

Bringing Governments to Justice

By

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Acts of injustice done,

Between the rising and the setting sun,

In history lie like bones, each one.

Auden/Isherwood, *The Ascent of F6* (1936)

I am honored to be here as you commemorate the anniversary of your signal and improbable achievement. I am quite aware that many belittle your efforts. One account I read claimed that the only people in all of Canada who had any concern about your achievement would be gathered in this room.¹ I will try to make it clear why that is a foolish view but I would first like to provide a little personal history to help explain how it is that I came to be here.

Back in the early 90s I was teaching in summer session at the University of Calgary. My wife and I took advantage of a light teaching load to take in the local scenery and spent a good bit of time in and around Banff. One day in the park we came upon a small and unpretentious notice which referred rather sketchily to the park having been built by prisoners during World War I. It was not clear who, exactly, they were: in one place it talked about prisoners of war, in another about interned enemy aliens. (I realized later that nowhere in Banff did I see any reference to either "Ukrainian Canadians" or even "Ukrainians." And, incredibly, a few days ago, the inaugural issue of a PARKS CANADA newsletter which described its new "First World War Internment Exhibit" similarly suppressed any mention of "Ukrainian Canadians" or "Ukrainians." As the French like to say, "Plus ça change, plus ça même chose.")²

Back in the early nineties the "prisoners in the park" tag was of interest to me, as I had done research about POWs and internees during World War II in the United States, Canada, and other parts of the world.

I assumed that my colleagues in Calgary's history department would know more about this but they didn't have a clue. Nor was there anything I could find in the university library.³ Some months later I was on a panel at a scholarly meeting in Chicago with an Australian scholar I knew and a Canadian scholar whom I had never heard of who was reading a

paper about Canada's first national internment operations. As the Canadian professor - it was, of course Lubomyr Luciuk - began to read his paper I quickly realized that the folks he was talking about - legal immigrants to Canada of Ukrainian ethnicity but Austrian nationality and thus enemy aliens subject to internment - were surely those mysterious prisoners in the park, or at least some of them. Conversation over beer with Luciuk later confirmed my surmise and it developed that we not only had a broad common concern with governmental malfeasance in general and wartime internment and incarceration in particular but we also seemed to be reasonably compatible. Regular email correspondence and occasional minor collaborations have followed right up to the present day. So much for personal history.

I am not going try to tell this audience about the outrages committed by the Government of Canada against Ukrainian Canadians and the long and eventually successful campaign to gain a measure of redress for what they endured. I suspect that almost everyone in this room knows more of this story than I do and that most of you have some kind of personal connection with the event and the subsequent process.

In addition, as I looked over the program before putting this talk together, I realized that by the time we got to this point - after dinner, Saturday night, following two full days of conferencing, all of us would know a lot more than we had known before. And, because I have been around the block more than a few times, I know that many, perhaps most of you here at this point in the proceedings would be just waiting for the "free evening" that is promised right after my name in the program; nevertheless I will soldier on, but I will be brief.

There is little that I can add to the comments, many of them wise, about what happened here in Canada that I have heard over the past two days. I can, I hope, contribute something about the international significance of what happened and try to explain where those actions fit into the developing patterns of what can be called national and international movements for collective human rights, what one scholar has called *The Controversy over Apologies and Reparations for Human Injustice*,⁴ a movement whose basic goals involve forcing governments to live up to the standards of justice that they have established and to gain some kind of redress for certain past wrongs.

This is not the same as attempting to repair what are usually called miscarriages of justice. We read and hear of instances of these miscarriages all the time. Typically, a person tried, convicted, and sent to prison, whose conviction is later found to have been improper, is released after many years of confinement. Such persons generally get an apology and monetary compensation, but no one can give them the years of

freedom that they lost. The fault here is not the government itself or its laws, but in the execution of those laws.

What we have been concerned with in this conference is an entirely different kind of matter. What happened to Ukrainian Canadians during World War I was not a miscarriage of justice but was the result of a calculated decision by the government of Canada to imprison large numbers of persons based on their ethnicity and nationality and not on anything that they had done, and to imprison them under degrading conditions far worse than those imposed on other internees, or on thieves, rapists, and murderers duly indicted, tried, and convicted by the legal system. This outrage was, as we know, ignored for the better part of a century. Now, finally, there has been a kind of redress for that grievance.

We should not, we cannot speak of the prisoners in the park and other victims as having finally gotten justice. There cannot ever be justice for them, any more than there can be justice for those convicted through a miscarriage and then later released. An old legal aphorism says "Justice delayed is justice denied." Once denied, justice cannot be restored. The best those who have been denied timely justice can ever receive is a public recognition of their past injustice and whatever emoluments that might be offered as recompense however inadequate.

But offending governments can be brought to justice at any time and forced to admit their specific past wrongs. It must be more than leaders saying that they were sorry. Tony Blair, for example, said that Britain "regretted" its murderous actions against the Irish people during the potato famines of the 1840s and 1850s, and if I could have a quarter for every time an American or Canadian politician has apologized for various and sundry mistreatments of native peoples I would be able to buy many rounds of drinks for everyone here. And just days ago the present British Prime Minister, David Cameron, apologized for the Bloody Sunday Massacre in Northern Ireland in 1972 which twenty-six unarmed civilians were shot to death by members of an elite unit of the British Army. He offered no compensation and suggested that there would be no attempt to prosecute the surviving perpetrators or the British military and civil officials who engaged in on-going obstructions of justice right up to the publication of the official report clearing the victims of any felonious misconduct. It was a confession of guilt without any serious consequences.

Only when the apology is not just an official confession and is accompanied by legislative action and monetary payments and/or other actions having to do with education and prevention of the recurrence of similar events, can we speak of a

government having been brought to justice. The 2009 actions whose first anniversary we commemorate here qualifies on every ground as such an event. Bringing governments to justice is not easy. As yet, only four such instances have occurred, the first of which, if it had been a sporting event, would be marked with an asterisk.

Before we can even begin to explain the historical significance of your movement, we must ask how it was that this long ignored event was finally brought into the light of day. In the first instance we must point to the labors of those individuals, many of whom have been mentioned and remembered here in the past two days, who struggled for years to have it inscribed on the pages of the history of Canada where it now stands.

But we must also be aware of the historical circumstances, particularly the seismic changes in the climate of world opinion in the six decades since the end of World War II which punctuate one of the great turning points of global history. Two hallmark events mark the first instance of bringing a government to justice. The first was the liberation of the Nazi death camps in the Spring of 1945 and the subsequent discovery of the methods by which the German government sought to destroy the Jews of Europe and managed to exterminate by industrial means some six million human beings. The crime was so horrible that a new word, genocide, "the destruction of a nation or of an ethnic group," had to be created to describe it.

The second event was the staging of the Nuremberg and Tokyo War Crimes Trials in the three years immediately after the end of World War II. These trials, particularly those in Nuremberg, set a new and admittedly imperfect standard of holding political, military, and industrial leaders of the losing nations in World War II responsible for their actions. Each count of the four count indictment - "Conspiracy to Wage Aggressive Warfare," "Waging Aggressive War, or 'Crimes Against Peace,'" "War Crimes," that is violation of the traditional laws of war, and "Crimes Against Humanity," violations against civilian populations including the slaughter in the death camps which we have come to understand as the Holocaust - was clearly and abundantly proven, largely from the records of the losing nations supplemented by the testimony of survivors and witnesses, and by occasional confessions of a few defendants. The presentation of the evidence was generally impeccable. No reasonable person examining the records of the trials can doubt the justice of the guilty verdicts.

Yet, it was clearly a victor's justice, a justice diminished in some eyes by the fact that Soviet judges who had dispensed totalitarian injustice as part of Stalin's regime

participated in the German trials. Much deeper and more troubling flaws were that no provision whatever was made for an international court to examine possible war crimes committed by the leaders and warriors of the victorious nations and that no provision was made for doing something for the survivors.

The fact of the matter is that given what historians have called the "victory culture" that prevailed in the winning nations at war's end, no serious consideration was given to any such projects.⁵

Although the war crimes trials did give surviving victims a voice and documented their suffering, they did nothing to redress their losses. As international awareness of the nature of the Holocaust grew the inadequacies of the allied response became increasingly apparent. Only in 1952, seven years after the end of the war, did the United States government, anxious to speed the rehabilitation of the fledgling West German government, place extreme pressure on its Chancellor Konrad Adenauer to make some meaningful redress for the crimes of the Nazi era. Adenauer pushed an indemnification law through the German parliament which, along with supplementary laws enacted in 1953, 1956, and 1965, have provided millions of dollars in compensation to Holocaust survivors and other slave laborers and their dependents, some of it supervised by an International Claims Commission and some of it by the government of Israel. With all too typical government clumsiness - to say the least - the authorities insisted on referring to their new statutes as the "wiedergutmachen gesetz" - literally the "make good again law," as if anything could make good again what the Nazis had wreaked. Yet a principle had been established. For the first time a government had paid damages for crimes against humanity, although the payments by Germany were hardly voluntary and thus, as noted, deserve to be marked with an asterisk.

We should also at least note the prior adoption in 1948 by the United Nations General Assembly of the Universal Declaration of Human Rights whose first article provides that "All human beings are born free and equal in dignity and rights." Again, as had been the case with the War Crimes Trials, the legitimacy of the Declaration was called into question by the formal adherence to it by a whole range of dictatorships from the mighty Soviet Union to such petty tyrannies as the Dominican Republic, Haiti, and Nicaragua. Nevertheless, its toothless existence gave a kind of legitimacy to human rights activists everywhere.

After this spurt of activity in the immediate post-World War II era, no significant advances in the international recognition of violations of human rights occurred. There were, to be sure, many serious violations of human rights in the wars

involved in the decolonization of Africa, and in the East/West conflicts in Korea and Vietnam. What did occur was a global youth rebellion primarily in so-called First World nations, whose most violent flare-ups occurred in 1968, at the height of disillusion with the once popular cold war policies, which expressed an increased skepticism and disillusionment about government in general and cold war politics in particular. In North America these tendencies helped produce the activists who made possible the next advance in bringing governments to justice. Unlike the West German law which was top down reform, parallel reforms enacted in the United States and Canada in 1988 were reforms which came from the bottom up.

At issue were parallel domestic war crimes, initiated in early 1942 by both the United States and Canada in the immediate aftermath of the December 1941 attacks by the Japanese Empire on Hawaii and on British and American possessions in East and Southeast Asia. In mid-February both North American democracies began the legal processes - Executive Orders in the U.S., Orders-in-Council in Canada - by which almost 150,000 persons of Japanese Ancestry or birth, men, women and children, who lived along the Pacific Coast from British Columbia to Southern California, a large majority of them citizens of either the U.S. or Canada, were forced to abandon their homes and most of their possessions, and, guarded by soldiers with bayoneted rifles, were herded into livestock pavilions and fairgrounds near their homes for varying amounts of time under heavy guard and surrounded by barbed wire. Eventually all were sent to interior sites where they were kept for prolonged periods: some were not released until many months after the war was over. Most of the relatively few Japanese Canadians or Americans who lived east of the coastal mountain ranges were left in nervous liberty throughout the war.

The places where these domestic displaced persons were kept varied but all were spartan but humanitarian encampments with minimum facilities. They were not death camps; many more persons were born in them than died. But all in them were what I have called "prisoners without trial."⁶

North American victory culture had no place for the story of the confinement of Japanese North Americans, just as Canadian culture a generation earlier had no place for the sufferings of Ukrainian Canadians during World War I. As late as the 1970s few educated North Americans were aware of what had been done to the North American Japanese, and if they looked in most history books they would learn little or nothing about them. Even today, the same statement can be made about the Ukrainian Canadians of the World War I era.

Beginning in the 1970s, small numbers of mostly younger Japanese Americans, and even smaller numbers of Japanese Canadians, began to agitate for some kind of redress for what their parents and grandparents had suffered and about which many of them were learning for the first time. The redress movement in the United States had two great advantages: it drew inspiration and strength from the powerful Civil Rights movement for African Americans which the major Japanese American ethnic organization had supported and from the fact that the admission of Hawaii as the 50th state in 1959 had resulted eventually in the election of two Japanese American United States senators who by the 1970s had acquired significant seniority. That movement also received important support from two successive United States presidents, the conservative Republican Gerald Ford and the centerist Democrat Jimmy Carter. No major Canadian political figure in the 1970s supported the similar redress movement there. The most powerful of them, Pierre Elliott Trudeau, was particularly adamant that there should be no inquiries into past political injustices, perhaps out of fears that any such inquiries would refocus attention on his own role in the FLQ Crisis of 1970.

In 1980 the American Congress passed and President Carter signed a law appointing a presidential commission to investigate whether any wrong had been done to Japanese Americans by the government in 1942 and after, and, if it so found, to recommend remedies. The Commission, after undertaking an exhaustive investigation and holding hearings to get the testimony of survivors, issued a scathing unanimous report two years later confirming what several historians had already reported. It found that the supposed "military necessity" used to justify the 1942 action had not existed. Instead, it argued:

The broad historical causes which shaped these decisions were race prejudice, war hysteria and a failure of political leadership. Widespread ignorance of Japanese Americans contributed to a policy conceived in haste and executed in an atmosphere of fear and anger at Japan. A grave injustice was done to Americans and resident aliens of Japanese ancestry who, without any individual review or probative evidence against them, were excluded, removed and detained by the United States during World War II.

Five months later the Commission issued its recommendations: that survivors should receive, in addition to an apology from Congress, a one-time tax-free payment of \$20,000 dollars. Other recommendations included funding of educational programs "to sponsor research" about government restrictions of civil liberties.⁷ The Commission offered a stinging indictment but for the process to be truly significant congressional and

presidential action was required. After five years of debate Congress enacted the Civil Rights Act of 1988 which essentially adopted the Commission's recommendations. For the first time a government, without external pressure, had in effect convicted itself and inflicted a serious penalty. Some 80,000 persons eventually received the \$20,000 payments, aggregating more the \$1.6 billion dollars.

In Canada, although both liberal and conservative governments had insisted that Canada would not pay compensation, in the month after President Ronald Reagan signed the 1988 statute the conservative government of Brian Mulroney worked out a strikingly similar agreement with leaders of the Japanese Canadian community. Canadian survivors would receive formal apologies, \$21,000, and educational programs would be financed.

Although some activists and scholars had expected immediate knock-on effects, they were not forthcoming. In the more than two decades since the passage of the 1988 Civil Rights Act, only the formal recognition last year of the wrongs done to Canadian Ukrainians has a full apology been added to the list. There have been a number of issues in play outside of North America, but without positive result. The longest enduring of the active unresolved conflicts is the persistent refusal of Turkish governments to make any significant acknowledgement of government wrongdoing in the large scale massacres of Armenians in Turkey during and after World War I. Nor has Japan been willing to admit guilt about massive violations of the rights of Asian civilians in what it called its greater East Asian Co-Prosperity Sphere between the 1930s and 1945, nor has it acknowledged responsibility for forcing large numbers of women of many nationalities into enforced prostitution in brothels it created for the use of its own military forces.

It is appropriate to consider another set of contemporary responses to past injustice that do not concern themselves with redress but with reconciliation and social healing. In places and situations in which tangible redress is impossible or highly improbable it is certainly better than nothing and may produce good results, but they are unrelated to justice although they may mitigate some of the effects of previous injustice.

The outstanding example of reconciliation has occurred in post-apartheid South Africa in its legislatively sanctioned Truth and Reconciliation Commission associated with Archbishop Desmond Tutu, and, as we speak, is occurring in contemporary Canada for the now adult child victims of clerical sexual abuse in boarding schools for First Nations children. The American legal scholars, Eric Yamamoto and Ashley Kaiyo Obrey have written of reconciliation as "social healing" and a "reframing" of redress in analyzing such efforts on behalf of Native

Hawaiians, the Ainu of Japan and the Soviet Far East, and others. They argue that “the time is ripe to rethink reparatory justice and reframe redress” having spoken of how:

the salutary potential of social healing initiatives as well as the emptiness of insincere apologies and unfulfilled redress promises.⁸

As for me, it would be comforting to believe that more progress will soon occur but I know of no evidence that such is the case. Given the difficulties involved in making what gains I have described, there is every reason to fear that further progress will be even more difficult.

NOTES

¹ *The Walrus*. By Mitch Miyagawa. “A Sorry State.” Feb. 6, 2010.

² *Parks Canada Newsletter*. 1, #1 (Spring 2010). www.parkscanada.go.ca

³ By 1995 I would have found W. A. Waiser. *Park Prisoners; The Untold Story of Western Canada's National Parks*. Saskatoon, MN: Fifth House 1995.

⁴ Roy L. Brooks, ed. *When Sorry Isn't Enough: The Controversy Over Apologies and Reparations for Human Injustice*. (New York. New York University Press, 1999).

⁵ For U.S. actions see Leonard Dinnerstein. *America and the Survivors of the Holocaust*. (New York: Columbia University Press, 1982).

⁶ Roger Daniels. *Prisoners Without Trial: Japanese Americans in World War II*. (New York: Hill and Wang, 2nd ed., 2004. For the most recent comparative account see Greg Robinson. *A Tragedy of Democracy: Japanese Confinement in North America*. New York: Columbia University Press, 2009.

⁷ Commission on the Wartime Internment of Civilians. *Personal Justice Denied01*. (Washington, DD: GPO, 1982).

⁸ Eric K. Yamamoto and Ashley Kaiiao Obrey. “Reframing Redress: A ‘Social Healing Through Justice’ Approach to United States- Native Hawaiian and Japan-Ainu Reconciliation Initiatives.” *Asian American Law Journal* 16 (2009) 5-72; quotations at 71-2.