

## **Retroactive Justice: Trials for Human Rights Violations under a Prior Regime**

**Makoto Usami**

In Burton M. Leiser and Tom D. Campbell (eds.), *Human Rights in Philosophy and Practice* (Aldershot, England: Ashgate, 2001), pp. 423–442.

### **Abstract**

In the transition from a repressive to a democratic society, the successor government faces the problem of how to deal with grave human rights violations such as killings and torture committed under its predecessor. The present article analyzes the dilemma a new government may encounter when it attempts to prosecute and punish those found responsible. On one hand, trials of chargeable officers may be able to prevent human rights abuses in the future and to facilitate instituting or restoring democracy. On the other, in the case that there were no legal rules definitively prohibiting the abuses committed by these officers, the trials require ex post facto laws, which breach the principle of *nulla poena sine lege*, and more generally violate the rule of law. These retroactive laws not only break legal predictability but treat individuals unfairly. After identifying both the need for, and the legal and political losses incurred by such criminal trials, the author examines the claims that international law resolves the dilemma of retroactive justice or that prosecution is justified as a fulfillment of international obligation. Then the author refers to this dilemma as “dirty hands” to characterize a circumstance in which one cannot avoid using the wrong means to obtain the best ends. Such characterization has normative implications for three aspects of trials: the process of enacting retroactive laws and the process of conducting the trials; the choice of other possible legal remedies; and the principles related to reactions in the international community.