

Breaking the Cycle of Mass Atrocities

*Criminological and Socio-Legal Approaches
in International Criminal Law*

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2

The Biology and Psychology of Atrocity and the Erasure of Memory

CHRISTOPHER HARDING

I. The Search for Criminological Understanding: The Criminology of Atrocity and Confronting the ‘Monster Within’

The striking and distinguishing feature of atrocity¹ or ‘mass’ or ‘system’ criminality is its scale, extremity, discriminatory motivation, and its collective nature of perpetration. In this way it is differentiated from the individualised and specific nature and context of ‘classic’ or ‘ordinary’ criminality, and the number of victims, the extent of their suffering and the number of human offenders required to bring about that outcome has now led to a distinctive moral, legal and political reaction. Morally, this is a phenomenon which ‘shocks the conscience of mankind’;² legally, the conduct now qualifies as ‘international crime’ and a serious violation of human rights;³ and politically, it has become the basis for exceptional intervention and the compromise of state sovereignty.⁴ At the same time, the subject embodies its own

¹The term ‘atrocity’ will be used in this discussion as a convenient shorthand term. It is a useful sociological/criminological/ethical epithet for what lawyers now often call ‘crimes against humanity’ as a form of ‘international crime’, and that generally conveys a sense of criminality which is large-scale, extreme in consequent human suffering, highly organised, and discriminatory in its motivation.

²Such descriptive language has been widely used during the twentieth century: ‘abhorrent crimes ... which struck at the whole of mankind and shocked the conscience of nations’ (District Court of Jerusalem in *Attorney-General for the Government of Israel v Eichmann* (1961) ILM 5; ‘in order to liberate mankind from such an odious scourge’ (preamble to the Convention on the Prevention and Punishment of the Crime of Genocide, 1948).

³There are thus two main routes of legal control: via criminal law, usually as a crime against humanity or genocide (accountability of individuals), or under human rights protection treaties (accountability of states and governments).

⁴Although humanitarian intervention and the more recent ‘responsibility to protect’ remain a contested area of international law (consider for example the case of Rwanda in 1994, as discussed below), in political terms such interventions have sometimes taken place, with significant outcomes, for instance in Kosovo in 1999. For an overview, see: S Zifcak, ‘The Responsibility to Protect’ in MD Evans (ed), *International Law*, 4th edn (Oxford, Oxford University Press, 2014).

enigma – while it has a manifestly exceptional and traumatic quality, expressed in strong and evocative vocabulary ('holocaust',⁵ 'armageddon', 'inferno'), it also involves the participation of the ordinary and the routine – hence the use of the term 'banality of evil'.⁶

In this way the subject presents a particular challenge to criminology,⁷ and indeed overturns and subverts the very idea of the 'criminal'. The special task for criminology, or at least the criminology of atrocity, is then to explain and understand the involvement of the otherwise good citizen in outrageous conduct, and most disturbingly, confront the existence of the 'monster' within everybody.

Another problem for criminal science and criminology in its traditional form is that it is largely an enquiry and scholarship rooted in methodological individualism, and an atomised view of humanity as operating through a number of specific and individual personal interactions, seeing the criminal as an individual bounded by his or her own personal circumstances, rather than as an item in a more complex whole.⁸ In this way, the egocentricity of each individual human being (itself an important distinguishing feature of the human species) has been projected on to the traditional explanations offered by criminal science. The dilemma for theory in this field has then been that of squaring this circle of interaction of the individual and collective units.⁹ In attempts (for instance by ethicists, political scientists and jurists) to penetrate the puzzle of the banality of evil, there has been a tendency to dehumanise the all too human individual and transform that actor into a cog in the machine. But this has left a disturbing ethical aftertaste in the resultant denial and removal of individual responsibility, for instance shifting accountability to the state or some criminal enterprise. This dilemma and these uneasy conclusions have led to a burgeoning of philosophical and legal literature,¹⁰ accompanying the practical and political demands of

⁵ 'Holocaust', now a widely applied description, originates in Greek, signifying a sacrificial burning. An equivalent term in Hebrew is 'shoah', broadly translated as 'catastrophe'. Another evocative term, but more specific in its application, is 'pogrom', from Russian, denoting a violent assault, and used first to describe large-scale anti-semitic attacks in Russia and parts of central Europe during the nineteenth and twentieth centuries.

⁶ Reputedly the term first used by Hannah Arendt, in her book, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York, Viking Press, 1963).

⁷ Other, perhaps it may be said more 'banal', challenges for criminologists have been identified as political and professional in character. For instance, see the view of Daniel Maier-Katkin et al that 'the safer course to academic respectability and official support for an aspiring discipline was to focus on the scientific study of agreed-upon national concerns such as violent crime, delinquency and drug abuse' (D Maier-Katkin, DP Mears and TJ Bernard, 'Towards a Criminology of Crimes Against Humanity' (2009) 13 *Theoretical Criminology* 227, 230).

⁸ What may be conveniently summarised as the issue of 'agency', or the problem of identifying the relevant actor on a global stage increasingly populated by significant organisational entities (states, corporations, IGOs and NGOs, criminal and terrorist organisations, to mention just some).

⁹ See generally, C Harding, *Criminal Enterprise: Individuals, Organisations and Criminal Responsibility* (Cullompton, Willan, 2007).

¹⁰ For a summary, see Harding, *ibid*; T Schwinn, 'Individual and Collective Agency' in W Outhwaite and SP Turner (eds), *The SAGE Handbook of Social Science Methodology* (London, Sage Publications, 2007).

developing human rights and international criminal law. But it is now timely for criminology to be called in aid to help resolve these ethical, legal and political puzzles.

Among sociologists and criminologists there appears to be some self-awareness of a tardiness and even some nervousness in approaching this subject. For instance, Hagan and Raymond-Richmond have referred to a sense of new venturing and scholarly risk: having taken a long time to confront 'more deadly neglected topics, namely genocide, war crimes, and crimes against humanity' and so bring 'a rich array of theories and methods to this crucial task', criminologists will 'first have to engage more fully and embrace the topic of genocide', but will 'incur the inevitable scholarly risks of traveling to new intellectual locations'.¹¹ Maier-Katkin, Mears and Bernard have interrogated more fully what they describe as 'the silence of mainstream criminology about crimes of such magnitude' in a discussion which calls upon the discipline to 'overcome its historic inattention'.¹² Those authors also identify a main task for the mainstream of the subject in taking up such an enterprise: that of selecting and applying approaches from its existing menu of explanations and theories, which have to a large extent been worked out in the context of 'individualised' criminality as observed in national study of such crime.

But then there may be some risk in over-complicating the response to what is in essence a simple main question. As Olaoluwa Olusanya has observed: the central question in the subject is 'what motivates people to murder, rape or torture their neighbours, friends and family members?'¹³ Expressed in such terms, it becomes easier to view this criminological endeavour as a criminology of the non-criminal actor, in some respects a more extreme version of what has been involved in the study of white-collar crime.¹⁴ But phrasing the subject in this way should serve as a reminder that it is subject matter that has been defined for criminologists by those working in other disciplines who were, so to speak, the first on the scene – political theorists, historians, psychologists, moral philosophers and lawyers.¹⁵ Indeed, the essential nature of the subject has been identified most sharply, evocatively and graphically by writers of a more wide-ranging and less academic provenance, such

¹¹ J Hagan and W Raymond-Richmond, 'Criminology Confronts Genocide: Whose Side Are You On?' (2009) 23 *Theoretical Criminology* 503, 503.

¹² Maier-Katkin et al, above (n 7) 228–29.

¹³ O Olusanya, 'A Macro–Micro Integrated Theoretical Model of Mass Participation in Genocide' (2013) 53 *British Journal of Criminology* 843, 844.

¹⁴ Maier-Katkin et al, above (n 7) point out the pioneering role of the study of white-collar crime in beginning to address the issue of crime within the organisation, leading to an interest in crime within government and sponsored by the state, and then to the present topic of large-scale atrocity offending. A common point, naturally enough, is the anonymity of the individual within an organisational context. The comparison also prompts thoughts about a catchy descriptor to match 'white collar', to capture pithily the idea of the latent enemy within the friend, colleague or neighbour.

¹⁵ See Maier-Katkin et al, above (n 7) 230.

as Hannah Arendt,¹⁶ Primo Levi¹⁷ and Leonard Cohen.¹⁸ The possible explanations for such apparently incomprehensible criminality therefore have been batted to the criminologists from a variety of disciplinary perspectives and there has been a late-in-the-day scrabble among the competing solutions to the puzzle – it is inherent in our biological make-up, it resides in the psychology of obedience and compliance, or in the force of propaganda and ideology, it originates in cultures of fear and distrust of the ‘other’, it depends upon a combination of authoritarian governance and economic or environmental breakdown or catastrophe. In that sense, the field is rich already in possible, and in many respects quite plausible and convincing explanations.¹⁹ The problem for the criminologist is then how to use this fertile source of data and theoretical analysis, and how to locate this material in the long-running debate within criminology as a discipline, as between the significance on the one hand of individualised explanations (broadly speaking the ‘micro-level’ biology and psychology of human actors) and on the other hand, of social-structural explanations (broadly speaking, the ‘macro-level’ political, social, economic and environmental context of action).²⁰ The present main task for criminology is then outlined by Maier-Katkin et al in the following terms:

[A] criminologist might well be struck by the extent to which closely related disciplines have advanced a discourse on genocide and crimes against humanity,

but that the existing literature

does not put forward a theory to explain how these factors come together to generate the behavior of groups of normal citizens who become perpetrators of evil,

so that

there is much more to be done and that criminology as an intellectual enterprise has much to offer and much to gain by turning an eye towards crimes against humanity.²¹

Taking up that mission, the present discussion will next suggest a *clarifying theoretical framework* for this debate on the way forward (a ‘theory to explain how the factors come together’),²² but without going so far as to recommend, as do, for instance Maier-Katkin et al and Olusanya,²³ a unifying or key component of such a theory.

¹⁶ As a journalist: Arendt, above (n 6).

¹⁷ As a victim and survivor, Primo Levi: P Levi, *The Drowned and the Saved* (trans Raymond Rosenthal) (New York, Vintage International, 1988).

¹⁸ As a poet, Leonard Cohen: L Cohen, ‘All There is to Know About Adolf Eichmann’ from *Flowers for Hitler* (Toronto, McClelland and Stewart, 1964).

¹⁹ As a teacher of the subject, the present author would feel duty bound to list and examine all those possible explanations and understandings of the subject; in other words, they all have something to offer.

²⁰ See generally, KS Williams, *Textbook on Criminology*, 7th edn (Oxford, Oxford University Press, 2012) 8–9.

²¹ Maier-Katkin et al, above (n 7) 232–33.

²² While acknowledging that what criminology has to offer in this enterprise is some more widely applicable understanding of criminal motivation.

²³ For Maier-Katkin et al, it is ‘normal people and group structures and dynamics – including socialization and conformity to the dominant norms of the moment – through which individuals are brought

II. A Framework for Discussion: It Begins in Biology But Includes Much Else

An essential clarifying task is to provide some order for discussion, proceeding on the assumption that there is something of value in most of the explanations and ‘theories’ of atrocity offending offered so far, and that any search for a single, overarching explanation is likely to be a chimera. The following is offered then as a ‘simple plan’ or more exactly an orientation within the subject as an aid for ideas, argument and the deployment of data.

The underlying element in explaining and understanding atrocity is – unpalatable as it may be – human nature in itself: the fact that, as a species, humans have a capacity for violence, and are prone to behaviour that is aggressive, suspicious and in various ways hostile towards others of the same species. This is a clutch of biological and psychological traits common to all humans. Furthermore, for humans in a more advanced state of social organisation, there is also a strong tendency towards obedience to authority and the need to fit into a hierarchy (resulting in what is often then referred to as an attitude of compliance) and this characteristic may be seen as a psychological need for security. Finally, another significant and arguably distinctive feature of the human make-up is also psychological – a capacity for critical reflection, for rationality and reasoning and for self-judgement, leading then to a capacity for normative ordering of action and an associated reflexive mental process, or ‘conscience’.²⁴

These are all ‘individual’ or ‘micro’ features of human behaviour in criminological parlance. But the important point of clarification is that the ‘negative’ biological and psychological elements – violence, aggression, suspicion, and to some extent obedience, may be and are moderated through rationality and critical judgement of the self and others. A central point of enquiry is how and when that process of moderation occurs, and that is a question in particular for moral philosophers, psychologists, lawyers and criminologists.

But also the external dimension (social and structural explanations) is important, indeed crucial, in any analysis of atrocity. Any resort to violent, aggressive or hostile action towards others (which is then in need of rational restraint or modification) will be triggered by external circumstances which generate a condition of fear, leading to violence or other aggression. Such external factors may be various and historically contingent but may be broadly classified as sources of economic and environmental stress, combining with certain political and cultural conditions (typically, for instance, authoritarian governance).

to participate in crimes against humanity, and perhaps many other forms of crime as well’: see above (n 7) 247). For Olusanya, the central element in his integrated conceptual framework is the notion of cognitive dissonance (Olusanya, above (n 13) 845 *et seq.*).

²⁴For some recent debate on the validity and relevance of ‘biosocial criminology’, especially as judged in the writings of ‘critical criminology’, see the papers and discussion in (2015) 7 *Journal of Theoretical and Philosophical Criminology*.

This broad scheme of analysis could then be reordered as a kind of timeline into the following general equation:

(capacity for violent, aggressive and hostile behaviour) × (obedience to authority within a culture of authoritarian governance) × (conditions of economic or environmental stress) × (insufficient or ineffective critical self-restraint) = atrocity conduct.

'Atrocity conduct', it will be recalled, is broadly understood here as action which is large-scale, extreme in its injurious effect, systematic and organised, and discriminatory in its motivation (thus legally, for example, a grave and manifest violation of human rights, a crime against humanity). The equation or formula given above will help to explain why and how, for example, atrocity occurred in the former Yugoslavia in the early 1990s but not in Scandinavia; or in Rwanda in 1994 but not in Botswana; in continental Europe in the early 1940s but not in North America.²⁵

Some of this may be elaborated on a little more. While the external or structural factors are well noted in discussion of predictive and preventive strategies (in so far as the latter are politically feasible),²⁶ it is well to remember and emphasise the underlying biology and psychology as the human seedbed of atrocity offending. This is a key to understanding the puzzle of the ordinary citizen turned into *génocidaire*. In the words of Leonard Cohen, what should we expect? 'Medium, and distinguishing features, none,²⁷ so very much most of us ourselves, bearing a capacity for violence, aggression, suspicion of the 'other', and a tendency to respect authority, but tempered by a certain degree of self-awareness and self-restraint.

Jared Diamond provides a concise summary of the self-destructive irony embodied in human nature:

But among our unique qualities are two that now jeopardize our existence: our propensities to kill each other and to destroy our environment. Of course, both propensities occur in other species: lions and many other animals kill their own kind, while elephants and others damage their environment. However, these propensities are much more threatening in us than in other animals because of our technological power and exploding numbers.²⁸

²⁵ Examples of well-attested atrocity, often described legally as genocide, as subsequently addressed by the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Tribunal for Rwanda (ICTR), and the International Military Tribunal (Nuremberg Tribunal).

²⁶ A notorious example of accurate prediction coupled with political refusal to act pre-emptively is the warning given by UN peacekeeping force commander Roméo Dallaire on the eve of the Rwandan genocide in 1994. See Dallaire's own account in *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Toronto, Random House, 2003); and also former UN Secretary-General Kofi Annan's later expressions of regret that the international community had failed to intervene in Rwanda in 1994. Also, on the trigger for genocidal conflict in Rwanda, note the argument of Jared Diamond: 'I conclude that population pressure was one of the important factors behind the Rwandan genocide, that Malthus's worst-case scenario may sometimes be realized and that Rwanda may be a distressing model of that scenario in operation. Severe problems of overpopulation, environmental impact, and climate change cannot persist indefinitely; sooner or later they are likely to resolve themselves, whether in the manner of Rwanda or in some other manner not of our devising' (J Diamond, *Collapse: How Societies Choose to Fail or Survive* (London, Allen Lane, 2005) 327–28.

²⁷ Cohen, above (n 18).

²⁸ J Diamond, *The Rise and Fall of the Third Chimpanzee* (London, Vintage Books, 1992) 2–3.

The violent and aggressive urge may then be tied to fear of the unknown, in particular of the stranger or 'other'.²⁹ A useful basis for exploring the concept of the 'other' in modern societies is provided by the work and theorising of the Polish sociologist Zygmunt Bauman. In the first place, Bauman has distinguished the *anthropophagic* tendency of primitive societies to incorporate and assimilate strangers, from the *anthropoemic* tendency of modern societies to exclude or keep separate such strangers – thus, contrasting inclusive and exclusive social strategies.³⁰ For Bauman, a characteristic feature of modernity is the need to remove unknowns and uncertainties, and the latter is represented in particular by the 'danger-carrying stranger'.³¹ Related to this analysis is Bauman's other explanatory metaphor of the 'gardening state'. This is a way of understanding modern societies as 'gardens' in which the natural and individual roots of antisocial phenomena are tended into some kind of social order (rational self-restraint, but also obedience to authority). In such modern societies, there is an 'indispensability of the supra-individual power of the state in securing and perpetuating an orderly relationship among men'.³² But while obedience to authority may be harnessed to the positive project of collective self-restraint (law as an ethical 'good') it may also be employed in the service of organised and systemic attacks on the 'other' (authority and law as an ethical 'wrong'). Experimental research such as that carried out some time ago by Milgram and Zimbardo also suggests the impact of authority as a means of unlocking the capacity for violent behaviour and loosening the restraint of ethical inhibition.³³

This ordering of the subject would then suggest that an important focus for criminological research should be that point of exercising self-restraint in the context of action being contemplated or taken in relation to the perceived threat of the 'other'. As Maier-Katkin et al argue,

it is not personal pathology or an anomic state of affairs but rather normal people and group structures and dynamics – including socialization and conformity to the

²⁹ Note, for instance, the tragic fate of James Cook in Hawaii, but also the extermination of the aboriginal population of Tasmania. For a useful overview of the latter, see: Diamond, *Rise and Fall*, above (n 28) 252–55. Cook's death appears to have occurred as part of a classic 'clash of culture', although the circumstances were complicated; see: *Journal of William Ellis: A Narrative of a Tour through Hawaii in 1823* (introduction by Lorrin A Thurston, Hawaiian Gazette Co, 1917).

³⁰ Z Baumann, *Life in Fragments* (Oxford, Blackwell, 1995) 179–92.

³¹ Z Baumann, *Modernity and Ambivalence* (Ithaca, NY, Cornell University Press, 1991).

³² Z Baumann, *Legislators and Interpreters* (Oxford, Polity Press, 1987) 55.

³³ S Milgram, 'Behavioural Study of Obedience' (1963) 67 *Journal of Abnormal & Social Psychology* 371; for a fuller account, see S Milgram, *Obedience to Authority: An Experimental View* (New York, Harper & Row, 1974). Milgram's research, conducted at Yale University in the early 1960s, while ethically controversial, has been replicated subsequently with some similar results by other researchers (for instance, the 'Stanford Prison Experiment', carried out by Philip Zimbardo in 1971: C Haney, WC Banks and PG Zimbardo, 'A Study of Prisoners and Guards in a Simulated Prison' (1973) 30 *Naval Research Review* 4). This research took place in a particular historical and political context, at the time of the trial of Adolph Eichmann in Jerusalem, charged with crimes against humanity for his role as a Nazi bureaucrat, and the debate engendered by Hannah Arendt's analysis of the 'banality of evil'.

dominant norms of the moment – through which individuals are brought to participate in crime against humanity.³⁴

But personal pathology and anomic state should not be so easily discarded. These latter are the raw material of the subject, the biological and psychological seedbed for destructive socialisation, and for that reason should be kept in the forefront of the mind in any analysis of atrocity conduct.

III. Memory and the Erasure of Memory

The second part of this chapter will build upon the scheme of discussion laid out above by addressing more specifically a particular aspect of the psychology of atrocity and its manipulation: memory of past atrocity and the erasure of that memory, both as a component of the atrocity and as a strategy for its resolution. Much of this discussion will build upon Diamond's argument that:

Genocide, often considered a human hallmark confined to rare perverts, actually has many animal precedents and used to be considered socially acceptable or admirable. Whether we will succeed in curbing our modern power to commit it depends on our coming to recognize its frequency in human history, the potential for it in all of us, and the way in which ordinary people try to rationalize becoming killers.³⁵

Memory is important in relation to a number of aspects of atrocity offending. In more practical terms it is a significant element of evidence and the proof of atrocity for legal and other purposes. After the event and in any attempt to recall and establish the facts of atrocity, the memory of victim-survivors, witnesses and perpetrators is often crucial in any reconstruction and understanding of the relevant events, yet it is clearly recognised that such memory may be problematical. It is well understood that memory is *selective* (for a number of reasons, some of which are self-evident), may be of *doubtful accuracy*, may be based upon a *partial experience*, and is subject to *interpretation and re-evaluation* by the memorising person. The psychology of memory and recollection is a well-established field of study,³⁶ and much may be drawn upon in that area of expertise for purposes of application to both legal and political processes which may be used to address atrocity situations. In the context of legal process, for example, policies and rules have been developed to deal with the sufficiency and admissibility of eyewitness testimony which is necessarily based on memory of past events. As Patricia Wald, for some time a judge in the International Criminal Tribunal for the former Yugoslavia (ICTY), has observed in relation to the work of that particular

³⁴ Maier-Katkin et al, above (n 7) 247.

³⁵ Diamond, *Rise and Fall*, above (n 28) 250.

³⁶ For a convenient overview and entry into the topic, see; JK Foster, *Memory – A Very Short Introduction* (Oxford, Oxford University Press, 2008).

court: ‘the Balkan offenders – again unlike their Nuremberg predecessors – did not engage in “meticulous record keeping”. They left few paper trails behind, and thus witnesses had to be relied upon for most of the evidence at trial.’³⁷ In the context of international criminal law, therefore, the vagaries and psychology of memory have engaged a fair amount of attention.

But memory is also very important in both the generation of atrocity, in understanding how it may come about, and in relation to subsequent feeling about and response to the occurrence of atrocity, and in that sense may be seen as a substantive component of atrocity. It is evident for instance that during the Balkans conflict of the 1990s longer-term memory among both Serbs and Croats of inter-ethnic atrocity committed during the 1940s served to ignite violence and aggression, and may help to understand and explain the phenomenon and paradox of ‘friend and neighbour turned into enemy’. Similarly, and more generally, some of the ‘healing’ strategies of atrocity-avoidance, ranging from amnesty to truth and reconciliation procedures, depend upon both memory and erasure of memory as part of a longer-term and continuing process of managing inter-ethnic relations. Memory in this context may be encapsulated in the metaphor of the ‘buried giant’, as used to notable literary effect by Kazuo Ishiguro in his recent novel, *The Buried Giant*.³⁸

A. The Buried Giant: An Imagining of Atrocity and its Erasure

In his recent novel Ishiguro engages in a fascinating reimagining of a partly ‘forgotten’ period of British history, that of the British westward ‘retreat’ before the advancing Germanic (or Anglo-Saxon) settlement (or ‘invasion’) of the British islands during the fifth and sixth centuries (AD). This has sometimes been regarded as a ‘lost’ period of history, largely on account of the scarcity of written and documentary evidence (part of the ‘dark age’), made all the more tantalising for historians since it was at the same time a period of significant ethnic migration and demographic change, resulting in the emergence of an Anglo-Saxon England and Celtic western belt within the British islands. Even now, there remains some argument among historians regarding the extent to which these changes (which were long term, extending over some two hundred or more years) were either violent and confrontational or peaceful and consensual. To pose the question in more dramatic terms, was it a matter of violent push and ethnic cleansing, or

³⁷ PM Wald, ‘Dealing with Witnesses in War Crimes Trials: Lessons from the Yugoslav Tribunal’ (2002) 5 *Yale Human Rights & Development Law Journal* 217, 220. The discussion there is a good example of critical analysis of some of the procedural and evidential issues in that particular jurisdiction.

³⁸ K Ishiguro, *The Buried Giant* (London, Faber & Faber, 2015). Ishiguro was awarded the Nobel Prize for Literature in 2017.

gradual integration? More heroic historical conjecture ('legend') has favoured the former view, while more rigorous and painstaking examination of archaeological and other evidence seems to be moving towards the latter view.³⁹

For his literary purposes and fictional device, Ishiguro takes up the 'legendary' account, and employs as a focal point of his narrative the partly historical, partly legendary military victory of the British (and Christian) war leader Aurelius Ambrosius (legendary 'King Arthur') at Mount Badon in the last decade of the fifth century.⁴⁰ Ishiguro's fictional conceit, central to the narrative of the novel, is a kind of mistiness which has covered much of the British territory during the earlier part of the sixth century, inducing among its inhabitants a kind of collective amnesia. This is eventually explained as the act of the 'sage' Master Merlin, acting for the war leader Arthur after his notable victory over the Saxons. Merlin used the breath of a female dragon to bring about the condition of forgetfulness, as a political strategy for ensuring longer-term peace in the strife ridden and ethnically divided country – a means of consolidating the British military victory and preventing a return to the earlier culture of ethnic tension. It is finally revealed that a particular objective of Arthur and Merlin's plan was to erase memory of a large-scale massacre, or attempted genocide of innocent Saxons in the wake of the Saxon military reversal at Bladon. Arthur the legendary hero is thereby transformed into Arthur the war criminal and génocidaire, attempting to rewrite the historical record and erase human memory – although in the cause of a peaceful future. In the words of the fictional Gawain (agent and nephew of Arthur) to the fictional Axl (a proponent of peaceful reconciliation in the wake of the battle):

Master Axl, what was done in these Saxon towns today my uncle would have commanded only with a heavy heart, knowing of no other way for peace to prevail. Think, sir. Those small Saxon boys you lament would soon have become warriors burning to avenge their fathers fallen today. The small girls soon bearing more in their wombs, and this circle of slaughter would never be broken. Look how deep runs the lust for vengeance ... Yet with today's great victory a rare chance comes. We may once and for all sever this evil

³⁹ See, for instance, JE Pattison, 'Is it necessary to assume an apartheid-like social structure in early Anglo-Saxon England?' (2008) 275 *Proceedings of the Royal Society: Biological Sciences* 2423. Pattison comments: 'It is now commonly accepted by archaeologists and historians that most, if not all, of the invasion groups arriving in Britain, from the Romans to the Normans, were relatively small migrations of vigorous people who used force and fear to control the considerably larger indigenous population. Although major battles and massacres took place, there was no mass extermination of the indigenous Britons as was once thought: the new settlers assimilated with their indigenous neighbours' (2423). Also, for an argument that there was a longer-term assimilation and integration, and indeed continuity of 'supplanted' culture, see S Laycock, *Britannia: The Failed State: Tribal Conflicts and the End of Roman Britain* (Stroud, The History Press, 2008).

⁴⁰ While the more exact location and date of the Battle or Siege of Mount Badon remain open to argument (the most favoured identification is close to Bath, during the 490s), there is little doubt regarding the nature and consequence of the historical event – a final military action as part of a successful British counter-offensive which pushed back and slowed down the Anglo-Saxon advance over 'English' territory, resulting in stable and peaceful British governance over the western part of England during the first half of the sixth century. See: J Morris, *The Age of Arthur: A History of the British Isles from 350 to 650* (London, Weidenfeld & Nicolson, 1973) 112 *et seq.*

circle, and a great king must act boldly on it. May this be a famous day, Master Axl, from which our land can be in peace for years to come.⁴¹

Thus, Arthur and Merlin conceived a kind of 'final solution'.⁴² But the solution proves to be temporary. Some memory survives, the ageing dragon's breath will not endure, and Gawain, the dragon's appointed protector, has become old and weakened, and cannot prevail against Wistan, the Saxon warrior intent on rekindling memory and the craving for retribution. In the final exchange between Axl and Wistan, the former recalls his long-forgotten policy of peaceful reconciliation:

[W]ho knows what old hatreds will loosen across the land now? We must hope God yet finds a way to preserve the bonds between our peoples, yet custom and suspicion have always divided us. Who knows what will come when quick-tongued men make ancient grievances rhyme with fresh desire for land and conquest?⁴³

But Wistan's response is uncompromising:

How right to fear it, sir ... The giant, once well buried, now stirs. When soon he rises, as surely he will, the friendly bonds between us will prove as knots young girls make with the stems of small flowers. Men will burn their neighbours' houses by night. Hang children from trees at dawn. The rivers will stink with corpses bloated from their days of voyaging. And even as they move on, our armies will grow larger, swollen by anger and thirst for vengeance ... And country by country, this will become a new land, a Saxon land, with no more trace of your people's time here.⁴⁴

And then Wistan is transformed from warrior-hero into génocidaire, suggesting analogy with the speeches of Hitler and the Hutu radio broadcasts against Tutsi 'cockroaches'; and the book's final message is that history teaches us that the 'evil circle' of suspicion, fear, aggression and violence, encased in memory – the buried giant – is likely to endure.

B. Managing the Buried Giant and the Circle of Violence

Ishiguro's imagined history rehearses three main strategies of managing inter-ethnic conflict. First, there is Axl's lately recalled policy of rational and peaceful

⁴¹ Ishiguro, above (n 38) 232–33. Axl had earlier negotiated a peace treaty, but it had not held: 'And yet, sir, the wars didn't finish. Where once we fought for land and God, we now fought to avenge fallen comrades, themselves slaughtered in vengeance. Where could it end? Babes growing to men knowing only days of war. And your great law already suffering violation' (298).

⁴² There are a number of analogies with 'well-intentioned' solutions within the historical record: for instance in 1945, the bombing of Hiroshima and Nagasaki, or the Potsdam Agreement redrawing the map of Europe and authorising large-scale ethnic cleansing and population relocation in much of post-war Europe (similarly in the Indian sub-continent later in the 1940s).

⁴³ Ishiguro, above (n 38) 323. It is as though Axl has read Baumann, and knows his theory of fear of the 'other'! His speech is an eloquent evocation of the power of the demagogue and propaganda and the stirring of self-interested aggression.

⁴⁴ *ibid.*, 324.

reconciliation and compromise, the diplomatic solution. Secondly there is Arthur, Merlin and Gawain's final solution, violent then peaceful, comprising an erasure of memory and a rewriting of history. Finally, there is Wistan's different final solution, drawing upon the revival of memory and its manipulation, and violent in its intended finality. And as a moral tale, Ishiguro's narrative is nicely instructive. For the historical evidence would tend to support the view that Axl's policy, intuitively the most commendable, often struggles to succeed in the face of 'custom and suspicion' and the argument of 'quick-tongued men'. The other two policies provide in themselves significant models of atrocity but exploit collective memory in opposite ways. What is then especially enlightening in Ishiguro's telling of the story is the way in which management of memory, as a key strategy, involves the manipulation of a number of the elements, explanations and theories of atrocity listed earlier in the discussion – elements of suspicion and fear of and aggression towards the 'other', and the manufacture of obedience and compliance through the exploitation of adverse circumstances (in Ishiguro's setting, the economic and political collapse of post-Roman Britain). On some reflection, the tale of *The Buried Giant* supplies some convincing analysis for many historical examples of genocide and atrocity, as already indicated above. Most significant examples of inter-ethnic tension will have longer histories of custom and suspicion and, one way or another, the collective memory of those longer histories will have an important role in any later or future atrocity, as borne out in the final dialogue between Axl and Wistan. Realisation of that fact, and an understanding of the latent power in the activation of memory, is then an important perception and tool for political leaders (Arthur), strategists and propagandists (Merlin), diplomats and negotiators (Axl), and military commanders (Wistan). In that analysis, what is or would be valuable for the present discussion and theory of the subject is what may be described as the missing criminology of memory.

In this context memory is not just an important resource – a storehouse or repository of information and feeling and as such something which is an essential element of psychological phenomena such as national and ethnic identity and culture more generally (indeed none of these could exist without a collective history and memory of that). But it is also a psychological force, a process of recollection which is both cognitive and emotive, and in that aspect is less predictable and controllable. To employ a legal analogy, memory comprises both evidence and the way in which that evidence is at a later time selected and used. Seen in those terms, memory is then a powerful force in determining action and that perception in turn is important in the analysis of any attempt to colour or even erase memory of action which may qualify as atrocity. In *The Buried Giant* both Arthur and Wistan recognise the powerful effect of erasing memory, both in genocidal action and then in amnesia of the event afterwards.⁴⁵ But another aspect of the power of

⁴⁵ Although the routes to amnesia appear different, and indeed this does point to some choice of strategy. Arthur opts for a chemically induced amnesia which would affect the whole population and take away a memory of the whole past, with cataclysmic consequences for the whole society. In a sense,

memory is that it can serve as a weapon on both sides. As Arthur perceived, if it is not erased completely, then it will not only haunt but also act as a motor of retaliation, hence, in Axl's words, the 'evil circle'.

The expert génocidaire will therefore have an understanding of memory and its uses. It should follow that the expert anti-génocidaire (assumed to include the author, the audience and the readership of this chapter!) will also need an understanding of memory and its uses. That observation then provokes an agenda-setting exercise, a kind of mapping of key tasks for criminology in relation to this subject. Four main fields of enquiry and further study come to mind at this point.

i. Memory as a Strategy

A first subject for criminological investigation would be in relation to an awareness of the power of collective memory and its deployment by those contemplating the commission of atrocity, both regarding their own motivation and how they may perceive the impact of such collective memory on others. Typically, in this context such collective memory will comprise both a history of events and an established culture and world view. Also, in the light of what has been said above, a strategic appreciation of such memory may lead either to a policy of exploitation or one of suppression and erasure, or both, emphasising certain facts and suppressing others in order to present a particular, if biased account of the past. The criminological interest resides in the exploitation of memory and the choice of strategy, since what is being examined here is the delinquent motivation, the aim to draw upon memory (or not) in the perpetration of atrocity. One way to view this kind of enquiry is to understand it as the study of propaganda and propagandists, but analysing such activity as a presentation of history and particular events through the medium of collective memory and the manipulation of the latter – the work, for example of a leading propagandist such as Goebbels, combining a reading of recent Germany history and a culture of anti-Semitism into a collective memory of a wronged nation.⁴⁶ Many other examples from the historical record could be cited of how memory of past events may be presented in different ways as different readings of history. Just briefly for present purposes, for instance, a number of examples of influential public statements about native-settler encounters in North America may be examined and compared.⁴⁷ On the one hand, there is the quotation of President Theodore Roosevelt: 'the settler and pioneer have at bottom, had justice on their side; this great continent could not have been kept as nothing but

Wistan's proposed strategy is cleaner – through a complete physical eradication of a people and its culture, the traces would be removed and eventually result in a forgetting. Whatever the strategy, it is likely to be a tall order, given the number of people involved and the resilience of some kinds of evidence (a lesson of the Holocaust).

⁴⁶ See J Herf, 'The "Jewish War": Goebbels and the Antisemitic Campaigns of the Nazi Propaganda Ministry' (2005) 19 *Holocaust Genocide Studies* 51.

⁴⁷ Diamond, *Rise and Fall*, above (n 28) presents a thought-provoking anthology of 'Indian policies of some famous Americans' 277–78.

a game preserve for squalid savages.⁴⁸ While on the other hand, there is the example of the significant American tradition and celebration of Thanksgiving Day, drawing upon the memory of a benign and bonding encounter between Native Americans and ‘Pilgrim Fathers.’⁴⁹ It is all too easy to speculate on the political and ideological motivation informing such resort to the memory of the European settlement of North America.

ii. *The Subjective Psychology of Memory*

The psychological aspect of such enquiry relates first to the fact of memory, its existence and its meaning for the memorising agent. Memory, whether personal or collective, is an important guide to decision-making and action, but people remember differently, according to their capacity, experience and circumstances. What is of special interest here is the deeper memory and the development of longer-term and collective memory, all of which may have consequences for any emotional response. It is axiomatic that feelings of like and dislike, resentment, grudge, or victimisation may be nurtured and sharpened by particular memory and its interpretation. The mundane observation that all humans are formed by their own past is more exactly a statement that human character and action may be significantly a result of each person’s own memory. In seeking to understand the psychology of fear, hostility and suspicion, an understanding of the role of memory in such psychological states is important. An obvious example in the present context would be the deeper memory of Hutu–Tutsi inter-ethnic relations in central Africa. It is readily accepted that an important element in the infamous Rwandan genocide in 1994 was the memory of earlier treatment of the Hutu community, in particular the massacre of Hutu by Tutsi in Burundi in 1972–73, and earlier still the successive German and Belgian policy of promoting the Tutsi above Hutu in the colonial administration of the territory⁵⁰ – ‘pre-existing ethnic hatreds fanned by cynical politicians for their own ends.’⁵¹

iii. *Memory Survival and Memory Loss*

Thirdly, there is the question of memory and the absence of memory. *The Buried Giant* is essentially a study of the personal, social and political consequences of the

⁴⁸ *ibid.*, 278.

⁴⁹ ‘Memory’ asserts that the first Thanksgiving celebration was in 1621, at the Plymouth Plantation in Massachusetts, to celebrate the Pilgrims’ first successful harvest, following Native American support – supply of food and advice on how to grow corn there.

⁵⁰ See generally on the background to the Rwandan Genocide: C Newbury, *The Cohesion of Oppression: Clientship and Ethnicity in Rwanda, 1860–1960* (New York, Columbia University Press, 1988); Human Rights Watch, *Leave None to Tell the Story: Genocide in Rwanda* (Human Rights Watch, 1999); P Gourevitch, *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families* (New York, Farrar, Straus and Giroux, 1998).

⁵¹ Diamond, *Collapse*, above (n 26) 317. Again, the fictional Axl in *The Buried Giant*, was right to fear, in his recovered memory of the earlier treatment of Saxons by Britons, the fictional Wistan’s intention to fan the flames of this recovered memory among the Saxons.

survival and the loss of memory. Ishiguro poses questions regarding the possibility of both, and such possibilities are a matter of sociological and psychological enquiry. Certainly, that author posited challenging questions regarding the feasibility of either Arthur and Merlin's or Wistan's project to erase memory. There is a rich body of historical evidence of atrocity committed at different times and in different places and circumstances and this may be drawn upon to test both the resilience and the vulnerability of memory. It is intriguing to speculate for instance whether there are examples of genocide that have proven so successful that they and their subjects have effectively been erased from the collective memory of humankind – some form of never-knowable 'dark figure'. Or, on the other hand, it is worthwhile to study survival in the wake of attempted genocide, and assess the role of collective memory in such endurance and in the face of huge material destruction. The Nazi Holocaust would be a natural candidate for such study, both regarding the material challenge of bringing about a complete obliteration of millions of people and a historically significant and embedded culture, and also the subsequent considered policy of preservation of the memory of those events. Preserved Holocaust sites such as Auschwitz represent a particular strategy of reminder – 'lest we forget', to use the common British memorial heading.⁵² A particular question worth investigation is the feasibility of strategies of erasure, and then the impact of the subsequent memory of attempts to take away memory – for instance, the criminalisation of Holocaust denial or revisionism in some European countries. Such a field of enquiry will demonstrate both the destructive potential of memory in the perpetration of atrocity, and also the conserving and restorative role of memory in the survival and endurance of particular groups and peoples.

A related question concerns the way in which first-hand individual or collective memory may be preserved or transmitted, leading to the construction of a longer but more indirect form of memory. In some more recent scholarship, researchers in the field of Holocaust studies have employed the concept of 'postmemory' (that of a second generation) to address this aspect of the subject. As Eva Hoffman has explained:

The guardianship of the Holocaust is being passed on to us. The second generation is the hinge generation in which received, transferred knowledge of events is being transmuted into history, or into myth. It is also the generation in which we can think about certain questions arising from the Shoah with a sense of living connection.⁵³

In more general terms, Marianne Hirsch has identified this as the issue of 'the "guardianship" of a traumatic personal and generational past with which some of us have a "living connection" and that past's passing into history',⁵⁴ and indicates

⁵² There are countless other examples, ranging from Remembrance Sunday in the UK to old armoured vehicles displayed at tourist sites in Dubrovnik as reminders of 'Serb-Montenegrin aggression'.

⁵³ E Hoffman, *After Such Knowledge* (New York, PublicAffairs, 2004) xv.

⁵⁴ M Hirsch, 'The Generation of Postmemory' (2008) 29 *Poetics Today* 103, 104.

other contexts for the study of such intergenerational transmission – American slavery, the Vietnam War, the Dirty War in Argentina, South African apartheid, Soviet and East European communist terror, and the Armenian and Cambodian genocides. This is a related field of enquiry, already under way, which may have much to offer in insight and argument.

iv. The Lessons for Policies of Prevention and Resolution

Fourthly, the criminological and psychological study of memory in this context may serve policies and strategies of both prevention and *ex post facto* resolution.

In a pre-emptive context, this may be a means of alerting observers of a situation to the warning signs of imminent atrocity while also suggesting the benefits of educational and informative strategies which enable a more fully informed and balanced popular reading of history. Atrocity alert, the potential awareness of imminent atrocity, is now well developed, and the problem would seem to be the feasibility and will for political action rather than awareness, as the sad example of Rwanda in 1994 has shown.⁵⁵ On the other hand, there may be a huge potential benefit in educating populations of potential génocidaires regarding the way in which histories and collective memory have been and may be manipulated in the ways discussed above.

In the context of resolution after the event, the choice of a number of strategies may be informed by a consideration of the effects of drawing upon memory in different ways. It is necessary to ask, for example, whether the resolution of a bad memory is better addressed by the closure effected through a trial or other formal process leading to criminal responsibility, punishment or compensation, or the compromise of memory involved in a process of amnesty or some aspects of reconciliation and social or political restoration. Compromise of memory, as embodied in the maxim ‘forgive and forget’, is a strategy which inevitably is set within the frame of an ethical debate which seeks to mediate between retributive and restorative argument. For present purposes, amnesty may be taken as a convenient example which illustrates such argument in a stark form. As Ben Chigara points out⁵⁶ *amnesty* and *amnesia* have the same etymological root in the Greek word *amnēstia* which may be translated as ‘forgetfulness’. Amnesty in the present context is a total and strategic forgetting of certain events to serve a utilitarian benefit – typically, the grant of legal immunity in relation to serious alleged or proven offences in order to ensure a peaceful transition to stable democratic governance.⁵⁷ Chigara has rehearsed the ethical and jurisprudential arguments

⁵⁵ See above, and in particular the account by Dallaire, above (n 26).

⁵⁶ B Chigara, *Amnesty in International Law: The Legality under International Law of National Amnesty Laws* (Harlow, Longman, 2002) 8.

⁵⁷ There are many recent examples. The history of legal process in Argentina is instructive: in particular, the use of legislation and presidential amnesty in relation to former members of the ruling Junta in the 1980s, and subsequent judicial declaration (for instance by the Argentinian Supreme Court

and argues forcefully against the extent of the compromise of victim rights and interests and retributive justice involved in amnesty relating to crimes against humanity:

If they were accepted as part of statecraft in modern international law, national amnesty laws which purport to expunge criminal and civil liability of agents of a prior regime potentially would threaten to convert jurisprudence from a study of positive laws to a study of sacrificial philosophy ... The suggestion that rehabilitation of a State from totalitarian rule to democratic practice is mutually exclusive to justice is an apology for setting to zero the inalienable rights of victims of crimes against humanity. It protects and perpetuates violence and fraud in the State system.⁵⁸

The strategy of amnesty is an extreme, at one end of the spectrum. But other restorative processes, such as truth and reconciliation, may involve some degree of moderation of formal retributive justice, for instance the procedure famously used in post-apartheid South Africa. There is now a vigorous debate regarding many measures of such 'transitional justice'⁵⁹ and this debate may be usefully informed by some of the reflection on the use of collective memory which has been urged in this discussion.

IV. Sign-Off

By its nature, much of the present discussion, in addressing a missing criminology of atrocity and the memory of atrocity, is speculative and tentative, and at the present stage agenda-setting rather than conclusive. But the purpose has been twofold: first to recommend a framework for discussion and analysis of these questions, and then to recommend a focus in this discussion on the role of memory, both individual and collective, in relation to the perpetration of atrocity and the reaction to such events. Much of this discussion has taken as a starting point a perceived primacy of biological and psychological elements as components of atrocity offending, in order then to appreciate the significance of human memory of atrocity and the management and manipulation of such memory.

in 2005) that such amnesty was illegal and unconstitutional. The legal saga relating to former Junta member Jorge Videla is especially illuminating (also an example of an individual invoking a particular memory of history to justify his own actions).

⁵⁸ Chigara, above (n 56) 22.

⁵⁹ See generally, eg, D Sullivan and L Tiftt (eds), *Handbook of Restorative Justice: A Global Perspective* (London, Routledge, 2006) especially section 5.