

The Topic of the Issue

THE WAYS OF FORGIVENESS

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There are two types of responses to collective violence: justice and truth. When a crime is committed, a perpetrator should be tried and, if found responsible for the committed crime, convicted and sentenced. Although being the basic principle of justice of every democratic legal system, is this concept applicable in cases of mass crimes and gross human rights violations? Should the perpetrators of mass crimes be treated differently? Is a trial the best way of searching for truth and for recovering, reconciliation and forgiveness of such horrible crimes?

Justice necessarily includes truth in its administering, but it also demands accountability. Vengeance and punishment are the unbreakable parts of justice. Unfortunately, the institutions for securing accountability - trial courts - may impede or ignore truth in reaching these goals. On the other hand, every democratic society guarantees the protection of the rights of defendants. These guarantees could place those rights at least in part ahead of truth-seeking. This brings us towards the ultimate question-should truth take precedence over justice? Should there be a trial and punishment of individuals? If so, after horrific mass violations of human rights such as Rwandan genocide, for example, is it possible to try all the perpetrators? The answers to these questions would all lead to justifying concept of "justice" taking precedence over "truth". The main argument against this stand would be, when it is impossible to try all the perpetrators, it is just to execute selective justice by trying only the ones "most responsible". I am afraid that such method of achieving justice would lead to injustice. What is the solution then?

Sometimes a trial is a necessary remedy for the victims of grave human rights violations, a useful lesson for all future possible crimes. Prosecution is one of the leading methods of transitional justice. This concept was applied by the international criminal judicial bodies, including the two international criminal tribunals - for Rwanda and the former Yugoslavia; at the five hybrid tribunals: the Serious Crimes Unit and Special Panels in Timor-Leste, Special Court for Sierra Leone, Extraordinary Chambers in Cambodia (also known as the Khmer Rouge Tribunal), the Supreme Iraqi Criminal Tribunal, and the Supreme Court of Kosovo, and before many domestic courts.

But sometimes, trials are not the most suitable option. The Truth and Reconciliation Commission in South Africa is the best proof of that. And sometimes, applying both methods, like in Sierra Leone, is the best solution. This demonstrates that different methods of transitional justice are suitable, and therefore applicable, in different post-violence settings. Which method would be the ultimate should be decided after serious consideration of many different circumstances (the nature of the violations, the mentality of the nation, multi-ethnicity, etc).

In the 1980's, an interesting alternative instrument was introduced for achieving the ultimate goal of seeking the truth - the truth commissions. This phenomenon proved that in some cases criminal prosecution, inspired by vengeance, is not the most appropriate method of transitional justice.

In the past twenty years, the term "truth commissions" was used as a generic designation of a type of governmental organ having the purpose to construct a record of the tragic history. These commissions offer one of many different ways of responding to years of horrific human rights violations that occurred while countries were caught up in racial, ethnic, class or ideological conflict over power and "justice". The truth commissions may be alternative or complementary to other responses, such as amnesty or, to other extreme, criminal prosecution at either international tribunals or domestic courts.

This unusual phenomenon started in Argentina in 1983, after the country's defeat in the Falkland Islands war and the military related withdraw from political power. Other prominent examples of truth commissions that had efficiently completed their work include some other countries from Latin America such as Chile and El Salvador. Conversely, in some other countries, such as Uruguay, Uganda or Serbia and Montenegro, they did not achieve a great deal. Given the level of reconstruction, acceptance of the victims, degree of reconciliation, and overall results the most significant for country's future was the South African Truth and Reconciliation Commission (TRC).

The truth commissions have been adjustable organs, not only in the institutional forms, but also in their varying membership, diverse functions that they served, and in their range of powers, methods, processes, and above all, efficiency. Even though the early experiences of Latin America, in particular Argentina's Truth Commission in 1983, influenced the design and approach for future commissions each

truth commission that has been operating, from the early 80's to the present day, has different characteristics. Every country is unique in its history, culture, political circumstances, and the nature of the transition. Therefore, each country has given its commission a distinctive architecture. As I said earlier, the nature of violations that lead to the establishment of a commission in the first place as well as the specific historical context undeniably influenced the type of commission. Every commission had different approaches toward dealing with a tragic period of national history.

At one extreme, a state may grant amnesty to those who committed defined crimes during the prior regime. Two examples with opposite results would be the one of the South African Truth and Reconciliation Commission and the Chilean National Commission for Truth and Reconciliation. Surprisingly, the TRC which applied the principle of guaranteeing amnesty for committed crimes (apartheid) in exchange for truth is considered the most successful among all commissions that ever existed. It is widely accepted that the TRC, which guaranteed amnesty to perpetrators who agreed to tell the truth in return, achieved the highest level of reconciliation between the perpetrators and victims of apartheid. On the other hand, the same principle accepted by the Chilean National Commission for Truth and Reconciliation, established in 1990, had the opposite effect. Instead of reconciling, the victims of torture understood that instead of allowing prosecutors to prove the military's responsibility for horrendous crimes, the government appointed a respected commission to issue a public report on the violence, by guaranteeing amnesty for perpetrators. It meant that there would be truth, at last, but no consequences. The members of the commissions in Latin America had to wear masks in order not to be recognized. In my understanding, such commissions did not reach the ultimate goal. This issue brings us to the main dilemma from the beginning of this article. Now, when the objective of reaching the truth was achieved, what about the other aspect of justice- vengeance?

At the other extreme, some truth commissions served as tools for gathering evidence for future criminal prosecutions. For example, the Truth Commission in Argentina used the testimonials as a source of information to prosecute some of the leading figures who were viewed ultimately responsible for the committed mass violence (forced disappearances and murder).

All of these examples demonstrate different designs of various truth commissions. At the end, how can the same principle be applied to so many different circumstances? In Rwanda, 800,000 people were killed within three months – how can conventional legal measures be implemented when 125,000 people have been accused and are locked up? On the other hand we have the situation in Sierra Leone, where there are the challenges of child soldiers and villages of amputees whose hands and arms were severed. Different circumstances surrounded truth commissions in South Africa, where they experienced two-sided apartheid, in Chile, where hundreds of thousands were tortured by the authorities, or in Argentina, where the issue of forced disappearances became so significant that it turned into a mass crime.

But aside from differences, no architect of these institutions has proceeded by deduction from basic principles. Truth commissions may or may not contribute to the healing process and reconciliation. But they will serve their purpose. The mutual goal of every truth commission is materializing the truth. Using one method or the other, every truth commission accomplished that - to tell the truth. Thousands of pages were written. Thousands of voices were heard. Thousands of stories were told. The history was created. Because... the way history is written is the way it will be remembered.