

Duty to Respond

Mass Crime, Denial, and
Collective Responsibility

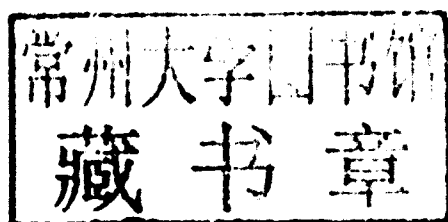
Nenad Dimitrijevic



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E-mail: mgreenwald@sorosny.org

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Duty to Respond

For Mirjana and Tijana

The dead recall
our indifference
The dead recall
our silence
The dead recall
our words.

The dead see our snouts
laughing from ear to ear
The dead see
our copulating bodies
The dead see our hands
poised for applause

The dead read our books
listen to our speeches
delivered long ago

The dead hear
clucking tongues

The dead scrutinize our lectures
join in previously terminated
discussions

The dead see stadiums
choirs ensembles declaiming rhythmically
all the living are guilty

guilty are
little children
who offered bouquets of flowers
guilty are lovers
guilty are
guilty are those who ran away
and those that stayed
those who were saying yes
those who were saying no
those who said nothing

the dead are taking stock of the living
the dead will not rehabilitate us

(Tadeusz Rozewicz, *Posthumous Rehabilitation*)

Acknowledgments

Writing a book is a solitary enterprise. Yet, during the process an author typically collects many debts. With this book and its author it is not different. I am grateful to many people who provided their generous help and support.

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I wrote the book while teaching at Central European University and its Political Science Department, my academic home for 17 years. It has been my honor to be a part of this exciting academic environment. Even more importantly, it is a rare privilege to be surrounded with so many good people.

* Following conventions in American academic writing diacritical marks are used in names and words in German and French only, with apologies to owners of Croatian, Hungarian, Serbian, etc. names appearing in the book.

Janos Kis, long-time Head of CEU Political Science Department, read many first drafts of different parts of this book. His wisdom and uniquely supportive criticism saved me from at least some blushes. During my CEU years, Janos has been a source of inspiration, and a friend whose sensible and unreserved support reached far beyond the confines of a book project. My special thanks are also due to Dorothee Bohle and Tamas Meszerics for their unwavering friendship. I am grateful to Zoltan Miklosi for his insightful critical reading of the fourth chapter of the book.

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The core position of the book—defense of the concept of collective moral responsibility—traveled a long way before becoming a (hopefully) meaningful argument. As a reader will easily realize, I relied substantially on Larry May's rich and sophisticated contribution to the field. Indeed, when it comes to the subject of collective moral responsibility for mass crime, I ought to consider myself a pupil of Larry May. I am especially thankful to Professor May for his instructive comments on a draft of the fourth chapter.

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This book is for my wife, Mirjana and our daughter, Tijana.

Sections of this book have previously been published in journals and edited volumes. I am grateful for permission to use these materials here. Chapter Two contains portions from the following articles and book chapters: "Continuity of Silence in Serbia: From the Irrelevance of Human Rights to Collective Crime, and Beyond," in Gurminder Bhambra and Robbie Shilliam (eds.), *Silencing Human Rights, Critical Engagements with a Contested Project* (Houndmills: Palgrave Macmillan, 2009); "Serbia After Criminal Past: What Went Wrong and What Should be Done," *International Journal of Transitional Justice*, Vol. 2, No. 1, 2008; "Justice Beyond Blame: Moral Justification of (the Idea of) a Truth Commission," *Journal of Conflict Resolution*, Vol. 50, No. 3, 2006. Chapter Three incorporates the article "Moral Knowledge and Mass Crime. A Critical Reading of Moral Relativism," *Philosophy and Social Criticism*, Vol. 36, No. 2, 2010. Chapter Four contains portions from the article "Words and Death. Serbian Nationalist Intellectuals 1986-1991," in Andras Bozoki (ed.), *Intellectuals and Politics in Central Europe* (Budapest, CEU Press, 1999). The poem *Posthumous Rehabilitation* is taken from "Tadeusz Rozewicz, They Came to See a Poet, Selected Poems," translated by Adam Czerniawski. Published by Anvil Press Poetry in 2004.

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Introduction

1

A disclaimer is due at the very beginning: the incentive for writing this book is non-academic. Its author is a member of a social group in whose name grave crimes were committed in the recent past. I am haunted by the ghosts of the innocent people who were killed in my name. This is perhaps one typical reaction to mass crime, experienced in different historical situations, by many people who share membership in a group with perpetrators of mass atrocities. Hannah Arendt famously dismissed this reaction as a “misplaced feeling [that] can only lead to a phony sentimentality in which all real issues are obscured.”¹ For Arendt, “real issues” following mass crime are guilt and responsibility. While I agree with Arendt’s identification of the central questions, I oppose her claim of the “dangerous irrelevance” of emotional reactions to atrocities committed in one’s name. Consider opposite feelings, which usually prevail in the wake of the fall of a criminal regime: those who supported the old regime react with confusion, self-victimization, or different forms of intuitive denial. Such spontaneous attitudes of the rejection of the truth and its moral impact are with surprising regularity and ease translated into political and cultural strategies which insist on a new beginning *ex nihilo*, where the act of the regime change is perceived as a watershed between a “then” and a “now.”

This book argues that the latter types of reactive attitudes and strategies are morally wrong. No argument developed to support them can stand the test of moral justification. In addition, they are politically and culturally wrong: no such strategies can advance the goal of democratic transition, the rule of law, stability, peace, or reconciliation. Although Chapters Two and Three are devoted to the elucidation of the political and cultural

¹ Hannah Arendt, “Collective Responsibility,” in Hannah Arendt, *Responsibility and Judgment*, ed. by Jerome Kohn (New York: Schocken Books, 2003), 147–148.

error of the “clean sheet” strategy, it is a minor claim of this book. In dealing with politics of silence, culture of denial, and moral relativism I am not guided primarily by the intention of demonstrating how closing the books is not a viable policy option for a post-criminal society. The importance of such attitudes and strategies is more complex: they are rarely presented in purely consequentialist terms. Their proponents normally defend them by using distinctly moral categories. On this view, a proper look into the complexity of the context informs that it is morally right not to deal with past wrongs. The political argument of the vulnerability of a new democracy rests on the moral argument, which requires avoiding injustice being done to people who share group identity with perpetrators.

This is a wrong interpretation of practical morality. In my reading, both types of emotional reactive attitudes point to a special moral condition of the post-criminal society and all its members: while the former feelings are morally right, the latter are unjustifiable. We in whose name crimes are committed carry an extraordinarily heavy moral burden. Our moral condition requires some response through reflection and action. We are duty-bound to respond; we are responsible. Here is the claim: provided certain conditions are met, *all members* of a non-voluntary group in whose name mass crime is committed share responsibility for it. “Certain conditions” go beyond direct or indirect participation in wrongs. They point to a special case of mass crime, which I will call “collective crime.” Shared responsibility for collective crime requires specifying agency, that is, distinguishing among subgroups of actors, and establishing the criterion of the distribution of responsibility. This book’s special interest is with analytical and normative defense of arguments that purport to explain the reasons for, and the character of the responsibility of decent people. Those who did not intend, support, or commit wrong are still accountable in a non-vicarious manner. The basis of their responsibility is the crime-specific relationship between group identity and personal identity.

This account is neither communitarian nor relativist: it does not claim conceptual primacy of belonging, nor does it yield to determinism of culture. The argument will be liberal. Liberal intuitions may rebel: our personal worth should be assessed by what we do, and not by where we come from. However, this does not hold for the context shaped by collective crime. Liberally, a person’s identity is tainted by wrongs committed in his or her name. Then, it is each person’s duty to respond in a manner that will affirm his or her personal autonomy. My liberal identity is still defined by what I do, but I cannot freely choose the course of my action. Living up to the ideal of liberal autonomy requires that I reflect on the

context-specific moral burden of my group identity, and that I base my choice of action on that reflection. Let me go through this claim in some detail.

2

This is not a book about the past. Its topic is the present, or, more precisely, the time conventionally identified as the transition to democracy after mass, regime-sponsored crimes. In such societies, the recent past is deeply disturbing, marked by mass killing, torture, expulsion, destruction of property, and other forms of grave violations of human rights and denial of human dignity. The reason to take the time of transition as the vantage point in thinking about such wrongs may be obvious: the consequences of the sinister rule are most painfully felt immediately after the regime change. Individuals, groups, and society as a whole are under stress produced by the recent evil experiences. They are confronted with the question of how to relate to the crimes committed, promoted, or sponsored by the recently ousted regime. Or, the primary question could be whether legacies of such a past can—and, indeed, ought to—be overcome by reaching forward, or whether, for practical-political and normative reasons, they require looking back.

Let me outline the type of criminal past the legacies of which are in my focus. This book is about the moral consequences of, and special duties generated by a particular type of criminal regime and its practices. The regime will be identified as the *populist criminal regime*, and its practices as *collective crimes*. A detailed analysis is provided in Chapter One. Three criteria identify a populist criminal regime: first, the scope of the committed crimes; second, justification of criminal practice, and, in particular, the way of choosing its targets; third, normalization of criminal practice. Normalization has at least two important aspects. The first consists in the ideological, legal and political institutionalization of crime; the second of the regime and its practices enjoying the support of most of those subjects who belong to the group in whose name the regime rules. Crimes committed by such a regime can be identified as collective crimes. Collective crime is an act committed by a significant number of members of a group, in the name of all members of that group, with the support of the majority of group members, and against individuals targeted on the basis of their belonging to a different group.

Collective crime poses difficult questions. The scope and cruelty of atrocities and their consequences sometimes defy our capacity to compre-

hend. We may know the “historical facts” of what happened, but the character and the magnitude of wrongs committed are often such that we cannot—or, sometimes we even do not want to—come to terms with their full meaning. We are at unease, to such an extent that many among us seem to be compelled to turn our heads and repress our memories. This repression or preference for oblivion, works at both individual and group levels, and sometimes also finds expression on a political level. This is something that ought not to happen. We ought not to try to forget, close the books and look forward only, or to act as if nothing had happened that would deserve our lasting memory. This is not a mere statement of moral disgust in the face of recent evil. The position is analytically valid, or this shall be argued: the regime change does not bring the criminal past to an end. Criminal legacies are features of the post-criminal condition. The sinister past has not passed; rather, it has been integrated, in a particular way, into the transitional condition.

It is relatively easy to demonstrate that past injustices trouble everyone: both those who comprehend them in their full terror, and those who deny them; both victims and members of their group, on the one hand, and perpetrators and members of their group, on the other hand; both “ordinary people” who supported the old regime, and those morally virtuous persons who opposed it. It is however more difficult to comprehend what that trouble means, and how it could be understood and managed. A distinction between internal and external viewpoints could perhaps provide some help. External observers of a society burdened with the sinister past will probably agree that a broad confrontation with legacies of recent criminal events is necessary for citizens to regain capacity to live normal lives, and for the whole society to return to civilized normalcy. Such an insight will typically be based on a combination of moral and practical-political considerations. Still, this kind of consensus is less likely to be achieved in the affected society itself. Those who look at the troubled past from within are not merely spectators who learn about, try to understand, and come up with an evaluation of a disturbing practice. Everything that is at stake—transition to democracy, memory, responsibility, identity, justice, political stability, or normalcy of life in the future—is tainted by wrongs. The contemporary and future-related controversies stumble upon the issues of the past intentions, attitudes, actions and their consequences. Who we are and what we can and ought to do today, seems to be to an important degree dependent on who we were, what we did, or what we should have done yesterday. Yet, these insights do not automatically translate into the requirements for reflection and action. We indeed want

to overcome legacies of evil, in order to free ourselves of the lasting impact of their consequences. Still, while acknowledging the moral and political weight of the crime-specific challenges, we can perhaps argue that not dealing with them is the most effective way of overcoming them. A detailed analysis of this argument is offered in Chapters Two and Three.

I disagree with such reasoning. Departing from the definitions of the populist criminal regime and collective crime, let me specify the assumption that the criminal past matters in a manner requiring reflection and action. I will defend several broad claims. First, in difference to the considerations of political, legal, and economic obstacles to the democratic transition, criminal legacies cannot be overcome by future-oriented rational actions only. Second, collective crime leaves difficult moral traces on the post-criminal society and all its members, and for this reason “closing the books” on the past is neither a morally justifiable nor a politically feasible alternative. Third, post-criminal society, its political regime, and all its citizens are duty-bound to explicitly disassociate themselves from the evil past. Fourth, proper dealing with moral challenges imposed by past wrongs requires independence from forward-looking considerations of the democratic transition. In other words, dealing with the evil past ought to be conceptualized as an essentially backward-looking process. This is not a position of moralistic idealism, which would abandon contextual constraints and transition-related imperatives for the sake of some abstractly superior, holistic position: at stake is the re-conceptualization of the context. Fifth, this disassociation requires raising the question of moral responsibility. Sixth, the focus should be on collective moral responsibility—every person who belongs to the group in whose name mass crime was committed has a duty to take a reflective attitude and to respond to the crime.

These claims rest on the assumption of the moral relevance of collective crime. How can this relevance be specified? Criminal events matter for transitional society not only due to their proximity, or the nature of impediments they pose to the transitional process. What really affects us—psychologically, morally, culturally, politically—is the nature of past wrongs, and, in particular, the way they interrupt normalcy. The normalcy in question does not refer only to an intergenerational continuity of a group’s existence, nor to institutional and legal continuity of the political unit of which we are members, but rather to a certain minimum continuity of civility. Continuity of civility is shaped by uninterrupted validity of universal moral standards that form the basis for binding distinctions between right and wrong, good and bad, true and false, just and unjust, and