

EDITORIAL

Truth and reconciliation commissions have emerged as a major tool in helping a society come to terms with the legacy of its past. They are part of a range of projects designed to reconstruct the social, economic and legal fabric of a society after a conflict or an authoritarian regime. They usually attempt to clarify who the victims are, the truth about what they have suffered and how harm might be addressed and remedied. Whereas the role of courts is to judge the guilt or innocence of the alleged perpetrator, the focus of truth commissions is placed on the victims and their individual experiences.

The function of truth commissions is to uncover the details of past abuses. In trials, the focus is on the accused and on protecting their rights. Truth commissions, conversely, often allow victims to tell their story in a less formal and sterile setting. This also has a therapeutic function: the information that is revealed in truth-telling procedures can be a form of catharsis for the victims, while families often learn what happened to those who disappeared and are thereby able to start the grieving process. Moreover, victims may also be granted reparations for past abuses, mostly by the provision of services that are often symbolic in nature.

Truth commissions can supply concrete evidence about terrible crimes. Without such evidence, social, ethnic, or political groups linked to the violence may be less inclined to accept responsibility for the roles their groups played. They also supply some measure of accountability by discrediting institutions and possibly, by extension, persons in charge of them. They tend, however, not to name individuals as suspected perpetrators but focus on the institutional failings that allowed the crimes to occur and propose reforms to prevent repetition.

They encourage the articulation of historical narratives by survivors and seek a means of narrowing the divergences between their accounts. Understanding what one generation wants to convey to the next generation about what happened during a conflict is also very important, as is the means by which that history is conveyed. The official acknowledgment provided by a commission's findings can eventually help to restore the victims' dignity.

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How to bring about some form of reconciliation and healing in a society that has experienced genocide, widespread rape, torture and physical and psychological harm is a problem with no easy answer, not least when the preconditions for conflict may still be present and unchanged. Reconciliation aims to help a society move forward from its troubled past to a more stable and less bloody future.

The less confrontational nature of the truth and reconciliation commissions seems to make them better able to promote reconciliation than trials. The social and political stability that arises from genuine reconciliation encompasses both interpersonal and wider social relationships within and among communities that cannot be addressed in judicial proceedings. It requires accommodation between former antagonists, a coming to terms with past injustices and violence, the development of new social and political relationships and the readjustment of group identities. Different societies need to create diverse formulas to overcome the extraordinary devastation they endured, especially in the aftermath of mass atrocities.

Truth and reconciliation commissions are thus inherently political, at the very least in their origin, but also in their result. One of the clearest cases of a commission compromised by politics was the Chilean Truth Commission. Although its work was of great value, its mandate was limited in crucial respects: it could investigate only deaths and disappearances, not cases of torture or other human rights violations; all of its hearings were held in private; and it was forbidden to name perpetrators. The configuration of the South African Truth and Reconciliation Commission was likewise the product of a series of political compromises. Unsavory compromises, such as granting amnesties to perpetrators of gross human rights abuses, are sometimes seen as the only alternative to a return to open conflict.

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Since World War II, the fight against impunity has become a universal concern, especially after major violations of humanitarian law and human rights have taken place. Yet despite calls for justice and accountability, government officials often choose to grant amnesty to individuals responsible for appalling human rights violations on the grounds that this alone would prevent a resurgence of conflict and help their society accomplish a stable transition from conflict to peace. Instead of seeking full criminal prosecutions for war criminals and human rights abusers, governments are increasingly turning to truth commissions, and the truth-telling exercise is becoming a substitute for criminal prosecution.

Amnesty in cases of politically motivated international crimes, including crimes against humanity, may be granted as a result of a negotiated settlement, and is sometimes due to the factual impossibility of bringing perpetrators to justice. Thus the amnesty provision may let off the worst offenders and also undermine the credibility of the truth and reconciliation commissions as a key mechanism in establishing a new society. The desire to see the perpetrators rot in jail stems at least partially from a widespread sense of satisfaction derived from the workings of retributive justice, without necessarily believing in it.

This raises the dilemma of striking a balance between the desire for retributive aspects of criminal proceedings, including the punishment of perpetrators, and the need to heal a society as a whole. Schematically, the human rights viewpoint is that justice in societies in transition should be strengthened, whereas the political claim is that criminal proceedings may prevent or at least delay reconciliation, and that one should look to the future and not to the past. The most

recent striking example is the amnesty proposed by the Ugandan government for the sake of a ceasefire to the Lord's Resistance Army in July 2006, despite the horrendous crimes it had committed. This move is in sharp contrast to the recent arrest warrant issued by the prosecutor of the International Criminal Court.

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According to the report of the UN Secretary-General, the notion of transitional justice comprises a range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve reconciliation. It implies that the role of justice in situations of transition is different from its role at other times. Unlike common understandings of justice as related to well-established notions of order, stability and community, the role of law in transitional situations seems to be to assist in the transition from a situation of conflict to one of "peace". Transitional justice takes many forms — criminal sanctions (e.g., trials and criminal punishment) or non-criminal sanctions (e.g., purging the public sector) and even amnesty — all of which have complex political, historical, legal, psychological and moral dimensions. It ranges from punitive or retributive justice to procedural justice and restorative justice. However, the importance of justice as means of transition is evident. The assumption is probably that the realization of justice is a precondition for true peace and reconciliation. This concept of the mid-1990s seems to have originated in a desire to return the element of justice to the centre of the transition process.

Truth and reconciliation commissions have a function other than the judicial one. They are usually designed as an alternative process in order to help shape a profoundly different future. Although justice is a key component of any transition, it is certainly not sufficient on its own. The judicial process has severe limitations in terms of its ability to bear witness to the truth of mass trauma and focuses on some perpetrators only. It can generally deal with no more than the tip of the iceberg of systemic abuse. The judiciary may be in poor shape or may even have aided or abetted the crimes of the past. Where abuses have been widespread, the judicial system may lack the capacity to handle the number of individual perpetrators in a timely manner. In internal armed clashes, all parties involved have normally committed or been associated with grave violations. Furthermore, sufficient evidence may be difficult to gather, because it has been destroyed or the events occurred long ago. Similar problems exist with regard to testimony by eyewitnesses.

The justice element, therefore, may be heavily restricted in the truth and reconciliation process and may only become relevant several years or tens of years later. The importance of time in transitional justice measures is still apparent in parts of South America. It has taken more than twenty years for Argentina and Chile to confront those responsible for human rights abuses in court. Argentina did set up truth commissions in the early 1980s to investigate the abuses perpetrated under the country's former military junta, but steps towards criminal prosecution led to the threat of a new military coup, and legislation was

introduced to impede any prosecutions. It was not until 2005 that the Supreme Court there declared those laws unconstitutional, thereby opening the door to criminal prosecutions for the abuses that had occurred in Argentina.

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The task of promoting justice, accountability, psychological relief and reconciliation is hugely challenging and costly, and may take one or more decades and require multiple interventions. The needs of individual victims must be balanced against the society's broader short- and long-term goals, and harm to individual survivors should be minimized while maximizing efforts to achieve those goals. These may be successful only if carried out in tandem with other social reconstruction efforts. The important connection between transitional justice, politics, physical or psychological trauma and the goal of any truth and reconciliation commission is the overriding desire for victims to regain a sense of dignity and be assured of a better future.

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