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History and Justice:

A Politico-Ideological Issue, a Historiographical Problem,

a Crucial Aspect of Historical Literacy

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History and Justice:

Is Time “Equitable” and History “the All-seeing Eye of Justice”?

History does not provide justice but contributes to consolidating the concept and value of justice, to the reinforcement of social justice: it refines it as a concept, extends its content, studies it through the different social situations of each era, records its readjustments and establishes the notion that social justice is a concept and a value

that should be constantly examined and readjusted to social developments. It is necessary to apply such claims to what will be examined below as they are connected with basic issues of epistemological, methodological and ethico-political nature.

More specifically, these claims are the necessary conceptual differentiations since they concern the delicate and complex relationship between the discipline of history and the universal value of justice. Judicial practices, the processes of justice administration, the allocation of responsibilities, accounting for sentences for committed (and therefore past, controversial and traumatic) actions, all intertwine and shape the complex and fragile relationship between history and justice. When this relationship becomes dense and impenetrable, then historiography declines towards morality, swinging its vengeance sword of peoples and losers, according to Chateaubriand's famous statement.

It is widely accepted that in a globalized world the topic of historical justice ought to be taken into consideration within a multidimensional framework and through a global perspective. As Jan Löffström ascertains, "the turn of the third Millennium has been characterized as the *age of apology*, due to the increased audibility of demands and offers of institutional reparations and acts of redress".¹ According to Löffström, "the topic is most interesting to study, since it provides a view onto some important aspects of citizens' historical consciousness".² Jörn Rüsen suggests that "there is always a moral or an ethical element involved in historical consciousness".³ For this reason, we are obliged to give more space and include the politico-ideological and also the moral dimensions of history in the subject's curricula; mainly the historization of public memories. Also, in many European countries remembrance

education has been made an official part of the history curriculum or of the cross-curricular aims and objectives of secondary education (Belgium is an indicative case). The term “remembrance education” refers to the recognition of the responsibility “for crimes or suffering caused in the past” and also the knowledge about the “dark chapters” of the humanity in order “*to prevent recurrence or denial*” of these “*devastating events*” or to demonstrate our duty as citizens to fight against intolerance, discriminations, racism, xenophobia and human rights violation”.⁴ Generally, the debt of memory, the concern for doing justice to the dead and the struggle to exit the vicious circle of History, provide the fertile ground for the relationship between historical truth and historical justice to grow.

While historical science is still obliged to understand and explain, it does not mean to administer justice retroactively, transform its methodological tools and its conceptual categories into Procrustean devices saturated with the rationale of criminal law (victimizer/ victim, guilty/ innocent, instigator and moral instigator, responsibility/ punishment/ dismissal...). Neither does it mean to sink into relativism. Even though the conceptual worlds of the past and present are different, one could accept the possibility of a rational and critical account of the values of the past.⁵ Also, the historian is not a head-hunter, an expert, a witness or a judge. Some historians undertake such roles, such as Daniel Goldhagen, who seems convinced of the German people’s collective guilt for the Nazi crimes and atrocities;⁶ or Stéphane Courtois, who supported the establishment of an international court of law for the moral, ideological and political conviction of communism.⁷

The issue of historical justice emerged dynamically after the fall of the dictatorships in Latin America, the collapse of real socialism and the end of the Apartheid regime in South Africa.⁸ However, it first appeared and was established in the western collective imaginary after the Holocaust and Nazism's painful memories. As a result, the Nuremberg trials epitomized legal civilization. Firstly, they shifted the framework of justice administration to the international scene and the collective guilt burden towards allocating individual responsibilities; secondly, international corps of judges were formed for the legal proceedings of the cases; and thirdly, the moral conviction of the past created a legal framework that focused on crimes against humanity and their retroactive criminalization outside national borders.⁹

This type of legal and symbolic restoration of injustice of the past, which in essence provides only public visibility and recognition to the victims and incorporates their experiences in the official national narrative, cannot be beneficial. Especially, if applied in a society where the ex-victimizers were re-incorporated functionally, that is, in key positions in the state or power hierarchy, thus becoming immune to punishment against their actions in the past (see France and Germany, e.g. Kiesinger, Globke, Papon). Moreover, such application of justice becomes ineffective when the covered up actions of the victimizers are exclusively ascribed to the power mechanisms of totalitarian regimes or the conformism of societies, invalidating entirely the dimension of individual pathology or individual responsibility, free will and the potential for resistance.¹⁰

Administering Historical Justice I: The Advocacy of Claudia Eppert

According to Claudia Eppert, administering historical justice ought to be the historians' fundamental value and essential purpose: it is the historian's duty to examine, resolve and "restore" an injustice, moral or material, caused to an individual, a social or ethnic group, a nation, a people or an entire civilization in the past.¹¹ She believes that moral restoration is possible when, firstly, the testimonies and the primary experience that a prisoner of the past has, are torn open; and secondly, the conditions which could allow such negative experience to re-occur in the present and the future are eradicated.

Eppert refers to Walter Benjamin and Abraham Heschel, in an attempt to articulate memory "ethics" and memory "pedagogy". Her point of view is based on the moral statement that recalling the memory of the forgotten ones and the losers, who anyway have exceptional, unique and usually non-comparable experiences, is aiming, not at retroactively vindicating them, but at enriching the experience of the people in the present, who learn to remember, in order not to repeat similar suffering. However, such approach hardly avoids historical moralization, as it presumes the presence of an exemplary historical consciousness, which deals with historical knowledge as a suffering prevention mechanism that can break the vicious circle of negative experiences.

Administering Historical Justice II:

The Objections of Henry Rousso and Carlo Ginzburg

One counterexample is the one of Henry Rousso who denied participating as an expert in Papon's trial. He justified his attitude by emphasizing the complexity of the relationship between the institution of justice and national memory and identity, between the dominant ideology and historical consciousness, let alone historical science. Hence, he put forward the argument that, contrary to expressing a final verdict implied in every judicial practice (even retroactively), the sole aim of historical science is the Sisyphean effort to approach the truth, which is always de facto relative.¹²

The second counterexample is Carlo Ginzburg and the views he expressed during the Sofri trial in Italy.¹³ The Italian historian also juxtaposed judicial and historical truth, even though these two types of truth are only possible when related to various and sometimes, contradictory evidence, proof and verifying rationales. He supported that judicial truth is characterized by uniqueness, necessity/ inevitability, inflexibility and canonization. These could partly contravene the relativity, the partiality, the fragmentation, the revisability and the non-normativeness of historical truth, which the internally multilateral and multidimensional community of historians accepts at every particular historical situation and within the framework of defined historiographical rationales and epistemological examples.¹⁴

Historical Justice: Its Three Types According to Social and Political Theory

Historical justice demands the "investigation of the truth" about the "dark pages" of History, or its signifying silence. When power relations and the ideological hegemony favour the result of this investigation, it leads to the readjustment or the internal

subversion of historical standards as well as the replacement or re-arranging of the national narrative. As a result, it becomes the beneficial framework for either national reconciliation or overcoming hostility between states.¹⁵ Modern social and political theory distinguishes three types of historical justice:

a) *Retributive justice*, such as the Nuremberg Trials, the legislation about Historical Memory (France, Poland) or the trials at a national or international level for cleansing the traumatic and controversial past (high treason, collaboration with the enemy), as well as sentencing the ones found guilty for war crimes or crimes against humanity and the symbolic, moral and/or economical restoration and compensation of the victims. In these cases, the legal initiatives taken by victims' groups and institutions or by international organizations, or even (rarely) the states themselves, are inversely proportional to the victims' will to recognize their responsibilities and their guilt. However, the failure to punish the victimizers creates a feeling of collective responsibility and guilt, which destroys the institutions of justice, bringing about a crisis in the legality of political power.¹⁶

It is estimated that during the first post-war decade and within the Nazi cleansing framework, many millions of people, and more specifically, a percentage of 2-3% of the population of the states that found themselves under German occupation, were dislocated and punished all over the European continent. Another distinctive category of defendants that was subjected to the exemplary punishment of the winners was the category of academics, artists and journalists, who were arrested because they had provided the enemy with "valuable" services.

The main objection against retributive historical justice is its retroactive nature, considering that when such crimes were committed, there was not any relevant active law (*nulla poena sine lege*). In some occasions, this objection is handled technically (and therefore remains fightable) by restricting the committed crimes in legal categories created just for them. These categories either potentially correspond to the legal regime of the trial period, or, as the actions they describe, collide with and therefore contravene the universal map of absolute human rights, leading to their persecution and punishment, even retroactively, since ethics are considered to surpass the law.

b) *Reparative / restorative justice*, which was established internationally by the 1949 Geneva Conventions, and does not retroactively bring forward criminal charges about the atrocious activities of the past.¹⁷ On the contrary, it consists of purposely-structured truth and reconciliation commissions aiming at:

- Firstly, reassuring the human nature of the victimizer (individual or group) after accepting responsibility or guilt and therefore their social rehabilitation;
- Secondly, creating a culture of dialogue to bridge the opposites and promote active tolerance and understanding between historical opponents, their successful co-existence, the decrease of the psychological chasm between victims and victimizers and the restoration of bonds, either within fragmented societies where fragmented memories dominate, or between states, whose relations continue to be governed by the pain of unhealed traumas;
- Thirdly, moral and material restoration/compensation of the victims, based on the atonement of the victimizers and at the same time, the recognition of the victims' suffering or the unappreciated historical role they played.

Thus, reparative/restorative justice can be either financial or moral, that is, a symbolical restoration of defamation, humiliation, injustice or violence the victim suffered. It initially includes the public confession of crimes against humanity, the apology for them and the active remorse of the victimizers, presupposing the acceptance of the necessary painful collective discussion procedures about the past and mainly an attitude of forgiveness on behalf of the victims and amnesty on behalf of the state. It tries to record the opposing interpretations, the controversial experiences and the self-conflicting interests of a society or two peoples in a post-traumatic perspective. This type of justice is considered beneficial, to the extent it arrives at the legal and historical recognition of the victims' suffering, for the public visibility and re-founding of collective identity, halting the dynamic of grievance, vengeance and festering memory inflation.

An example of reparative/restorative justice at an international level is the treaty of Versailles, which condemned Germany as "totally guilty" for World War I, that is, morally, legally and politically (article 231), and thus forced the country to pay large amounts of money to the winners as moral and material compensation.¹⁸ The compensation provided by a consortium of Swiss banks in 1997 to surviving victims of the Holocaust or their descendents, can also be considered a type of reparative/restorative justice, as it aimed to balance the injustice and reduce the pain they suffered by the Nazi who stole their property.¹⁹ At national level, a first example is the establishment of the Truth and Reconciliation Commissions in South Africa after the abolition of the Apartheid regime (1995), while a second one is the recognition and public apology by US high state officials in 1990 for violating the

rights of American citizens of Japanese descent, who, during World War II, were held in concentration camps, not only for security reasons, as it was claimed, but due to the institutional racism of the American state and racial discrimination.²⁰ At a bilateral level, we have the Luxembourg Agreement signed in 1952, which obliged West Germany to recognise its responsibilities, to pay financial compensation to the newly founded state of Israel as well as to a Jewish organization representing the victims of the Holocaust and their descendents.²¹ Also, the case of the Czech-German Declaration on Mutual Relations and their Future Development co-signed by both countries in 1997, when Germans apologized for the Nazi crimes, while the Czechs admitted their guilt for banishing Sudeten Germans from the country right after the end of World War II.

Therefore, the pillars of reparative/restorative justice are two: the Truth and Reconciliation Commissions and secondly, amnesty provision. More specifically, the Truth and Reconciliation Commissions, assembled by the state, social or international organizations are one of the basic mechanisms for the gradual transition from political authoritarianism and civil conflict to parliamentary democracy and the resolution of ideological and political tension. Such mechanisms are used when retributive justice would have disastrous consequences for the social or political network, or when the contradictory interpretations of the recent past could jeopardize the fragile collective self-image (Chile, Guatemala, El Salvador, South Africa).²² In such cases, historical truth could become submissive to the reconciliation or occasional political and ideological interests, invalidating its definition.²³ Moreover, the truth and reconciliation commissions are usually temporary and transitional. Sometimes, however, they transform into permanent institutions. An example of this is the case of

Chile, where the truth commission developed into the National Corporation for Reparation and Reconciliation, adding to its investigative spectrum new cases of human rights violations.²⁴ Ideally, these commissions ought to function as a neutral and unbiased investigator, agent or judge. Sometimes, prominent academics and writers are appointed presidents of the truth and reconciliation commissions, such as Ernesto Sabato in Chile. In some occasions, the findings of the rigorous investigation carried out by the commissions are publicly presented in celebratory events, in order to accredit the whole procedure with solemnity and indisputable status. In Chile, for example, these findings were presented in a crowded stadium, by the president of country. Such a ratification, apart from the ceremonial and procedural characteristics, is equivalent to a formal apology of high state officials and therefore creates the conditions not only for collective atonement, re-legalization of power and establishment of the institutions' continuity, but also for dispersing a feeling of national consistency and solidarity.²⁵

Nowadays, the lion's share of global concern regarding the necessary types of transitional justice is enjoyed by the establishment and function of reconciliation commissions. Starting with those assembled in the Federal Republic of Germany during the first post-war years or those created in Argentina and Chile during the 1980s, the reconciliation commissions have acquired a particular social dynamic in both the newly founded democracies resulting from the fall of real socialism, as well as in South Africa, in order to make an effort to heal the open traumas of the black population caused by the discriminating, excluding and oppressive Apartheid regime. The healing could in fact take place by combining the revelation of the truth with the public apology and remorse of the victimizers, which ideally should, at least, end up

with their victims accepting the apology. Actually, it is a type of “public theatre”, a ceremony that should have led, as ancient Greek tragedy does, to the collective catharsis of the suffering, the amnesty of the victimizers and therefore their rehabilitation in the collective body, as well as to the repression of the centrifugal powers caused by the long-term dissection.

Amnesty is an expression of leniency, especially when it enjoys democratic legalization and popular consensus, and it is considered as the most drastic measure of healing traumas of the past. In a society where democratic order and legality has been restored, amnesty can only conflict with the commitment of crimes against humanity, such as mass murders, exterminating population dislocations, torture, asymmetrical violence against civilians during war, persecutions for racial, political, ideological, cultural or religious reasons.

c) Lastly, *transitional justice*. This term describes the ways in which “trials, amnesties, truth commissions, public apologies, remorse, restoration and other relevant policies of managing controversial and traumatic past and of treating/healing historical trauma” are or should be used in order to administer justice.²⁶ In this case, international, bilateral or national discussion on the past, the approach of historical enemies, victimizers and victims, the recognition of the historical injustices and the suffering that entire populations or selected groups and individuals were subjected to, as well as the catharsis and the symbolic atonement of collective traumas is considered a long-term process that can be facilitated either by routing restoration policies or by symbolic political actions, such as the one by German Chancellor Willy Brandt in 1970 who kneeled in front of the Warsaw Ghetto Memorial, or the French

President of the Republic, Jacques Chirac in 1995, who recognised the responsibilities of the French state regarding the Vichy regime.²⁷

One of the most typical types of transitional justice is the apology of the Catholic Church to the Jews, after the suggestions of Pope John XXIII (1958-1963) during the Second Vatican Council in 1965. The initiative of Pope John XXIII succeeded the less radical and systematic actions of Pope Pius XII concerning the post-war elimination of racism and came, to a certain extent, as a result of the strong criticism against the passive position of the Catholic Church towards National Socialism and the Holocaust cover-up, as well as the aid provided to help Nazi criminals escape.²⁸

Conclusions

Allan Megill points out that in our era, when the past acquires a meaning within the field of subjectivity and public history, that is, when it is not ostentatiously ignored, then, this meaning becomes a fantastic museum of super-temporal and prescriptive ideas, values and ideals, applying either on the cultural heritage and the family martyrological genealogy, or on the persistence of memory and commemorative rituals.²⁹ Especially, when traumatic memory subjugates the scientific approach to the past, while including, along with the emotional charge, the moral demand of recognizing the suffering and symbolically justifying the victims, nevertheless, it poses, at the same time, a high risk for the understanding and interpretation of history itself. So, in conclusion, more issues arise requesting further investigation, such as whether it is useful to include civic socialization and intellectual preparation for undertaking one's role as a citizen within the basic aims' spectrum of history lessons?

Or, in other words, how actively should we contemplate on the meaning of historical justice within the framework of education?

More specifically, in order to address the issue of education further, one could claim that historical justice should be present and effective during the higher classes of secondary education, in order to deal with the following:

- a) The relationship between history and justice, which is a central value of Western civilization with a generalizing meaning,
- b) The internal distinction between types of justice (while at the same time, it is necessary to invoke typical historical examples, which should be included as distinctive elements in the analytical syllabus and history school books),
- c) The promotion of the historical charge of concepts such as genocide, ethnic cleansing, crimes against humanity, international law, victimizer, victim, memory, oblivion, vengeance, memory inflation, amnesia, amnesty, material and moral restoration, moral victory, remission, remorse, reconciliation, righteous memory.

The ultimate aim of such an approach is to establish “a memory pedagogy”. That is, to establish a pedagogical theory and practice, which would defend morality, but without distorting historical reality and without violating the distinctive epistemological quality of historical memory and the self-determination of historical education.

¹ Jan Löfström, “The Finnish High School Students Speak on Historical Reparations: A Note on a Study of Historical Consciousness”, *International Society for History Didactics - Jahrbuch* (2012): 191.

² Löfström: 191.

³ Löfström: 192.

⁴ Karel Van Nieuwenhuysse, “ ‘Remembrance Education’ and the Historization of Holocaust Memories in History Education”, *International society for History Didactics - Jahrbuch* (2012): 207-210.

⁵ For some interesting ideas on how the human mind overcomes (at least partly) the problem of the different worlds of the present and the past see Alfred Schutz, *The phenomenology of the social world* (G. Walsh and F. Lehnert, Trans.), (Evanston, Ill: Northwestern University Press, 1967). See also Robin G. Collingwood, *The Idea of History*, (Oxford: Clarendon Press, 1967).

⁶ Daniel Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*, (New York: Alfred A. Knopf, 1996).

⁷ Stéphane Curtois (ed.), *The Black Book of Communism. Crimes, Terror, Repression*, Translated by Jonathan Murphy and Mark Kramer, (Harvard University Press, 1999).

⁸ Ruti G. Teitel, *Transitional Justice*, (New York: Oxford University Press, 2000), 3.

⁹ Teitel, *Transitional ...* : 33-34 and Mark Osiel, *Juger les crimes de masse. La mémoire collective et le droit*, Preface Antoine Garapon, (Paris: Seuil, 2006).

¹⁰ David Art, *The Politics of the Nazi Past in Germany and Austria*, (Cambridge: Cambridge University Press, 2006), 16.

¹¹ Claudia Eppert, “Remembering Obligation: Witnessing Testimonies of Historical Trauma”, in *The Touch of the Past. Remembrance, Learning and Ethics*, ed. Roger I. Simon (New York: Palgrave-Macmillan, 2005), 52.

¹² Enzo Traverso, *Le passé, modes d'emploi. Histoire, mémoire, politique*, (Paris: La fabrique editions, 2005), 75.

¹³ Carlo Ginzburg, *The Judge and the Historian. Marginal Notes on a Late Twentieth-Century Miscarriage of Justice*, Translated by Antony Shugaar (Verso Editions, 1999) [1st ed.: 1991 – *Il giudice e lo storico*].

¹⁴ Enzo Traverso, *Le passé, modes d'emploi. Histoire, mémoire, politique* (Paris: Editions La fabrique, 2005).

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- ¹⁵ Teitel, *Transitional ...*: 69.
- ¹⁶ Teitel, *Transitional ...*: 56.
- ¹⁷ Teitel, *Transitional ...*: 123.
- ¹⁸ Teitel, *Transitional ...*: 121 & 122.
- ¹⁹ Jean Ziegler, *I Elvetia, o xrysos kai oi nekroi* [Switzerland, the gold and the dead], translated – commentary – introduction by Meletis E. Meletopoulos, (Athens: Papazisis, 2007), 235.
- ²⁰ Teitel, *Transitional ...*: 140.
- ²¹ Teitel, *Transitional ...*: 123.
- ²² Teitel, *Transitional ...*: 89.
- ²³ Teitel, *Transitional ...*: 84.
- ²⁴ Teitel, *Transitional ...*: 90.
- ²⁵ For what was previously mentioned Teitel, *Transitional ...*: 79 to 84.
- ²⁶ Art, *The Politics ...*: 16.
- ²⁷ Elazar Barkan and Alexander Karn (eds.), *Taking Wrongs Seriously: Apologies and Reconciliation* (California: Stanford University Press, 2006), 3-30; Neil J. Kritz (ed.), *Transitional Justice: How Emerging Democracies reckon with Former Regimes*, vol. 1: *General Considerations*, vol. II: *Country Studies*, vol. III: *Laws, Rulings, and Reports* (Washington, DC: United States Institute of Peace Press, 1995) & Ruti G. Teitel, *Transitional ...* .
- ²⁸ Michael Phayer, *The Catholic Church and the Holocaust, 1930-1965* (Bloomington and Indianapolis: Indiana University Press, 2000), 203, 208-209, 218-221.
- ²⁹ Allan Megill, *Historical Knowledge, Historical Error. A Contemporary Guide to Practice* (Chicago and London: The University of Chicago Press, 2007), 31-36.