/2005, “Simón Julio Héctor y otros s/ privación legítima de la libertad,” La Ley [Fallos] (holding that amnesty laws for those who commit crimes against humanity is unconstitutional); See also, Christine A. E. Bakker, A Full Stop to Amnesty in Argentina: The Simon Case, 3. 5 J. INT’L CRIM. JUSTICE 1106-20, 1112-15 (2005).


51 Id. By 2006, over 500 cases were prosecuted against former military and police officers. Id.
The amnesty question is more difficult to answer than may appear at first glance. Had Apartheid been overturned through armed confrontation, the victors might have sought revenge by trying and punishing the defeated. There would be no search for truth—the trials would take many years and might not uncover the top officials who gave the orders. And there certainly would be no reconciliation; just unconditional surrender and a constant threat of insurgency. Reparations for the perpetrators was the price of a negotiated, peaceful overthrow of Apartheid. What complicates the amnesty question even more is the fact that the record is replete with atrocities committed by anti-Apartheid forces as well. In its own statement before the TRC, the ANC confesses to its “adoption of armed struggle on December 16, 1961.” Indeed, members of the ANC, including President Mandela’s former wife, Winnie, acknowledged their participation in murder and torture while the ANC was a guerrilla group in exile. A court struck down the TRC’s grant of amnesty to 37 top ANC officials, including the Deputy President of South Africa, Thabo Mbeki, because their testimonies did not sufficiently indicate what each had done.

Other black activist groups also committed atrocities in the fight against Apartheid. One of the most prominent is the African People’s Liberation Army (APLA), the military wing of the Pan African Congress (PAC). Benzien’s narrative is followed by that of a 21-year-old black man, Bassie Mkhumbuzi, who, as an APLA member, participated in the bombing of a church, killing 11 and injuring 50 whites and Coloreds. “[A]ttacking the Whites, we knew and we read
from the books that they are the ones who took the land from the Africans,”

Mkhumbuzi told the TRC. The essay [in the book] by Alexander Boraine, Vice
Chairperson of the TRC, seems to suggest that the existence of black-initiated
human rights violations was a significant factor in the structuring of South
Africa’s peculiar form of reparations.52

Retributive justice may not be the best transitional justice model in a given case.
Criminal prosecution primarily seeks to provide redress to the state rather than the victims.
While it is true that criminal redress can slake the victims’ desire for retributive justice, it is
equally true that it cannot redress the tangible damage the atrocity has inflicted on the victims’
lives. In addition, criminal redress is too adversarial and backward-looking to aid in the forward-
looking process of reconciliation between victims and perpetrator that is sometimes needed. In
fact, it can hinder that process. Case in point: Northern Uganda.

In Northern Uganda, many victims of the Lord’s Resistance Army (LRA) did not support
the Ugandan government’s referral of redress to the ICC for prosecution of five LRA leaders.
Indeed, many Ugandans viewed the government’s referral as “a threat to a peaceful resolution of
the conflict.”53 The Ugandan Program Development Officer for Conciliation Resources argued

52 Roy L. Brooks, What Price Reconciliation, in WHEN SORRY ISN’T ENOUGH, supra note 14, at
444-45.

53 Hema Chatlani, Uganda: A Nation in Crisis, 37 CAL.W. INT’L J. OF L. 277-98, 291 (2007);
Payam Akhavan, The Lord’s Resistance Army Case: Uganda’s Submission of the First State
that “the ICC committed a terrible blunder” by initiating “war crimes investigations for the sake of [retributive] justice at a time when Northern Uganda sees the most promising signs for a negotiated settlement.”

Many in Uganda, particularly those of the Acholi leadership, pleaded with the ICC to delay investigations, arguing that atonement and peaceful reconciliation must come first. Hence, in an effort to achieve restorative justice, sometimes it is better not to prosecute perpetrators. Sometimes retributive justice must yield to restorative justice.

Finally, even in the absence of a conflict between restorative and retributive justice, criminal prosecution alone may not be a sufficient form of redress for the post-conflict stage of an atrocity, including modern slavery. Criminal prosecution primarily provides redress for the state rather than for the victims. As such, criminal redress cannot speak to the victims’ tangible needs. For that reason, civil redress and its concomitant forms of reparative justice may be more suitable for the victims.


56 See infra text accompanying notes 172-73, discussing former child soldiers.
Part III

Civil Redress

Unlike criminal redress, civil redress works to the material benefit of the victims. It is, in essence, private redress that takes place in a public forum. Civil redress can be effectuated in a variety of ways, such as, truth commissions, truth trials, apologies, and reparations. Furthermore, reparations can be authorized through an adversarial, backward-looking process (called the tort model) or through a more conciliatory, forward-looking process (called the atonement model). Each model promotes one or more forms of justice—retributive, compensatory, restorative, or redistributive justice.

Truth Commissions and Truth Trials

Truth commissions and truth trials are relatively straightforward civil redress models. They are typically used in conjunction with the atonement model. South Africa and Sierra Leone employed truth commissions in their approaches to redress, while Argentina used both truth commissions and truth trials. The primary purpose of truth commissions and truth trials is to get at the truth.

In many ways, the South African Truth and Reconciliation Commission set the standard for the use of the truth commission. Two centuries of colonization culminated in the formation of the racially exclusive Union of South Africa in 1948. The National Party (NP) came to power in that year. Between 1948 and 1960, the NP enacted legislation (Apartheid) that gave current
meaning to a tradition of racial segregation and discrimination. In 1994, after decades of internal protest and international condemnation (including economic boycotts and exclusion from Olympic participation), the people of South Africa ended Apartheid. They elected Nelson Mandela president in their first nonracial election. Mandela was not only black, but having spent 27 years incarcerated as a political prisoner, he had become the symbol of resistance to Apartheid. He was head of a once-banned political party, the African National Congress (ANC).

Nelson Mandela’s election marked the beginning of a period of transition in South Africa. The government, but not all the people, expressed a deep desire to apologize for Apartheid and to move from a regime of racial oppression and exclusivity to one of racial harmony, national unity, and democratic process. Racial reconciliation—or what is simply called “reconciliation” by South Africans—became a political imperative that drove the redress movement in South Africa. Once the redress movement transitioned from the outside to the inside (from the streets to the government), the government-created Truth and Reconciliation Commission (TRC) took over.

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58 Reconciliation has produced a unique form of redress—amnesty for the oppressors, the state as well as individuals. Amnesty, which typically arises as part of the criminal redress process, is discussed in Part I supra.

The TRC had authority to conduct hearings for the purpose of uncovering the truth of Apartheid: who did what to whom and what were the consequences to the victims? To encourage individual perpetrators to come forward and speak the truth, the TRC was given a controversial additional power—the power to grant amnesty from criminal and civil prosecution for truth-tellers. Headed by the world-renowned Archbishop of South Africa, Desmond Tutu, the TRC uncovered untold acts of violence and torture that proved useful for two purposes: it set straight the historical record regarding the atrocity; and it established a factual predicate for the creation of meaningful reparations. The TRC made the difficult and controversial judgment that it was better to pursue restorative and redistributive justice through a regime of civil redress rather than retributive justice in the form of criminal prosecutions. Redistributive justice was deemed to be a necessary vehicle for transitioning the country toward democratic government and racial reconciliation.\footnote{Wihelm Verwoerd, \textit{Justice after Apartheid? Reflections on the South African TRC}, in \textit{When Sorry Isn’t Enough}, supra note 14, at 479.} The success of this calculation is still very much an open question; for while there has been a meaningful redistribution of political power in South Africa, there has not been a meaningful redistribution of educational and economic opportunities.\footnote{\textit{South Africa}, U.S. DEPT. OF STATE, http://www.state.gov/r/pa/ei/bgn/2898.htm (last visited June 13, 2011).}

Not unlike South Africa’s TRC, Sierra Leone’s TRC was created to get at the truth. It was established as part of the Lome Peace Accord, which marked the end of the civil war in 1999, with the help of Reverend Jesse Jackson.\footnote{Laura R. Hall, \textit{Recent Development: Prospects for Justice and Reconciliation in Sierra Leone}, \textit{32}} The TRC’s findings provided an unbiased\footnote{\textit{South Africa}, U.S. DEPT. OF STATE, http://www.state.gov/r/pa/ei/bgn/2898.htm (last visited June 13, 2011).}
historical record of the violations of international human rights committed during the conflict. These findings proved to be a vital step in furthering the process of reconciliation. The TRC also presented recommendations, among which were that the government should issue a general apology and implement a series of reparations. Although the government has issued apologies on a number of occasions, it has failed to implement most of the recommended reparations due to a lack of economic resources. In addition, the TRC made no recommendations regarding the former child soldiers.


63 Truth and Reconciliation Commission, Sierra Leone, vol. 2, ch. 4, p. 263, http://www.sierra-leone.org/Other-Conflict/TRCVolume2.pdf (last visited June 13, 2011). Community-directed (rehabilitative) reparations are directed toward the victims’ community, which has been adversely affected by the atrocity. For a more detailed discussion, see infra text accompanying notes 81-83.

64 There have been various public apologies, one quasi-apology issued by the RUF in 1997 (see, http://www.sierra-leone.org/AFRC-RUF/RUF-061897.html (last visited April, 2011)); an apology issued to women, (see, Human Rights Commission of Sierra Leone, publication No. 21, http://www.gnwp.org/president-ernest-bai-koroma-apologizes-to-sierra-leonian-women (last visited April, 2011)); and a general apology to all victims (see, Sierra Leone Telegraph (Aug. 8, 2010), http://www.thesierraleonetelegraph.com/articles/100454.htm (last visited April, 2011)).

65 The victims of the atrocity would have gladly used the $212 million the UN spent on criminal
Like all truth commissions, Argentina’s truth commission, the Argentine National Commission on the Disappeared, sought to clarify the facts of its atrocity, the so-called “Dirty War.” During this atrocity (1976-1983), Argentina’s military government killed, tortured, and arrested thousands of suspected leftist dissidents. Many innocent people, called “the disappeared,” simply disappeared, never to be found. In addition to creating a historical record, which could aid in the prosecution of war criminals, the commission also recommended specific reparations. Compensatory reparations were recommended in the form of economic assistance, educational grants, and employment to the family and relatives of the “disappeared.”  

Rehabilitative reparations included new laws declaring forced abduction a crime against humanity and other measures to strengthen human rights.  

redress, see supra text accompanying notes 33-34, for civil redress.

66 See infra Part IV for a discussion of child-perpetrators.

67 Victim-directed (compensatory) reparations are directed toward the victim or the victim’s family. For a more detailed discussion of this type of reparation, see infra text accompanying notes 91-92 & 93-94.

68 See, ARGENTINA COMISION NACIONAL SOBRE LA DESAPARICION DE PERSONAS, NUNCA MÁS: THE REPORT OF THE ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED; WITH AN INTRODUCTION BY RONALD DWORIN, 446 (1986); Shwartz, Rectifying Twenty-Five Years of Material Breach: Argentina and the Legacy of the ‘Dirty War’ in International Law, 15 EMORY INT’L. REV. 334-35, (2004). While the compensatory reparations were largely implemented years after the commission’s final report, the rehabilitative reparations were not entirely implemented, although the Argentinean Constitution was amended in 1994 to provide that
Argentina’s truth commission failed, however, to respond to a crucial need of the victims—finding out what happened to the disappeared members of the victims’ families. Groups like the Madres de Plaza de Mayo called for the judiciary to initiate “truth trials.” In these trials perpetrators already under the protection of the amnesty laws would be forced into court to testify about what they knew about the disappeared.69 The U.S.’s version of truth trials is the writ of coram nobis (the decision had been made in error). This writ was used in the Japanese American Redress Movement not only to get at the truth surrounding the internment of Japanese Americans during World War II, but also to set aside previous convictions of victims who were arrested and tried for crimes growing out of their internment.70

**Apologies**

It is no small matter when the perpetrator of an atrocity tenders an apology. At the very least, the perpetrator speaks to express remorse and reclaim its moral character in the aftermath of a grave human injustice. It was so with the Holy Roman Emperor Henry IV whose image of standing barefoot and repentant in the snow at the castle of Pope Gregory VII at Canossa in 1077 international law, including crimes against humanity, and treaty obligations trump domestic law. See, id. at 337. For a more detailed discussion of rehabilitative reparations, see infra text accompanying notes 92-94.


is embedded in Western culture as a symbol of remorse. The excommunicated emperor sought forgiveness from his papal adversary for what many today would consider a minor transgression—defying the Pope over the question of lay investiture. On a visit to the Warsaw Ghetto, West German Chancellor Willy Brandt expressed deep remorse for Nazis atrocities:

I must express the exceptional significance of the ghetto memorial. From the bottom of the abyss of German history, under the burden of millions of victims of murder, I did what human beings do when speech fails them. Even twenty years later, I cannot say more than the reporter whose account ran: “Then he who does not need to kneel knelt, on behalf of all who do need to kneel but do not because they dare not, or cannot, or cannot dare to kneel.”

In an essay titled “The Age of Apology,” I noted that “apologies [are] coming from all corners of the world—Britain’s Queen Elizabeth apologizing to the Maori people; Australia to the stolen Aboriginal children; the Canadian government to the Canadian-Ukrainians; President Clinton to many groups, including native Hawaiians and African American survivors of the Tuskegee, Alabama syphilis experiment; South Africa’s former President F.W. DeKlerk to victims of Apartheid; and Polish, French and Czech notables for human injustices perpetrated during World War II.” I also posited that these apologies were more complex than “contrition chic,” or “the canonization of sentimentality.” They are “a matrix of guilt and mourning,

71 Brooks, Atonement and Forgiveness, supra note 14, at 143.

atonement and national revival.” To that extent, an apology “raises the moral threshold of a society.”

But can an apology by itself have enough heft to elevate the level of humanity in the aftermath of an atrocity? Is saying “I’m sorry” really enough? Consider the United States’ apology for the overthrow of the Hawaiian Kingdom.

About 120 years ago, the United States government participated in the overthrow of the Kingdom of Hawaii. With the use of military force and intimidation, the United States effectively dethroned the Kingdom’s Queen, Lili’uokalani. The provisional government that replaced the Kingdom took away the native people’s lands, destroyed their culture, and limited their freedom, leaving the indigenous people with a diminished sense of self-worth and belonging.

In 1993, the 100th anniversary of the overthrow, the United States issued a formal apology. Congress passed the Apology Resolution. The resolution’s purpose was to “(1) educate the American public and the Congress on the history of U.S. involvement in the overthrow and its aftermath; and (2) set the record straight” regarding the United States’ responsibility for the overthrow. Specifically, the resolution acknowledged that the Hawaiian

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75 *Id.*

Kingdom was self-sufficient, that the United States played a major role in its overthrow, including the cession of lands from the Native Hawaiian people to the United States government, and that as a result the “long-range economic and social changes” in Hawaii “have been devastating to the population and to the health and well-being of the Hawaiian people.”\textsuperscript{77} The resolution’s aim was to “promote racial harmony and cultural understanding . . . to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express [the United States’] . . . deep regret to the Native Hawaiian people, and to support the reconciliation efforts.”\textsuperscript{78} Having passed the Senate by a vote of 65–34 and the House by a voice vote, the resolution was signed into law by President Clinton on November 23, 1993.\textsuperscript{79}

Senator Daniel Inouye of Hawaii, one of the primary sponsors of the legislation, argued that an apology was necessary to mend the country’s broken past and to “cleanse one of our pages, to make it a bit brighter.”\textsuperscript{80} Senator Inouye emphasized:

\textsuperscript{77} Apology Resolution of 1993, Pub. L. No. 103-150, 107 Stat 1510.

\textsuperscript{78} \textit{Id}.


We are here to recognize the results of the unfortunate events of that day. We all know that the history and actions of our great country have been less than honorable in dealing with native peoples of this Nation. But, as I have indicated, this fact should not prevent us from acting to recognize and rectify these wrongs. Obviously, we cannot change history. We are not here to change history. But we can acknowledge responsibility.\(^\text{81}\)

Hence, in sponsoring the legislation, Senator Inouye had hoped “[t]o bring about some understanding and reconciliation.”\(^\text{82}\) In his closing remarks to his fellow senators, the senator from Hawaii asserted: “All we have to say is that we are sorry.”\(^\text{83}\)

Not all senators supported the legislation. Senator Slade Gorton of Washington, a major opponent of the legislation, argued that the resolution was divisive in that it “divided citizens of the State of Hawaii who are of course citizens of the United States into two distinct groups, Native Hawaiians and all other citizens.”\(^\text{84}\) Although the senator conceded the historical record presented in the resolution, he emphasized, “This coup took place more than 100 years ago. No one is alive who played any role in it. . . . This is a different time and a different generation.”\(^\text{85}\) Senator Gorton compared the acquisition of Hawaii to the acquisition of any other state. He

\(^{81}\) Id.

\(^{82}\) Id.

\(^{83}\) Id.

\(^{84}\) Id.

\(^{85}\) Id.
believed that the apology had no other goal than to promote the independence of the State of Hawaii.\textsuperscript{86}

It is quite possible to strongly disagree with Senator Gorton and still criticize the Apology Resolution. The fact is, the resolution effectuated no concrete changes.\textsuperscript{87} It did not provide reparations. That indeed was the intent of the resolution, as it clearly stated, “Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.”\textsuperscript{88} As Hannah Reeves, a full-blooded Native Hawaiian, stated, “Apology is not enough. . . . You must help our people.”\textsuperscript{89} At least with criminal redress, someone goes to jail.

Apologies can, however, be useful when they are accompanied by reparations. Reparations need not always be joined with an apology. In fact, they usually are not. When issued without an apology, reparations constitute a form of redress called the “tort model.”\textsuperscript{90} In contrast, an apology used in conjunction with reparations creates a form of redress called the “atonement model.”\textsuperscript{91} The primary social and political objective of the atonement model is

\textsuperscript{86} Id.


\textsuperscript{88} Apology Resolution of 1993, Pub. L. No. 103-150, 107 Stat 1510.


\textsuperscript{90} See infra text accompanying notes 94-124 for a more detailed discussion.

\textsuperscript{91} See infra text accompanying notes 124-60 for a more detailed discussion.
restorative justice (a forward-looking process), while the tort model mainly seeks to achieve compensatory and sometimes punitive, or retributive, justice (a backward-looking style of redress). Before discussing these post-conflict models of civil redress in greater detail, let us briefly take a closer look at reparations.

**Reparations**

There are two basic forms of reparations: victim-directed (sometimes called “compensatory reparations”) and community-directed (sometimes called “rehabilitative reparations”). The former “are directed toward the individual victim or the victim’s family.” They are compensatory, but only in a symbolic way, as “nothing can undo the past or truly return the victim to the status quo ante.”

Rather than attempting to compensate the victim or the victim’s family, community-directed reparations can seek to repair the damage the atrocity has visited upon a large portion of the victim’s group or community, whether or not a particular member was a direct victim of the atrocity. These are community-building reparations. Not unlike voluntary affirmative action programs, community-directed reparations are responsive to the lingering effects the atrocity has on the victims’ social group as a whole. Ultimately, community-directed reparations seek “to nurture the group’s self-empowerment and, thus, aid in the nation’s social and cultural transformation.”

Both forms of reparations can be divided into monetary and nonmonetary (or in-kind) reparations. When cash is given to the victims or their families on an individual (sometimes

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92 Brooks, ATONEMENT AND FORGIVENESS, supra note 14, at 156.

93 Id.
needs-only) basis, that is a monetary victim-directed (compensatory) reparation. When these reparations are made available to all victims or their communities based upon their status as members of the victims’ group, they are monetary community-directed (rehabilitative) reparations. When medical or psychological assistance, job training or job placement, or a special educational program (e.g., admissions or scholarships) is provided to the victims or their families on an individual basis, that is a nonmonetary (or in-kind), victim-directed (compensatory) reparation. Monuments or other public recognitions that honor the victim personally would also fall into this category. When such non-cash services are made available to the victims’ community, they are nonmonetary, community-directed (rehabilitative) reparations. Museums or monuments honoring the victims’ group fall into this category.94

Victim-directed reparations are typically pursued through the tort model, while community-directed reparations are more suited for the atonement model. Each model brings its own brand of justice to the table. Which redress model, given its particular reparative slant and commitment to justice, is more suitable for modern slavery’s post-conflict stage?

**Tort Model**

Victim-directed (compensatory) reparations without a prefatory apology operate as a form of post-conflict redress for tort liability. The victim basically seeks compensation for personal injury sustained as a result of the perpetrator’s intentional acts of wrongdoing. Victims

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94 *Id.*
can also seek retributive, or punitive, justice in conjunction with compensatory justice. In this sense, the tort model is backward-looking.\textsuperscript{95}

Although victim-directed (compensatory) reparations are most commonly sought under the tort model through civil litigation in which the victim sues the perpetrator in court, they can also be pursued through legislation. The Rosewood Compensation Act is one example.\textsuperscript{96} In 1994, the Florida legislature enacted the Act for the purpose of compensating blacks who lost property as a result of a race riot that demolished the all-black town of Rosewood in 1921. No apology was issued in connection with such compensation. The Act merely sought to compensate the victims and, hence, settle the matter once and for all.\textsuperscript{97}

Forced labor litigation is a prime example of victim-directed (compensatory) reparations pursued through litigation. Filed in U.S. courts, these cases consist of dozens of class action lawsuits brought by private citizens and World War II veterans of both the U.S. and Allied armed forces. Named as defendants in these lawsuits are the governments and several corporations of Japan and Germany. The plaintiffs asked for damages for unpaid wages and injuries arising from the labor they were forced to perform under inhumane conditions while held captive or as POWs during World War II. They assert claims under U.S. constitutional and statutory law, state constitutional and statutory law, as well as international common law (or customary international law). Like most civil redress litigation, these lawsuits have been unsuccessful.

\textsuperscript{95} The tort model has largely defined the African America Redress Movement. See, e.g., R\textsc{andall} R\textsc{obinson}, T\textsc{he Debt: What America Owes to Blacks} (2000).

\textsuperscript{96} Laws of Florida, 1994, c. 94-359.

\textsuperscript{97} Kenneth B. Nunn, \textit{Rosewood, in When Sorry Isn’t Enough}, supra note 14, at 436.
They were dismissed on numerous grounds, the primary ones being lack of subject-matter jurisdiction, violation of sovereign immunity, and expiration of the statute of limitations. The Japanese forced labor litigation illustrates this redress model.

In *re World War II Era Japanese Forced Labor Litigation* (2001) the federal judge consolidated several class action lawsuits brought by plaintiffs of Korean and Chinese descent against the Japanese government. Plaintiffs asserted a number of claims. One set of claims was based not on statutory or constitutional law but on common law. These claims alleged false imprisonment, assault and battery, conversion, *quantum meruit*, unjust enrichment, constructive trust, and accounting.

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100 *Quantum meruit* and unjust enrichment are recurring claims in forced labor civil redress litigation and hence warrant further comment. *Quantum meruit* is a quasi-contract action that seeks to obtain “the reasonable worth or value of services rendered for the benefit of another.” *Marta v. Nepa*, 385 A.2d 727, 730 (Del. 1978). *Quantum meruit* will lie for the reasonable value of services rendered “even though there was no contract to do so.” *United States v. Snider*, 779 F.2d 1151, 1159 (6th Cir. 1985). In other words, “the law implies an understanding or intent to pay the value of services rendered,” unless there is a specific agreement that the services will be
performed gratuitously. *Tustin Elevator & Lumber Co. v.Ryno*, 129 N.W.2d 409, 414 (Mich. 1964). Most jurisdictions require that circumstances must show that “the recipient of the benefit [was put] on notice that she (plaintiff) expected to be paid for her services.” *Bellanca Corp. v. Bellanca*, 169 A.2d 620, 623 (Del. 1961). Unjust enrichment is a much more complex legal concept than *quantum meruit*. It is generally defined as “the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience.” 66 AM. JUR. 2D Contracts 945(1973). See, e.g., *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 471 (D.N.J. 1999) (cases cited therein).

Some states require an additional showing of “the absence of law barring the remedy” sought through the unjust enrichment claim, whereas other states require only a showing that “the defendant received a benefit from the plaintiff . . . [and that] it would be inequitable for the defendant to retain such benefit.” *Iwanowa*, 67 F. Supp. 2d at 471. See, e.g., *Cantor Fitzgerald v. Cantor*, 724 A.2d 571, 585 (Del. Ch. 1998) (adopting the limited rule); *Dumas v. Auto Club Ins. Ass’n*, 473 N.W.2d 652, 663 (Mich. 1991) (adopting the liberal rule). While many courts seem to require the initial taking of the property to be unlawful, the trend in the law seems to be that the enrichment need only lack “an adequate legal basis” rather than have no legal basis.

“The American Law Institute notes in its proposed draft of the Restatement Third, Restitution that the term ‘unjust enrichment’ is a term of art, and that the substantive part of the law of restitution is concerned with identifying those forms of enrichment that the law treats as ‘unjust’ for the purpose of imposing liability . . . [T]he term ‘unjust enrichment’ refers to . . . enrichment that lacks an adequate legal basis.” 66 AM. JUR. 2D § 9 (2002).
The judge never reached the merits of any of these intriguing common law claims. He ruled that the claims were barred by the statute of limitations. To arrive at that decision, the judge had to apply California’s choice of law rules to determine which statute of limitations applied—that of the forum state (California) or that of the place wherein the events took place (China and Japan). Yet, the judge noted that it did not matter which forum’s law applied “because the statutes of limitations from all three forums are significantly shorter than the age of these claims.”\textsuperscript{101} The limitation periods were one to three years, depending on the claims, under California law; two years under Chinese law; and ten years under Japan’s Civil Code.\textsuperscript{102} Thus,

\textsuperscript{101} Japanese Forced Labor Litigation, 164 F. Supp. 2d at 1182.

\textsuperscript{102} Id.
in order for the claims to have been seasonal, they would have had to been brought within one to ten years after they occurred, which is some time in the 1950s.

A second set of claims brought by plaintiffs in *In re World War II Era Japanese Forced Labor Litigation* was based on California constitutional and statutory law, specifically: Article I of the Constitution and Penal Code § 181 (both of which prohibit involuntary servitude); the Unfair Competition Act (UCA), which is part of the California Business & Professional Code; and § 354.6 of the California Code of Civil Procedure. Like the common law claims, the state constitutional and statutory claims were dismissed before the judge could rule on their merits. The judge ruled, for example, that the claims were barred by applicable statutes of limitations, and that he lacked subject-matter jurisdiction because the claims essentially raised political questions in violation of the political question doctrine. First announced by Chief Justice John Marshall in *Marbury v. Madison* (1803), the political question doctrine basically holds, to quote Chief Justice Marshall, that “questions, in their nature political . . . can never be made in this court.” An enigma to constitutional scholars—the Supreme Court routinely decides political matters from discrimination in elections to the exercise of executive privilege— the political question doctrine basically gives judges the discretion to determine which cases are too hot (too controversial) for the judiciary to handle.

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103 *Id.* at__.
104 *Id.* at__.
105 1 Cr. 137, L. Ed. 60 (1803).
107 See, e.g., Gwynne Skinner, *The Non-justiciability of Palestine: Human Rights Litigation and*
The final claim alleged in In re World War II Era Japanese Forced Labor Litigation was asserted under an ancient federal statute—the Alien Torts Claims Act (ATCA). Originally enacted in the Judiciary Act of 1789 to create a right of action against nefarious nations, the ATCA gives a federal court “original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”108 The ATCA gives federal district courts subject-matter jurisdiction to entertain suits against state actors or private actors “alleging torts committed anywhere in the world against aliens in violation of the law of nations.”109 Since the ATCA has no statute of limitations, courts are instructed to “borrow” from the most suitable statute of limitations. In this case, the judge borrowed from the ten-year limitation period contained in the Torture Victim Protection Act,110 which provides a cause of action in federal court for victims of torture wherever they might be in the world. As plaintiffs’ claims were not filed within ten years of their occurrence, their ATCA action was dismissed on statute of limitations grounds.111


109 Kadic v. Karadzic, 70 F.3d 232, 236 (2d Cir. 1995).

110 28 U.S.C. § 1350 notes. The TVPA was enacted in 1991 as a statutory note to the ATCA.

111 See, Japanese Forced Labor Litigation, 164 F. Supp. 2d at 1179-82. For a more detailed discussion of the ATCA, see, George P. Fletcher, Tort Liability for Human Rights
What this case teaches us is that legislation is likely to be a more practical path to reparations for the victims of modern slavery than is litigation. Even assuming a country’s system of laws allows for reparative litigation, adjudication is expensive, time-consuming, cumbersome, and indeterminate. There are too many hurdles to scale and too many hoops to jump through. The victims of modern slavery would, in a sense, be re-victimized were they to pursue reparations through litigation. Equally important, low-level perpetrators are unlikely to have enough assets to make the litigation worthwhile. At the other end of the spectrum, high-level government perpetrators will likely be immune from civil liability involving damages. Finally, judges have far less power than legislators to effectuate compensatory, retributive, restorative or redistributive justice.

Even if successful, reparations through the tort model have no dearth of deficiencies as a civil redress model. For example, it can result in an insufficient development of the historical record of the atrocity. Knowing what happened is crucial to any attempt to redress a past atrocity. With many lawsuits filed, it is quite probable that one judge may see the facts of the atrocity differently from another judge. It is quite probable that we may end up with several


112 See infra text accompanying notes 200-01 for an example.

113 See id.


115 See supra text accompanying notes 59-60 (South Africa) & 75-76 (Hawaii).
different versions of the same set of facts, as often happens in complex litigation.116 Perhaps the larger concern is that there may not be any development of the historical record at all. Some judges may feel institutionally constrained to develop the record of an event that took place so long ago. If the case is tried before a jury, there will be no formal finding of facts except a verdict for or against the parties. And, finally, the parties may simply agree to a quick settlement without paying any attention to the historical record, except the usual settlement refrain that the defendant does not admit to a violation of any law.

The tort model is also deficient in that it is essentially a backward-looking redress model. As such, it offers a narrow view of the redress movement. For example, the Black Redress Movement in the United States is traditionally focused on paying descendants of slaves for their slave labor. This redress approach “implies that proposals for reparations focus on the injustices of the distant past.”117 It completely sweeps under the rug the fact that slavery has lasting effects that are felt in society today. As Boris Bittker has stated:

...this preoccupation with slavery...has stultified the discussion of black reparations by implying that the only issue is the correction of an ancient injustice, thus inviting the reply that the wrongs were committed by persons long since dead, whose profits may well have been dissipated during their own

116 Notwithstanding the doctrine of res judicata, which is supposed to prevent inconsistent judicial determinations of the same set of facts, inconsistency does occur. See, e.g., State Farm Fire and Casualty Co. v. Century Home Components, 550 P.2d 1185 (Or. 1976).

lifetimes or their descendants’ and whose moral responsibility should not be visited upon succeeding generations, let alone upon wholly unrelated persons.\textsuperscript{118}

Concentrating on the past, Bittker argues, “understate[s] the case for compensation,” let alone other forms of reparations, “so much so that one might almost suspect that the distant past is serving to suppress the ugly facts of the recent past and contemporary life.”\textsuperscript{119} Indeed, “slavery was only a necessary, not sufficient, condition for today’s compensatory proposals.”\textsuperscript{120} Hence, when arguments made for and against black redress are based on the assumption that the goal of redress is to compensate for some past event, such as lost wages, they miss the fact that slavery cost African Americans far more than a few dollars a day. These arguments, both for and against redress, fail to acknowledge that African Americans are still being injured by the atrocity of human bondage that ended more than a century and a half ago.

Hence, legislation seems to be a more realistic strategy than litigation to achieve compensatory justice for modern slavery. Legislative authorization exists for the creation of victim-directed (compensatory) reparations in Article 6 of the Protocol on Trafficking.\textsuperscript{121} That and similar laws require both source and destination countries to provide housing, counseling, and medical and educational services to the victims of modern slavery.\textsuperscript{122} Some pieces of

\begin{flushleft}
\textsuperscript{118} \textit{Id.}
\textsuperscript{119} \textit{Id.} at 12.
\textsuperscript{120} \textit{Id.} at 10.
\textsuperscript{121} See \textit{supra} note 3.
\textsuperscript{122} See \textit{id.}
\end{flushleft}
domestic legislation would limit eligibility to victims of “severe forms of trafficking in persons.”  

123 Given a post-conflict vision of compensatory justice, this condition seems rather unfortunate. It will only deny compensation to victims.  

124 Despite this particular deficiency in this particular piece of domestic statutory law, one must recognize that legislators have more authority than do judges to craft effective redress. It behooves us, then, to consider the atonement model, which is typically a product of legislation.

Atonement Model

If redress under the tort model is victim-focused, backward-looking, and compensatory or retributive, then redress under the atonement model is perpetrator-focused, forward-looking, and restorative, or, in transitional states like South Africa, redistributive.  

125 Under the atonement model, redress is mainly about reconciliation between victims and perpetrator. It is about moving society forward in the aftermath of an atrocity. For this to happen, both the perpetrator and the victims must assume reciprocal responsibilities. The perpetrator has a moral obligation to apologize and to make that apology believable by doing something tangible called a


124 Section 107(b)(1)(C)(ii)(1) of the Victims of Trafficking Violence Protection Act of 2000, defines “severe forms of trafficking” to mean, among other things, a person “who has not attained 18 years of age.” Id.

125 See infra text accompanying notes 59-60.
“reparation.” The victims, in response, have a civic (not a moral) obligation to forgive so that society as a whole, including the victims themselves, can move forward. Reconciliation, then, begins with a perpetrator-issued apology, backed by reparations to solidify the rhetoric of remorse. Forgiveness, then, arrives on the victim’s desk like a subpoena; a response must be given. 126

Unlike the tort model, the atonement model never advocates punishment of the perpetrator. 127 Although the atonement model can be joined with redress models that effectuate retributive justice, 128 justice under the atonement model is primarily restorative. It provides the perpetrator of the atrocity with an opportunity to restore its moral worth, and it creates an opportunity for the perpetrator and victims to restore their broken relationship in the aftermath of an atrocity. 129 The atonement model, then, has three distinct elements: apology; reparations; and forgiveness. Apology and reparations have special meaning under the atonement model. Forgiveness introduces a new set of considerations.

Atonement Apology. A perpetrator-issued apology begins the atonement process. When the perpetrator apologizes under the atonement model it does four things: “confesses the deed; admits the deed was an injustice; repents; and asks for forgiveness.” 130 Without a public

126 BROOKS, ATONEMENT AND FORGIVENESS, supra note 14, at 141-48, 163-69.

127 Id. at 142.

128 See infra text accompanying note 215.

129 See BROOKS, ATONEMENT AND FORGIVENESS supra note 14, at 141.

130 Id. at 144-45. Sometimes a fifth element is added: “the perpetrator must change its behavior toward the victim.” Id. However, I believe that this element is better included under the
statement of remorse recognizing guilt, the redress is nothing more than a settlement. Without a request for forgiveness, the victims’ forgiveness, and, ultimately reconciliation, is unlikely to be placed on the table for consideration. 131

The passage of time does not eliminate the need for an apology. There is no statute of limitations on the moral obligation to apologize. Even if there are no living victims of the atrocity, an apology should still be tendered if the perpetrator is still alive. 132 Yet it is paramount, particularly after the passage of time, to clarify the historical record of the atrocity. Clarifying the historical record “provides the factual foundation for apology” and “fuse[s] polarized antagonistic histories into a core of shared history to which both sides can subscribe.” 133 Clarification of the historical record creates an understanding for the necessity of reparations as well as the moral obligation to apologize. 134 An almost flawless atonement apology is the U.S. government’s formal apology for its overthrow of the Kingdom of Hawaii.

As mentioned earlier, 135 the apology was issued through a 1993 congressional resolution, called the “Apology Resolution,” on the 100th anniversary of the atrocity. 136 It came in response

reparations component as it, like reparations, deals with deeds rather than words. Id.

131 Id.

132 Id. at 144-45.

133 Id. at 148.

134 Id.

135 See supra text accompanying notes 73-89.

to the Hawaiian Redress Movement,137 which mainly sought sovereignty (like many American Indian tribes138) rather than a return of land. The resolution aspired to “educate the American public and the Congress on the history of the U.S. involvement in the overthrow and its aftermath, and set the record straight” regarding the U. S.’s responsibility.139 In the resolution, the U.S. acknowledged the Hawaiian Kingdom’s previous self-sufficiency, the U.S.’s role in its overthrow, the cession of lands from the Native Hawaiian people to the U.S. government, and the “long-range economic and social changes” in Hawaii as a result of the overthrow that “have been devastating to the population and to the health and well-being of the Hawaiian people.”140 In addition, the resolution sought to “promote racial harmony and cultural understanding, . . . to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express [the] deep regret of the U.S. to the Native Hawaiian people, and to support the reconciliation efforts.”141 The Apology Resolution passed the Senate 65–34 and the House on a voice vote. President Clinton signed it into law on November 23, 1993.142

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137 The United Church of Christ of Hawaii also issued an apology for its role in the atrocity. The apology was made believable by the delivery of one million dollars in reparations. See, Norman Meller & Anne F. Lee, Hawaiian Sovereignty, 27 PUBLIUS 167, 182 (2007).

138 WHEN SORRY ISN’T ENOUGH, supra note 14, at Part 5 (discussing the Native American Redress Movement).

139 Hawaii Advisory Committee to the U.S. Commission on Civil Rights, Reconciliation at a Crossroads, 19.


141 Id.
All the conditions constitutive of an atonement apology are reflected in the Apology Resolution in one way or another. The apology recognizes the deed and that the deed was an injustice. The congressional resolution sought to clarify these aspects of the historical record by stating, through a series of “whereas” statements, the facts leading to the Hawaiian overthrow and the aftermath of the overthrow. In addition, the resolution conceded the illegal nature of the overthrow, the U. S.’s interference with Native Hawaiians’ right to self-governance, and the overthrow’s dramatic deleterious impact on the economic and social status of Native Hawaiians. The apology also specifically repents, stating that the United States “express[es] its deepest regret to the Native Hawaiian people.” Although the apology does not specifically ask for forgiveness, the apology does state that Congress “support[s] the reconciliation efforts,” implying its hope for healing and forgiveness.

A more direct and, hence, better statement of the forgiveness element of an atonement apology can be found in the 2004 apology issued by Argentina’s President Néstor Kirchner. President Kirchner apologized on behalf of the Argentine state (government and people) for atrocities committed in the name of the Argentine state during the 1976-1983 military dictatorship (or “Dirty War”). The apology came well after the atrocities had ended—again,

144 Id.
145 Id.
146 See supra text accompanying notes 43-51 for a more detailed discussion of this atrocity.
better late than never. President Kirchner stated: “As president of the nation I come to beg forgiveness of the state for the shame of having stayed silent about so many atrocities during 20 years of democracy.”

Has the U.S. Supreme Court undermined the legitimacy or effectiveness of the apology? In 2009, the Supreme Court in *Hawaii v. Office of Hawaiian Affairs*, held that the Apology Resolution’s historical findings are not legally binding. I do not believe this ruling matters much because the question of apology is a moral rather than a legal consideration. Although the apology does not waive sovereign immunity and cannot otherwise be used as a basis on which to sue the U.S. government for damages, its factual clarification of the historical record is morally binding on the U.S. government and its people. And to that extent the apology serves as a public record of the atrocity and the perpetrator’s remorse.

**Atonement Reparations.** Under the atonement model, reparations serve a very specific purpose: “they make apologies believable.” Atonement reparations, unlike reparations outside the atonement model, transform an apology into a meaningful statement of remorse. They “turn the rhetoric of an apology into a meaningful, material reality and, thus, help to repair the damage caused by the atrocity and [help to] ensure that the atrocity will not be repeated.”

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149 *Office of Hawaiian Affairs*, 129 S. Ct. at 1444.

150 *Brooks, Atonement and Forgiveness*, *supra* note 14, at 142.

151 *Id.* at 142–43.
Hence, atonement reparations can be defined as “the revelation and realization of apology.”152 Inside the atonement model, reparations are restorative or redistributive. Inside the tort model, they are compensatory or punitive.

As discussed earlier,153 there are several forms of reparations. Whether inside the atonement model or tort model, reparations can be community-directed (rehabilitative) or victim-directed (compensatory). Unlike tort reparations, atonement reparations are proceeded by an apology and tendered with the intent of concretizing the apology. A community-directed (rehabilitative) reparation might include a special educational or employment program directed toward the victims’ community (specifically a nonmonetary rehabilitative reparation). If these reparations are directed toward the victims or their families, they are victim-directed (compensatory) reparations. (specifically a nonmonetary compensatory reparations).

Ultimately, it is the perpetrator’s responsibility to generate appropriate reparations. The perpetrator, however, has to be mindful of the victims’ needs, desires, and opinions. Otherwise, the reparation might not be sufficient to induce the victims’ forgiveness and ultimately lead to reconciliation, which is the ultimate goal of atonement reparations.

Forgiveness. The last element of the atonement model, forgiveness is the victims’ remission of an attitude of resentment evoked by injury. It is the victims’ willingness to re-establish a broken relationship with the perpetrator. None of the other major redress models, criminal or civil, contemplates forgiveness. None view the victims as having a redress duty of

152 Id. at 155.

153 See supra, text accompanying notes 91-94.
any sort. Forgiveness is, however, essential to the forward-looking, reconciling focus of the atonement model. Atonement (meaning apology plus reparations) and forgiveness are the key elements of this unique redress model.

Yet, atonement and forgiveness are not morally equivalent under the atonement model. The perpetrator’s duty to atone for a past atrocity is a moral imperative. But the victim’s duty to forgive can be no more than a civic responsibility. The victim of an atrocity, unlike the perpetrator, has no moral debt to pay.154

Some might disagree with the atonement model’s characterization of forgiveness as a civic duty. To be sure, omnipresent in literature, religion, philosophy, and culture, forgiveness is viewed in different ways. Sometimes it is seen as a moral imperative based on our unity with God. Other times it is formulated only as a moral prerogative. Then there is Nietzsche, who believed that one who forgives manifests a “slave morality.”155 Similarly, S.J. Perelman once quipped: “To err is human, to forgive supine.”156 But, again, I would argue that the victims of an atrocity are innocent and have incurred no moral obligation. I might, on the other hand, agree with Nietzsche and Perelman only if forgiveness comes without preconditions. As a strong advocate of the atonement model, I believe that the civic duty to forgive is predicated upon the quality of the atonement tendered.157

154 Id. at 168-69.
155 Id. at 166.
156 Id. at 166.
157 Id. at 163-68
Under the atonement model, then, there has to be a tender of atonement by the perpetrator, including a specific request for forgiveness, as a precondition for forgiveness. Unconditional forgiveness is unacceptable, at least to me. Absent atonement, forgiveness is morally objectionable, because the indiscriminate forgiver disrespects herself. She preserves an unhealthy relationship with her perpetrator by accepting the perpetrator in his identity as her tormentor.\textsuperscript{158}

Can an atrocity be too great or its lingering effects too devastating or horrific to warrant forgiveness? William Styron’s novel, \textit{Sophie’s Choice},\textsuperscript{159} raises the issue in dramatic fashion, as I have noted on another occasion:

In the incident from which the book has its name, Sophie and her two children arrive at Auschwitz, prisoners of the latest German round-up of Polish resistance members. Upon disembarking from the train which had brought them to this death camp, Sophie encounters the infamous selection process by which SS doctors determined those who were strong enough to work, and thus to live, and those who were to die. In a break with routine procedure, however, the doctor before whom Sophie is brought makes her the victim of a perverse plot to commit an unforgivable crime. He gives Sophie a choice: one, but not both, of her children may live; only she must decide or both shall be killed. Sophie chooses, and the burden of her choice ultimately destroys her, but what I want to bring out

\begin{itemize}
\item \textsuperscript{158} \textit{Id.} at 168.
\item \textsuperscript{159} WILLIAM STYRON, SOPHIE’S CHOICE (1980).
\end{itemize}
here is not the effects but the nature of the crime. Even if, miraculously, Sophie’s little girl survived, we would still, I think, want to say that no amount of restitution, no change of heart on the part of the doctor could make forgiveness a requirement in such a case. Indeed, it was precisely the doctor’s belief that such a crime was unforgivable that led him to commit it. As Styron portrays it, the doctor, having been pressed into the wretched service of the selection process, and despairing of the godlessness of his existence, plans an offence which he believed only God could forgive. His need for divine forgiveness, he hoped, would restore his faith.\footnote{Id. at 167.}

Even where forgiveness is possible, the atonement model does not envision forgiveness to be an immediate response to atonement. Forgiveness is a process, a long dance between the perpetrator and victims. It is a negotiation over the victims’ needs against the backdrop of the perpetrator’s apology and reparations. The victims will be motivated in large part by the sincerity of the apology, and they will surely calculate the sincerity of the apology by the weight of the reparations.
The atonement model offers the highest form of human redress and, hence, human development in the aftermath of an atrocity. More than any other redress model, civil or criminal, the atonement model brings forth Adenauer’s post-Holocaust vision of heightened morality, egalitarianism, identity, and restorative justice. Yet, the atonement model may not be suitable for every atrocity. Other redress models may be needed to meet the dictates of post-conflict justice. To illustrate my argument, I should like to apply the major redress models to the post-conflict stage of two very different forms of modern slavery---former child soldiers and the sexual exploitation of women and girls in Thailand.

**Former Child Soldiers**

Liberia, a country on the coast of West Africa bordered by Cote d’Ivoire, Guinea and Sierra Leone, was initially settled in 1822 by repatriated American slaves. It was established as a republic in 1847.\(^1\) Liberia’s population of approximately four million is made up of a dozen ethnic groups, none comprising more than 20% of the total population. The population has a median age of 17.9 years, an average life expectancy of 57 years, and some of the world’s highest maternal and infant mortality rates.\(^2\) Although its reported unemployment rate is

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\(^{1}\) *ROY L. BROOKS, INTEGRATION OR SEPARATION? A STRATEGY FOR RACIAL EQUALITY* 156, 159, 163 (1996).

\(^{2}\) *Central Intelligence Agency World Factbook: Liberia, CENTRAL INTELLIGENCE AGENCY*, 62
relatively low, Liberia is a country of pervasive poverty, little access to health care or clean water, and low rates of adult literacy.\textsuperscript{163}

Against this dismal backdrop, Liberia was rocked by civil war between 1989 and 2003. There were actually two Liberian Civil Wars. The first (1989-1997) was begun by American-educated Charles Taylor who fought against and defeated the authoritarian regime of Samuel Doe. Taylor was elected president in 1997 and, in short order, established a corrupt and repressive government. The second civil war (1997-2003) came in response to Taylor’s regime. Liberian dissidents, supported by the Guinean government, launched attacks against Taylor’s government from Guinea. Forces loyal to Taylor counterattacked from Liberia and Sierra Leone. Both sides, including the largest rebel group, the Guinea-backed LURD (Liberians United for Reconciliation and Democracy), used equally brutal and inhumane tactics in the civil war. Taylor was forced to resign in 2003.\textsuperscript{164}

\textsuperscript{163} \textit{Id. See} BROOKS, INTEGRATION OR SEPARATION?, \textit{supra} note161, at 161-63.

Child soldiers were used in the Liberian armed forces as early as 1989 when Taylor created the Small Boys Units. SBUs, as they were called, recruited children as young as eight, both boys and girls, to aid in the rebellion against Doe.165 This military model was also used by LURD and other dissident groups in the counter-rebellion, spreading across the border to Sierra Leone.166

It is estimated that 15,000-21,000 children were conscripted during the Liberian civil war. This war displaced 1.5 million civilians from their homes, killed over 250,000 people, and mutilated, tortured, and sexually abused thousands more.167 Many of the most grotesque and

165 See sources cited in note 164 supra.


nauseating crimes were committed by child soldiers. Similar atrocities were committed by child soldiers in other African conflicts, such as the Sierra Leone Civil War.168

The children were conscripted into military services through the most barbaric means imaginable. Adult soldiers typically entered the children’s villages and proceeded to rape, murder, mutilate, and terrorize the villagers, including members of the children’s family as well as the children themselves. Some children were forced to have sex with a parent or sibling. This

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horrendous practice served to destroy the concept of family, community, and connection. Some children were forced to watch as their parents were sexually assaulted or murdered by the adult soldiers. Hence, the induction notice to the children was indeed an abduction: join up and do what you are told or be killed.  

The children continued to be stripped of their innocence as they performed their military service in the bush. Child soldiers were compelled to fight, fornicate, and kill. Girl soldiers were forced to serve an additional role as sex slaves to the male soldiers, both adults and boys. Many child soldiers were constantly assaulted, starved, drugged, and victimized by their own military commanders.

The physical effects of being a child soldier or child sex slave are heavy and lasting. While many child soldiers died in battle, those who survived have debilitating wounds, including missing limbs and disfigured faces. Girl soldiers used as sex slaves have damaged reproductive systems and cannot have children. Many were impregnated or contracted sexually transmitted diseases such as HIV/AIDS. When the Sierra Leone Civil War ended in 2002, it was estimated that over 16,000 children had HIV or AIDS and that because of AIDS-related deaths more than 40,000 children were parentless.

Equally devastating, the psychological impact on child soldiers cannot be ignored. Ripped from a loving familial setting, torn from a nurturing community, and abruptly thrown into a

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170 Id.

171 Id. at 318.
world of terror and violence, these children have developed deep emotional scars. They fight an internal war long after the external war has ended. They have little sense of what constitutes appropriate social behavior. They are fearful, anxious, and aggressive. Within the post-war community, former child soldiers, having been abandoned by their military “families,” are often shunned by their natural families, if they are still alive, because of the crimes they were forced to commit during the war. Sexual slaves, in addition, are stigmatized for their sexual encounters, often looked down upon and disowned by their own families. The offspring of these damaged children, conceived out of rape and violence rather than warmth and love, are perhaps the worst off. They are degraded as “rebel babies.”

A picture of re-victimization is revealed in the words of one child soldier:

When I came to Freetown, I tried to stay with my father… he rejected me and now I am staying in the streets. He said that he is no longer my father because I was a rebel… I tried to explain to him that it was not my fault… but he could not listen to me. I am now a chain smoker. I smoke cigarettes, cannabis sativa, and have sex with prostitutes everyday… I even drink alcohol.172

What form of post-conflict justice is best suited for former child soldiers? What does human rights and the best of humanity dictate? The answer, in my view, is restorative justice; certainly more so than retributive justice.

172 Id. at 320.
Under the criminal redress model, the government would criminally prosecute the former child soldiers for the atrocities they committed during the civil war. If convicted, the children would be subject to imprisonment or perhaps even execution. Criminal redress not only serves the state, or community’s, interest in retribution and deterrence, but it also slakes the victims’ desire for revenge, safety, and peace of mind. Retributive justice, however, seems most inappropriate (most unjust) when, as here, the perpetrators are very young and themselves victims.

At a very impressionable age, these children were pressed into service through abduction carried out in a climate of violence or the threat of violence. In a word, they were trafficked, becoming victims of modern slavery. Some were even held as sex slaves. Further, the sense of retributive justice may never actually be afforded under the criminal redress model because it would call for massive litigation, and that would be costly and time consuming. Prosecution, therefore, may not be a realistic possibility. As for deterrence, there is less threat that the children will continue to commit crimes of the nature committed in the bush. They might commit lesser crimes like other citizens. That is all the more reason to try to rehabilitate the former child soldiers rather than simply throwing them in jail. Rehabilitation moves the community forward, punishment only stunts the healing processes for both the former child soldiers and their victims.

If retributive justice seems unjust, compensatory justice is little better. Under the tort model, the victims and communities would privately take legal action against the former child soldiers. Either through trials or government legislation, the former child soldiers would be ordered to pay redress in the form of money damages. While this approach may seem appropriate because it begins to address the issue of victim compensation, the truth of the matter is that it
creates its own set of problems. For example, the issue of fairness arises yet again when so much of the blame and responsibility for the atrocity is placed on the former child soldiers who are victims themselves. There is, in addition, a large practical problem that cannot be overlooked: the former child soldiers do not have the money or resources to pay reparations. Having the government pay reparations on behalf of the former child soldiers would certainly help the children’s victims, but it would rob the former child soldiers of an important opportunity to participate in the redress process and, hence, take some responsibility for their role in the atrocity. Also, using the courts to go after the thousands of former child soldiers would be both costly and inefficient, not unlike criminal redress. Finally and most importantly, the tort model offers no solution for reuniting the child soldiers with their families and reintegrating them into the community. Indeed, the antagonistic nature of litigation undermines reconciliation between the former child soldiers and their communities.

As perpetrators, the former child soldiers should be given opportunities to restore their moral character as well as the broken relationship between themselves and their victims, their families and their communities. What is needed all around is restorative justice. The atonement model provides the best post-conflict structure for generating restorative justice. But because these perpetrators are also victims, the atonement model may have to be applied creatively.

Under the atonement model, character rebuilding begins with the issuance of an apology. The perpetrator apologizes by confessing the deed, admitting the deed was an injustice, repenting, and asking for forgiveness.\(^{173}\) Although the perpetrators were children when they committed the atrocity, they still need to apologize in this fashion. They must acknowledge that

\(^{173}\) See supra, text accompanying note 130.
they committed morally reprehensible wrongs and ask their victims and the community at large for forgiveness even though they were not fully responsible for their acts. Apologies could be issued before a Truth Commission, which not unlike South Africa’s Truth and Reconciliation Commission, could be used in conjunction with the atonement model.\textsuperscript{174}

Simply saying “I’m sorry” is not enough. Statements of remorse must be followed by tangible acts of redemption. These acts can include community service. In return, the government should grant amnesty to these atoning perpetrators. Following the South Africa precedent, again, amnesty for the perpetrators is offered in the interest of restorative justice. Amnesty can help move the community forward; in other words, beyond the atrocity. To that extent, amnesty arguably benefits the victims as well, who in this case are also the perpetrators. Should, however, the former child soldiers fail to do their community service or otherwise fail to take seriously their obligations, then they should be subject to criminal prosecution; perhaps even tried as adults.

As victims, the former child soldiers should receive atonement from the government because the adult perpetrators were empowered to act under governmental authority. Solidifying its apology, the government should issue the former child soldiers victim-directed (compensatory) reparations. These are the most effective reparations. They might include education, housing, jobs and job training, medical and psychological treatment. If it is argued that the government was not an actual perpetrator, the government should still atone, because its atonement will help move society beyond the atrocity. This is certainly a creative rather than a

\textsuperscript{174} See supra, text accompanying notes 57-58.
strict application of the atonement model. Yet it is within the general spirit of Adeneru’s post-Holocaust vision of heightened morality, egalitarianism, identity, and restorative justice.

 Finally, there should be forgiveness all around. The former child soldiers should forgive their perpetrators and be forgiven by their own victims as well as by their families and communities. Without forgiveness, the country will not be able to move beyond the atrocity and the hate and vengeance that live on for years, decades, and even centuries after the atrocity has ended. If the country holds to the belief of an eye for eye, it will surely go blind.

**Sexual Slavery in Thailand**

Thailand presents a most complex case study of post-conflict justice for modern slavery. The atrocity in Thailand is sexual slavery and is on-going. Criminal and civil redress come into play after the atrocity has ended.\(^{175}\) We must, therefore, imagine that the atrocity has ended. By engaging in this thought experiment, we not only sharpen our understanding of the redress models (their limitations in particular), but we also gain insights into how best to end the atrocity. It seems clear that the only way to end sexual slavery in Thailand is not to end prostitution but to legalize and regulate it. More about which in due course.

In Thailand, modern slavery primarily appears in the form of sexual exploitation of women and girls who, by force, fraud, deceit, and cultural and religious pressure, are thrown into prostitution. In some instances, girls as young as five years old are sold into prostitution by their

\(^{175}\) *See, e.g., WHEN SORRY ISN’T ENOUGH, supra* note 14 (discussing worldwide redress movements); *Brooks, ATONEMENT AND FORGIVENESS, supra* note 14 (discussing the Black Redress Movement in the United States).*
poverty-stricken parents to cover family debt. Held in debt bondage, these little girls, like other
sex slaves, typically end up working in brothels. The cruel irony is that brothels do not officially
exist in Thailand. Brothels and prostitution have been illegal there since 1960.176 How then do
they continue to have a physical presence?

A combination of strong cultural values and deep religious conviction is responsible for
the enduring practice of prostitution in Thailand. There is a strong cultural imperative in the
country that holds girls responsible for the care of their elderly parents.177 Imbibing this cultural
imperative, girls often seek work at a young age. Some end up in the world of commercial sex.
The vast majority of these girls or women are lured into the business with false promises of
legitimate jobs (waitresses or maids for example) and are not allowed to leave once they discover
the truth. Hence, the deception nullifies the putative consent.178

Another contributing cultural factor is the sexual double standard that exists in Thailand.
“Thai society believes that boys are mischievous, men are naturally promiscuous. Men need sex,
but good women (this usually means the well-to-do) are expected to remain virgins until

176 See generally, ASIA WATCH AND THE WOMEN’S RIGHTS PROJECT, A MODERN FORM OF
177 See, e.g., SIRIPORN SKROBANEK, NATTAYA BOONPAKDI, AND CHUTIMA JANTHAKEERO, THE
178 See, ASIA WATCH AND WOMEN’S RIGHTS PROJECT, A MODERN FORM OF SLAVERY:
TRAFFICKING OF BURMESE WOMEN AND GIRLS INTO BROTHELS IN THAILAND 46 (1993). See
also, Siriporn, The Traffic in Women, 35; Sally Cameron, Trafficking of Women for Prostitution,
It is only “good” women who must remain chaste until marriage. “Bad” women are needed so that men can slake their sexual needs. Nine out of ten men in Thailand have reported that they lost their virginity to a prostitute. For many men, it is a rite of passage, a moment to mark their coming of age, when they lose their virginity to a girl at a brothel. Thus, while men are encouraged to visit prostitutes, women who meet these needs are labeled “bad” for not remaining chaste until marriage.

This sexual double standard is sanctioned not only by secular custom, but also by religious dogma. Like Thai culture, Thai Buddhism permits men to use prostitutes. According to the Vihayas, the rules governing monks, wives are ranked at various levels, ten levels in all. Among the ten levels of wives are “those bought for money” and “those to be enjoyed or used occasionally.” Prostitutes are, thus, the “wives” that are bought for money or that are used or enjoyed occasionally.

Thai Buddhism also drives the sexual exploitation of women and girls in the country by placing them at the bottom of the social order. “In Thai (Theravada) Buddhism, females cannot even reach the highest levels of spiritual enlightenment. The best they can hope for in this

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180 Bales, Disposable People 45.


182 Seabrook, Travels in the Skin Trade 79.

183 Bales, Disposable People 38.
lifetime is to build up enough good karma to be born male in their next life.”¹⁸⁴ Thai Buddhism teaches that if one is born female, it means that she did something wrong in a previous life.¹⁸⁵ More generally, a person must accept life’s pain and suffering because he or she is responsible for the bad things that befall him or her. Anything bad that happens to one is a direct result of the person’s actions in a previous life; thus, sexual slavery is the karma of a female with a bad past life. If bad things are happening, it is punishment that must be accepted. People must try to live better in this life so that they can be reincarnated into a better and higher life the next time.¹⁸⁶ Hence, women and girls are being sexually exploited in brothels because they were bad in their previous lives. The brothel is present-day punishment for a bad past life. Because this punishment is their own fault, they must not fight against it, but instead, should accept it and try to build up good karma for the next life. If all goes well, they will be reborn a man.

Flowing from this religious dogma is a strong preference in Thailand for the uneducated female. Women and girls are not given the same access to Thai educational institutions as are men and boys.¹⁸⁷ This lack of educational opportunity is an additional social force driving women and girls into the world of commercial sex.


¹⁸⁵ BATSTONE, NOT FOR SALE 24.

¹⁸⁶ BALES, DISPOSABLE PEOPLE 39.

¹⁸⁷ Cameron, Trafficking of Women for Prostitution supra note 160, at 87-88.
When sexual slavery ends in Thailand, the victims will need to heal and the country will need to move forward. In deciding how best to mend the victims and the country, both criminal and civil redress models should be examined. In discussing the latter, I will continue to give primary attention to the tort and atonement models.

Under the criminal redress model, the Thai government prosecutes individual perpetrators, and fines or imprisons the guilty parties.\footnote{188} Brothel owners, pimps, traffickers, brokers, and corrupt police officers are tried and, if found guilty, punished. Criminal redress, thereby, promotes retributive justice.\footnote{189} Both the state and the victims gain a sense of vindication in seeing the perpetrators receive their just desserts.

Criminal redress, on the other hand, may not be practical. There may be too many perpetrators to prosecute. The perpetrators include parents who sold their child into sexual slavery, the broker who procured the deal, the trafficker who transported the child, the brothel owner who paid for the sex slave, the pimp who monitored and beat the victim, the crooked police official who accepted bribes from the brothels and allowed them to remain in business, and the myriad Thai brothel clients who paid for sexual services, including international clients who traveled to Thailand for the expressed purpose of participating in the sex industry. These are small-fry perpetrators. On a larger scale, the perpetrators include the government agents who failed to enact effective laws against trafficking, Thai Buddhist religious leaders who condoned a sex industry that uses sex slaves, and the Monarchy and other protectors of a culture that subordinates women and girls. There just may be too many guilty parties to prosecute, and trying

\footnote{188} See supra, text accompanying notes 7.

\footnote{189} Id.
to do so may put too large a strain on the Thai judicial system.\textsuperscript{190} Recognizing the extensive participation of public officials in sexual slavery, Thailand’s former Prime Minister Chuan Leepai stated that “if the problem cannot be solved, I won’t order the authorities to tackle it.”\textsuperscript{191}

Prosecuting the parents who sell their daughters into sexual slavery raises difficult questions of retributive justice. How morally culpable are poor parents who engage in debt bondage? Consider how the typical transaction works. A daughter repays her parents’ debt by working as prostitutes at a brothel.\textsuperscript{192} The debt compounds very quickly, plus the daughter is charged rent for her room at the brothel.\textsuperscript{193} Her rent, other fees, and the mounting debt interest make it nearly impossible to pay off her parents’ debt. She becomes an indentured servant, a sex slave.\textsuperscript{194} Eventually, pimps at the brothels may simply declare the debt paid in full.\textsuperscript{195} Are the parents aware of the nature of the transaction? Should it matter for purposes of retributive justice? Is justice best served by seeking revenge? Is revenge the most just way to deal with poverty-stricken parents?

\textsuperscript{190} Domestic prosecution is the primary means of effectuation criminal redress. See supra text accompanying notes 41-42.

\textsuperscript{191} BALES, DISPOSABLE PEOPLE 64.

\textsuperscript{192} KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY 41 (1999).

\textsuperscript{193} Id.

\textsuperscript{194} Id.

\textsuperscript{195} Id. at 42.
Another common transaction involves brokers who travel to rural villages, especially in Northern Thailand, to arrange for the purchase of young girls from poor families.\(^\text{196}\) This is a purchase and not a loan. The sale of a daughter may reward a family with the equivalent of their entire yearly salary. After a period of time, the girls working in brothels are allowed to send home money to their families.\(^\text{197}\) This is a business tactic employed by brothel owners to maintain rapport with the girls’ families so that they can recruit additional daughters from the families. The pipeline is an important aspect of the sex industry in Thailand because of the high turnover and the resultant constant need for young sex workers.\(^\text{198}\) Does this “business” transaction make the parents any more or less morally culpable?

Regardless of how one answers the retributive justice issues, criminal redress is problematic when viewed from the victims’ perspective. It does not address the victims’ material needs. The perpetrators are jailed, but the victims’ receive no counseling, no housing, no jobs nor other reparative treatment needed to move forward with their lives; hence the need for civil redress.

In contrast to the criminal redress model’s concern for retributive justice, the tort model seeks to achieve compensatory justice. It can also be a vehicle for the pursuit of punitive justice, although that is more the exception than the rule in the modern redress era.\(^\text{199}\) As litigation is

\(^{196}\) Bales, Disposable People 41.

\(^{197}\) Id. at 41-42.

\(^{198}\) Id. at 42.

\(^{199}\) See supra text accompanying note 95.
the chief means by which the tort model is effectuated, this style of redress, like criminal redress, is highly problematic.

The number of sex slave victims in Thailand is unknown, but it is estimated that there are between 500,000 and 1,000,000 prostitutes in Thailand. This would result in dozens, if not hundreds, of class actions lawsuits, assuming the victims even had enough money to hire lawyers. It would also be a burden of the court system to go after all the perpetrators. In addition, most of the low-level perpetrators are unlikely to have deep pockets, and the government is likely to grant the high-level perpetrators immunity. Compensatory damages, therefore, may not be possible in the great majority of the cases.

Though less typical than litigation, legislation can be used to achieve compensation. Using legislation as a means of tort redress for sexual slavery has its advantages over litigation. Chiefly, it avoids putting the victims through a situation in which they would have to re-live their atrocities. That ordeal alone, not to mention the cultural stigma that attaches to prostitution, might dissuade many victims from coming forward. The government, a high-level perpetrator, rather than the low-level perpetrators, would compensate the victims under a legislative approach. Yet, the compensation could only be symbolic. No amount of compensation could return the victims to the status quo ante. Some victims might reject compensation as little more than “blood money.” Moreover, the tort model, whether pursued through litigation or legislation, does little to heal the community or fix the problem that caused the atrocity, in this case the cultural subordination of women. To pursue these objectives, one would have to opt for a redress model that reaches a higher development of humanity than mere compensation.

200 BALES, DISPOSABLE PEOPLE, supra note 5 at 43.
More than any other redress model, civil or criminal, the atonement model approximates Adeneur’s post-Holocaust vision of heightened morality, egalitarianism, identity between victim and perpetrator, and restorative justice.\textsuperscript{201} Whereas the tort model is backward-looking and compensatory, the atonement model is forward-looking and restorative,\textsuperscript{202} exactly what the victims of sexual slavery need. Under the atonement model, the perpetrator must first apologize to the victims; i.e., confess the deed, admit that it was an injustice, repent, and ask for forgiveness.\textsuperscript{203} The apology is followed by reparations.\textsuperscript{204} The sincerity of the apology is calculated by the weight of the reparations, which, in turn, induces the victims’ forgiveness.\textsuperscript{205}

Extracting an apology for sexual slavery in Thailand is no easy task. The government should be the primary apologizer because sexual slavery existed at its pleasure. Although procuring a government apology might seem impossible because prostitution in Thailand is accepted by both religious and cultural customs, the argument I would make is that prostitution may be acceptable at some level, but sexual slavery—involuntary prostitution—should not be. In fact, I would argue that prostitution should be legal and heavily regulated in Thailand to meet the demand for sex, thereby saving little girls from sexual enslavement. Give the people something that is large (prostitution) in exchange for the elimination of a small and unsavory piece of it (sexual slavery). Regulation takes the exploitation out of prostitution and ends or

\begin{footnotesize}
\begin{enumerate}
\item See supra text accompanying notes 18-19.
\item See supra text accompanying notes 94-160.
\item See supra text accompanying note 130.
\item See supra text accompanying notes 150-53.
\item See supra text accompanying notes 153-160.
\end{enumerate}
\end{footnotesize}
substantially reduces sexual slavery. The government, therefore, should be poised to apologize for having allowed the very practice it jettisoned to exist in its jurisdiction.\footnote{I do not deem prostitution per se to be an atrocity. Hence, I am comfortable advocating the legalization and regulation of prostitution for the purpose of ending sexual slavery.}

Assuming the Thai government ends sexual slavery within its borders and tenders an apology to the victims, the government would then offer reparations to the victims. These reparations should speak to the needs of the victims with an eye toward moving Thai society forward, by which I mean moving it away from a culture of gender subordination to one of gender equality to the extent possible. This calls for a reparative regime consisting of both victim-directed (compensatory) reparations and community-directed (rehabilitative) reparations. The former might consist of cash that sustains a level of subsistence for a period of time post-conflict as well as such services as education, job training, jobs, housing, and medical attention for sexually transmitted diseases or other injuries to a victim’s reproductive system. To be sure, the medical reparations are very intimate. But they are quite needed because Thailand has a huge HIV/AIDS epidemic resulting from the sex industry there. One study reports that 50% of children sold into sex slavery contract HIV/AIDS.\footnote{Michael S. Serrill, \textit{Defiling the Children}, TIME (June 24, 2001), \url{http://www.time.com/time/magazine/article/0,9171,161918,00.html}.} Sex workers who contract HIV/AIDS are sent back to their villages to die.\footnote{Bales, \textit{Disposable People}, supra note 5, at 60.} Psychological counseling to deal with the stigma of being viewed as a former prostitute as well as the emotional issues and depression resulting from sexual abuse, physical abuse, and captivity may be needed as well.
Community-directed (rehabilitative) reparations of a nonmonetary nature are equally important. These measures should be designed to prevent future sexual exploitation and to affirmatively elevate the status of women and girls in Thai society. Limited only by the imagination (and the country’s economic condition, of course), such measures might include teaching women’s rights programs in schools starting at a young age, and implementing new gender equality laws, such as laws banning sexual harassment. Affirmative action programs that bring females into the mainstream of Thai society, and, at the same time, change the public’s perception of females will also have to be implemented. TV, radio, and other media that inform the public’s view of women will have to be called into service to reshape the female image in Thai society.

Thai law currently sees prostitutes as perpetrators who are punishable under the law.\textsuperscript{209} Women kidnapped and trafficked in from bordering countries are also charged under Thai law for being in the country illegally.\textsuperscript{210} The government needs to identify these women as legal workers but regulate the industry in which they work to save little girls from sexual slavery.

Admittedly, there is some tension between the gender-equality reparations I recommend and my call for the legalization and regulation of prostitution. At first glance, they may seem to move in opposite directions. On closer reflection, however, one can see that they do in fact travel in the same direction. Legalizing voluntary prostitution may be the only way to eliminate involuntary prostitution; in other words, to liberate sex slaves. In addition, I am advocating the

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\textsuperscript{209} Id. at 73.
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\textsuperscript{210} Id. at 72.
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creation of more jobs opportunities for Thai women as an alternative to employment in the sex industry.

Religious dogma will certainly have to be changed to help shape a positive public image of women and girls. While there are certainly precepts in Thai Buddhism that deny gender equality, there are also transcendent precepts of human dignity that can be found in Buddhism. As one scholar has noted, the success of Christianity and Buddhism “is to be found in certain characteristics that they hold in common. One … [is] their egalitarianism; their brotherhood… [is] open to all who sought admittance – women as well as men, rich and poor alike, slave and free.”\textsuperscript{211} The success of such religions (all religions) is based on their embrace of such life-affirming precepts.\textsuperscript{212} Community-directed (rehabilitative) reparations should employ such precepts to counter the gender-subordinating features in Buddhism.

Forgiveness is the last element of the atonement model. Asking victims of sexual slavery to forgive their perpetrators, especially the low-level ones with whom they had daily contact, might seem a bit perverse. After being sold into sexual slavery as children, sexually assaulted every day, and debilitated by a STD, forgiveness may seem like re-victimization. But victims of atrocities have been known to forgive their perpetrators, if for no other reason than to move on with their lives. As the old Chinese aphorism states: “He who opts for revenge must dig two graves.”\textsuperscript{213} Yet, I cannot help but believe that unconditional forgiveness is a mistake, that the


\textsuperscript{212} Id.

\textsuperscript{213} BROOKS, ATONEMENT AND FORGIVENESS, supra note 14, at 164 (citing sources therein).
indiscriminant forgiver disrespects herself. That is why the perpetrator’s apology and reparations as a precondition to forgiveness is so important in my view. But even with the perpetrator’s atonement, I must leave open the question of whether sexual exploitation is an unforgivable transgression. Only the victims can answer that question individually. Only they have the moral standing to answer it.

On the other hand, asking the victims to forgive the government, monarchy, and religious leaders (i.e., the power-elite perpetrators who did not have a hands-on role in the victims’ persecution) is essential to a forward-looking, conciliatory process of redress. Once these high-level perpetrators have atoned, the victims have a civic duty to respond affirmatively. *Forgive but do not forget.* But forgiveness will take some time. It is, in fact, a process that will not conclude overnight, nor should it. The victims and their high-level perpetrators will have to negotiate the preconditions for forgiveness – i.e., the nature and extent of the reparations, such as the ones suggested above – before the civic duty to forgive ripens. Forgiveness can then be manifested in several ways; e.g., by the victims signing a “forgiveness book” in a public place. However the victims choose to manifest their forgiveness, the very act of forgiveness should serves to psychologically release the victims from the perpetrator’s control. Unchained psychologically, the victims can move forward in their lives rather than be held captive to the past.

It might be necessary to combine the atonement model with other redress models to help the reconciliation process. For example, even though criminal prosecution across the board may

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\(^{214}\) *See supra* text accompanying notes 157-58 for further discussion.
not be practical, the victims’ sense of justice may demand retributive justice for the most egregious low-level perpetrators, such as a notorious brothel owner, sex trafficker, or pimp. Although criminal redress may not be a necessary and sufficient form of redress for sexual slavery in Thailand, it can work with the atonement model to enhance the quality of post-conflict justice overall.\textsuperscript{215}

**Conclusion**

The post-conflict stage of modern slavery is under-discussed and undertheorized. We can, however, deepen our thinking about the end stage of modern slavery by applying the reparative framework developed in the aftermath of the Holocaust. Informed by a post-Holocaust spirit of heightened morality, egalitarianism, identity, and restorative justice, three reparative justice models—criminal redress, the tort model, and the atonement model—are particularly noteworthy. Taken together, these three redress models raise questions about the proper theory of justice—compensatory, retributive, restorative or even redistributive—that should govern the post-conflict stage of modern slavery.

Optimally, we would want to apply all three redress models to give the victims and community the full arsenal of post-conflict weapons in the pursuit of justice. But this is not always possible. For example, although retributive or compensatory justice effectuated through the criminal redress and tort models, respectively, can provide a level of redress to the state as

\textsuperscript{215} See Stephen P. Garvey, *Punishment as Atonement*, 46 UCLA L. Rev. 1801 (1999) (arguing that because atrocities change people’s morality and understanding about human nature, retributive justice helps to rebalance both the perpetrators’ and victims’ sense of right and wrong).
well as to the victims by throwing the perpetrators in jail or by having them pay money to the victims, these theories of reparative justice can collide with restorative justice pursued through the atonement model. This conflict can arise when the desire of the victims or community push for a forward-looking, conciliatory approach to redress rather and the government prosecutors or victims’ advocates favor a backward-looking, punitive of compensatory approach. This and other tensions can be seen in the post-conflict analyses of former child soldiers and sex slaves provided in this article.

Retributive justice in the form of criminal redress seems most unjust for the former child soldiers who were very young at the time of the atrocity and, hence, victims themselves. Compensatory justice under the tort model is little better. Although monetary damages may seem just in that it begins to address the issue of victim compensation, it is unjust because the former child soldiers are not entirely to blame for their role in the atrocity. In addition, the former child soldiers have no money or resources to pay reparations, and while having the government pay reparations on behalf of the former child soldiers would help their victims, it would rob these perpetrators of the opportunity to participate in the redress process and, thereby, take some responsibility for the role they played in the atrocity. With thousands of former child soldiers to sue, litigation would be both costly and inefficient. Most importantly, compensatory justice is antagonistic and offers no strategies for the former child soldiers’ reuniting with their families or reintegrating into their community. For that reason alone, restorative justice through the

216 See supra text accompanying notes 53-54 discussing Northern Uganda. Criminal prosecution of former child soldiers seems exceedingly unjust in most instances. See supra text accompanying notes 172-73 for a more detailed discussion.
Atonement model provides the most just post-conflict resolution for countries victimized by former child soldiers. By apologizing for their actions and concretizing the apology with a strong redemptive act (e.g., community service), these child perpetrators are given the chance to restore their moral character as well as the broken relationship between themselves and their families and communities. As victims, the former child soldiers should receive atonement from the government, which empowered the adult perpetrators to “induct” children into war. These reparations can be victim-directed (compensatory); such as education, housing, jobs and job training, medical and psychological treatment. Even if the government was not an actual perpetrator, its atonement would vindicate humanity at its highest reaches. When this is all done, there should be forgiveness all around—the former child soldiers should forgive their perpetrators and be forgiven by their own victims as well as their families and communities—thus crafting a restorative justice for the conflict’s afterlife.

Sexual slavery in Thailand will most likely end when prostitution is legalized and heavily regulated. When it does end, the victims and the country must pursue a form of justice that mends hearts and relationships. It might be necessary to combine forms of reparative justice to help the reconciliation process, even though some forms of justice may not be fully attainable. Retributive justice falls into this category. Although it will play an important role in healing both the victims and the community, it may not be attainable on a significant scale. Most low-level perpetrators (e.g., parents, brothel owners, pimps, traffickers, brokers, johns, and corrupt police officers) may escape prosecution because of the sheer number of these perpetrators. Also, it is an open question as to whether justice is served by jailing poverty-stricken parents who, following long-standing national custom, sold their child into sexual slavery. Prosecuting the
high-level perpetrators (e.g., legislators, Thai Buddhist religious leaders, and the Monarchy, all of whom protected a culture of sexual subordination) is also not likely to happen because are likely to be cloaked with immunity. In addition, criminal redress by itself is insufficient, because it does not address the victims’ material needs.

Moving to civil redress, most of the victims are not likely to received compensatory justice under the tort model because victims have no money to hire lawyers and litigating thousands of lawsuits pro bono would place a severe strain on the judicial system. Judges would find ways to dismiss these cases to clear their dockets. Beyond these procedural problems, most low-level perpetrators are unlikely to have deep pockets, and most victims will not want to go to court and have to re-live their atrocities. Although the government, rather than the perpetrators, could compensate the victims by passing compensatory legislation, the compensation would only be symbolic. Some victims might reject compensation as little more than “blood money.” Most importantly, compensatory justice is too backward-focused to fix the cause of the atrocity—gender subordination in Thailand. For this, restorative justice effectuated through the atonement model is needed most.

High-level perpetrators can apologize for sexual slavery while still legalizing prostitution. These are not coterminous operations. To make the apology believable and to move the country forward, the reparative scheme should encompass both victim-directed (compensatory) reparations—including education, job training, jobs, housing, counseling, and medical attention for sexually transmitted diseases or other injuries to a victim’s reproductive system—and community-directed (rehabilitative) reparations—including teaching women’s rights programs in schools starting at a young age as well as gender equality laws, such as those banning sexual
harassment. Even after all of these reparations are in place, it will be difficult for the victims of sexual slavery to forgive their perpetrators, especially the low-level ones with whom they had the most immediate contact. But, like other victims of atrocities, they should forgive, at least the high-level perpetrators, not only so that they can move forward with their lives, but also so that the country as a whole can move forward. *Forgive but do not forget.*

Not only are there tensions among the redress models and their respective views of post-conflict justice *inter se*, but there are also tensions within the redress models themselves. For example, within the atonement model, there is tension between the indiscriminate forgiver and the conditional forgiver. There are strong arguments on both sides of the issue as to whether the victims should forgive unconditionally. Certain types of reparations can be problematic for the victims. Educational programs, for example, place a duty on sex slaves to become self-aware of trafficking schemes or to take advantage of community resources that can otherwise protect them from being trafficked. Such discussion certainly runs the risk of unjustly blaming the victim and, hence, must be carefully constructed.

There is also tension between victim-directed (compensatory) and community-directed (rehabilitative) reparations. Should members of the victims’ group who are not direct victims of modern slavery benefit from community-directed (rehabilitative) reparations? Should, for example, women who were not sex slaves be allowed to benefit from resources, such as educational or health programs, that were created in response to sexual slavery? One answer might be that, unlike victim-directed (compensatory) reparations, community-directed (rehabilitative) reparations are not intended to make direct victims whole; they are not...

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217 *See supra* text accompanying notes 155-60 for a more detailed discussion.
compensatory. Their purpose, instead, is to dismantle the lingering effects of modern slavery and to prevent it from ever happening again.\textsuperscript{218} Thus, as I have suggested in my discussion of Thailand, community-directed (rehabilitative) reparations can attack the supply side, or the first stage, of modern slavery.\textsuperscript{219} Because victims of sexual slavery are typically pulled from poor communities with minimal education and job opportunities, as is the case in Thailand, the government should provide programs to keep women and girls in school. The opportunities for sex exploitation greatly diminish by giving women and girls in these communities real opportunities for a better life. International funding for NGOs that provide educational services and job training in these countries can play an important role in achieving this objective.

Finally, I have had little time here to say more than a few words about redistributive justice, because I have not been concern with transitional justice. Redistributive justice mainly occurs in transitional states, such as South Africa’s transition from Apartheid to democracy.\textsuperscript{220} There are no dearth of questions that come with the pursuit of a redistributive theory of reparative justice. For example, at what point should community-directed (rehabilitative) reparations effectuate redistributive justice rather than restorative justice? What justifies the pursuit of redistributive justice in nontransitional states?\textsuperscript{221} Is modern slavery a large enough

\textsuperscript{218} This is the thinking behind voluntary affirmative programs under United States law. See, BROOKS, ATONEMENT AND FORGIVENESS \textit{supra} note 14, at 178.

\textsuperscript{219} See \textit{supra} text accompanying notes 208-09 for a more detailed discussion.

\textsuperscript{220} See \textit{supra} text accompanying notes 57-61.

\textsuperscript{221} For a more detailed discussion of the issue of transitional justice, see, \textit{e.g.}, RUTI TEITEL, TRANSITIONAL JUSTICE (2000); \textit{Special Issue: Transitional Justice and Development}, 2 THE
event even in a transitional context to warrant a redistribution of societal resources? Considering these and other questions of reparative justice will bring fresh thinking to our study of modern slavery, especially its post-conflict stage.