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Transitional Justice: Memory and Reconciliation Challenges

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I. Introduction

In all continents, new governments have been facing the dilemmas of the democratic transition that follows an inter-ethnic conflict, a war, a dictatorial government or other regimes that entail serious human rights violations. National reconstruction requires rehabilitating the economy and political institutions, establishing the rule of law and social reconciliation. Justice represents the most effective response to human rights violations and serves as a bridge between the violence of the past and future democratic prospects. Building this bridge requires intensifying the political debate. The issue of defining how to deal with those accused of violating rights in past regimes has haunted new democracies for a long time.

My assumption, in this paper, is that consolidating long-lasting democracy requires a society reconciled with its past, in which victims and perpetrators can find their place in the new regime. The direct role of justice is fundamental in this reconciliation process, but not all models of transitional justice are suitable for promoting the restoration of social relations. I therefore assume that in the inter-subjective debacle mediated by legal institutions, power and domination relations can be reinforced thus perpetuating the feeling of inferiority and hostility that characterizes moral and social conflicts. In the search for models that minimize this tension, I move on to the reflections below.

II. Law as A "Locus" For Reconciliation

The Experience of Nazism and the Holocaust awoke criticism of the Juridical Positivism and its intention to eliminate from the Law all references to the value of justice. Juridical Positivism emerged from the effor t to transform the study of Law into actual Science, with the same characteristics as those of natural sciences. And the fundamental feature of Science is the severe exclusion of judgments of value. The jurist therefore seeks to reconstruct the facts, divesting himself of passions (Bobbio, Matteucci and Pasquino 1985, 135). Exacerbated positivism considers a rule to be fair simply because it is valid, i.e., because it emanates from an authority established by the legal system in force. The formal rigor under which the legality of the Third Reich was built and that legally justified the aberrations of the Holocaust have given rise, once again, to the tension between regulation and emancipation, between legality and legitimacy, or rather the discussion about the legitimacy of legality.

Hans Kelsen (2003) made a remarkable effort to develop the Pure Theory of Law by conceiving a science of Law exempt from any ideology as well as from any influences of non-legal considerations. He advocated a legal positivism deprived of any references to judgments of value, concerned about determining the legality of the rule by seeking its validity within the juridical order, isolated from any other legal system, whether related to morals or natural law. This positivism despises the value of reasoning. The positivist thought, in general, believed that nature could be controlled in order to become predictable and certain, just like society could be controlled to become predictable and certain. It is a philosophy that seeks order over chaos. According to Boaventura de Sousa Santos (2000, 131), it is with Leibniz, Gianbattista Vico and Hobbes that the law starts to look for its sources in mathematics and geometry and assumes an aspect of general rules that cannot individualize the subjects they regulate, as advocated by Rousseau. As positivism emerged, certainty, predictability and control became the utmost values of a new legal system.

The Century of the Lights, following the rationalist tradition of Descartes, Spinoza and others, consolidated the belief that everything that is a product of history and does not correspond to the clear and distinctive ideas of reason should be excluded from the so-called Science. A logical empiricism, which sought to replace the common language by the artificial language of the form and mathematics gained strength. In fact, long before the Age of Enlightenment, the classical tradition already preached the supremacy of eternal over temporal and proclaimed an universally valid order. The method then emerged as a path for purifying the

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passions that bear the mark of personalities and means (Perelman 2002, 256-257).

In the opposite direction of this movement to create a strict regulatory order, many contemporary authors seek to develop the emancipatory potential of Law. Jürgen Habermas, for example, argues that legality can only create legitimacy to the extent that the juridical order reacts to the need for grounds resulting from the positivation of Law, i.e., as legal decision proceedings that allow for moral discourses are institutionalized (Habermas 1994, 216).

He also states that the legitimacy of law should be linked to self-determination; that those subject to law as addressees should understand themselves as authors of the law (*idem,* 309).

In view of these propositions, one comes to the conclusion that moral conceptions are determined by the beliefs and practices of our milieu, thereby influencing the idea of justice that prevails in each society. The dichotomy between the "be" and the "ought to be" of law does not it into universal parameters; on the contrary, the "ought to be" is as variable as the cultures of the world. For this reason, both the legislation and legal decisions should reject the formalism that makes the legislative and decision-making processes impervious to culture and moral issues; otherwise, we will have an "immoral law", i.e., dissociated from values indispensable for living in society. In the words of Miguel Reale (2000, 377) justice, in summary, can only be fully understood as a concrete historical experience, i.e., as a founding value of Law, throughout the dialogical process of history.

It is in the dialogical process that justice emerges as a consolidated value in a given society. The satisfying capacity of legal solutions arises from an argument and counter-argument process that leads to a concrete response to the social and individual demands of society. Theodor Viehweg[1] and Chaïm Perelman developed the concept that there is no law without rhetoric, since the rationality of what is juridical depends on human relations and communication. Perelman (2002) points out that juridical reasoning is engaged in its context - whether political, economic, ideological or social. To him, the juridical logic is an argumentative and dialectic logic from which decisions that make the value of justice real arise. Rhetoric has power and ideology and is capable of exercising and producing extra-rhetorical effects that cannot be ignored in a social

The mythological figure of the goddess of justice, blindfolded, conveys an idea of rationality and impartiality that rejects any arguments based on morals.

[1] In his book Topics and Law (1979), Viehweg reintroduces rhetoric as a tool of law for searching decisions.

However, if we take into account the thought of Luis Roberto Cardoso de Oliveira (2004), every lawsuit embodies three dimensions that need to be considered so that the solution can be satisfactory to the parties involved:

a) The legal rights dimension: the parties expect a definition as regards the normative correction of their actions, expressed in the motivation or development of the dispute;
b) The interests dimension: its focus is the material reparation of the allegedly violated rights, either through the assignment of monetary value via compensation or by imposing a penalty on the accused;
c) The recognition or "moral" dimension: the parties expect to be recognized as worthy of being treated with respect and consideration, thus preserving the moral integrity of their identities. This dimension has an ethical-moral character and often articulates rights and feelings.

The first two dimensions are directly faced by the judiciary when making decisions. The third dimension is generally neglected in a standard judicial proceeding, influenced by juridical positivism. Sometimes, meeting interests and legal rights implies recognizing the insult, although in a very subtle way. The judiciary is not appropriately equipped to respond to this third dimension.

Many times, the parties involved in a legal dispute want to have more than just their concrete monetary interests or legal rights met. In fact, they are seeking recognition and reparation of their ethical-moral rights. The grounds for their claim are linked to a material damage that is evident in the eyes of the judges, although many times they are actually seeking moral recognition of the insult.

The judge, who is not prepared to deal with such a claim, tries to establish the merit of the claim based on the right provided for in the law and on existing practices and seeks to establish the responsibility of the accused. Despite the difficulty to verbalize the need for moral recognition, this recognition occurs in so far as the decision is satisfactory for the parties. This satisfaction increases when, through a dialogical process, the judge, even if unconsciously, absorbs the claim of the parties and materializes it in the final judgment. Therefore, a process that allows the parties to freely and effectively express themselves is fundamental for the decision to be satisfactory and conducive to promoting social reconciliation. For this to happen, the judge must be mindful not only of the rights involved but also of the broader norms and values that serve as background for the facts occurred. Something that to a given community would never represent a moral insult, to others could be interpreted

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as an aberration of social relations. The judge who is sensitive to the historicity of concepts and values perceives more clearly the needs embedded in the verbal and non-verbal speeches of the parties involved. In this regard, Chaim Perelman (1996, 146) points out that "justice" is a vague word until it happens in concrete cases in response to the facts stated and rhetorically sustained within the normative systematization of the community.

We can therefore consider as an important objective of justice procedures not the search for the right in itself as a transcendent and innate concept, but rather the search for a concrete, satisfactory solution that promotes social reconciliation. The focus then lies on both social reconciliation and the rehabilitation of human dignity rather than on the validation of the law *per se.* To establish justice by determining the legal rights of the parties is but one aspect of reparation claims stated in judicial proceedings (Oliveira 2002, 37). In order to achieve justice in all its breadth and dynamics, one should seek to fulfill the three aforementioned dimensions of the dispute.

With these considerations in mind, we will evaluate the forms and methods of transitional justice, starting from the three models based on the common practice of the States: the "legal" models (amnesty laws and lustration laws), the "judicial" models (national and international courts), and the "quasi-judicial" models (truth and reconciliation commissions).

All transition governments have to face and solve the tension between the desire to bury the past and avoid further conflicts and suffering, on the one hand, and the moral and political need to confront the crimes of past regimes, on the other. Most of the times, the way this tension is resolved determines the future of the reconciliation and consolidation of democracy.

The legal model: general amnesty laws and lustration laws

Historically, many countries have chosen to solve the dilemma of past crimes by adopting blanket amnesty that establish transition without punishment and most of the times do not disclose the facts related to massive human rights violations. Amnesty laws, as established mainly in Latin America[2], hamper deeper investigations of tortures, disappearances and deaths, preventing the victims and their families from overcoming the mourning period and getting involved in a therapeutic process that would allow them to reconstruct their future.

Advocates of more conciliatory positions state that general amnesty facilitates a peaceful and safe transition because it allows those responsible for the violence regime to surrender without resistance. So, many times unrestricted pardon was self-granted before the transition actually occurred, and Latin America is the main scenario of this phenomenon. Impunity can become the most precious currency of exchange in negotiations between old and new leaders. In Guatemala, Peru and Colombia, the military courts refused to convict members of the military accused of human rights violations. Many of them, instead of being tried got a promotion. The lack of moral recognition of the victims' needs was the recurrent trademark in these regimes.

The cases of Argentina, Uruguay and Chile show that the choices are not always simple and can be quite different, although these three countries have experienced a very similar period of repression and human rights violations. The decisions made by each transition government differed substantially from one another (O`Donnell e Schmitter 1986). President Alfonsín, of Argentina (1983-1989), authorized official investigations regarding the "disappearances" followed by legal proceedings against the perpetrators. The Chilean president Patrício Aylwin (1990-1994) authorized investigations but not trials, and the president of Uruguay, Julio Maria Sanguinetti (1985-1990), authorized neither investigations nor trials (Pion-Berlin, 1994, p.106), as was the case in Brazil. Although many reports sought to retell the atrocities that occurred in each country[3], the lack of official recognition of the

In Brazil, the law was passed in 1979; in Uruguay, the civilian government adopted amnesty in 1986, one year after taking power; in Guatemala, the amnesty law was adopted four days after the dictatorial regime was overthrown in 1986; in Nicaragua, in 1983 the government declared amnesty for both the Miskitos Indians imprisoned and the Sandinist troops that committed crimes against the Miskitos; in Chile, the Pinochet administration declared amnesty for the crimes committed by the armed forces since 1978, encompassing his first five and bloodiest years in office.

[3] In Argentina, the National Commission of the Disappeared included representatives of several political parties and civil society and was chaired by Ernesto Sábato, one of the most prominent intellectuals in Latin America. But the Commission lacked coercive powers and the information could only be submitted to local courts. The final product was a long report entitled *Nunca Más*, which contained details of the atrocities committed by the military regime during the Dirty War in the 1970s and 1980s. The Chilean president, who came to power in March 1990, established the National Truth and Reconciliation Commission to investigate the violations commited in the last 17 years of dictatorial rule. The commission worked for nine months and investigated more than 4,000 claims. Of these, 2,025 were cases of human rights violations committed by the State security forces; 90 involved victims of violations by armed oppostion groups; and 164 concerned violations commited by both sides. In February 1991, the commission submmited a 1,800-page report to the president, who presented it the public in a TV speech. Aylwin apologized to the victims and their families on behalf of the State. He asked the population to accepet the truth and turn the page (Hayner, 1994, p.26, 34). In Uruguay, the "*Nunca Más*" report was produced by the SERPAJ organization (*Servicio Paz y Justicia*). In Paraguay, the "*Nunca Más"* reports were prepared by the Committee of Churches. In Brazil, the Archbishop of São Paulo, together with the World Council of Churches, supported the secretly developed "*Nunca Mais*" project. The Church not only provided financial support but also gave legitimacy to the final report,

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violence as well as of systematic and transparent investigations has perpetuated the feeling of disrespect and indignity of the victims.

Another legal alternative that was adopted mainly in Central and Eastern Europe are the lustration laws. This model, contrary to amnesty laws that facilitate impunity, exacerbates punishment. By establishing the guilt of political and social groups without actually investigating the acts committed by each individual, it excludes from civil and political life people that probably were not involved in criminal acts. Furthermore, it restricts the right to defense of those affected by it. The lustration laws emerged as a residue of communist totalitarianism, which introduced the concept of "objective enemy". These people are ideologically defined as enemies of the system and therefore there is no need for them to act so as to actually threaten the established system. They are previously included in an outlaw category that should be eliminated even where there is no evidence of the criminal act.

Although the numbers are not precise, there are indications that Germany and Czechoslovakia were the countries that resorted to this type of cleansing the most. Bulgaria, Latvia, Poland and Estonia also implemented lustration laws for communist members of the military and their collaborators, although to a lesser extent (Schwartz 1995, 145). The harshest criticism of the purification laws, which served mainly to attack alleged collaborators of the communist regime in Eastern Europe, was related to their use for private political interests. This was certainly the case of Czechoslovakia and Poland[4], both in 1992.

Even when grounded on actual investigations, these cleansings can translate into a high social cost. In Germany, for example, more than 13,000 educators (teachers and professors) were removed from their functions because of their connections with the previous regime, producing a huge chaos in the educational system. Many were able to defend themselves and prove their innocence, although too late to avoid stigmatization ad social isolation.

The adoption of both a general amnesty law and purification measures has its limitations as regards social restoration, as it prevents the victims and their families from having their suffering recognized and disapproved by society. Material compensations are also hampered by the lack of investigation. In both cases – amnesty or lustration – the victim plays a secondary role.

III. The Judicial Model: National and International Trials

The judicial model includes internal trials and international courts as the institutions responsible not only for investigating the facts but also for punishing the culprits. Both the courts based on the Common Law and those based on the Roman-Germanic system are structured around adversative and retributive principles. Adversative because the parties are organized in opposition to one another – perpetrator and victim - and a judge who seeks a solution is a supposedly impartial and neutral way. Retributive because the ultimate goal is to establish an appropriate punishment, that can range from deprivation of freedom to restriction of rights or pecuniary compensation. The interests do not converge towards reconciliation and this makes this justice system too strict for pardon and reconciliation to arise from debate, communication and understanding between the parties. The law emerges as a system of human conduct that regulates behaviors by perpetuating the dominant authority (Neto 2000, 98).

In trials, the space for the victims to express their indignation so as to promote the moral cleansing of their wounds is very limited because they are not fundamental characters in the justice-seeking process. Likewise, the community, which is also a victim of the disrespect for the norms, is excluded from the process. The adversative and retributive models are not primarily aimed at the psychological rehabilitation of the community, the victim and the perpetrator. Its main concern is to establish the guilt based on past events – has the subject committed the crime or not? – and determine the appropriate punishment. In the courts, the emergence of emotions between the parties and the judges is interpreted as a threat to the rationality and objectivity of the trial. The victim's claim for dignity and moral disapproval of the facts finds no space in the standard judicial proceeding.

One could argue that national courts are less harmful than international courts, as they are inserted into the community that suffered the damage of the criminal act. The cultural barrier is softened or simply non-existent and only social and hierarchical barriers remain. They also provide greater access to the evidence, strengthen the internal law and have greater potential to contribute to healing the collective memory and leading to reconciliation. National courts adopt domestic laws, local judges, and proceedings the population is familiar with.

Many new governments seek to create an image that is dissociated from the past and defends legal rules. Even so, judicial proceedings for punishing crimes committed during repression periods are rare. The choice for amnesty or the simple inertia in relation to acts of violence has led to frustration and left social

and the violators found themselves in an embarrassing position to attack the Catholic Church, the only author identified in the report.

[4] In Poland, in 1992, in an effort to maintain the government of Olszewski in power, the then Minister of the Interior, Antoni Macierewicz, published a list of alleged collaborators that included the names of several political opponents. Later on, several forgeries and inconsistencies were detected in the published list.

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wounds unhealed. Because of the frequent incapacity of governments to secure an efficient justice system, the international community has taken the initiative of creating international courts. In general, the judiciary of countries that have just come out of wars or other social, political and economic crises is weak and incapable of trying such sensitive cases. In long-lasting oppressive regimes, even the judges and the judiciary, in general, are seriously committed to the regime in force as they are part of the repressive apparatus. Training new judges, district attorneys and counselors and replacing the old ones is a difficult but necessary task. In post-Second World War Germany, for example, many victims of Nazi persecution who were authorized to claim for the damages suffered had their claims submitted to the very judge that had authorized the damage.

The creation of international tribunals therefore resulted from the need for international control when the internal conditions of a country did not allow for a trial that would be deemed fair by international standards. Through the typification of international crimes, international society gained powers that were exercised through the courts. In this case, language and cultural barriers, the distance from local reality and material costs turn this option into a problem for the psychological and social reconstruction of victim populations. The disregard for moral issues, solidarity and the recognition of the victims' suffering pushes the courts away from the therapeutic role of justice. This fact is aggravated by the cultural differences between judges and district attorneys, who many times are incapable of interpreting the untold claim of the victims.

The importance of international courts in establishing high standards of human rights, legal defense and due process of law needs to be recognized. Nonetheless, their contribution to the national reconciliation process is dissatisfactory. The criminal trial – the judicial model – that follows mass atrocities represents an effort to find a solution situated between vengeance and pardon. It transfers to the State and official entities the individual desire for vengeance, transforming private revenge into public and fair retribution. But according to a more restorative perspective, punishing the accused is not enough. The victims need to be recognized as such and supported by national and international disapproval of the crimes in order for forgiveness and psychological liberation to become possible.

Retributive justice has its role in transition processes, mainly by imposing punishment on the elites that perpetrate the violence. In cases of mass violence, however, there are so many victims and so many perpetrators that even the most sophisticated apparatus would be incapable of trying them all. Selecting a handful of perpetrators, an elite formed by the main parties responsible for the violations, meets neither the need for justice nor the need for truth. The trials of a few perpetrators will but disclose a small portion of the truth, which is related only to the facts contained in the accusation. Furthermore, many will go unpunished.

A hybrid model has been developed within the UN: the so-called "internationalized domestic tribunal". These seek to combine the advantages of a domestic trial with the legal standards of international courts. In Sierra Leone, for example, the Special Court combines domestic and international legislation by operating with both local and foreign judges. This Court, which was established in 2000 to try those involved in the internal conflict that devastated the country in the 1990s, has proven effective in terms of its purposes[5]. Replications of this adversative and formal model of justice have been softened by the establishment of a Truth and Reconciliation Commission that operates in parallel with the Court. The case of Sierra Leone represents a promising attempt to reconcile a retributive, adversative and formal model of justice with a restorative, dialogical and more flexible one.

IV. The *Quasi*-Judicial Model: Truth and Reconciliation Commissions

A new concept of justice focused on forgiveness and reconciliation that seeks to restore more than punish and that believes in the therapeutic power of the truth began to attract international attention after successful experiences such as the ones in South Africa and Sierra Leone. The central moment of the process is the hearing of the victims and witnesses, which many times is broadcast live on national network radio and television. Likewise, the accused have the opportunity to explain themselves and tell "their side" of the story. Within this perspective of argument and counter-argument, a dialogical truth emerges and reconciliation is constructed through justice, in its broadest sense.

The truth commissions were established as a way to investigate and disclose the truth without necessary implying arresting the perpetrators. This formula is based on the belief in the awareness and repentance of human rights violators, leaving to the community the decision to take them back or not. They have a cathartic effect by allowing civil society, through

[5]Sierra Leone experienced an internal conflict in which the economic aspirations of controlling valuable mineral resources, especially diamonds, were the main factors responsible for the outbreak and maintenance of the conflict. Diamond mines in the country's northeast region represented the main source of the conflict and served as the basis for the operations of the rebel forces of the United Revolutionary Front (URF). Ten years of conflict, started in the 1990s, forced over half a million Sierra Leone citizens to flee the country, making up the largest refugee population from Africa. The war, with guerilla tactics, was fought through violent attacks against civilians as strategies of control and submission of the population. Many had parts of their body cut off as a strategy of the terror campaign.

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the hearings of the victims and the accused, to recognize their past mistakes and plan their future. The main interest in the truth commissions as a means of transitional justice lies exactly in their more flexible formula and their emphasis on dialogy.

More than 20 truth commissions have been established since 1974, many of them with different names: Commission on the Disappeared in Argentina, Uganda and Sri Lanka; Truth and Justice Commission in Haiti and Ecuador; Historical Clarification Commission in Guatemala, and Truth and Reconciliation Commission in South Africa, Chile and Peru. Although different in many aspects, all of them have pursued the same objective of not allowing political and social amnesty to affect the future of democratization.

Despite the fact that the concept of restorative justice was disseminated mainly from the post-apartheid transition in South Africa by the Reverend Desmond Tutu, the practice adopted by the commissions has always been that of holding the culprits accountable for their crimes by publicly disclosing the truth. The basic assumption of the truth commission is that disclosing the truth, which is built from the reports of all the parties involved, has a restoration power. Justice, in this case, implies meeting the moral dimension of the victims, who see in public recognition the possibility of having their dignity restored.

Many commissions limit themselves to investigating the truth in a more confidential way and do not provide the opportunity for public hearings with witnesses, victims and defendants. It was only from the experience of South Africa that the commissions started to emerge as a powerful instrument of social cleansing through the reports of the parties involved (Hayner, 2002).

South Africa made history as a daring and innovative experience by showing the international community a concept of restorative justice that emerged from local tradition to become part of the international agenda. The dialogical procedure, which focuses on the victim without neglecting the perspective of the accused, has managed to meet the demand for moral disapproval and recognition of dignity, which are necessary for the social and psychological rehabilitation of those who have suffered the oppression of apartheid. It has also allowed the truth to be disclosed in a broader and more detailed way, thus laying the foundation for reconstructing national identity and memory.

In South Africa the transitional government was able to construct a new national identity by recovering the past and purifying the lies of the apartheid. Broadcasting the sessions of the Truth and Reconciliation Commission was instrumental for disclosing the lies told over many years and ensured that the entire population confronted the facts so as to assume their responsibilities. No one was exempted from reflecting upon their role in perpetuating the oppression of non-whites. Today, South Africa is a consolidated democracy, which still fights for the economic inclusion of the black but that no longer fears the return of inter-racial violence.

The number of truth commissions has grown at a fast pace. Unfortunately, there are cases in which the truth commission is established by the government to draw international attention away from human rights issues in the country, serving more as a political instrument than as real fact-finding perspective. Truth Commissions in Uganda[6] and Chad seem fulfill this purpose.

A truth commission is inherently vulnerable to political and economic limitations. Its structure, financing, mandate, political support, people, access to information and strength of the final report are largely determined by the political forces of the moment. It is the mandate of the law establishing the commission that defines its investigative powers and therefore the success of the commissions is highly dependent on the conditions found in the country where they are operating. A truth commission may face many challenges such as a weak civilian government and a strong military sector; a state structure moving towards democratization; ethnical groups and other forces threatening to bring back violence; a weak civil society and a population afraid of testifying against violators. Many times, a truth commission is under a lot of pressure from groups that want to see their interests prevail, either human rights defense organizations pressuring for punishment and reparation or governmental forces pressuring for pardon and reconciliation.

Some reports have included specific suggestions and recommendations for strengthening democratic institutions and reforming the judicial system. Although most of them do not have a mandatory character, with the exception of El Salvador's, they can establish points civil society can rely on in order to pressure for change.

Many commissions, especially in Africa, have operated on a reduced staff. Commissions in Uganda, Chad, Rwanda, Zimbabwe and the Philippines count on a few clergymen and assistants, and a legal counselor. In Latin America, on the contrary, the commissions were supported by an impressive number of experts and consultants such as human rights specialists, forensic anthropologists and social workers. Chile and Argentina had one of the largest staff, with approximately 60 full-time people.

[6]In Uganda, in 1974, Idi Amin established a comission partially in response to pressure from international human rights organizations. But despite the final report, he proceeded with his brutal repression policy.

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Truth commission investigations may be confidential or public. In Africa, there is clear preference for public hearings broadcast live by the media. In this case, many witnesses might refuse to testify for fear of retaliation. On the other hand, however, the cleansing effects seem to be stronger. Many victims feel ready to resume their regular social life simply because they know that everyone is aware of their suffering. The anxiety to express their feelings is such that in Haiti there were long lines of victims willing to report their cases to the truth commission, despite the risk they were taking, as many aggressors still lived in the neighborhood and could threaten their lives.

Another important issue is deciding whether the reports should contain the names of alleged human rights violators or not, so as to generate greater commitment to accountability. Many jurists state that this would represent a conviction without the due process of law or the right to legal defense. Only from 1992 onwards some commissions have disclosed the names of the accused. To the population, publishing such names means declaring the accused guilty of the charges, although truth commissions do not represent jurisdictional bodies. Only four final reports have disclosed the names of the perpetrators. In Chad, the commission not only disclosed the names of the accused but also published their photographs. In El Salvador, more than 40 members of the military were publicly declared guilty of human rights violations, including the Defense Minister and the President of the Supreme Court – and they all had the right to legal defense before the truth commission (Popkin and Roht-Arriaza 1995, 280_281).

The truth commissions' model has finally become part of the measures to be taken in a democratic transition. The recognition and accountability process introduced by the commissions is a response to the pressures from internal groups as regards the omission and impunity established by general amnesty; meets the international demand for investigation and punishment through criminal trials; and offers the victimized local community the opportunity of having their suffering public recognized by disclosing the truth. Because it is a quasi-judicial proceeding, it is capable of reconciling these demands without violating the principle of justice.

V. Conclusion

This paper has described the several juridical or quasi-juridical mechanisms that can be used to operationalize a sociopolitical transition in societies that have come out of periods of oppression or domestic conflicts, by emphasizing the capacity of each to meet the demands for fulfilling the three dimensions of the juridical causes named by Cardoso de Oliveira (2004): the dimension of legal rights, the dimension of interests, and the dimension of recognition.

All these models have been tested in different contexts. Different levels of success and failure have been recorded. The common link among them is the presence of tension between deconstructing the past and constructing the future; rejecting human rights abuses so as to build a safe bridge to democracy and the rule of law.

In the course of history, virtually all regions in the world have gone through difficult democratic transition processes. Each country has made its own choices, taking into account both domestic and international determinants and dealing with the economic, social and political constraints of each situation.

Conflicts, wars and other forms of violence occur when communication fails. It is in the void of understanding that social crises emerge and that is why dialogical and restorative justice, attentive to the dimension of recognition or morals, can be the answer to these cases. Dialogy and reflection on the mistakes of the past are preventive measures against future conflicts and Law, as an arena of verbal fights, should be adequate and ensure the emergence of peace and democracy. Multiple psychological studies attest to the fact that emotional repression and introspection following serious traumas can generate even more problems. Many psychiatrists believe that expressing feelings by talking about traumatic experiences can lead to psychological healing (Danieli 1995, 575). Nonetheless, when victims are called in to testify in a formal court they not only have to stick to the facts linked to the crimes but many times are aggressively cross-examined by the defender.

It is clear that, after a massacre, many societies struggle with the dilemma between too much memory and too much oblivion. To many, as explained by Jean Baudrillard, forgetting extermination is part of extermination itself. According to Myrian Sepúlveda dos Santos (2003, 26),

We are all that we can remember; we are the memory that we have. Memory is not only thought, imagination and social construction; it is also a given life experience capable of transforming other experiences from previous residues.

The social dimension of memory has gained relevance in the study of social interactions. Everything an individual retains or constructs in his memory is influenced by the social context and the rules existing in the society he lives in. Moral disapproval of past crimes, when disseminated and official, influences the development of a society's identity as well as the selection of its memory. Both memory and oblivion can be instruments of domination. Therefore, truth commissions play an important role in so far as they

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offer victims the opportunity to tell their version of the facts and their offense.

Many countries have adopted national amnesia and amnesty as alternatives, but the choice for oblivion can also be interpreted as a choice for injustice, to the extent that it perpetuates impunity and lies. The victim actually never forgets. Adopting oblivion as a measure of political stability and safety does not translate into an appropriate moral response to the suffering of the survivors and their families. However, this does not mean that there is a single recipe for all cases. Different transitional justice strategies are being applied to reconstruction and democratization processes in all continents. Nonetheless, quasi-judicial procedures aimed at rehabilitating the victim, society and the accused could contribute to improve the democratic transition process in countries that have emerged from deep crises such as those that follow genocides and civil war. As these procedures are better qualified to meet the demands for rights, interests and recognition by seeking the ethic-moral meaning of the solution, they show the best results when the objective is social reconciliation and the restoration of dignity.

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