

## VICTIMS' RIGHT TO TRUTH

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"We can now deal with our past, establish the truth which has so long been denied us and lay the basis for genuine reconciliation. Only the truth can put the past to rest."

--Nelson Mandela

"[T]he struggle of man against power is the struggle of memory against forgetting."

--Milan Kundera

"The facts do not only speak, they call out in the midst of and intolerable silence, that is being imposed on the immediate past. Silence has become a cornerstone--placed in the past by the dictatorship and in the present by those who believe that it can assure a peaceful future. But the facts, the victims, are there; they speak or call out to us. There is no future in pretending to be deaf to what they are saying."

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In February 1995 this author was privileged to listen to a dialogue of West and East Berlin Christians, met in one of a series of such gatherings for giving voice to complaints against each other from both sides of the former Berlin Wall. The purpose of the gathering was to strengthen the bonds of the two parts of the new Synod of Berlin-Brandenburg, formally constituted in the spring of 1991 in the wake of the 1990 reunification of Germany. The crux of the conversation, often bitter and angry, was the protest of parishioners from the former German Democratic Republic against the leaders of their own Evangelical Church for various degrees of cooperation with the notorious Stasi. We now know that its agents compiled some 120 miles of file records on the goings and comings of seventeen million east Germans--an average of some 26 feet of file drawer per citizen. Uppermost in the discussion was accusation and defense of pastors who had acted as Stasi informers on members of their congregations. Some pastors replied that the price of shielding parishioners was sometimes just such cooperation, spiced with protective lies. Since the Stasi themselves often "enriched" their written reports on citizens with elaborations designed to enhance career reputations, the resulting picture is one of layered oversupply of official and unofficial lies, a corruption of all that might be implied in the term "civil society." It is also a picture of truths that belonged to the private spheres of a society in any sense democratic. Indeed, dictatorial regimes in the twentieth century have practiced arts of control that turned upside down the democratic distinction between public and private, prying into every aspect of family and personal lives while protecting government's right to keep its own activity secret.

What is the place of truth-speaking in the texture of civil society? How much truth about personal lives belongs only to individuals and non-governmental spheres? How much belongs rightly to the public sphere? Who, and what institutions, are required for protecting private truths

and exposing truths that deserve publicity? To these general questions there are no easy answers, but the distinction between democratic and dictatorial polities depends crucially on distinctions between rightly private and rightly public truth-telling. For the restoration of that distinction, public exposure of its violation may be the only practical recourse.

We live in a time of world history when, in numerous countries, citizens are demanding of their government the public exposure of a category of truth that autocratic regimes characteristically prefer to keep "off the record": torture, imprisonment, and death meted out to thousands of political dissidents on a scale that justly deserves the new name, "administrative massacre." Within the past fifteen years, dozens of countries have seen some version of this demand. The list is long: Argentina, Chile, El Salvador, Nicaragua, Guatemala, South Africa, Rwanda, Bosnia, Taiwan, Australia, the United States. Common to all these cases is the claim of certain citizens that they have been victims of extreme, unjust suffering at the hands of official governmental power and that--whatever other forms of justice they may now deserve--they deserve to have the truth about their suffering made public.

Such victims' "right to truth" has received little formal attention in discussions of human rights generally in the past fifty years. The Universal Declaration of Human Rights (1948) speaks of the right of everyone to "a fair and public hearing" of any criminal charge against them, to "recognition everywhere as a person before the law" and to "effective remedy by the competent national tribunals for acts violating...fundamental rights granted...by the constitution or by law." The effective enjoyment of these rights presumes a judicial system willing to implement them. Such systems are notoriously lacking in the legal orders of autocracies, whose proponents are only too willing to invoke the undercutting clause in Article 4 of the International Covenant on Civil and Political Rights (1966) which allows for government suspension of certain rights "in time of public emergency which threatens the life of the nation."

The latter Covenant comes closer to the circumstances of a society in recovery from centralized government repression when it calls, in Article Two, 3a, for "an effective remedy" for violations of rights "notwithstanding that the violation has been committed by persons acting in an official capacity." The following Article 2, 3.b. calls for the effecting of this right by "competent judicial, administrative, or legislative authorities". But the realism of the article, vis a vis repressive government, glimmers in its final assertion of the right of aggrieved individuals, in the absence of such competent authorities, "to develop the possibilities of judicial remedy."

Citizens of countries with long, institutionalized protections of free assembly, free speech, and freedom of religion are likely to overlook and underestimate the human importance of this raw, basic beginning of "justice" in societies where such freedoms are absent. "Mothers of the Disappeared" in Argentina, demonstrating daily in the Buenos Aires square in the 1980s, were facing, at risk, the alleged right of government to make the disappeared to remain disappeared from all public knowledge. It is the characteristic final injustice that an unjust government means to inflict upon its victims: As Adolf Hitler said about his plan to obliterate the Jews, after it was over, nobody would even remember them. "Who, after all, speaks today of the annihilation of the Armenians?"

In fact, most surviving Armenians are determined that neither they nor the world will forget that annihilation: some 1.5 million kinspeople whom the Turkish government considered its enemies in 1915. As Peter Balakian, grandson of the generation that endured this massacre,

recently commented:

The Armenian holocaust deserves to take its rightful moral place in history. For a generation for whom there could be no justice, the pain is compounded by the evil of denial. There is always a period of delay after a trauma. But now we are at a moment of threshold.

For Balakian and others like him, no "moment" is too late for paying attention to the atrocious suffering of ancestors unnoticed by the public. For the sufferers themselves, some moments may be too soon, so unwelcome psychologically may be the rehearsal of their pain and loss. Surviving victims of torture, in particular, may conceal all mention of their ordeal, not only because the memory is so painful but because close friends and relatives may resist hearing of it. Eric Dyson, a Scot who survived torture in a Japanese prison camp in World War Two, discovered that neither his wife nor his friends had sustained interest in his sufferings. For thirty-five years he kept the story to himself, spilling it out only in the early 1980s to a psychiatrist who, as a young doctor assigned to interviews with survivors of Auschwitz, had developed as her specialty therapy for torture victims.

The moral and psychological cases for affording publicity to victims of unjust suffering are not the same, however, as the political and legal cases. Central to post-oppressive legislative, legal, and public debate over the establishment of "truth commissions," for example, is the moral concern that public culture, law, and institutions be recast into new democratic molds that inhibit the repetition of the oppression. A prime illustration in recent American history is the reparation tendered to survivors of the internment of Japanese-Americans during World War Two. The internment was unjust from many points of view, beginning with its doubtful military necessity and its questionable legality in American law. By their persistence in lobbying the government for redress, survivors of the camps and their children finally persuaded the United States government to revoke the presidential order that put 120,000 Japanese Americans behind barbed wire, to set up a commission to investigate the history, and to tender to survivors an official Congressional apology accompanied by a modest financial reparation of \$20,000 for each survivor. The event was a paradigm for what victims of massive governmentally-enacted injustice can contribute to the reform of public culture and its institutions: Not only do the victims receive some belated satisfaction of their own sense of justice, but their stories enter the public media and other shapers of public cultural consciousness. Yet more important, the stories become warnings to political leaders: "Never again." Moral, psychological, legal, political, and cultural realities all appear in these procedures; each has a part in the recasting of a public's memory and acknowledgement of its own past. But the role of governmental acknowledgment is crucial: "What the victims want is an authoritative narrative, an 'official story,' as the remedy for the wrongs they have endured."

In the current, virtually unprecedented clamor for public acknowledgment of these past evils, there are many questions to be raised concerning reasons for the clamor, the proper public institutional forms for responding to it, the benefits of such truth-telling for the development of pluralistic democratic society, and the avoidance of harms to that development. In the rest of this essay, I want to explore some of these questions.

Why, in the 1990s, the clamor for victims' right to public truth?

Hitler used to say that he would compel his enemies to use weapons like his own, only he would use them more skillfully than would they. Secrecy is one such weapon in the arsenals of dictatorships, and the years 1914-90 saw its use on a massive scale in hot and cold wars and revolutions. Rightist dictatorships arising against the threat of Communist dictatorships--much twentieth century world political history could be subsumed under that theme. Even in well-established democracies like the United States, threats to national existence can tempt political authority to become authoritarian, as the Japanese-American case again illustrates. The U.S. Central Intelligence Agency, child of the exigencies of World War Two, acquired permanent place in the American government once a worldwide conflict with Soviet-sponsored Communism had begun. Quite important for democratic defenders of the C.I.A., however, is the law that requires the Agency to practice the arts of spying and espionage upon citizens and systems external to the United States. Presumably the democratic uses of violence-in-secret must be severely limited. Especially in its near-monopoly of the tools of violence, democratic governmental use of those tools must be open to public scrutiny. As in every war, official, organized violence is maximally vulnerable to the commission of atrocity. Democrats know of no stronger protection against such atrocity than some institutionalized likelihood that it will be subject--finally if not in the act--to public scrutiny.

Across continents in the 1990s, calls for public accountability for the crimes of government against its citizens

have been simultaneous with the turn towards liberal democratic systems in the wake of the collapse of the Soviet Union and the end of the Cold War. Especially in Eastern Europe and South Africa, the revival (or first birth) of citizen freedom to criticize government coincided with the weakening of Soviet power. And in country after country a remarkable first use of the new freedom has been the outcry: "Let the government tell us the truth of what its predecessors did to our fellow citizens, our relatives, ourselves!"

If a world political context helps explain this phenomenon, the political price of secrecy, inside these countries, is a second explanation. Over the years, whether in the Soviet Union or in fascist Argentina, the alleged right of government to keep its actions secret precipitated massive citizen distrust of official government "truth." Pravda ("Truth") went out of business in the 1990s once it was no longer compulsory reading for either bureaucrats or ordinary citizens. Long before, of course, few of the latter trusted Pravda as a purveyor of truth. This virus of mistrust is a great danger to the functioning of government. Mistrustful of almost everything the government says, most citizens will eventually cease to trust officials to look out for anything but their own power and interests. Indeed, since not even the most efficient totalitarian system can conceal all evidence of the truth about its actions, citizens will progressively limit their trust to private sources of information. Nikita Krushchev's 1956 revelations of the atrocities of Stalin must have had a confidence-restoring effect in the relation of citizens to his government, however partial the revelations may have been. Not the least humanly important result of his revelations was the rehabilitation of certain public reputations--a small entry of victims' right to truth under a government that still claimed a right to manufacture good and bad reputations at will. Do the dead have rights? Moral rememberers think so.

The truth about political truth-telling here is at once moral and practical: a certain minimum of match between what a government does and what it publicizes is necessary for a certain minimum of citizen loyalty. Doubtless, in the days of its decline, the Moscow

government would have liked to have covered up the failures of both Chernobyl and the Chechnyan war. By the time of each of these disasters, the Soviet public had too much access to at least some of the facts for such a coverup to have been successful. Most Americans, in the Watergate crisis, knew that officials do not always tell the truth to their publics, but by democratic instinct we knew that systematic public lying was a threat to the republic.

In the 1990s, the proliferation of truth commissions, declarations of amnesty, and sundry victim demands for reparations expresses a public outflow of grievances long dammed up behind walls of government refusal to tolerate public voicing of its crimes. That there is such a thing as crimes of power, of course, is fundamental to the experience of those who construct governments of limited power. No truly totalitarian system can tolerate such a principle. To do so would be to give up the notion of its right to define the truth that its public should be taught to believe in. Religion, art, and science have a large stake in resisting that notion. So also does every theory of human rights.

Doubtless historians will find a widespread complex of other reasons why the 1990s have seen a plethora of these calls for redress of the crimes of government against its citizens. They will also survey the varieties of governmental response to these calls. Below is one such survey.

What are the measures that governments have so far enacted to effect victims' right to public truth?

A simple list of the measures turns out to be not so simple. Deep, controversial questions about personal-social-political recovery from traumatic pasts arise when the goal of one measure--e.g. satisfying a victim's sense of justice--conflicts with the goal of another--e.g. inducing perpetrators to come forward with the truth of what they did. Delaying attention here to these difficulties, here is the range of measures that governments and citizens have devised during the past fifteen years:

1. Public judicial prosecution. Preceding the postwar Universal Declaration of Human Rights, were the Nuremburg and Tokyo trials of an elite group of leaders deemed by the victors to be punishable for "crimes against humanity." These two precedents have led to other trials, administered nationally and internationally, most notably in West Germany but not at all in Japan.

A national legal system has both assets and liabilities for answering victim cries for the truth about their unjust suffering. When the courts of one's own country put the officials of a previous regime in the dock, the public knows that the government is at work recovering or rectifying its own laws. But when the judges and the court systems themselves work still in the shadow of habits and law embedded in the repressive past, their decisions may yield little "justice" in the eyes of victims. The most notorious recent example is 1996 judicial exoneration of the head of the South African police force responsible for enforcing the repressions of the apartheid era. Qui custodient custodes? Not even in a relatively democratic society are courts of law likely to prosecute all the collaborators responsible for gross "legal" injustices. Especially for recovery from an era of stark violent official repression, courts are a necessary but insufficient instrument, as Mark Osiel has recently demonstrated at length.

2. The restoration of freedom of speech and press. In modern society the supply of "truth" to public consciousness will depend largely on whether both public and private communications are safe from official violent controls. For example, on February 28, 1949, the armies of General Chang Kai-shek, having fled mainland China for a new base in Taiwan, systematically murdered some 20,000 civilian protesters against his regime. For the next forty years, it was illegal, under the Kuomintang government, to mention this event in public or private conversation. In the late 1980s this law was lifted. Now in Taipei there is the beginning of a "2/28 Museum," whose creators are seeking to bring together every fragment of evidence of what actually took place on 2/28/49.

The ability of modern repressive governments to control private as well as public communication should not be underestimated. Jerrold Post of George Washington University visited Argentina during the height of the "disappearances." Across a restaurant table he asked his friend, "Tell me what you know about it." Immediately the customers in the room fell silent, and Post's friend got up and left the restaurant. Now, in 1997, under Argentina's "Defamation Law", it is still impermissible to mention crimes against citizens by the police or other agents of the former government. The law applies to journalists as well as to religious leaders. Some 31,000 "disappeared" people have been officially consigned to public oblivion. A similar law in Chile now subjects to arrest any members of the military police who report on their previous activities in torturing and killing political dissidents.

These incidents suggest that, under the oppressions of a totalitarian government and even under its allegedly democratic successors, a speech-act can be, by legal definition, a crime. As George Orwell depicted them, twentieth century totalitarians have learned that speech-control is a step towards thought-control. In China in the 1940s, Japanese occupiers made official use of the term "thought crime". In turn, Chinese communists invoked the same concept, forcing many citizens to indulge in public "self-criticism", not for what they had done but for what they had thought. Consistent totalitarianism intends to deprive citizens of the right to a "wrong" consciousness.

Its success in doing so will be greatly aided by repression of interpersonal as well as public speech, and such success has enormous impact on the mental health of its most damaged victims. Study of victims of torture in Argentina and Chile reveals that they have great difficulty recovering from their ordeals if, like Eric Dyson, they find no one willing to listen to their stories. As Dr. Rona Fields says: "Social response to the victim seems to be the most important factor in the recovery. No acknowledgment of the event or of guilt from anybody else increases the pain of the trauma and increases the tendency in private to rehash it, to relive it over and over."

Pondered in this awful context, politically protected free speech is not grounded merely in the rationalist tradition of human rights but as deeply in social requirements for the health and well-being of individuals, including those whom official society has devastated. Various studies of torture confirm that a principal aim of the process is not only to extract information but to "reform" the mind of the victim. Dr. Dario Logos, a psychiatrist, summarizing his work with torture victims in Argentina, concludes that "successful" torture induces the subject to "attribute a value of truth to the discourse of the alienating force. Reality [now] is how the other person defines it and the subject is in agreement to this definition that the other despotic person gives."

These illustrations blur distinctions between a right to private and a right to public freedom of speech. To practice one is to begin the practice of the other; to suppress one is to serve the repression of the other. Political power can promote or inhibit the practice and the repression in both settings. Like other human rights, victims' right to tell their stories requires social-political protection and encouragement.

3. Organized non-governmental investigations and hearings. Highly centralized political orders may still allow for some freedom of citizens to organize for giving voice to their complaints against government repression. Churches in East Germany are a recent example. In the late 'eighties they offered their building spaces for citizen gatherings seeking redress of grievances against the communist government. From a totalitarian perspective, this was dangerous free space. The public, non-violent demonstrations that emerged from these meetings led eventually to the toppling of the regime. In Romania, the beginning of the overthrow of Ceausescu was sparked by a government attempt to throttle a pastor of the Reformed Church in Transylvania, an action which, once resisted by local citizens, encouraged a revolt by the military. Even in the years of maximum violent repression of apartheid's enemies in South Africa, its government's grudging respect for religious freedom enabled some church groups to nourish protest and to furnish the international press with stories that made the names Sharpeville, Crossroads, and Robben Island widely known.

Another striking illustration from Africa is the Justice and Peace Commission set up by the Roman Catholic bishops of Rhodesia in the 1970s as civil war raged in the countryside. Without any formal power to control the violence, the bishops sent out the word that they were ready to hear from persons anywhere in the country who wanted their experience of ill treatment by either side of the war to get public exposure. The result was dramatic.

"Africans grew to see [the Commission] as a major means at their disposal to speak of their oppression.' Villagers trekked long distances to Salisbury to tell the commission of their plight. 'Often there was no thought of redress, simply the quest for someone who would listen, see the wounds, and understand what was happening in the guerrilla war. It was strangely not so much a quest for justice and peace as a quest for truth. And it was ultimately truth, rather than justice and peace, that the Commission achieved and will be remembered for.'"

Organizations that challenge governmental versions of truth may have very limited political impact. They have a tenuous place in the theory and practice of centralized states. They are often more a refuge for the surviving victims of official violence than agents for abolishing official systems. But, as these illustrations suggest, they sometimes start processes of change beyond their expectations. That possibility alone is one reason why even their modest organizational freedom is worrisome to autocrats.

4. Governmentally authorized "truth" commissions. New governments, coming in the wake of repressive ones, have something to gain from publicly acknowledging the crimes of their predecessors. They also have something to lose--a problem to be explored further below. The chief gain is the renewal of citizen loyalty, including the loyalty of those who have suffered most from the old regime. The latter's suspicion of all government is likely to run deep, so that any opportunity for victims to tell their stories can occasion not only some healing of individuals but a healing of the fractured civic bond as well. The other side of knitting up that bond, of course,

concerns the perpetrators. Some truth commissions have opened their processes to both sides of previous political conflict, offering victims and perpetrators their day in court. Indeed, even if a truth commission is not a court, it resembles the adversary process when it lets every side to tell its story.

Several new governments, in the past fifteen years, have authorized research into official records, testimonies of victims and perpetrators of gross injustices, and public reporting of findings. The leading post-World War Two example is the Federal Republic of Germany, whose leaders, beginning especially in the 1960s, set about to find and introduce into public life accurate recollection of the Nazi era. History books, museums, ceremonial remembrance of victims, and judicial prosecution of the most notorious agents of Nazi terror mark the Federal Republic of Germany as a remarkable case of government-led collective facing of evil in a national past.

More recently, truth commissions have made reports to new governments in Chile, Argentina, El Salvador, and Guatemala. The fate of these reports, in these four countries, flags a great political problematic: How much publicity of the crimes of a past government will serve the interest of a present government? In particular, will the truth about the past serve to unify or further to disrupt the society? Quite in contrast to the German example, truth commission reports in the above four countries have issued in quick abandonment of follow-up implications. President Patricio Aylwin, tendering the Chilean public via television a summary of the report delivered to him in 1990, offered an apology to the nation for the crimes of the predecessor government. Soon after, with an irony endemic to "representative" democracies, the new Chilean parliament granted amnesty to all persons and groups identified in the report, leaving the victims of the crimes with very partial satisfaction of their cry for "justice." Whether amnesty and impunity for perpetrators can with integrity be combined with public truth about their deeds remains one of the great questions surrounding recent, current, and future practice of truth commissions.

5. "Truth for amnesty". Truth and Reconciliation: this title of the current South Africa experiment advertises the hopes and the dangers at stake in affording victims their day of public truth. Authorized by government, truth commissions are political acts; and as such they are designed to serve political aims, especially the aim of uniting citizens in loyalty to a new government and in peace with each other. The truth about past suffering at the hands of government can serve reconciliation, or so the South African parliament believed when it authorized the TRC in December 1995.

This commission is, by far, the world's most extensive current example of consistent pursuit of victims' right to public truth. It has subpoena power, can hold public and private hearings, can recommend reparation measures for victims, and--most in dispute--can recommend amnesty for perpetrators who confess their crimes but claim political motivation. "Truth for amnesty," observes Timothy Garton Ash, "is at once the most original and the most troublesome feature of the commission's work. Most people find it hard and some find it impossible to accept that multiple murderers should walk free."

Nonetheless, compared to the history of the recent Latin American amnesties, the South African TRC is morally and politically more ambitious by far. In the Latin American cases, brave beginnings of public truth about past atrocities have been cut short by "blanket" amnesties to perpetrators whose names and crimes disappear from public record like the names and suffering

of their victims--all for the alleged purpose of a national shift towards getting on with the public future. Whether political justice and political peace are best served by the Latin American or the South African strategy, may remain for now an open question. Debate about the gain and loss from granting victims a right to publicity is likely to continue for many years to come. Among the major questions of the debate will be the following.

The ongoing debate: Questions for Moralists, Politicians, Jurists, and citizens.

Like "truth" in moral theory, truth in political society is only one virtue among others needed for the integrity of the whole. The illustrations recalled here compose a strong argument for the wisdom of the American theologian H. Richard Niebuhr who wrote: "Where common memory is lacking, where [people] do not share in the same past, there can be no real community, and where community is to be formed common memory must be created....the measure of our unity is the extent of our common memory." Significantly, this quotation was appropriated recently by Charles Villa-Vicencio, research director of the South African TRC. The same conclusion has been drawn by the Colgate University political scientist, Robert Rothstein, in a lecture in Jerusalem in May 1996:

"Stable peace may...require a concerted effort to revise the historical canon, to begin teaching a new version of history, and to marginalize and contain the extremists who reject the effort."

It is not only extremists, however, who have questions about the effort. "Stable peace" is a compound of many interests, laws, procedures and principles. Tensions exist between all these, and from these tensions arise many a puzzling question. None is to be dismissed lightly. Here are four such questions.

I. How much public justice results from public truth?

"Making public the truth is itself a form of justice," says Richard Goldstone, distinguished judge of the new South African Constitutional Court. Is it enough justice? Ordinary criminal law assumes that the truth of a crime requires some ensuing punishment. Witnesses to the work of the TRC "see how powerful is the public shaming" of confessing perpetrators, but the formal rules of the Commission imply that "contrition" is not an absolute necessity for a recommendation of amnesty for a perpetrator. This is the nub of the protest from some South African victims of apartheid: that truth alone is not enough for justice, that amnesty as a reward for truth may only deepen victims' sense that their persecutors have gotten off easy. It may even open the temptation of some to wreak revenge in any extra-judicial way open to them. The curtailment of private revenge, of course, is one classic reason for the very existence of a legal judicial system. There is no guarantee, then, that revelations about the unjust past will serve the coming of a more profoundly shared sense of justice in society at large.

Defenders of the truth commission procedure (including this writer) will reply that, while truth about the past is no guarantee of social peace, concealment of that truth is so rankling to victims that it virtually guarantees a future disruption of the peace. "There is no peace for the wicked," says one Hebrew prophet. Neither is there peace for the victims of the wicked so long as the latter go "scot-free." Advocates of quick closing of windows on the past--as in Latin America--are betting that brief gestures of remembering and quick forgetting will best serve

peace and justice. The alternate scenario is that by this strategy they are building up unresolved "wrath to come."

2. If publicly displayed truth is sometimes a benefit to victims, is it also sometimes a harm?

The work of the TRC has offered evidence for both sides of this issue. Many victims have expressed gratitude for the chance to tell their stories, to have their suffering and their perpetrators become part of public record. It is ordinary among victims of torture and other traumatic suffering, however, to fear a rehearsal of their past ordeals, to speak about the unspeakable indignities which they endured. A refinement of this embarrassment is the shame--added to anger--felt by many morally sensitive humans in the presence of radical evil done by a fellow human. When that fellow is a member of one's family or a neighbor from whom one expected no such behavior, hesitancy about public telling of the dark story is understandable indeed.

What truths qualify for publicity, which do not? Democratic theory distinguishes "state" and "society", mandating some insulation of the public and the private realms. Liberal democrats have to insist that no one has an unambiguous right to ask anyone else to tell "the truth, the whole truth, and nothing but the truth" about their personal histories. In conformity with this principle, the South African TRC has no power to compel victims to come forward, even though it does have power to subpoena accused perpetrators. The voluntary nature of the truth-telling is a reflection of the compassion built into the Commission legislation. Even when voiced with great renewal of pain, however, victims' exercise of their right to truth serves society's need for that truth. Whether victims have a right to keep silent, in spite of society's needs, remains a difficult question.

3. Does the scale of some collectively-enacted crime exceed the capacity of institutions either to determine "the whole truth" or to mete out justice to all the perpetrators?

The question has come up for debate again and again since the Nuremberg trials of 1945-46, which resulted in the execution of only twelve Nazi leaders and life imprisonment sentences of only seven others. Subsequently the Federal Republic of Germany took up the cause, prosecuting, by 1970, some 12,900 former Nazi officials, imprisoning 5,200 of these, 76 of them for life. In the same 1970, however, half of the Republic's 15,000 active judges had held offices in the Nazi regime. Furthermore, whether or not Professor Goldhagen counts of "Hitler's willing executioners" are correct, we have always known that responsibility for the crimes of Nazism spread far and wide in the German public. Few astute observers of political collectivities should be surprised. "Responsibility spread thin" is by definition the rule, not the exception, of most modern politically-engineered atrocity; and the search for justice to all perpetrators, in their diverse degrees of responsibility, is illusory. Stalin's famous remark, "The murder of one person is a tragedy, the murder of a million is a statistic," has a less cynical parallel in the pragmatic view: "It is impossible to locate all the agents of the murder of a million; it is even more impossible to bring all of them to court." To this, advocates of blanket amnesty add another pragmatic argument: "It is bad for the future of the society to subject thousands of perpetrators to public trial, even public truth." How could Germany have continued to run its judicial system, after 1945, if it had dismissed or imprisoned 15,000 of its judges? How can the morale of an army be preserved if every soldier, obedient to unjust orders, were to be prosecuted? All but a tiny minority of resisters may have some part in the evils of a totalitarian system. Who is to draw

the line between those who deserve punishment and those who do not?

The answer to this question, likely to come from defenders of war-crime trials and truth commissions: "Imperfect justice is better than no justice at all." The prosecution of notorious leaders may come down to symbolic prosecution of the followers, but that symbolism is itself important for the building of new structures of public culture, discourse, and law. What Osiel says about the contribution of courts to this process applies also to the contribution of truth commissions: neither can achieve all the shift to new democratic, collective memory, nor can either bring to public judgement more than a fraction of the people who are probably responsible for large-scale politically engineered massacre. But the work of both "may...authorize and thus encourage the telling of other, more personal stories, both within courts and elsewhere in society." They thus enable "thousands of victims to tell stories that, without such official encouragement, would never publicly be told."

"Truth for amnesty", in short, may leave victims' sense of justice unsatisfied, but truth is some balm for their hurt memories, and even partial truth is a door-opener to yet other truth. "He could pretend he never did it. Now he cannot. Nor can a lot of other collaborators we can now talk about...."

As the charter of the South African TRC makes clear, public reparation, typically in financial terms, has to be considered as an addition to the largely symbolic justice of public truth. Once it has provided a forum for story-telling about long-concealed atrocity and offer some tangible compensation for loss, the society may have done what it can do to remedy the irremediable. Part of the story that many a victim wants to tell is the tragedy of losses that can never be compensated.

Careful study of many national experiences with this question will be required before the politicians and lawmakers will be entitled to settled conclusions in the matter. Truth-from-many may have to combine with prosecution-for-some. The two are in something of a zero-sum game: Without the promise of amnesty, some perpetrators have little self-interest in coming forward with their confessions, insuring the permanent inaccessibility of the facts. Which is better: That the crimes of many should at least be acknowledged? Or that the crimes of fewer should be judicially punished? In regard to social recovery from massive atrocity, the question is likely to be debated nationally and internationally for many a year to come.

4. Are the internal crimes of national political leaders subject to international law?

Many political leaders around the world today claim that every nation has a right to conceal its past from its own citizens and from the rest of the world as well. This claim abuts on the wider question of who, besides victims of atrocity, has a "right to truth." Do diplomats and historians from one nation have a right to investigate the affairs of another nation without being arrested as spies? Internal and external degrees of openness to the uncovering of truths that discomfort someone are intimately, practically related here. On a planet whose human inhabitants are likely to become ever more densely interconnected in the decades just ahead, some internal national truths will have import far beyond local political boundaries.

The implication here is that, for the commission of some great atrocities, the world of nations has the right to hold leaders of its members accountable. Not just abstract "knowledge" but concrete,

moral and legal obligation of "acknowledgment" is the requirement here, and here again the work of the South African TRC deserves worldwide attention. One astute observer of the current work of the TRC has suggested that it might more accurately be renamed a "Commission for Knowledge and Acknowledgement." Knowledge of truth is a primary academic value, but as a political value "acknowledgement" involves victims' special rights to knowledge: the right to inform the state, and a wider public, of their version of events. But the other political side of acknowledgment concerns perpetrators, who are morally less entitled to keep their secrets than are their victims. By virtue of their offices in repressive systems, some perpetrators are more obligated than others to acknowledge that they they were the authorizers of the crimes of their followers.

"Fifty historians could write accurate, closely documented accounts of the repression, the atrocities, the third force, and still ordinary white South Africans could deny it. But when their former president is reported in every newspaper and seen on national television saying he apologizes and repents...then it becomes much more difficult to deny."

It is more difficult to deny because some persons in every society are representatives, if not of the whole, then of significant parts of the whole. Holding leaders responsible for the acts of their followers seems minimally necessary for implementing any process for salvaging some remnant of justice from the devastations of the past. Since Nuremberg, there has been impressive international consensus on the principle: if the leaders are not brought to dock, it is unjust to prosecute their followers. (This is currently a major problem for public acceptance in South Africa of the results of the TRC, since no major official of the ruling Nationalist government has come forward to testify and ask for amnesty.)

The accountability of the leaders of any nation to their own people is a plausible democratic idea, but should the idea be expanded to the world of nations in general? At stake here is the connection between the Nuremberg concept of "crimes against humanity" and the right of international bodies to demand truth and punishment of national leaders who perpetrate those crimes.

As of the summer of 1997, the problem of effecting such a demand internationally came to focus in the case of Radovan Karadzic, leader of the Bosnian Serbs, still at large in Bosnia while under indictment for war crimes in the International Court of Justice in the Hague. With his Serbian compatriots, of course, Karadzic does not recognize the right of an international tribunal to try him for atrocities committed in alleged pursuit of political objectives. Here the recent history of South Africa is in decided, hopeful contrast. For decades international pressures mounted against the racist policies of its Nationalist government. The collapse of apartheid came in part from the repeated outside voicing of the truth about its victims. The views of outsiders made a difference to the leaders and the led in South Africa; almost all visitors to the country could detect that. It is not surprising, then, that the new leaders of the country should be quite sensitive to the positive importance of international consensus and law for the past and future history of their nation. The current highest judicial official of South Africa, Minister of Justice Omar Dullah, for example, refers and defers repeatedly to the place of internationally recognized standards for judging the work of the TRC, whose parliamentary authorization he helped to design.

"I don't think the TRC can fly in the face of the international law and international values which have been created."

[Asked what advice he would give, in turn, to other countries struggling with their own issues of "truth and reconciliation," he replied:]

"The provisions for amnesty [in our TNC] are far too generous in terms of international law. If I were to live through the experience again, I would pay far greater attention to the need to prosecute in appropriate cases so as to ensure that we are able to more effectively establish the rule of law. My advice to other countries would be not to be as generous as we have been."

The assumption in these words from the chief legal officer of South Africa is that its internal search for justice has obligatory external norms to take into account. To date such opinions from such an officer are rare among national leaders. In Argentina's trial of junta officers, the new government overtly avoided invoking international standards of law. Justice Dullah illustrates yet another reason why eyes around the world have focused intently upon the past and present political debate in his country: what has happened and will happen there has impact and meaning for assorted societies around the globe. Its models of search for "truth and reconciliation" may involve premises and procedures that other nations ought not to adopt. But the complex of moral, legal, and political issues made explicit in the work of its TRC offers the world an astonishing example of one nation's collective will to make the awful truth of its past serve the coming of more benign truth in its future.

### Conclusion: Building Social Tolerance for Truth that Discomforts

The right of every citizen to seek public "redress of grievances" is so basic to the American legal order that it would be easy to conclude that the profusion of amnesties, truth commission reports, and associated legal debates in other countries are largely irrelevant to Americans. To maintain this superficial view may require some forgetting by Americans of their own country's fall into atrocious collective behavior as relatively recent as slavery, the massacre of Native Americans, and the incarceration of Japanese Americans.

At the end of its report on that latter case, an American version of a truth commission in 1982 called attention to a decision of the Supreme Court, immediately after the Civil War, refusing the request of the Federal Army to invoke martial law in the states that bordered the Confederacy. Those states have always been legal parts of the country, said the Court; and it issued this cautionary observation about democracy-under-threat:

"When peace prevails, and the authority of government is undisputed, there is no difficulty in preserving the safeguards of liberty;...but if society is disturbed by civil commotion--if the passions of men are aroused and the restraints of law are weakened, if not disregarded--these safeguards need, and should receive, the watchful care of those entrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired the blessing of liberty."

Our century is full of warnings of the capacity of one segment of organized society to impose death and other suffering on a massive scale upon others; but it is not easy for most humans, in times of comfort and complacency, to keep such warnings in mind. It is not easy because some truths about the human past and some potentials for our human future are painful to consider. If the current rash of truth commissions tells us nothing else about human nature, they tell us that tolerance for painful truths is always at risk even in the most democratic of societies.

The practical implication for the protection of a wide range of democratic freedoms, in every society, is that if its members are open to the pain of acknowledging its past injustices, they are already on the way to the practice of a form of "tolerance" more robust than the casual unconcern often implied by that word.

One American Supreme Court judge defined democratic tolerance as "freedom for the thought we hate." In science, art, religion, economics, and politics, one is likely to meet many provocations to such hate. The freedom of my neighbor to speak a thought hateful to me but precious to her is an awesome freedom, often producing clashes of mind, feeling, and rhetorical exchange that tempt one or both parties to consider a turn to violence. Nothing in human affairs is a more likely occasion for that turn than the emphatic claim: "I am right, you are wrong."

The work of the most authentic of truth commissions makes exactly the opposite claim: "I was, we were wrong. You were right." Until some drastic changes occur in human nature worldwide, ease in that kind of confession will be rare, difficult, and in need of all the protections a conflict-prone society can muster. As one witness to the current work of South Africa's TRC has written:

"Acknowledging responsibility, making apology and contributing to reparations are...powerful ways of strengthening a new moral order. Confirming one's membership of a new reconciled society through acceptance of responsibility for one's actions...would appear to be a recipe for a deeper sense of reconciliation.

"This is not a short term solution...A restorative process will have to be pursued for some years if not into the next generation. It is a process that also needs to be pursued at both the personal and institutional levels."

The "new moral order" underway in South Africa, one dares to hope, will catalyze a truly civil society whose members will have acquired some habit of listening to the views--including the complaints--of each other, and thus practicing a form of tolerance more akin to care than to indifference. The ability to care about, and to live in some peace with, one's neighbors is a hope for society at once moral, political, and legal. Learning to listen to the pains of a neighbor is good practice for learning to respect his or her humanity in many dimensions--intellectual, moral, religious, legal, political. It is also the necessary practical corollary to the right of free speech: the right to be heard.