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Guilty Pleas in International Criminal Law: Constructing a Restorative Justice Approach for Bridging Justice and Truth

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Citation

Combs, N. (2005, December 14). *Guilty Pleas in International Criminal Law: Constructing a Restorative Justice Approach for Bridging Justice and Truth*. Stanford University Press at <http://www.sup.org>; printed copies can be ordered through this website at a cost of \$29,95 (paperback) or \$75 (hardcover)|Dept. of Public International Law, Faculty of Law, Leiden University. Retrieved from <https://hdl.handle.net/1887/3759>

Version: Corrected Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).

PROPOSITIONS

for

Guilty Pleas In International Criminal Law: Constructing A Restorative Justice Approach For Bridging Justice And Truth

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1. Before the early 1990s, impunity for international crimes was the norm.
2. A number of international institutions have been established during the last twelve years to prosecute international crimes, but these prosecutions have cost tremendous sums of money. As a consequence, these institutions have the means to prosecute only a small proportion of the offenders who would otherwise come within their jurisdictions.
3. The prosecution of international crimes is said to advance certain penological goals, including retribution, deterrence, incapacitation, and rehabilitation. The prosecution of international crimes is also believed to advance a society's acceptance of the rule of law and to diminish victims' desire for retribution. However, prosecuting just a small number of (usually) high level offenders fails to advance these goals and sometimes can undermine them.
4. Plea bargaining is roundly criticized in the context of domestic crimes for a host of good reasons. Notwithstanding this criticism, the use of plea bargaining is justified in the context of international crimes as a result of the different contexts in which domestic and international crimes are prosecuted and the different needs those prosecutions satisfy.
5. In particular, domestic criminal justice systems are founded on the presumption that violent crimes will be prosecuted, so plea bargaining can reasonably be viewed as an unprincipled diminution of the full justice that a domestic criminal justice system should provide. The presumption of prosecution does not exist, however, with regard to international crimes; rather, the prevailing presumption is impunity.
6. Plea bargaining to obtain guilty pleas for international crimes, then, can lead to the prosecution of offenders who would otherwise not face sanctions at all.
7. A guilty plea also constitutes a limited form of truth-telling that can be very valuable for victims of international crimes, since international crimes are often denied.

8. A guilty-plea process that incorporates restorative-justice principles would serve both to enhance accountability and promote the values advanced by truth commissions and reparations schemes.
9. The optimal blend of restorative and retributive features of a particular guilty-plea system will depend on a variety of factors surrounding the crimes themselves. An analysis of the crimes taking place in Bosnia, Rwanda, Argentina, and East Timor reveals that different crimes can give rise to very different restorative and retributive needs. Argentine and East Timorese crimes give rise to the greatest need for the inclusion of restorative values.
10. An analysis of the plea bargaining taking place at the ICTY, the Special Panels for East Timor, and through Rwanda's Gacaca courts show that the guilty plea processes at the Special Panels contain no restorative features, the guilty-plea processes at the ICTY contain few restorative features, and the confessions made through Rwanda's Gacaca courts have the greatest potential for restoration.