The PRIO Annual Peace Address invites distinguished guests to reflect on how to contribute to the creation of a world in which violence is the exception and peace is the norm. The lecturers include scholars, policy makers, writers, artists and others with a distinct voice on peace and war matters on the world scene.

The PRIO Annual Peace Address is an important part of our efforts to create awareness, stir public debate and increase understanding about the conditions for peace in the world. We hope that the PRIO Annual Peace Address can challenge the peace research community by suggesting new measures and bringing new perspectives on peace and war. The questions asked and the answers sought can only be improved by critical challenges.

The 2010 PRIO Annual Peace Address is the first in what will be an annual event.

Comments by
Elisabeth Wood
Dagfinn Føllesdal

Music by
Staffan William-Olsson Trio

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Peace Research Institute Oslo (PRIO)

The Peace Research Institute Oslo (PRIO) is a non-profit research institution established in 1959 whose overarching purpose is to conduct research on the conditions for peaceful relations between states, groups and people. The institute is independent, international and interdisciplinairy, and explores issues related to all facets of peace and conflict. To remain at the cutting edge of war, drawing on field research in several countries and has previously authored *Forging Democracy from Below: Insurgent Transitions in South Africa and El Salvador* (Cambridge University Press, 2000) and *Insurgent Collective Action and Civil War in El Salvador* (Cambridge University Press, 2003).

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Peace Research Institute Oslo (PRIO) is both proactively involved in identifying new trends in global conflict, and oriented toward formulating and documenting new understandings and responses.

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Justice, Truth, Peace

by Jon Elster
Introduction
The human mind seems to have a natural tendency to assume that all good things go together. This may be a result partly of what psychologists call tradeoff aversion and partly of wishful thinking. Let me offer some examples.

Marx asserted that in the transition to Communism, one should try to “shorten and lessen the birth pangs”. For a given duration of the transition, less violence would obviously be desirable. For a given level of violence during the transition, the shorter it is the better. But a more gradual transition might involve less violence.

The movement for “socially responsible investment” is based on the premise of “doing well by doing good”. In some cases, the profit motive and community benefits may indeed be maximized simultaneously, as when consumers refuse to buy goods produced with the use of child labor. Typically, however, mutual funds that refuse to buy alcohol and tobacco stocks do less well than others, because they cut themselves off from a valuable source of diversification.

Public policy is usually guided by concerns of distributive justice as well as efficiency. In practice, however, equity and efficiency may be at odds with each other, because of the problem of “the leaky bucket”. When transferring wealth from a rich person to a poorer one, some wealth is usually destroyed or not created.

The French Revolution was based on the – mostly tacit – assumption that the values of equality, liberty and fraternity supported and reinforced each other, so that more of one led to more of the others, not less. Although each of the three values is endlessly ambiguous, on many common understandings they are more likely to work against one another than to favor one another. Radical thinkers claim that liberty is inconsistent with equality. Libertarian thinkers argue that fraternity is inconsistent with liberty. Rawls claimed that strict equality was inconsistent with fraternity because it might make the worst-off worse off than they would be under a regime of moderate inequality.

In this talk I shall examine another trio of values in this perspective: justice, truth, and peace.

I shall do so not in the abstract, but in the context of political transitions. These include transitions from authoritarian rule to democracy, from the defeat of the two Athenian oligarchies in 411 and 403 BC up to the recent transition in Iraq. I shall also mention the transitions to constitutional monarchy that took place in England in 1660 and in France in 1814 and 1815. In the context of a civil war we may talk about transitions to peace. Examples include the negotiated end to the wars of religion established by the edict of Nantes in 1598, the negotiated Bosnian transition in 1995, and the 2009 defeat of the Tamil Tigers war.
in Sri Lanka. The two Athenian cases also fall in this category. In developing my argument I shall cite many of these cases as well as several others. I shall pay particular attention to the ongoing processes of demilitarization and land restitution in Colombia. Although some prefer the term “armed conflict” rather than “civil war” to characterize the political violence in that country, this does not matter for my purposes, since many of the dilemmas I shall discuss arise in the effort to reduce the level of violence. A key element in that effort is the Law on Justice and Peace, which was adopted on July (2005) after extensive negotiations between the paramilitary “United Self-Defense forces of Columbia” and the government. It provides a framework for the demobilization and reininsertion of members of ‘illegal armed groups’. Although it applies to guerrillas as well as to paramilitaries, so far only the latter have availed themselves of this option. Members of illegal armed groups with an incentive to demobilize under the JPL are those who hope to avoid ordinary criminal prosecution, prosecution before the International Criminal Court, and extradition to the United States. In exchange for receiving shorter prison sentences than any of these options would involve, they must render full confessions, hand over illegally acquired assets, notably land, cooperate in the dismantling of the armed group, and cease all illicit activities. Victims of crimes committed by the beneficiaries of the law can claim reparations funded by the assets that are handed over.

Since this is a PRIO event, it is appropriate to mention that PRIO’s Centre for the Study of Civil War has had a long-standing collaboration with organizations and individuals in Colombia. Since 2004, Morten Bergsmo, Scott Gates and I have organized half a dozen conferences in Bogotá on civil war, transitional justice, and land reform. I shall return later to a perceptive remark made by Jim Fearon at one of these events.

I shall now first say a few words about each of the three values, and then discuss tensions and synergies that can arise among them.

Justice

I shall distinguish between alleviatory justice and transitional justice. The first expression is a term of art, and perhaps not a very fortunate one. I welcome suggestions for a better term. It refers to measures taken to address and alleviate the injustices that caused the conflict, in distinction from transitional justice, which is concerned with the injustices caused by the conflict. Many civil wars begin because part of the population has a grievance against the government, based on a perceived injustice. In many important cases the grievance is that of an economically oppressed majority, where the injustice can take the form of unequal distribution of land or of huge income disparities. Alleviatory justice then requires economic redistribution. Colombia exemplifies this case. In other cases, the grievance is that of a politically oppressed minority, where the justice can...
take the form of the minority being denied access to the vote or to public office, the right to worship in its own religion, or the right to use its own language. The French wars of religion in the 16th century and the recent conflict in Sri Lanka exemplify this case. In these cases, alleviatory justice requires political reform.

Generally speaking, the aim of alleviatory justice could be intrinsic, instrumental or both. When the Athenian democrats reformed the political system after the defeat of the oligarchs in 403 BC, it was both because they realized the intrinsic value of the rule of law, as distinct from unconstrained popular sovereignty, and because they wanted to eliminate the root cause of the oligarchic coups. When Henri IV, after converting to Catholicism, granted the Calvinist minority the right to worship in their fortified cities, it was partly an instrumental measure designed to end the devastating wars, but also a measure designed to satisfy his former co-religionists. Economic redistribution may be sought for its own sake and granted as a means to social peace and conflict-prevention.

The main components of transitional justice are punishment of wrongdoers and reparation for victims, either in the form of compensation or of restitution of property. In addition, one often observes purges in the civil and military administration. Punishment of wrongdoers and reparation for victims are easily justified on intrinsic grounds. The former can be said to deserve punishment, the latter to deserve reparation. Instrumental arguments are more difficult to assess. According to one argument that is widely used in the human rights community, severe punishment of wrongdoers is needed as a “signal to the future” that will dissuade potential dictators or insurgents from trying to grab power. As I shall explain, I do not find that argument persuasive. Similarly, in Czechoslovakia after 1989, many argued that unconditional respect for the pre-Communist property holdings was required to send a signal to foreign investors. In light of the important if elusive factor of confidence in financial matters, that argument may have had a better justification. According to a further instrumental argument, retribution and reparation are needed to stabilize the post-transitional society. I shall return to that issue as well.

In processes of transitional justice, retribution and reparation can serve as substitutes for each other. If large-scale compensation would be too costly in economic terms, severe punishment of wrongdoers can serve as a partial substitute. I mention this as a conjecture, for which I have no strong evidence. It seems plausible, however, that lack of compensation to victims might at least fuel their demand for punishment. Conversely, if retribution would be too costly in political terms, restitution can serve as a substitute. For this effect, there is some evidence. When the West German government enacted generous reparations after World War II, it was partly to deflect attention from the very modest prosecution and purges of former Nazi offi-
cials. It has also been argued that the Chilean reparations after 1990 served as a substitute for retribution. Some who were entitled to reparations refused them as “blood money”.

The relations between reparative justice and distributive justice are complex. On the one hand, they compete for the same resources, which, in times of transition, are often very scarce. On the other hand, they are based on different principles. Reparation is backward-looking and entitlement-based. To the extent that distributive justice is alleviatory, meaning that it is oriented towards conflict-prevention, it is forward-looking. In the aftermath of conflict, however, there will also be a mass of suffering that justifies redistribution on present-oriented grounds of acute need. Among the three million displaced persons in Colombia, out of a population of 45 million, a large fraction do not fall under the provisions in the Law on Justice and Peace that would entitle them to land.

In many transitions, alleviatory justice is not a major consideration. Although the initial impulse of the Allies in 1945 was to prevent Germany from ever again being able to wage war, that concern did not survive the beginning of the Cold War. In countries that had been occupied by Germany, the fear of a resurgence of Nazi movements in the future was nil, as was the fear of a rebirth of Communism in the 1989 East European transitions. In these last transitions, the main concerns were retribution, reparation, and some measure of redistribution. These could be combined in various ways. In Romania, one imposed an upper limit on the size of restituted plots to liberate some land for the formerly landless. In Czechoslovakia, the decision to restitute land in kind rather than to compensate the former owners financially was motivated, among other reasons, by the desire to prevent the property from ending up in the hands of the former Communists.

A very general tension between backward-looking entitlements and present needs arises in cases of dual ownership. Sometimes, property is confiscated by the state in the pre-transitional regime and then distributed or sold to new owners. This took place in Athens in 403 BC, in England in 1648, and in France in 1793. This was also the case for Jewish property in France during World War II and for communist Europe after 1945. In other cases, original owners have been forcibly dispossessed of their property or possession by war or civil war, and others have taken their place. This also includes the very important and common case of forcible sale of property at artificially low prices. After the transition, the four possible solutions have all been observed. First, the property may then be returned to the original owner without compensation to the new one, as happened with Jewish property in France after 1945. Second, it may be returned with compensation, as sometimes happened in England after 1660. Third, it may be retained by the new owners with compensation for the original ones, as was the solution chosen by France in 1815. Finally, it can be retained
without compensation, as was the case after 1989 for German properties that had been confiscated by the Soviet Union between 1945 and 1949. The choice among these solutions seems to depend, first, on the time between the dispossession of the original owners and the regime transition, and second, on the good or bad faith in which the subsequent owners acquired the property.

**Truth**

I now turn to the search for *truth* in post-conflict situations. The search can take a variety of forms, institutional as well as personal.

This search takes an institutional form in *truth commissions* set up to uncover and document political wrongdoings that took place before the transition. Since all wrongdoings have perpetrators and most have victims, the commissions will often provide information about these as well, always about victims and sometimes about perpetrators. I shall discuss the intended and probable effects of these institutions later in the talk.

In Poland, Romania, Estonia, and Lithuania, security files have been used as an instrument of truth revelation, by creating an incentive for individuals to tell the truth about their involvement with the pre-transitional regime. In this procedure, known as “lustration”, individuals seeking elective or high appointive office are asked whether they ever collaborated with the security services under Communism. If they answer Yes, voters or administrators are free to elect or appoint them — or not. If they answer No and are later found out to have lied, they are blocked from office for a certain number of years. I shall return to the intended and probable effects of lustration.

Some procedures aim at acknowledging the truth rather than, strictly speaking, discovering it. An example is judicial rehabilitation, which occurs when an unjust conviction or condemnation from the previous regime is formally cancelled under the new regime. To cite only one example among many, in Mongolia after 1992, the Supreme Court has rehabilitated 22,000 victims of Stalinist repressions. The process provides a certificate of rehabilitation to the families of the victims, with no compensation for economic loss, wrongful death or other harms illegally inflicted by the Soviet State. The aim is presumably to provide satisfaction and a sense of closure to the families.

Whereas rehabilitation is victim-based, *official apologies* offer a perpetrator-based acknowledgement of the truth about past wrongdoings. Melissa Nobles has documented 60 such apologies over the last half century, more than half of them made by heads of state and the vast majority relating to World War II or to the origins of national settlement. Very recently, the British Prime Minister offered his apologies for the 1974 events of Bloody Sunday in Ireland. With a few exceptions, these apologies do not go together with compensatory measures. When
apologies are both given and asked for, the demand for an apology is determined mainly by a sense of grievance, and the supply often by electoral concerns. In some cases apologies are given but not asked for, and also conversely.

The search for truth may also be a matter of personal choice. In several post-Communist countries, individuals may ask to get access to their security files, notably to discover whether friends or family members had informed on them during the Communist era. A friend from the former East Germany told me that she needed to consult the files to get her past back. She wanted to know whether she was denied promotion because she was thought incompetent or because she was considered politically unreliable, and whether her boyfriend stopped seeing her on his personal initiative or because someone told him to.

Peace
In any post-conflict situation, the establishment of a durable peace is of overwhelming importance. Most obviously, this requires the cessation of open armed conflict. In addition, the cessation of virtual conflict is highly desirable, since if everybody acts on the assumption that the war might resume tomorrow, that outcome is more likely. Among the measures that can prevent such self-fulfilling predictions, one can cite the demobilization of armed personnel, the handing in of guns and the presence of an international peacekeeping force.

Building a new and stable society also requires what one might call civic peace. I shall understand that situation as characterized by a low level of ordinary criminal violence, some form of psychological healing, and a cooperative attitude of public officials to the post-transitional regime. To put it the other way around, factors undermining civic peace include high rates of crimes against persons, strong emotions of hatred and resentment, and sabotage of the new regime by agents and collaborators of the former regime. The failure of the first French restoration in 1814 was due in large part to the lenient purge of officials and officers who remained loyal to Napoleon. It is, therefore, a clear case in which insufficient transitional justice caused the collapse of the post-transitional regime. When Louis XVIII came back after the Hundred Days, he did not repeat his mistake.

Justice and truth
Justice may serve the goal of truth, when truth is produced as a by-product of the ordinary workings of the justice system. Trials of wrongdoers will make the wrongdoings known to the public, especially if they are tried on camera rather than in camera. The Nuremberg trials served this function, as did the trials of the Argentine military in the 1980s. In the latter country, when “the trial to the members of the military Juntas was initiated […] the everyday media were flooded by the horrors of state terrorism".
Truth may also serve as a substitute for justice. Truth commissions, in South Africa and elsewhere, are typically created in circumstances where the leaders of an autocratic regime retain enough power to block or severely limit the extent of penal proceedings after the transition. The creation of truth commissions can then serve as a compromise. In many countries, their main task has been to document wrongdoings and identify victims. In a few cases, notably South Africa and El Salvador, the task of identifying wrongdoers has also been part of the mandate of the commissions. In South Africa the exposure of wrongdoers did not lead to their prosecution if the commission found that their crimes were motivated by political aims rather than by malice or greed. The truth commission in El Salvador also named the wrongdoers, but parliament granted them a full amnesty five days after the report was published.

Yet even in the absence of a mandate to name perpetrators, truth-finding can reveal their identity. In Argentina, on a parallel track to the trials of a small number of military personnel, the government created the National Commission of the Disappeared, which documented 9,000 persons who had “been disappeared”. The commission itself did not name perpetrators, but someone inside it leaked 1,351 names to the press. Although Brazil never had an official truth commission, the Archdiocese of Sao Paulo secretly prepared a report on “Torture in Brazil” that received wide attention when it was published in July 1985. Five months later, the Archdiocese published the names of 444 torturers. In Chile, the truth commission documented 3,000 human rights violations and recommended extensive reparations. Although the report did not name perpetrators, the Communist party paper, El Siglo, published the names of human rights violators.

In such cases, public knowledge of the identity of wrongdoers may, at least partially, serve the purposes of justice. The wrongdoers are not jailed, but exposed to public contempt, which, according to Adam Smith, can be even worse. “Compared with the contempt of mankind, all other evils are easily supported”. In addition to being targets of contempt and ostracism, known wrongdoers may also suffer physically. In Argentina, one navy captain who was well known for his brutal acts suffered dozen of attacks by strangers on the street or people who say he tortured them and their relatives.

Shaming and revenge, even when based on accurate information, do not amount to justice, however. In a civilized society, justice should be left to the courts, not to observers of wrongdoings or to victims of wrongdoings. This statement is even more obviously true when names of wrongdoers are made public without proper verification of their guilt. In these cases, we are dealing with allegations, not with findings. In several post-Communist countries, lists of large numbers of alleged informers or collaborators have been posted on the Internet: 75,000 in the Czech Republic and 160,000 in Poland.
The security archives on which the lists were based are notoriously both incomplete, as full-time members of the security forces were usually not listed, and inaccurate, as some files were mere fabrications. In other words, the lists are likely to contain both false positives and false negatives.

Although one can easily imagine the reactions of the individuals who were named, there has not, to my knowledge, been any systematic study of the subject. In a small-scale precedent from 1998, an unknown organization in Lublin (Poland) published the names of 119 persons who had allegedly cooperated with the militia before 1989. Two of the individuals who were named killed themselves. It seems plausible that the longer lists have had similar effects. Arguably, this “rough justice” is worse than abstaining altogether from seeking justice. Unlike the Latin American cases, there is not even the excuse that ordinary legal prosecution was unavailable.

Truth may also be an instrument for providing justice to victims. This idea comes in a modest and in a more ambitious version. In the modest version, fact-finding by truth-commissions can lay the factual groundwork for reparations to victims. The South African and Chilean commissions, for instance, performed this task. In South Africa it did not make much of a difference, but in Chile this work was very important.

The South African Commission also made the more ambitious claim that truth can contribute to healing and “restorative justice”. It is not quite clear to me what is meant by restorative justice. Mostly, it seems closer to what I called civic peace. I shall discuss it, therefore, when I consider the relation between truth and peace. For the same reason, I postpone until later the discussion of the effects of judicial rehabilitation and official apologies.

**Justice and peace**

In 1944, Henry Morgenthau, Secretary of the Treasury in the Roosevelt administration, devised a plan for how to deal with Germany after it was defeated. He wanted to set the clock back to 1810, and turn the country into a “pastoral economy”. The coal mines in the Ruhr should be flooded or dynamited and sealed for fifty years to make the Germans “impotent to wage future wars”. The Germans should be prohibited from developing any kind of industry that could be converted into military production (ploughshares into swords). “If you have a bicycle, you can have an airplane. [...] If you have a baby carriage, you can have an airplane.” Although Morgenthau initially persuaded both Roosevelt and Churchill to go along with his plan, they backed off when it became clear that it might have negative effects on the conduct of the war and delay the peace. Knowledge of the extreme severity of the expected punishment would stiffen the German will to resistance. For this reason, among others, the plan was not implemented in its draconian form.
Justice and peace have been at odds in other cases too. In Bosnia, France and Britain "saw the issue of war criminals as a potential impediment to making peace in ex-Yugoslavia, binding the hands of policymakers who might have to cut a deal with criminal leaders". Similarly, a “perverse scenario of inducing a dictator to fight for his survival may have happened recently when the prosecutor for Sierra Leone’s International Criminal Tribunal indicted Charles Taylor in Nigeria. This action prevented diplomatic efforts from striking a deal with the former dictator, who arguably could have facilitated a smoother transition".

We have to be careful, though, in characterizing all these conflicts in terms of justice versus peace. Morgenthau’s desire for a heavy punishment was based on a desire for vengeance rather than for justice. In recent discussions, the issue has often been stated as one of short-term peace versus long-term peace. The demand for severe punishment of dictators and autocrats has been based on the argument that courts must set a clear precedent to dissuade would-be dictators in the future, even at the cost of prolonging the conflict in the present. As Otto Kirchheimer noted some fifty years ago, however, the precedent might “backfire [...] if it induced the leaders of a future war to fight to the bitter end rather than surrender and face the possible future of war criminals.” It is possible, although in my opinion psychologically implausible, that some aspiring dictators might refrain from grabbing power because of the consequences of losing it. It is certainly plausible that the same fear may cause dictators to hang on to power longer than they would otherwise have done. I have yet to see a convincing argument why the first of these effects would dominate the second. Diane Orentlicher, a prominent scholar in the human rights community, merely asserts, with no argument (and one example), that “the prospect of facing prosecutions is rarely, if ever, the decisive factor in determining whether a transition will occur”. If that were so, why would the prospect of facing prosecution be a decisive dissuasive factor?

Even if an argument to that effect were forthcoming, the advocates of severe punishment would have a hard task. They would have to show not only that the expected smaller number of future conflicts offsets their expected longer duration, but also that the net effect in the future exceeds the costs of a delayed peace in the present. If one believes – as I do – that neither of these arguments can successfully be made, the idea of “sacrificing peace for justice” by punishing dictators severely has no foundation. In fact, an argument could be made for treating all dictators leniently, if I am right in my belief that this policy would reduce the duration of current and future conflicts while having little impact on the number of conflicts.

Yet a policy of leniency could run into either of two related problems: unpopularity and lack of credibility. The population at large may require that those responsible for wrongdoing and
atrocities be severely punished. If they are not, the government might fall and the peace process might come apart. The wrongdoers, however, may not be willing to step down if they face the prospect of spending the rest of their lives in prison. The question, then, is whether there exists a degree of punishment that is severe enough to satisfy the population and mild enough to satisfy the wrongdoers. In Colombia this window seems to exist, because of the threat of extradition to the United States that, as recent events show, is a highly credible one. At the same time, the Justice and Peace Law opened for the possibility that drugs lords could go free or receive reduced sentences, and at any rate escape extradition to the US, by virtue of the clause that granted amnesty for crimes with an “indirect” political purpose, the drug trafficking being a “means” to finance political ends. This clause was later struck down by the Constitutional Court.

As I remarked earlier, the Law in its original form was negotiated between the government and the paramilitaries. The fact that this crucial clause was struck down by the Court points to an intrinsic problem in the negotiated settlement of conflict in a democracy. When the government negotiates with insurgents or paramilitaries, the latter know – or should know – that the government is constrained by parliament and the courts. It is in fact a defining characteristic of democracy based on the separation of powers that the government cannot force the legislative and judiciary branches to uphold its promises. This has been an acute issue in Latin American as well as in East European transitions. In Colombia, the threat of extradition was credible because the government had both the power and the motivation to carry it out if necessary. By contrast, the government could not make a credible promise of amnesty for political crimes.

So far I have discussed tensions between peace and transitional justice. There is a need, however, also to address the relation between peace and distributive justice, a question that is especially important in the aftermath of civil wars that had economic injustice as their root cause.

The following anecdote provides an illustration. In one of the conferences in Bogotá that I mentioned at the outset, James Fearon at Stanford University made the following remark. “If a conference on political conflicts in Colombia had taken place here forty years ago, the name most frequently cited would have been Marx. Today, it is Hobbes.” In Colombia today, Hobbesian violence rather than Marxian exploitation is perceived as the main social ill. To create a durable peace, however, it is not enough to address the issue of violence by measures of transitional justice. One will also have to address the issues of exploitation, inequality and poverty by measures of distributive justice. Land reform is even more needed today than in the past, because of the vast landed properties concentrated in the hands of drug lords and paramilitary leaders. At the same time, it is more difficult than ever because of the close links between land-owning members of parliament and the drug lords.
Given the need for both transitional and distributive justice, governments face the problem of allocating scarce resources. They must decide whether to give priority to compensating victims of the conflict itself or to improving the situation of the landless poor in general. In abstract terms, should compensation be made on the basis of entitlement or need? The aim of a durable peace may favor the latter criterion and that of transitional justice the former. Whereas redistribution often encounters great resistance among entrenched elites, transitional justice may command greater agreement. As Maria-Paula Saffon has argued, transitional justice in the form of restituting land to those who can document ownership may be the maximum that is politically feasible. In the current demobilization process in Colombia, scarce resources are also devoted to subsidizing the ex-paramilitaries to prevent them from taking up their arms again. Although this may be a necessary measure to ensure a durable peace, victims of the conflict may see this subsidy to perpetrators as deeply unjust.

**Truth and peace**

Truth commissions can preserve peace – in the sense of an absence of armed conflict – by making it impossible to deny that massive wrongdoings took place prior to the transition. In South Africa, many members of the white elite might have refused – in more or less good faith – to believe claims about apartheid wrongdoings had they not been so fully documented in the hearings of the Truth and Reconciliation Commission. The work of the commissions in Argentina and Chile also made it impossible to sustain the myth that the dictatorships were justified by the task of weeding out of criminal or subversive elements. If the truth had not been publicly recognized, the new regimes might have been jeopardized and the previous repressive regime been restored. The work of the truth commissions underwrote the enormously effective message “Never again”.

Truth can also have an important impact on civic peace. If agents and collaborators of the old regime remain in high office after the transition, there is a risk that they may either work actively to undermine the new regime or be vulnerable to blackmail by members of the former security services who are aware of their past involvement. For both these reasons, it is important to find out the truth about their past. As noted earlier, the process of lustration is oriented to this end. In fact, lustration serves justice as well as peace. Since individuals who are caught lying about their past are sanctioned not for “what they did then” but for “what they say now about what they did then”, the problem of retroactivity that often mars processes of transitional justice does not arise.

A variety of lustration is also used in the Colombian peace process. The Justice and Peace Law has created the possibility of “gambling with the truth”, by offering the incentive of reduced sentences in exchange for full confession and reparation to
victims. If a serious wrongdoer does not apply for the benefits provided by the Law and then loses the gamble because he is found out, he faces ordinary criminal law sentences. These are five or ten times higher than those imposed for similar crimes by the Justice and Peace Law. If he wins and if his crimes are not discovered, he remains free. The efficacy of this procedure obviously depends on the government’s knowledge about serious crimes, or more accurately on the belief of the wrongdoers about the government’s knowledge, and on its capacity to enforce prosecutions.

I now return to the idea that truth commissions may contribute to healing and social peace. When truth-finding does not go together with retributive justice, this claim seems intrinsically implausible. Knowledge about wrongdoings may be painful if one also knows that the wrongdoers will go free. Even when the ideal is truth with justice, it follows from the general theory of the second-best that truth without justice is not necessarily desirable. From the victim’s point of view, knowing who the offender is and knowing that he will go free is likely to generate resentment and bitterness rather than catharsis and healing. Given offender immunity, ignorance about offender identity might be better. According to one recent comprehensive survey, however, “we lack clear evidence that truth telling produces psychological benefits for victims, or that healing at the individual level correlates with group-level reconciliation and other society-level outcomes”. Although my inclination is to believe that truth telling will do the victims more harm than good, the empirical jury is still out on the question.

It is sometimes claimed that truth could also emerge and produce restorative justice through the direct encounter between victims and perpetrators. In a document produced by the Economic and Social Council of the United Nations, we read that in South Africa, “the interaction between victims and perpetrators of human rights abuses [...] helped [...] to dispel the perception that the perpetrators were exempt from punishment [...] This exchange [...] humanized some of those who committed human rights abuses, giving them the opportunity to appear as hostages of a system they could not control”. Although there is no evidence to prove or disprove this claim, it strikes me, once again, as intrinsically implausible.

In fact, the physical separation of victims and perpetrators might be more desirable. The amnesty that the Athenian democrats granted to the oligarchs in 403 BC went together with a demand that the oligarchs leave the city. They were allowed to come back later, when emotions had cooled down. According to the statement I just cited, the emotions would cool down as a result of interaction. The French wars of religion came to an end only when the Protestants were granted their own fortified cities, after the failure of earlier attempts to have Protestants and Catholics coexist on a local basis. Referring to Bosnia, Monika Nalepa writes that “the strategy developed by the War Crimes...
Chamber staff is to begin prosecutions with those perpetrators who are most visible in public life. If administered consistently, this will gradually create an incentives mechanism for former perpetrators to shy away from public office [...]. This outcome also satisfies victims, who are not confronted by the glaring presence of their former perpetrators on a daily basis”. In the Colombian context, a relevant measure might be to ensure that demobilized paramilitaries and members of guerilla forces do not resettle in areas where they inflicted harm on civilians.

Moreover, truth itself, or the speaking of truth, might not be desirable. A striking feature of the edicts of the French wars of religion is the ban they imposed on making any references to past conflicts. As we know from other cases, such “gag rules”, taking certain topics of the table, can sometimes be quite effective.

Let me also return to judicial rehabilitation and official apologies. In itself, rehabilitation can do no harm and may do some good. Nevertheless, there is an obvious risk, that it may serve as a costless substitute for other measures that would have economic or political costs. As I noted earlier, in Chile after Pinochet and in Germany after 1945, governments awarded tangible reparations because of the high political costs of punishment of wrongdoers. In Mongolia, the government may have carried out symbolic rehabilitation because of the high economic cost of tangible reparations.

Official apologies constitute a deeper problem. Over the last 50 years, governments all over the world have expressed regret, remorse and apologies, as well as asking for forgiveness, for what their predecessors did at various times in the past. Sometimes they have used more impersonal language, as when deploring these past actions or acknowledging that they were wrong. Whatever their political or psychological efficacy may be, the moral status of these statements is highly ambiguous. Often, they are nothing short of meaningless. For a country to deplore what its government did in the past does not seem to differ from deploring what other governments are doing today. To apologize for what dead individuals did to other dead individuals is absurd on metaphysical grounds. Even when some of the victims are still alive, for others than the perpetrators to apologize is an equally empty gesture.

It may be objected that if the victims request and obtain some satisfaction from an apology, these metaphysical scruples are excessive. Even if meaningless, the apology does no harm and may do some good. I strongly disagree, however, with the claim that apologies are harmless. Apologies for what people who are no longer alive did to other people who are no longer alive tacitly presuppose a form of essentialism with respect to nations or ethnic groups. When Germans today apologize for what their grandfathers did before 1945, or David Cameron apologizes for the events on Bloody Sunday that took place
when he was five years old, they tacitly presuppose that the German or the English nation persists as a collective entity over time and that this entity, as such, can be held morally accountable. This view is not only a flagrant violation of ethical individualism, but in my view downright pernicious. Anything that reinforces essentialism also reinforces the tendency to blame and punish individuals on the basis of their membership in a group. The history of anti-Semitism bears witness to this fact. Ethnic violence all over the world – just think about Serbia and Kosovo – is fueled by the assumption that “the other” is intrinsically evil or intrinsically inferior. Although apology-making may have some short-term benefits, there is a real danger that the cumulative long-term effect of this practice will be to cause more acts for which future apologies will be needed.

I want to conclude, therefore, with a general warning against what one may call iatrogenic effects of implementing justice, truth and peace in transitional processes. In medicine, the term is used for any adverse condition in a patient resulting from treatment. In this talk, I have discussed several iatrogenic effects. Apologies will reinforce essentialist beliefs that encourage actions for which more apologies may be needed. Credible threats of severe punishment of autocrats will cause them to hold on to power longer than they would otherwise have done. The search for truth about wrongdoings without punishment of wrongdoers will cause resentment and hatred rather than healing and reconciliation. Forcing victims and perpetrators to interact will have the same negative effects. A focus on transitional justice will cause neglect of alleviatory and distributive justice and, as a result, undermine the stability of the transition. The search for rough justice will on balance create injustice, if we believe with Blackstone that it is “better that ten guilty persons escape than that one innocent suffer”.

In making these claims, I asserted that the iatrogenic effects will arise, rather than that they may arise. In truth, my evidence does not quite support this strong language. My statements should be understood partly as a research agenda, partly as a warning against a certain form of political correctness. In these matters of life and death, nothing is as irresponsible as to base policy proposals on poorly supported causal assertions. The only claim about which I feel fully confident concerns the danger of official apologies. They presuppose essentialism, which is both demonstrably false and demonstrably dangerous.
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