

# Justice beyond Blame

## MORAL JUSTIFICATION OF (THE IDEA OF) A TRUTH COMMISSION

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Truth commissions have existed as mechanisms of transitional justice in some of the societies confronted with legacies of the criminal past. The author focuses on the question of the foundational justification of the idea of a truth commission. While recognizing the complexity and importance of moral and political considerations that are conventionally invoked to justify the existence of this body, the author aims at offering an alternative justificatory account. The main claim is that the specific task capable of providing the ultimate justification of truth commissions consists of rebuilding the lost sense of justice in the community of perpetrators.

*Keywords:* transitional justice; truth commission; justification; responsibility

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After the change of regimes, the new proto-democratic order is, among other things, confronted with the tasks of establishing the rule of law and guaranteeing basic rights in a society in which these foundational features of democracy were either destroyed or nonexistent. This complex task acquires yet another dimension in societies whose immediate past has been marked not only by the authoritarian nature of the previous regime but also by mass regime-sponsored crimes. The basic question is simple: does the new political community, legitimized by its democratic intentions, need to reckon with the crimes of the previous regime? Dilemmas that are brought up by this question span legal, practical-political, and moral considerations. This should come as no surprise, given that most often at issue are the crimes perpetrated in the name of a whole political community or in the name of a group constitutive of that community. Answers are sought between the poles of the policy of oblivion and the policy of an open and multidimensional confrontation with the past.

Skeptics usually point to the contextual complexity of the democratic transition: the new regime is confronted with multiple problems that burden the transitional process with always new and often mutually contradictory political and economic imperatives. In such a context, the demand to deal systematically—legally, morally,

politically—with disturbing legacies of the past would only divert attention from really pivotal issues, opening up at the same time the Pandora's box of painful questions to which there are no conclusive answers and resulting in the further deepening of already thorny social, political, and ideological divisions. If we agree that the transition to democracy requires a minimum consensus on values, goals, instruments, and the sequencing of transitional steps, and if we pay due attention to the plain fact that such a consensus in a new polity, if it exists at all, is as a rule extremely vulnerable, then a rational strategy requires that we apply “gag rules” (i.e., that we agree to leave aside all issues that could harm the prospects of reaching and stabilizing social and political integration around new values and institutional arrangements).

On the other hand, those who claim the necessity of confronting the sinister past will typically argue that without this process, the preferred democratic future remains beyond reach. The argument is that with the regime change, the past has not ceased to be relevant (i.e., that its legacies cannot be simply eradicated from the public sphere, either by an act of political will or by a mere neglect). The consequences of the past deny the possibility of choice between forgetting and remembering: the character of their presence is such that a decision to promote a policy of forgetting would only mean promoting refusal to confront reality.

I accept the second position: different processes of obtaining knowledge, seeking recognition, and institutionalizing acknowledgment about the true nature and consequences of the misdeeds from the close past are necessary for democracy. I hold that “mastering the past” is a process that contributes to (1) moral, political, and legal disassociation from the crimes of the previous regime; (2) establishment and stabilization of a new democratic legitimacy; and (3) creation of the basis for civil normality and justice after the period of barbarianism. This article focuses on an (incomplete) analysis of institutional forms and instruments appropriate for dealing with the past.

Specifically, I try to defend the need for the body that is most often referred to as a truth commission. This defense will proceed in the form of a search for the commission's proper justification. The main claim reads that a feasible justification of the idea of a truth commission requires that we abandon the familiar arguments of condemnation, ascription of guilt, distribution of blame, healing, reconciliation, or even the restoration of equality between victims' and perpetrators' groups. Those goals are undoubtedly all very important, but I argue that none of them can pass the test of serving as a generally acceptable legitimation basis of the idea of a truth commission. As an alternative, I propose to look for justification in the province of practical morality: the specific task that justifies truth commissions consists of rebuilding the lost sense of justice in the community of perpetrators. A commission will live up to this task if it proves capable of reconstructing the reasons that led vast numbers of people to forsake the basic standards of right, good, and just. It will be assumed that those standards were valid in the community of perpetrators at the time when crimes were committed.

Defense of this view requires the combination of two broad strategies. First, it is necessary to prove that it is possible to go beyond the specific contexts of particular countries, in order to look for a general point of justification of truth commissions. Second, the chosen justification has to be inclusive: while going beyond particular

contexts, it should at the same time provide a point of identification for each of those contexts.

The article comprises two sections. The first section introduces the concept of transitional justice: its moral foundations, practical-political justification, and its main elements. The second section explores truth commissions as mechanisms of transitional justice, focusing on the question of their legitimation. Following the above outlined hypothesis, I try to develop and defend a general reasoning capable of meeting the following tasks: justifying the establishment of truth commissions, outlining the legitimate scope of their authority, and providing a basis for the legitimate interpretation of their findings.

### COMPLEXITY OF TRANSITIONAL JUSTICE

Most of scholarly literature about the truth, justice, responsibility, and institutional mechanisms for confronting the criminal past focuses on the concept of transitional justice. Starting from the claim that criminal justice is insufficient or even inappropriate for dealing with the mass crimes, additional categories are introduced: political, compensatory, restorative, and transformative justice. Sometimes, these varieties of justice are seen as alternatives. The claim that a choice has to be made among different versions of justice is most often based on the argument of their mutual incompatibility in the specific transitional context. On this view, the pivotal question is what can be done without damaging the prospects of the stabilization of democracy: we need to ask whether a particular strategy aimed at overcoming bad legacies contributes to the desired future.

I reject this stance. This does not necessarily imply the irrelevance of the argument, which denies obvious causal links between different mechanisms of mastering the past, on one hand, and the success of the democratic transition, on the other hand (Barahona de Brito, Gonzalez-Enriquez, and Aguilar 2001, 11). Indeed, there is no guarantee that the path to the stabilization of a desirable democratic future would be made easier by insisting on a comprehensive strategy of coming to terms with the past. However, it deserves to be noted that there is not sufficient empirical evidence that would witness to the contrary. For instance, it is impossible to reliably demonstrate that the perpetrators and the old elites are less dangerous if they are granted amnesty or treated leniently than if they are subjected to processes aimed at criminal and political responsibility (Mendez 1997, 3). In more general terms, there exists no powerful argument to the effect that a comprehensive approach to transitional justice is more threatening for the stability of a new democracy than its alternatives. Most important, this is an altogether false dilemma. Both the decision not to deal with the past and the decision to adjust the choice of the type of transitional justice to policy considerations are based on reasoning that is simultaneously mechanical and idealistic. Its comprehension of the relationship between the past, the present, and the future rests on a poorly founded idea of a new beginning, where the act of the regime change is perceived as a watershed between a "then" and a "now." While

it may be trivially obvious that the past events cannot be reversed, from here it does not follow that the dividing line between the past and the present is clear-cut. The events of yesterday are causes of certain consequences, which we usually call legacies of the past. What was happening under the old regime has not disappeared. It has rather undergone a transformation: having lost the capacity to act as officially sanctioned formative moments of the social and political life, the old patterns nevertheless survive, retaining their ability to influence the present. Thus, the real task is not to decide whether the past is to be reckoned with. The task is rather to discover the character of its legacies and to choose fitting means of fighting them.

I argue that, ideally, all the mentioned types of transitional justice are needed. It is true that conditions after the breakdown of the criminal regime are hardly "ideal." Still, our choice should not be primarily guided by the constraints of the postregime change period but rather by the nature of the past crime and by insight into its consequences. The moral challenge created by the past and its legacies is of such a weight that judging the appropriateness of the strategy of transitional justice against policy criteria amounts to a wrong strategy. Instead, the past-related considerations should be given advantage over the transition-related ones. This should not be understood as a stance of moralistic idealism that neglects the ambiguities of the transition. It is true that, in practical-political terms, at stake is institutionalizing an approach to the past that will not undermine the prospects of stabilization of the new democracy (Crocker 1999, 43). But the transition from the criminal regime to democracy can never be merely a forward-looking political issue. The context-specific approach at the very minimum requires from us to observe that the mass wrongdoings of the recent past were nowhere presented as naked acts of violence. In a comparative perspective, it may be interesting to note that one shared feature of criminal regimes is their surplus of references to a peculiar perverted version of ethics. Nazi Germany, communist regimes, or nationalist Serbia under Milosevic all heavily relied on a certain concept of the good. Each of those regimes used to present itself as the embodiment of the binding ultimate truth. The necessary feature of those ideologies was an arbitrary choice of an enemy group, the group presented in the same perverted ethical terms, as the embodiment of the bad. In such ideologies, the circle is closed by inferring that destruction of the enemy group is both necessary and good. Mass killing and other types of denial of basic human rights then follow as merely technical consequences. Below, I argue in more detail that this kind of "ethics of evil" leaves as its most troublesome legacy a political culture in which there are too many people who remain incapable of distinguishing between right and wrong, good and bad. Therefore, after crimes committed in the name of false ethical claims, transition into a state of civilized democratic peace cannot be achieved solely by means of the replacement of the governing elites and setting up of a new institutional framework. After a moral catastrophe, a clear, radically new moral foundation of the community is needed.

This is why criminal justice does not suffice either. First, it should be noted that—contrary to the expected "objectivity" of abstract legal procedures—the moral and political approaches to the past directly affect the character and the scope of possible legal measures. The question of an adequate legal confrontation with the past crimes

can surface in several forms, only one of which will be mentioned here: what is the reach of a procedurally individualized criminal proceeding in a situation in which the subject of the confrontation with the past is a mass crime, a large portion of which can be identified as a state act, supported by a significant number of the regime's subjects?

In regard to this issue, I agree with the claim that criminal prosecution before domestic and international courts—even when it is accepted and carried out—is not a sufficient response to sufferings. Obviously, this should not be read as an argument against criminal justice: to respond to mass crimes through criminal procedure is to affirm the principle of the rule of law (Minow 1998, 25). However, the question remains of whether the character of crime—the role of the regime in criminal activities, ideological justification of the crime, the number of perpetrators, the behavior of bystanders, the manner in which targets of the crimes were chosen, the huge number of victims, the grave moral and political consequences felt after the change of regimes—exceeds the capacities of criminal justice. Pragmatic arguments endorsing the thesis about the insufficiency of criminal trials claim that the mass character of crimes and the weakness of the postauthoritarian judicial system impede an efficient legal confrontation with the past. A more abstract argument stresses that a judicial, procedurally strictly delineated focus on the individual perpetrator and his or her culpability is not capable of meeting the tasks of transitional justice. First, due to the character of crimes, it is often difficult to individualize guilt and to distinguish perpetrators from collaborators. Second, criminal justice does not suffice to overcome the social consequences of evil because it fails to obtain a clear picture of society in which the most drastic violations of human rights were made possible through broad endorsement of a perverted value system and through the complicity, collaboration, or “passive support” of many, ranging from those at the top of power to “ordinary men” (Dyzenhaus 2000, 473).

It is thus essential to establish a complex set of instruments for mastering the bad past, all of them to be led by the normative objective of overcoming difficult legacies and building a different future. Within the scope of this article, transitional justice shall refer to a set of moral, legal, political, and social processes, measures and decisions passed and implemented during the transition to democracy. The aim of such efforts is to remove the instruments, protagonists, and consequences of massive violence from public and social life and to contribute to the creation of a community based on freedom, equality, human dignity, and respect of the right to diversity.

### **LEGITIMIZING TRUTH COMMISSIONS: FROM THE (AUTHORITATIVE) TRUTH TO (TRANSFORMATIVE) JUSTICE**

#### **TRUTH COMMISSIONS IN THE CONTEXT OF TRANSITIONAL JUSTICE**

One of mechanisms of transitional justice has been found in the form of truth commissions, which in the past two decades have been established in two dozen countries

throughout the world.<sup>1</sup> Truth commissions are bodies set up to investigate and compile reports about breaches of human rights in a given country and in a certain conflict that took place in a precisely identified time period in the past. Violations can include police murders, torture and illegal arrests, crimes committed during an armed conflict by the military and paramilitary forces, expulsion, destruction of property, and other forms of systematic abuse of political or military enemies, individual civilians or whole groups of the civilian population, and so on. Priscilla Hayner (2000, 2001) identifies four primary elements that define a truth commission. First, a truth commission is focused on the past. Second, a truth commission does not deal with specific events but strives to document the greatest possible number of cases of human rights violations. Third, a truth commission is an extraordinary body that usually exists for a limited, predefined period of time and is supposed to complete its work with the submission of a report. Fourth, a truth commission has certain authority granted to it by the political body that has established it.

Truth commissions are established as special institutional arrangements for a historical context in which the undesirable past is far more present than the desirable future. They are expected to help in providing answers that would be both morally correct and politically viable (Zalaquet 1995, 205). Following the above offered understanding of transitional justice, the juxtaposition of moral and political considerations does not call for a bargaining between the two. Rather, forward-looking political actions that aim at legitimacy and practical authority need moral foundations acquired through reflective confrontation with the past: "The claim is that the establishing the 'truth' about the state's past wrongs . . . can serve to lay the foundation of the new political order" (Teitel 2000, 69). I hold that a truth commission is to be perceived as an instrument of transitional justice capable of contributing to the task of reconstructing moral foundations of a proto-democratic polity. This position requires a closer conceptualization of the reasons advanced to justify the commission's existence.

I start from a simple intuitive assumption: there is something deeply troubling and wrong in indifference to the recent sinister past on the part of those individuals who share their group and communal identities with perpetrators of mass crimes (Kukathas 2003, 167). But why exactly would such uneasiness remain as a problem after the regime change? Do we need to deal with the past to exculpate ourselves from misdeeds done in our name? Should we focus on excluding from democratic society those individuals who are found criminally and politically responsible? Do we need to know about the past principally to pay a proper tribute to victims and compensate them, to somehow correct injustices inflicted upon them? If accepted, should this approach be seen principally as a way of reconciliation with victims and their heirs, a strategy of bridging the gap between our society and the society of those oppressed in our name? Or, should we understand reflection primarily as a

1. Besides criminal prosecution and truth commissions, additional important forms of this process are lustration, official apology, restitution, public rehabilitation of victims, commemoration, and so on (Cohen 2001, 227-40).

self-reflection (i.e., as an inward-oriented process aimed at reaching a new moral and political understanding of our damaged and discredited individual, group, and political identities)? In other words, should we principally try to master the past because it has created our special duties to “others” or because there is something that we, members of a group to which perpetrators belonged, owe to each other, in light of the consequences of mass crimes?

Those questions do not point to mutually exclusive choices but rather to different aspects of transitional justice. Still, they are of a different moral order, and therefore not all of them are capable of providing ultimate justificatory arguments for comprehensive dealing with the past. The principal point of justification should not be condemnation, ascription of guilt, paving the way for official apologies, or even reconciliation. It should rather be understood as the reconstruction of the motivational patterns of a behavior that in the recent past led to a massive violation of human rights and universal moral values. The practical-political objective of such a reflection would be to enable the citizens to regain their recently and severely damaged capacity to distinguish between right and wrong, just and unjust (Habermas 1997, 2). If such a goal were not accomplished, the liberal values proclaimed by the proto-democratic regime change could easily slide into ritual façades without any legitimizing and practical authority.

Departing from the legitimation basis thus identified, what makes commissions appropriate instruments for reckoning with past wrongs? In approaching this question, one could start with two preliminary cautions. First, given the differences between individual countries, any abstract analysis of truth commissions may be of only limited value. Nevertheless, all commissions have one thing in common—they are established after the regime change, in countries where the consequences of massive and systematic violence and abuses of human rights represent the main feature of the heritage of the past (Boraine 2000, 142). It follows that the types of moral and practical-political questions that can be raised before these bodies are also comparable (Crocker 1999, 63). Second, it should be noted that some of the objectives that are advanced to justify the establishment of these bodies are better read as statements of intention, whose plausibility can only partially be confirmed by reviewing results of commissions’ activities. The argument that, by discovering the truth about past crimes, commissions contribute to reconciliation, “national healing,” the renewal of national unity, and individual and group “catharsis,” or help the victims and their dear ones overcome the traumas of abuses, strives to establish the legitimacy and the authority of these bodies by invoking aspirations of highly questionable feasibility (Allen 1999, 317). At the very least, the accomplishment of such aspirations depends to a great extent on the specific political and cultural context. Perhaps the concept of reconciliation, which is today without much reflection almost generally accepted as the core denominator of the idea of a commission, provides the best example. It is most often simply borrowed from the experience of South Africa, while overlooking its highly specific religious roots in the South African culture. It could be added that reconciliation is a morally doubtful concept in itself since it implicitly proposes equality between two groups, the moral positions of which are radically different: the



community of victims and the community of perpetrators. Simply put, nobody could assume the authority to require that members of a victimized group agree to reconcile with the people in whose name harm was done.

I will try to demonstrate that a more plausible justification of commissions should be sought in the analysis of the relationship between the categories of the truth and justice. The focus is on the analytical, normative, and practical-political aspects of the meaning and the use of these categories in the work of truth commissions.

#### AUTHORITATIVE TRUTH

In the broadest sense, the request for the truth means that commissions should investigate past events and present to the public facts about violence, crimes, and other forms of human rights abuses. According to one possible interpretation, this prompts the demand for the respect of the principle of objectivity and for a documentary approach to the past. A commission's report would not be a generic narrative on the causes, forms, and effects of violence but rather a documentary record covering the greatest possible number of concrete cases. However, according to another point of view, evaluation and interpretation are inherent elements of the truth that a commission is supposed to provide. A commission can help promote justice only if its presentation of the events adheres to an explanation that will point out the role of violence in the construction and reproduction of the old regime. Such an explanation ought to unveil the causes of violence, its institutional context, and the basic patterns of its use (Crocker 2000, 101).

The dilemma of "objectivity versus interpretation" is false, at least to the extent to which the very selection of events for investigation requires a certain interpretation. The choice of the commission's subject of inquiry implies a preceding criterion of what makes an event or a particular set of events from the past relevant. Guided by the general intention to promote the case of an aspiring democracy, a commission is supposed to provide a specific political and moral diagnosis of the past (du Toit 2000, 126). This, however, points to an important problem in the treatment of the truth: a commission is a state body that is expected to offer an *official authoritative truth*. Some commentators believe that the ambition to attain the official truth represents an inherent threat for a community that wants to establish democratic pluralism (Gutmann and Thompson 2000, 34). Others argue that the project is doomed due to the incapacity of such a body to attain the historically relevant truth (Maier 2000, 271). The latter objection can be overcome by an appropriate delimitation of commission's tasks. This is not to deny that a commission can interpret and evaluate the chain of past events. Still, it should avoid systematic historical research, which is led by an intention to reconstruct a definitive "big narrative" about the recent past. Such an intention would exceed both the cognitive capacity and the legitimate operative framework of a commission. What is needed is rather "information about whose moral and legal rights were violated, by whom, how, when, where, and why. . . . Just as important is less individualized and more general truth, such as reasonable interpretations of state actions and those of the state's opponents, as well causal explanations of the chain of



command, institutional structures, and economic problems that resulted in rights violations” (Crocker 2000, 100).

The objection against the authoritative character of the truth is more serious because it directly links the issue of a commission’s legitimacy with the normative foundations of liberalism. I will devote some attention to this question.

Modern democracy, being based on the principle of individual autonomy and corresponding pluralism of worldviews, presupposes political neutrality, which leaves no space for the monopoly of the binding truth. Since our analysis deals with societies that have started adopting democratic values and building democratic institutions, it seems apparent that the quest for the “official truth” is the wrong choice. A possible answer that a commission’s work toward the “official truth” must be based on the principle of neutrality seems to be wrong for at least two reasons. The first, to which I will return below, argues that the outcome of the work of a regime’s commission will necessarily reflect the “victor’s truth.” The second claim comes from political philosophy: we cannot liberally think of an “official truth,” even if the procedure of coming to it could be regarded as neutral since the very choice of political neutrality favors liberalism over alternatives. This is known as the argument of incoherence: the principle of neutrality is not neutral with respect to its own position (Kis 1996, 2).

Nevertheless, I will defend the thesis that commissions can seek the truth, without threatening to undermine either equality or political neutrality. I also try to demonstrate that commissions cannot function without a clearly defined normative framework, identified both by a certain type of moral attitude toward the past and by a clear preference for a set of values identified as foundational of the new regime. Following Ruti Teitel (2003, 4), I argue that the task of a commission is to arrive at a liberal narrative about the past. I also assert that the construction of such a narrative is potentially the most important contribution of a truth commission to transitional justice.

Leaving aside the methodological question of whether objective knowledge of the past is possible at all, it deserves to be noted that the establishment of the subject and method of a commission’s work, as well as the way its results will be presented, are matters of the political decision of new authorities. Here it is of paramount importance to politically formalize and make public the decision about the type of social knowledge that a commission will offer. The basic message that its founders should offer to the public, without any fear of breaching the principles of neutrality and pluralism, would be as follows: the social knowledge of the past is not merely a reconstruction of something that “really happened” but is rather a *construct* (i.e., the product of a public process of deliberation guided by clear normative preferences). Documents concerning concrete cases of human rights violations, testimonies given by the victims, perpetrators, witnesses, and members of the old political elite and state apparatus, ought to offer a re-presentation (i.e., a reinterpretation of the facts). Such a reinterpretation is necessary because the same facts, interpreted in a substantially different way, constituted the official truth of the old regime in the immediate past, serving as the legitimation basis for a systematic use of violence. In this sense, the task of truth commissions is to unmask as a lie the official truth of the previous regime (Teitel 2000, 81) by demonstrating that its ideological formulas served to justify and normalize

violence. At the same time, commissions should offer an alternative reading of those same facts, shaping them into a new truth, the political aspect of which cannot be denied. The truth formulated by a commission should be understood as a segment of social knowledge indispensable to the democratic transition (Teitel 2000, 91).

The risk of politicization is evident here. However, the political status of the official truth should be distinguished from its possible abuse, which would reduce this body and its report to mere instruments of partial political goals. I agree that the capacity of commissions to offer socially relevant truth depends on the preceding consent about which interpretations of the past will be taken into consideration (Dwyer 1999, 85). But, unlike the critics, I believe that a clear definition of the normative framework within which commissions will operate represents an efficient defense against the threat of politicization. If the task of the democratic transition is to affirm human rights and the rule of law, a commission's liberalizing project should consist of presenting and interpreting all data, documents, and statements in a manner that will promote universal moral values crudely violated in the previous period. This would not imply giving up the request for the documentary truth. On the contrary: only a universalizable liberal approach makes it possible to fully explore and properly situate the facts of the past events (i.e., to identify all crimes in a manner free from particularistic ideological rationalizations). The knowledge of what happened should be presented so that it (1) clearly reveals that the previous period was characterized by violations of universal rights to life, freedom, equality, dignity, and diversity and (2) affirms the adherence of the new polity to those values. The first point specifies what has happened, followed by the requirement that any form of repetition of the past, thus identified, must be prevented. The second point aims at restoring a decent society, understood as the society governed by a minimum set of universalizable moral norms (Bhargava 2000, 45). In this sense, the main task of a truth commission is "to generate and consolidate new and distinctive conceptions of political morality that can henceforth inform the political culture" (du Toit 2000, 125).

#### TRANSFORMATIVE JUSTICE

To the extent that these are the values any civilized society should guarantee to each of its members, such a normative attitude of a commission cannot be evaluated as the imposition of a new ideological dictate. Still, it remains obvious that the purpose of affirming these values is to promote an alternative moral and political image of the society and polity, one that does not exist at the time of the publication of a commission's report. Following Jonathan Allen and David Dyzenhaus, this objective can be summarized as an intention to implement transformative justice (Allen 1999, 335; Dyzenhaus 2000, 492). The object of the transformation is the political culture inherited from the previous period.

Before examining the essence of transformative justice, one additional consideration is needed. It concerns the question of the proper sequencing of steps, especially the argument that an elementary institutional stabilization of a new democracy is a necessary precondition for systematic dealing with the past. This statement defends the

view that people immediately after the regime change are “still not ready” to confront the past. The claim is that a certain time has to pass first, during which democratic institutions would be built, and democratic practices would take hold. This would have a double positive effect. First, people would learn that to live in democracy implies not only enjoying the good things that this type of the regime provides but also learning to accept its built-in constraints and requirements. Second, the passage of time would help people to look at the past in a more detached way, enabling them to reflect on sinister practices without defensive attitudes (Grunenberg 2001, 119-22). Hermann Lübbe (2001, 41-2) identifies the transitional period during which the humiliating past should not be addressed as the time of “communicative silence.” His claim is that dealing with the past immediately after the regime change could only result in forcing people to exercise “political rituals of remorse,” which would effectively create a basis for a kind of political culture of guilt. A more general claim follows: only silence makes it possible to reconstruct the fundamental continuity with the better past and its genuine traditions and values. This better past, as the repository of the true answers to the question of who we are, appears in turn as the bridge that integrates our political and group loyalties and identities with the democratic patterns (Lübbe 1983, 585). This can also be expressed as the claim that knowledge tends to be subversive. In the particular historical moment of the transition from evil, the truth and the knowledge about the past cannot be perceived as absolute requirements, independent from the contextual considerations. Before asking what the truth is, we need to see whether and why the truth is needed at all and especially whether it threatens the principal trait of liberal justice, that of equality for all. In sum, after the sinister past, citizens and political elite lack the capacity to integrate the knowledge about the past into a liberating narrative and practice. But even if they were capable of such an effort, it should be avoided because rather than promoting desired values, its outcome would only inflict injustice, deprive the whole society of its better past, and ruin the prospects of the democratic consolidation.

This argument suffers from two major flaws. First, the claim of a “return to a better past” amounts to a conservative idealistic position that, in glorifying “genuine traditions” and “true identity,” argues for an ideological engineering, the main task of which would be to correctly choose a usable past. What really happened in the recent past would be selected for oblivion, at the expense of an ideologically prepared image of the past (most often understood as a set of traditions stretching to “time immemorial”).

Second, this ideologically historicized argument refuses to see that at stake are actually important elements of continuity between the political cultures before and after the regime change. Numerous empirical surveys reveal the set of values developed in the previous period that cannot, after the change of regimes, be reduced to a mere remnant of the past, something that would spontaneously disappear with a dynamic proportional to the institutional (political, legal, economic) reforms (Golubovi, Spasi, and Pavievi 2003; Hod i 2003). If there is anything “spontaneous” in the status of the authoritarian set of values after the political change, it is its transformation into an active alternative (illiberal) political culture. The “culture of silence” is not simply a culture of oblivion.

It is rather the culture of political affirmation of the bad past.<sup>2</sup> Following the regime change, the “culture of silence” is typically developed in the community of perpetrators as a kind of mass defensive reaction. Thus, what is after the regime change identified as societal silence about the past cannot be seen as an implicit preference for “closing the books” for the sake of a new beginning free of bad legacies. The core of the problem lies in the fact that under the old regime, the ideological rationalization of violence was coupled with the individual rationalization of silence and denial. Many people were ready to accept the ruling ideology not because they were the earnest supporters of the regime or only out of fear for their individual existence: avoiding confrontation with the character and the proportion of the evil was perceived by many as crucial for the preservation of their individual and social identities. This phenomenon can be identified as a feature of normalization of crime under the old regime. Such normalization has at least two important aspects. The first consists of ideological, legal, and political institutionalization of crime: the value system, legal norms, and political institutional arrangements are established in a manner that allows and justifies misdeeds against the chosen enemy group, reducing at the same time such misdeeds to a routine. The second aspect consists of the acceptance and interiorization of such a system and its practices by the majority of population. The regime that inscribes *the right to do wrong* in the very foundations of its existence must require that its subjects accept legitimizing and institutional patterns of crime. In practical terms, by accommodating such requirements, subjects at the same time renounce their moral autonomy. An analysis of the German or Serbian cases would demonstrate something that is almost self-comprehensible: during the criminal regime, both rulers and ruled behave as if no crime has taken place at all. They all abide by the institutionalized lie. This is the core of the moral problem, whose actuality is not limited to the time span of the criminal regime. After the change, the society remains deeply divided as a direct result of the recent crime, of its perception, and of the political abuse of its effects. The line between the truth and lies about the past remains unclear, and lies are thus easily translated into a manipulative political discourse. Instead of recognizing the true victims of the crimes, such societies would typically tend to preserve the old narrative about “our group” being the “true victim.” This narrative of self-victimization—which in many criminal regimes used to form the core of the official ideology—would then continue to serve as a repository of right-wing political options, very often similar to those valid in the recent past.

This all could mean that even if we refuse to deal with the past, the past would be still dealing with us. Hence, it is both morally right and politically necessary to explore its lessons. The exploration of the “culture of silence” under the old regime could provide us with one strikingly simple lesson: “A little more thoughtfulness among the principal perpetrators and a little less moral indifference among the bystanders were all that stood between life and death for millions of victims” (Baum 1988, 53). This is not merely a stance of moral indignation. It is better read as a position of future-

2. For an analysis of the complex relationship between the psychological, cultural, and political aspects of keeping silent about the past, compare Cohen (2001, 51), Schwan (1998, 475), and Adorno (1986, 116).

oriented practical morality, which points to the fact that in criminal regimes, a vast majority of people have effectively renounced already valid and accepted standards of distinction between right and wrong, good and bad, just and unjust. Hence, the task of transitional justice in general, and of truth commissions in particular, should not consist of creating new or better standards of moral behavior. The objective should rather be to bring to everyone's attention a sense of the type of condition in which basic civilized values were all of a sudden rendered irrelevant (Waldron 1992, 5). Decent people of today ought to know how it became possible for decent people of yesterday to participate in, support, or tolerate the worst crimes.

Taking these and related considerations into account, a truth commission could focus on contributing to the affirmation of the democratic political culture by examining the nature and justification of violence committed by the previous regime. In most of affected countries, it is possible to reconstruct an adequate number of facts about crimes. Besides, empirical studies of such countries make it clear that a large number of citizens are aware of crimes. What is needed in the transitional context is a step from this private knowledge to public acknowledgment and recognition.<sup>3</sup> It follows that a truth commission project must prove itself capable of offering sufficient motivation to the people to confront the past reality. A commission should make it clear that no discovery, document, or testimony would constitute a condemnation of the group as a whole (i.e., that its task would not be to attribute collective guilt or to distribute blame). If it were made clear right from the start that individual events and organized mass violence as a whole would be treated principally as acts of the regime and not of a group in whose name the regime acted, then people might understand and accept, without automatically activating psychological and social defense mechanisms, that serious crimes are at stake and that it is also necessary to identify and publicly present the fact that the regime used to rely on people's collective identity. A commission would not be exploring group crimes but rather crimes committed in the name of the group. The difference is essential: a commission would aim at obliterating the ideological matrix that used to present crimes as a "legitimate defense of national (racial, class) interests." Its task would consist of a factual demonstration that the old regime did not protect any "higher interest" but was actually engaged in a serious, massive, and systematic violation of human rights. The unmasking of the perverted ethics of the old ideology as the ideology of administrative massacre could act as a strong incentive for a viable dealing with the past because it would release the ordinary people from the moralistic pressures of collective guilt and blame, opening at the same time the possibility for everyone to face her or his own moral responsibility for supporting the old regime.

Of course, the perils of dismantling such a culture should not be neglected. Furthermore, it should not be expected that mere publication of the commission's report would bring about a change in old value orientations. Nevertheless, it can be

3. The distinction between knowledge, acknowledgment, and recognition is extensively used in literature on transitional justice, although the ways of interpreting these categories differ (cf., e.g., du Toit 2000, 132; Dyzenhaus 2000, 483).

assumed that bringing down the wall of silence that surrounds the past would initiate public reflection not only about the crimes but also about the widespread culture of tolerance of injustice, which decisively marked the preceding period (Allen 1999, 337). The political culture of silence is not a by-product of historical processes, and its modification cannot be left to the course of history. Rather, it involves a set of problems that have to be overcome by actively thematizing their foundations and basic features.

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