

test. He doesn't pass or fail it: it is simply dissolved.

That this white-douily romance should come from the man who wrote *The Water Engine* and *House of Games* and *Edmond* and *Glengarry Glen Ross*, among others, is a bit frightening. His last work was an

adaptation of Rattigan's *The Winslow Boy*, an effective old-fashioned piece of theater in which we had to admire his skill in controlling such old-time machinery, so far from his time and tender. But he has created *State and Main* from the start and in a factitious manner, with

none of the fierce, caustic morality underlying so much of his work. One keynote of his mind has been his interest in deceit, his perceptions about the use of flimflam in modern life and in modern mouthings about life. *State and Main* is itself a deceit. ■

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## Tribunals, apologies, reparations, and the search for justice.

# In Search of Lost Crime

By TZVETAN TODOROV

### I.

**T**HE END OF World War II in Europe awakened hopes as great as the catastrophe that had just occurred. Once evil was defeated, it was believed, a better world would come to pass, in which everyone would have the same rights and enjoy the same freedoms, in which peace and prosperity would be the common lot. But disillusionment followed swiftly: not only had the devastation of the war condemned most of Europe to poverty, but the prevailing political structures did not have such happy outcomes. One of the victorious countries, the Soviet Union, imposed on a large part of the continent a repressive regime that hardly fell short of the Nazi dictatorship. As for the Western countries, they safeguarded the democratic order, but egotism, greed, and even cruelty continued to taint everyday existence within each one of them. The enormous suffering of the war seemed to some to have served almost no purpose, and the world appeared to carry on pretty much as before.

Profiting from the distance of half a century since that sobering period, we can say that in reality a change in public life did come about. There *did* occur a step (or several steps) in the direction of greater justice; and this positive conclusion withstands the many qualifications and restrictions that must be heaped upon it. The development in question concerns primarily the European continent, but it may serve also as an incentive

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TZVETAN TODOROV is the author, most recently, of *Voices from the Gulag* (Pennsylvania State University Press). This spring, Princeton University Press will publish *Fragility of Goodness: Why Bulgaria's Jews Survived the Holocaust*.

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STAY THE HAND OF VENGEANCE: THE POLITICS OF WAR CRIMES TRIBUNALS  
by Gary Jonathan Bass  
(Princeton University Press, 368 pp., \$29.95)

THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES  
by Elazar Barkan  
(W.W. Norton & Co., 464 pp., \$29.95)

THE POLITICS OF RETRIBUTION IN EUROPE: WORLD WAR II AND ITS AFTERMATH  
edited by Istvan Deak, Jan T. Gross, and Tony Judt  
(Princeton University Press, 368 pp., \$65)

FOR HUMANITY: REFLECTIONS OF A WAR CRIMES INVESTIGATOR  
by Richard J. Goldstone  
(Yale University Press, 152 pp., \$18.50)

UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY  
by Priscilla B. Hayner  
(Routledge, 304 pp., \$27.50)

TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS  
edited by Robert I. Rotberg and Dennis Thompson  
(Princeton University Press, 296 pp., \$55)

elsewhere. As we might have expected, the change concerned words more than deeds, official declarations more than secret manipulations; but words, too, have a transforming power. The exceptions are numerous, and sometimes shocking; yet they are now perceived to prove a rule that conforms to the idea of justice.

One of the most visible forms of this transformation is the public condemnation of racism. This does not mean that racist attitudes have disappeared; but even the political movements of the extreme right, heirs to the openly racist parties of the interwar period, dare not proclaim this ideal publicly, and even they maintain at least an external adherence to the common credo of universal human rights. If we recall for a moment the public debates of one hundred years ago, we can measure how far we have come: in those days, a good number of the best minds of the time displayed a perfectly serene racism. Moreover, a parallel transformation has taken place in the role of women, who have become for the first time in history political subjects on an equal footing with men. And there is more. Public gestures are made today that are also without historical precedent: governments voluntarily acknowledge having acted badly in the past, and try to repair the damages for which they feel responsible.

These steps toward an ideal of justice are accompanied by a transformation of the narrative that we like to tell ourselves about our past. Of course, every community needs to present its past in the form of a story filled with moral judgments in which it plays a favorable role; but the form of these stories can diverge. Until the middle of the twentieth century, the narrative favored by the Western public attributed a heroic role to our own community: we were engaged in a great and

worthy struggle, and we triumphed over our adversary. But in recent decades there has been a change of paradigm, and the favorite story is now a melancholy tale in which we play the role of victim. The change is twofold: it is the vanquished, not the victor—the weak, not the strong—who are now valorized; and the one who has suffered most has the greatest claim on our sympathy.

Today the victory won has less prestige than the suffering endured. An example from recent French history can illustrate this moral and cultural transvaluation. In the aftermath of World War II, the greatest respect was paid to political deportees, to former resistance fighters: they had acted against the evil, and so they deserved our gratitude. The very existence of “racial” deportees, of surviving Jews, was often passed over in silence. Thirty years later, the situation is reversed. The former resistance fighters feel neglected, and attention is paid to the victims of anti-Semitic persecution, who were the objects of the supreme crime, the crime against humanity. They had committed no punishable acts. They were persecuted for what they were, not for what they did, and therefore the harm inflicted upon them was even greater.

This profound change is perhaps explained by the progressive consolidation of the democratic model. The heroic ideal, after all, is an aristocratic one: everyone knows that we are not all made of the stuff of heroes, so we are satisfied to admire them from afar, the way the British enjoy the splendor of the royal family. The role of victim, alas, is accessible to all, and we have no difficulty projecting ourselves into it. But the usurpation of the narrative of heroism by the narrative of victimhood testifies to a more positive development, too: to the reinforcement of the idea of justice among us. Who would lay claim to the status of the victim if he had no hope of seeing his suffering acknowledged, and of obtaining reparation? This evolution in the direction of a greater public decency is a sign that the modern period has turned its back on the Nietzschean precept: “The weak and ill-constituted shall perish: first principle of *our* philanthropy. And we shall help them to do so.” We prefer instead to help the weak to survive, and to flourish; and we prefer to offer apologies and restitutions.

## II.

THIS SLOW TRANSFORMATION of public life after World War II also explains the appearance of a new preoccupation: the repairing not only of present injustices, but also of the injustices of the past. This reparation has taken

several forms, modified in turn by the historical and political context of each country; and the books that I am discussing here attempt to evaluate most of these attempts. It must be said at the outset, before entering into detail, that the picture is far from rosy. The means that are used to advance the cause of justice sometimes impede it, and the reparations chosen sometimes create problems no less serious than the problems that they were designed to solve. Still, the very existence of these attempts testifies to a timid progress in the idea of human rights—and in this terrible field, a small improvement is a big improvement.

Reparation for past injustice has been sought in three major ways. The first is in the law, in the judicial sphere, and it targets former criminals, with punishment meted out by a tribunal charged with judging the past. The second is oriented toward the public life of the community and uses the instruments of politics or culture to address the victims, providing them with symbolic or material compensation. The third is aimed at the community as a whole, with the goal of restoring the unity of a scarred society by establishing the truth about its past. The most notable among its means are commissions of inquiry, such as the Truth and Reconciliation Commission in South Africa; and its field of application is communal memory. These different interventions in the name of justice also seem to have their continents of predilection: continental Europe prefers legal redress; the Anglo-Saxon world, from North America to New Zealand, tends to opt for the compensation of victims; and Africa, Latin America, and parts of Asia favor commissions of inquiry. But these divisions are not exclusive.

THE SEARCH FOR justice has occurred both nationally and internationally. The end of World War II was followed by a number of trials, mostly in the European countries, as well as by punitive measures applied to various groups in the population. This led to “ethnic cleansings” of hitherto undocumented proportions: around fifteen million Germans were expelled from Eastern Europe, along with hundreds of thousands of Poles from Ukraine, Hungarians from Slovakia, Albanians from Greece, and so on. These different measures to repair a past injustice within each country are investigated by a variety of scholars in *The Politics of Retribution in Europe: World War II and Its Aftermath*.

There were many trials conducted during the period of “purification,” and examining them today provokes mixed feelings. The general problem is sharply summed up by Tony Judt: “How do you punish tens

of thousands, perhaps millions of people for activities that were approved, legalized and even encouraged by those in power?” The principle of justice is the application of the law—no crime without law, no punishment without law; but the law did not prohibit these outrageous acts. Should the political choices of the past be punished because they are no longer in force today? Should all the members of the fascist party in Italy be punished, when belonging to the party was obligatory for all civil servants?

Justice adapts itself to this challenge somewhat imperfectly. It begins by transgressing one of its major principles, by applying laws retroactively, and it proceeds by frequently contravening another of its sacred rules, that of individual responsibility. Political organizations and social institutions are declared outside the law; and so to have participated in them becomes a crime, even without one having done anything personally. But this multiplication of the guilty is moderated by a careful selection of those brought to justice. The situation lends itself well to the designation of expiatory criminals: the Germans were to blame, say collaborators in all the occupied countries; the Nazi leaders were to blame, say ordinary Germans. Bad reputation often counts more than acts actually committed; punishment is by example. One illustration of the relativity of such justice is found in the disparity of the sentences imposed for the same crimes, depending on when they were meted out: in 1945–1946, the death sentence was standard; but two years later, culprits got away with purely formal condemnations.

These reparatory trials were certainly imperfect—but they also seemed to be necessary. They performed a function other than the operation of justice, a function better described by religious or medical metaphors than by legal or judicial terms: the purification and the sanitization of the social body. The majority of the population had participated in what appears now to be a mistake—more, a crime; and in order to free themselves of a vague feeling of guilt and to be able to live with a light heart, people need to practice a bloodletting, a purge, a ritual sacrifice, after which they could declare that they are clean and innocent. In the end, it was better for the institutions of justice to take on this work of expiation than to allow the exorcism of guilt to degenerate into mass violence and lynchings—even if what took place was not, strictly speaking, an operation of justice. And several years later the respective governments short-circuited justice in another way, by declaring that the most urgent priority was now social peace and social order, and establishing

an amnesty or a statute of limitations, and even freeing those who had earlier been condemned. In each of these instances, justice was instrumentalized, and made subordinate to the immediate well-being of the community.

### III.

**A**ND WHAT OF international justice? Gary Jonathan Bass's well-researched book is a fine introduction to this second judicial practice. Its subject is the prosecution of war crimes. Bass shows, for a start, that this form of justice was not invented at Nuremberg, as we generally believe. He traces the first hints of the practice in the aftermath of Napoleon's defeat at Waterloo, and then he analyzes some trials that ended badly: at Constantinople in 1919, where the Turks were held responsible for the Armenian genocide (it was on this occasion that the expression "crime against humanity" was coined); and at Leipzig in 1921, where the Germans, beginning with Kaiser Wilhelm II, were held responsible for World War I.

Finally Bass examines the more recent and more familiar case of Nuremberg, and also of the international tribunal at The Hague, where judgment is currently being brought against the political and military leaders responsible for the break-up of Yugoslavia and the horrors that were perpetrated in its wake. Bass is an ardent advocate of this type of trial, though he exposes its many weaknesses. His arguments are not entirely convincing. He claims that this instrument of justice, imperfect as it is, is preferable to the vengeance of individuals, which is true; but surely these two forms of intervention do not exhaust the field of moral and legal possibilities. He also argues that only liberal regimes have practiced this form of justice, and deduces the virtue of this practice from that fact. But his deduction assumes that everything that liberal regimes do is good, which is an arguable assumption. Surely we can enthusiastically support liberal governments but still be critical of some of their political choices.

The judicial condemnation of the German political and military leaders at the end of World War I is, in this respect, rather disturbing. With the distance of eighty years, it is not at all clear that the German government and the German army were more culpable than their French counterparts; the only significant difference was that the French won the war and the Germans lost it. But the French, the British, and the Belgian governments insisted on adding a legal defeat to a military defeat. In doing so, they revealed that the great principles of jus-

tice could be merely a camouflage for a politics of self-interest. Not completely convinced that the effort was worth the price, the Allies abandoned the prosecution several years later. The Leipzig trial was a fiasco.

**B**UT THE STORY of this attempt offers a few useful lessons. Lloyd George, the British prime minister, claimed that "war itself is a crime against humanity," and at a meeting of the Imperial War Cabinet the attorney general held the Kaiser "personally responsible for the death of millions of young men." They demonstrated by these statements that they subscribed to a naive and potentially dangerous utopianism, which hoped to cure humanity definitively of its ills, such as the practice of war, and sought to impute the responsibility for a world war to the will of a single individual. The Italian president Orlando boasted that the tribunal's approach "had nothing to do with interests," forgetting that not all interests are material, and that if a country seeks to appear as the incarnation of justice, that too is a form of political gratification. The French prime minister Clémenceau congratulated himself on the moral revolution that the tribunal represented, which did not prevent him from defending the presence of judges drawn exclusively from the victorious countries with the excuse that "all justice is relative." He added that he was not interested in punishing the Turks responsible for the death of Armenians because the French had not been their victims. And the American president Wilson saw himself as a reincarnation of Jesus equipped with the appropriate military means: "I am proposing a practical scheme to carry out His aims."

The results were rather negative. The Leipzig tribunal did not prevent future crimes. Quite the contrary, it provided nationalist Germans with a reason to fight again, and it compromised the idea of an impartial international organ of justice. Compared to Leipzig, the Nuremberg trials a quarter of a century later were a great success. But this was because circumstances had also changed. Unlike World War I, which was the result of a rivalry of great powers, World War II was actively initiated by only one of the parties involved, and so the guilt of Nazi Germany was much more obvious, much more real. Images of the concentration camps evoked unanimous moral condemnation.

Moreover, Germany was occupied and its leaders were imprisoned. The question that preceded Nuremberg was not: Should the Nazi leaders be punished or should they be freed? The question was, Should they be executed without a trial or should they be tried? Stalin leaned toward

the first solution, and offered his services to eliminate 50,000 or 100,000: he had the experience. The American secretary of the treasury, Henry Morgenthau Jr., cruelly proposed to deport several million Germans to another part of the globe; the Turks did well with foreign populations, he recalled. Churchill and Roosevelt even entertained the possibility of castrating the male population of Germany. Only the stubborn legalism of Henry Stimpson, the Secretary of War, enabled the outcome of the Nuremberg tribunal, in which the accused were provided with counsel, and witnesses had to testify, and a defendant might even be acquitted.

The most troubling aspect of the Nuremberg trial is that the genocide of Jews and other populations—what we call crimes against humanity, and precisely what seems to us to have been the worst reason for establishing such an exceptional jurisdiction—played only a marginal role in the proceedings. The principal accusation against the Nazi leaders pointed in an entirely different direction: that they were guilty of having conducted a war of aggression. It is true, certainly, that World War II was unleashed by Germany's aggressive politics; but it is no less true that other great powers did not hesitate on other occasions to conduct wars of aggression themselves. As for the Soviet Union, in which millions were led to their death by a regime no less repressive than Hitler's, it shared Germany's aggressive policies for a time, occupying the eastern part of Poland while Hitler conquered the western part. For this reason, as Judith Shklar noted, it was "a project of doubtful value" to condemn someone legally for having conducted an unjust war. The presence of the Soviets at Nuremberg posed a problem in itself. Stalin was no less criminal than Hitler, the biggest difference being that the one won and the other lost.

Nuremberg, in its turn, condemned defendants who had not violated laws in force, and punished some for collective misdeeds. Still, the legal innovation of this trial seems justified, and the general effect of Nuremberg was positive. For there is something truly new in totalitarian crimes, in these state crimes that the old legal code had not envisaged; and the introduction of the notion of crimes against humanity into law was a way of remedying this lack. Today, we can no longer claim not to know that certain acts are criminal, whatever the laws of the country in which they were committed. The Nuremberg trial also contributed to the transformation of Germany into a democratic country, even if thirty years later a new generation needed to question the conduct of ordinary citizens in Hitler's Germany, and not only the conduct of its leaders.

N EARLY FIFTY YEARS after Nuremberg, in February 1993, a new war crimes tribunal was instituted at The Hague, to judge those responsible for war crimes in Yugoslavia. Was the creation of this institution justified? The answer to this question is not at all self-evident. As Bass rightly recalls, this tribunal was not the result of a simple desire to see justice prevail. It resulted, rather, from the refusal of the Western powers to intervene in Bosnia militarily or even politically. Public opinion was aroused by the images of suffering regularly broadcast on television; and in order to ease the burden of conscience a little, the tribunal was established. The absence of political enthusiasm for the court hindered its efforts: it lacked the material means that it required, the Western governments refused to lend their soldiers for risky arrest operations, and reliable testimony was difficult to obtain in an ongoing conflict.

Nor did the tribunal's action during the Kosovo crisis garner unanimous support. Charging Milosevic and other Yugoslav leaders with crimes against civilians while the province was being bombed was a somewhat questionable enterprise. The tribunal, financed and sustained by the Western countries, accused the army of the West's enemy of war crimes. It cannot be said, then, that the conditions of impartial justice were respected. In bringing the charge, the prosecutor Louise Arbor gained the attention of the media, but she compromised the idea of justice by making it an auxiliary instrument for the pursuit of political and military ends.

The international tribunal, like other organizations of humanitarian aid, had the obligation not to allow itself to become entangled with the machinery of NATO. Organizations such as Amnesty International and Human Rights Watch were drawing attention to the violations of international law committed by NATO, but their appeals to the Tribunal fell on deaf ears. Acts that were described as "war crimes" when they were committed by Serbs were described as "collateral damage" when they were committed by the Western countries involved.

Current efforts to create an international criminal court are equally dubious. Richard Goldstone, the South African judge who worked at The Hague, has written a disappointing book, in which he tells us more about hotel rooms and restaurant menus than about his underlying philosophy of international justice. Goldstone says that "the unfortunate approach of the United States administration at the Rome conference" has been the major stumbling block to this project. The United States refuses to see one of its citizens charged by

this Court without prior consent; in other words, it refuses to see an international institution take precedence over the decisions of its national government. (President Clinton recently signed the treaty, but nobody expects that it will be ratified by the Senate.) So international justice will not apply to the great powers, it will apply only to relatively weak countries; who will have to fear the reprisals of others. Once again, the idea of justice is damaged.

The American objection aside, we may still wonder if the project of a permanent international court of justice deserves to be defended. It is a noble and generous idea, to be sure; but to be effective such an institution of justice must have at its disposal a police force, and such a force would always be drawn from particular countries and therefore be subject to the orders of particular governments, which might demand that it be exempted from its shared obligations. (Barring, of course, the establishment of a universal state, of the sort dreamed of by totalitarian dictators in the first half of the century—an equally unattractive solution.) Moreover, this international court would be superior to national sovereignties, and so would replace the will of the people, who in a democracy elect their leaders, with the will of competent judges. After all, we can never know the will of humanity as a whole. Such a court, in other words, would replace a democratic principle with an aristocratic one. Would this be progress? I doubt it. The example of Nuremberg, positive as it is, should remain the exception that proves the rule.

#### IV.

THE SECOND GREAT form of repairing past injustices is to concern ourselves mainly with the victims and no longer with the perpetrators. This sort of action is the subject of Elazar Barkan's book, which has the merit of putting together recent cases of restitution, all of them very different, in order to offer a broad vision of this approach. These cases divide themselves into two historical frameworks, one linked to the consequences of World War II, the other to decolonization.

The compensation offered to the victims is either symbolic or material. We should not underestimate the power of symbolism on the pretext that it does nothing for your bank account: this is, in fact, what the victims need most, spiritually and psychologically and socially; and material compensation itself is worth something not least because of the symbolic recognition that it brings. The victims want the evil and the injustice inflicted upon them to be acknowledged,

so that they can reconstruct their identities; they need public sympathy that validates their awful experience in some way, and transforms the violence that they endured into an act that their society condemns. The gestures of acknowledgment can come from their former executioners or later representatives of the culpable state: Willy Brandt kneeling before the Warsaw ghetto monument in 1970, or Jacques Chirac publicly admitting in 1995 the implication of the French state in the roundup of Jews in the Vel d'Hiv in Paris in 1942. In 1998, during a tour of Africa, Bill Clinton admitted to the responsibility of the United States for the practice of slavery.

The first important case of material compensation offered to former victims was Germany's decision to pay reparations to Jewish families stripped of their possessions during the war, and later to the State of Israel—a decision that its leaders, headed by Adenauer, made freely, even if external pressures were not lacking. They judged that this was the necessary price that Germany had to pay to rejoin the family of nations; and those reparations have amounted to more than \$60 billion. Another acknowledgment of historical misdeeds was made by the Congress of the United States in 1988, when it admitted that Americans of Japanese origin had suffered unduly from their internment in camps during World War II; and \$1.6 billion has already been paid in damages to more than 80,000 individuals. American Indians living in the United States and Canada have been allowed to reclaim possession of lands from which they had been expelled in the nineteenth century, by force or by deceptive diplomacy. They have also acquired certain prerogatives that are materially advantageous but of a more doubtful symbolic value, such as the right to have casinos on their lands, a lucrative vice prohibited to most of the American population. Is this a sign that Native Americans, assumed to be morally superior, are not at risk of being corrupted? Or does it express the view that they are already deprived, and so they have nothing to lose?

THIS TYPE OF penance has a good chance of success today, at least in countries such as the United States and Canada, Australia and New Zealand. Needless to say, reparations are not exactly automatic: the victimized group must be well organized, already wealthy enough to pay good lawyers and effective lobbyists, and its demands must not be so excessive that they are impossible to satisfy. The paying states or institutions also find this sort of reparation to be in their favor, buying them an acknowledgment of

their capacity to conduct themselves morally.

This evolution of public morality is new, and it, too, represents a reinforcement of the idea of justice. Yet it also raises problems that are not easily solved. For a start, there is the matter of what we mean by the past. History is very long, and it is not always clear how far back we can go to try to repair the atrocities of yesteryear. In our day, in several Eastern European countries, property lost under the Communist regime is being restored to its original owners. But which dispensation should be reestablished? The Hungarian peasants were deprived of their lands in 1950, in the interests of collectivization; but those lands had been given to them in 1945 by a government in which the Communists already participated. If one of the decisions was legitimate, why not the other? And the regime previous to that one was itself a dictatorship: should all its actions be considered legitimate? It would be best not to get lost in this retrospective exercise, but neither can we ignore the context in which the acts were committed that we would like to undo. That the Soviet army rounded up the artistic treasures it found in its path in Germany in 1945 seems inadmissible today; but if we remember that the German army in Russia was not satisfied with stealing Russian cultural monuments but insisted also on destroying them, we can understand that the Russians may have felt the need for immediate compensation.

These questions may be posed still more sharply with regard to the post-colonial world, insofar as the acts that we are trying to "undo" today are even more distant in time. To hear the demands formulated by groups speaking in the name of former victims, one often has the feeling of being forced into a time machine, in an attempt to erase history as it really unfolded, and to rewrite it in accord with our current moral principles. These attempts are all the more paradoxical in that they are often presented as validated before tribunals that are themselves products of this history, and often refer to a past that is more mythic than true. Was there an indigenous political space that the arrival of Columbus in 1492 destroyed, and should that space be restored today? Before the arrival of the whites in the Americas, were the Indians of America living in splendor—which contemporary society might be obliged to restore—or in squalor? With the lapse of one or two centuries, moreover, the identification of current representatives of the victims and the victimizers poses a problem. The practice of slavery was an evil, but why should the descendants of Irish and Italians who arrived in America at the beginning of

the twentieth century pay reparations today? And to whom should they pay them? There was something futile and false about Clinton's gesture in Africa: he was asking to be pardoned for acts committed two centuries ago, for which he was in no way responsible, even as he was evading responsibility for his own misdeeds. Surely the principle of historical justice collides at some point with the principle of individual responsibility. To make reparations for an injustice toward a living person is a duty; but to do so toward an abstract entity is an action much less binding and much less clear.

We are familiar with the prickly question of the Parthenon marbles, brought to Great Britain by Lord Elgin at the beginning of the nineteenth century, and reclaimed today by the Greek government so that they might be reinstalled in their original place. If such a principle of restitution were adopted, and each country were given back its original possessions, the museums of the Western world would be half-emptied. This would not be a tragedy in itself, but it would mean validating one moment of the past as the only authentic one, and casting the other events of history aside with the judgment that they should not have happened. The demand for reparations is often as much an abolition of history as it is a recognition of history. It is often as much an

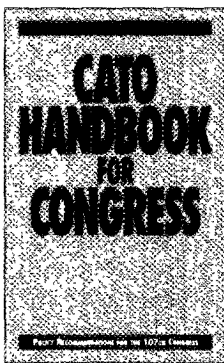
expression of illusion as of knowledge.

Another question concerns how much of an individual's legitimate property deserves to be restored or protected. The demand of Native Americans to retrieve the lands that had been taken from them by governmental agencies in the recent past has a clear and precise meaning—but this is not the case when the property in question concerns their traditions, their religion, or the bones of their distant ancestors. A conflict has arisen in recent years between the Indians of today, who insist that they are the exclusive heirs of their grandfathers' wisdom, and the New Agers who also want direct access to it. Should we prohibit these neophytes from using eagle feathers, from imitating religious rituals such as the sweat lodge and popular decorations such as the dream catcher? The theft of land and wealth may be made good; but we may well wonder whether spiritual works should not more properly be the heritage of humanity, rather than being held under the tribal copyright of their creators' distant descendants. Can we imagine a similar prohibition on the traditions of Buddhists, Muslims, or Christians? We may be shocked to learn that an Internet site offers to everybody "A Sweat Lodge Ceremony," but should we prohibit it?

In all of these conflicts, the rights of the individual clash with the rights of the

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group. In the somewhat distant past of colonized peoples, individuals had no say in the matter; they had to submit to the decisions of the group. But is it legitimate to reestablish such a situation today? Does a present-day descendant of the Sioux have the right to accept compensation for his stolen lands, and as a result renounce the Sioux's right to those lands? Does an individual artist have the right to adapt a traditional heritage to his purposes, or must he devote himself to preserving the tradition, under penalty of seeing himself accused of cultural genocide? Sometimes fidelity to history can also become a form of oppression. These demands to maintain or reestablish the past do not seem to take account of the fact that all living traditions change, and only dead cultures remain intact. The recent promotion of the rights of groups is not necessarily progress: an individual has the right to practice the culture of his choice, to participate in this group rather than that one—but he also has the right to free himself from the pressure of any group.

**F**INALLY, ONE HESITATES to endorse a permanent identification with victimhood. Our world, which wallows in the sentimental and craves the spectacular, grants a privileged place to suffering. The protagonists in situations of conflict know this very well, and try to garner general sympathy by parading their wounds, sometimes going so far as to attack their own camp so that the damages will tip the balance of sympathy in their favor. But the suffering of a group does not prove that its cause is just; and compassion alone cannot take the place of policy. Communal life must be based not on the quantity of pain endured by this or that group of people, but on the equality of rights.

What is more, a person who sees himself exclusively as a victim often remains insensitive to his own responsibilities and to the sufferings that he himself might cause. He is happy to wait for justice to be done. "Victimization empowers," as Barkan remarks; and there are many who would profit from this power. This sometimes degenerates into a competition in wretchedness. Thus some American Jews deny that Japanese-Americans interned during the war should use the expression "concentration camps" and contest the Armenian-Americans' right to speak of "genocide."

To acknowledge one's own mistakes or weaknesses enables one to become involved in a personal challenge and to bring about a moral transformation; but to claim the prerogatives of the victim adds nothing to our moral value. It simply serves our self-interest. Paradoxically,

the positive contribution of the victim to the moral education of society consists in offering the perpetrator the occasion to make amends. From this point of view, the effects of restitution are ambiguous: "No restitution has lifted the burden of victimization, instead it has routinized it," Barkan concludes.

If we want to repair the injustices of the past, it is preferable to address the former victims rather than the former perpetrators. But this orientation itself must be qualified by certain warnings: that past evil must be recognized, but it is better not to identify most intensely and most permanently with the role of victim; that compensation is more appropriate for living individuals than for communities or institutions of the past; that we are better at repairing material losses than at repairing spiritual dispossessions.

## V.

**T**HIS BRINGS US to the third method of reparation, which seeks neither to punish the guilty nor to compensate the victims, but instead to permit an entire community to become reconciled with itself. This objective can be pursued, of course, by punishments and compensations, too; but it has also created certain activities and institutions specifically designed for this end: the commissions of inquiry charged with producing an image of the past that is acceptable to everyone. Priscilla Hayner's book presents a useful inventory of the work of twenty-one such commissions from all over the world; Robert Rothberg and Dennis Thompson's volume is a collection of essays devoted to the best known of these bodies, the Truth and Reconciliation Commission in South Africa.

In certain circumstances, punishing the guilty and compensating the victims seems impracticable—particularly in those highly charged situations in which it can be verified, after a radical change in political orientation, that a large part of the population participated in what now seems to be a crime, and an even larger number suffered from its consequences. This was the situation after the overthrow of the military dictatorships in Latin America, and of the regime of apartheid in South Africa, and of the Communist regimes of Eastern Europe. Sometimes it is not easy to distinguish between victims and perpetrators. Under a totalitarian regime, the majority of the population is at once the accomplice and the victim of the perpetrators. Since it is not possible to compensate all the victims or to punish all the guilty, and since the idea of a general amnesty, pure and simple, as if nothing happened, is equally inadmissi-

ble, the remaining solution, chosen by several countries, is to establish a commission of inquiry.

**T**HE ONE in South Africa identified its objectives as "Truth and Reconciliation." The commission candidly presented itself as an alternative to justice. It was also said that it represented a new form of justice, "restorative" justice as opposed to "retributive" justice. But it is not clear that anything was really gained by this terminological innovation. For the business of commissions is very different from the business of tribunals. Commissions have a goal, which is social peace, and reconciliation between different factions of the population; and they posit that a particular method will lead to social peace, namely the public establishment of the truth. Lastly, such commissions are prepared to pay the price that is required to achieve this result: that persons who have revealed their past misdeeds will be offered amnesty and freedom from legal charges against them. These commissions seem to have joined the lessons of Christian confession and the psychoanalytic cure: like the former, they link absolution to confession, and like the latter, they propose that telling about the trauma allows it to be discharged.

The result of the work accomplished by the South African commission has been virulently criticized. As a middle road between judicial redress and amnesty, the public inquiry has been attacked by those who would have preferred one extreme or the other: the former perpetrators prefer pardon, and the families of the victims often demand the condemnation of the guilty. Moreover, doubts have been expressed about each of the premises underlying the action of the commission. Some critics have wondered whether reconciliation is an appropriate goal for a democracy. After all, democracies generally do not impose a single thought or opinion on their citizens; the tolerance of dissident opinions is deemed to suffice. Surely reconciliation must be left to the free assessment of each individual, and does not depend on a collective decision. Moreover, the critics add, reconciliation is difficult to measure; and when it is measured, it seems not to have been achieved. According to a poll in 1998, two-thirds of the South African population judged that the work of the commission contributed to the deterioration of racial relations in the country, while only 17 percent believed that it improved them.

And can it be said that the truth was indeed established? Hardly. As critics of the commission have remarked, it did not have the means to verify the stories of witnesses, and therefore it had to be satis-

fied essentially with the recording of their accounts. Surely, the "truth" that courts of justice produce is superior: police reports, cross-examinations, and laboratory work help to establish irrefutable facts. In addition, the very idea of a truth recorded once and for all, even by a commission composed of men of good will, has something problematic about it, and this is so not only for the army of "deconstructionists" who do not believe that truth exists. The facts can be established, but their meaning will always remain open to debate. Which elements of the context are necessary in order to understand these facts, and how far back must we go to grasp the actors' intentions? Even historians, working in clearly superior conditions, have difficulty arriving at a consensus on these matters.

Moreover, who is to say that the commission's audacious assumption is true, that truth leads to reconciliation? Often the opposite is the case: the examination of old wounds reopens them, and fuels hatred, and aggravates pain. A death that had finally been accepted must be lived through again, and the work of mourning begun once more. Hayner reports the dramatic case of a mother who learned from the commission's inquiry that her son had not been killed by the white police, as she had thought, but by his comrades in the African National Congress; the shock was so great that she died a few months later. After telling their stories, a great many of the witnesses suffered severe psychological problems, and the commission had no way to help them.

**I**T SEEMS FAIR to conclude, then, that the commissions of inquiry that have proliferated in recent years serve neither justice nor truth nor reconciliation. And yet public opinion runs high in their favor, and other countries imagine creating such commissions. How can we explain this? By the fact that the positive effects of these bodies are not located at quite the level that people imagine. It is not true, for example, that the guilty escape all punishment by confessing: their admission that they participated in reprehensible acts—murders, tortures, rapes—brings down upon them the fearsome power of social opprobrium, and they will live in shame for a long time to come. "Exposure is punishment," as one observer notes.

Nor is it the case that the families of the dead, because they obtain neither financial compensation nor the punishment of the guilty, gain nothing. In the course of the commission's sessions, they are led to play an active role in revealing the truth, and thereby they are provided with an escape from the passivity of victimhood.

For the relatives of the murdered, the inquiry gives meaning to what happened, and a tragic meaning is certainly better than no meaning at all. They are integrated, by this means, into the life of the society. And the choice of public debate as a means of confronting conflicts is itself a social good: it teaches the citizens of a country to seek the remedy for difficult situations in deliberation and negotiation rather than in violence, or in the preemptory division of the population into guilty and innocent.

The work of the commissions also reveals another need of human societies, which might have gone unnoticed without them: as members of a community, we all wish to have at our disposal a certain image of our collective identity, which also includes a general consensus on the meaning of our past. This consensus will never be perfect: there will always be individuals in France who believe that the German occupation of 1940 was a good thing, and the resistance to it a bad thing; but the great majority of the population thinks otherwise, and this agreement is indispensable to the moral health of the society. The same is true for the condemnation of apartheid in South Africa, as well as of assassinations and torture under the military dictatorship in Argentina. This collective memory, this common narrative, does not need to be as precise as the work of historians. It is concerned not with knowledge but with recognition. The important thing is that it is formulated publicly, and reinforced by the sanction of official political authorities, government or parliament. We may believe that we are hardened individualists and sophisticated moderns, but we have no less need than our ancestors for a shared image of the past, for a common morality.

**F**OR ALL THESE REASONS, we might conclude that for societies in transition, when there is a question of repairing the injustice of a previous political regime and challenging the responsibility of the state as a whole, commissions of inquiry would be preferable to tribunals, national or international. Indeed, the tribunals have understood that the proliferation of commissions represents a threat, and have opposed their creation wherever possible, as in Yugoslavia in 1998. And there are not only material reasons for this rivalry, though the representatives of the tribunal feared that the creation of a commission, which is so much less expensive, threatened their own existence. (The International War Crimes Tribunal costs around \$100 million per year; but a commission, according to some estimates, would cost between \$15 million and \$20 million, over the

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course of two or three years.)

The fact is that, unlike courts of justice, commissions of inquiry lead to nuanced judgments other than simple verdicts of "guilty" or "innocent" that allow judges and their supporters to regard themselves as the very incarnation of the good. Those responsible for violence may be transformed by the generous attitude of the commission, while justice in a court of law leaves open to them only bold-faced opposition and denial. In South Africa, General Magnus Malan denied everything before the tribunal (and obtained his acquittal); but later he came before the Truth and Reconciliation Commission and admitted his share of the responsibility. We cannot expect people to tell the truth if they know that this act will lead to their punishment. Commissions, better than tribunals, conform to the spirit of Nelson Mandela's observation, made in 1997 and addressed not only to South Africans: "All of us, as a nation that has newly found itself, share in the shame at the capacity of human beings of any race or language group to be inhumane to other human beings."

**W**HAT SHOULD WE think, then, of contemporary attempts to repair the injustices of the past? In the first place, that they are legitimate. Once violence is introduced into history, it continues to exercise its malevolent effects for decades, and even for centuries. Hitler's misdeeds continue to hurt people today, just as the cruelties of the Boer War continued to influence those of the apartheid regime; and the violence of the colonial war in Algeria in the 1950s explains in part the recent massacres in that country. The way to repair these situations is not to repress the past, to attempt to forget it: repression leads only to neurosis, and causes frustrations, and provokes irrational vengeance. It is better to engage in a public act of reparation.

Such a choice, of course, is a risky endeavor. To reestablish a connection between morality and politics is to run counter to the great movement of modernity responsible for the establishment of democracies. (The bloody Crusades of the Middle Ages were conducted in the name of the good.) We also run the danger of practicing a policy in which only the justifications are moral, and not the actual motivations: colonization in the nineteenth century also claimed to be justified by the values of civilization and even by the necessity to defend human rights. The dream of a world in which all injustices would be corrected resembles our ancestors' notion of a life lived in submission to Providence more than it resembles our idea of a universe that is familiar with

chaos and contingency, in which the complete control of events is impossible.

That is why reparative action is desirable, but not in all its forms. We must always remember that might loves to masquerade as right; and this does not make its reign any more acceptable. What is international justice worth if the permanent member countries of the U.N. Security Council have the right to veto all its decisions? How can a so-called "right of intervention" be legitimate when it is applied only to weak countries, which are not counted among our friends? What is this right which by definition exempts the powerful members of the G-8? The American government has never wanted to repent for repeated human rights violations committed by its agents in El Salvador and Guatemala, in Haiti and Chile, or to accept the overwhelming conclusions, formulated by various commissions of inquiry established by the United Nations, and therefore also by the United States. It is not hard to understand why Vojislav Kostunica mistrusts international commissions and tribunals. In the real world, the choice is usually not between a *Real-*

*politik* and a *Moralpolitik*, but between two politics of force, one candid, the other hypocritical.

But this sober observation should not condemn us to inaction. In the world of politics, the principle of the excluded middle rarely applies. Much more effective than these attempts to bring about a new world order based on virtue and justice are political acts within one country or between two countries. Political action is not necessarily a continuation of war by other means; it can also intervene in the symbolic realm in order to repair and thus to improve the life of the community. The community needs a common image of its past that better conforms to justice, and commissions of inquiry, and legitimate political bodies, such as governments and parliaments, are there to contribute to it. Such actions are not always sensational. They require patience and persistence, and they do not allow us to see ourselves as paragons of virtue. They may be the only reliable means of establishing a little more justice on this unjust earth.

—translated from the French  
by Carol Cosman

## Ladies, Truth, and Logic

By SIMON BLACKBURN

A. J. Ayer: A Life  
by Ben Rogers

(Grove Press, 402 pp., \$30)

**T**HIS BEAUTIFULLY WRITTEN, sympathetic, and sensitive biography tells the life of Britain's best-known philosopher in the generation after Bertrand Russell. In the decades after World War II, Professor Sir Alfred Jules Ayer, or Freddie to everyone, was famous. He was familiar on television and radio, the paradigm of the vaguely left-wing London liberal and public intellectual. He mounted campaigns and championed causes, and he was sufficiently influential that, when he died in 1989, Margaret Thatcher's Minister for (many said, "against") Higher

SIMON BLACKBURN is the Edna J. Koury Distinguished Professor of Philosophy at the University of North Carolina, and the author of *Think* (Oxford University Press).

Education felt required to write to the press vilifying him. Perhaps less predictably, so did the Tory house-philosopher Roger Scruton.

The outline of Ayer's life is easy enough to tell. He was born in 1910, into a moderately well-off, cosmopolitan family. His father was of Swiss Calvinist descent, and his mother, Reine Citroën, came from a family of Dutch Jews. They were genteel "trade," though with real money in the background. Freddie grew up an only child, and there is the usual doubt about whether he was fundamentally happy, in a gilt Edwardian way, or fundamentally unhappy in a lonely, private-school, World-War-I way. Whatever the truth, there is no doubt at all that he was precociously and annoyingly clever. He gained a scholarship to Eton, and after the usual forced diet of Latin, Greek, and barbar-