We had great concerns during the production of *The Patriotic Hypermarket*. How to treat the war? What compromise could be reached between two sides with completely opposite perspectives – Albanian and Serbian? What should theater document and what shouldn’t it? And - what message are we sending to the audience through the play? That wars are bad? That the Serbs are to blame for the war in Kosovo? That we should forget the past and turn to the future? Reconciliation?

These are all political and moral dilemmas one cannot escape in any politically engaged project, but especially in those that deal with the past, with war - as in this case, the complex history of the relations between the Albanians and the Serbs.

We hate the doctor who is to operate on our injuries, even though we fully realize that he is actually helping us. We hate the doctor because the wound he opens hurts.

Artists who work on these regional collaborations, or whose works discuss these difficult topics – works such as *The Patriotic Hypermarket*, are often subject to stigmatization and criticism. This is because these artists are touching the wounds that hurt us, even though we are aware that this is the only way to cure the hatred that has accumulated in the throat.

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**Making Amends After Collective Crimes: On Reconciliation**

Sanja Pesek

The practitioners and theoreticians of Transitional Justice have debated for over two decades now whether truth and justice are compatible with reconciliation, and more practically which of the two – the truth commission or the trial -- are better equipped to address the injustices of the past. The proponents of truth commission argue that this relatively modern instrument is capable of strengthening civil society and providing restorative justice, “which is concerned not so much with punishment as with correcting imbalances, restoring broken relationships, with healing, harmony and reconciliation” (*Elizabeth Kiss*). Truth commissions have been praised for being
moral and human rather than solely legal or instrumental. Thus its proponents stress that it is not retributive but restorative justice that will help reconstruct a just society. Punishment alone for perpetrators, they say, hinders the achievement of restorative justice.

Critics of restorative justice argue that it is conceptually muddled and politically illegitimate. They say that the kinds of confrontations engendered by truth commissions only make societal tensions more palpable. They say that there is no better alternative to criminal trials, which establish the rule of law as the framework for rendering accountability for unspeakable conduct, for deterring future violations and for compiling a formal public record so that attempts to destroy groups of people cannot succeed in destroying their memory.

Nevertheless, retributive justice, through the legal mechanism of its courts, deals most directly with perpetrators and not with victims. In court proceedings, victims serve primarily to prove the defendant’s criminal responsibility and not to give testimony so that their own suffering might be acknowledged. Furthermore, recognition of injustices inflicted on victims or the creation of a registry of victims and missing persons in the wars is not under the jurisdiction of any court. So, although trials help establish an authoritative version of a small number of the most heinous crimes, truth commissions aim to proclaim officially and expose publicly the truth directly affecting not only individual victims but society as a whole.

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In Serbia, institutions of retributive justice were employed to deal with the legacies of the past and, more specifically, to ascribe individual criminal responsibility to a relatively small number of members of the community, resulting in the myth of the innocence of the majority. While a number of perpetrators have been criminally charged in the international and domestic war crimes trials, the roles played by fellow travelers have largely been ignored. Law Professor Laurel Fletcher lucidly observes that “international criminal convictions single out and stigmatize the accused, normalizing the behavior of bystanders and potentially creating a false moral innocence for the unindicted and their bystander supporters.” While trials may indirectly influence the behavior of fellow travelers in transitional periods, they certainly do not explore them.

Thus, the moral predicament in Serbia that emerged in the transitional period as a result of the bystanders’ role in sustaining conditions for collective crime and the normalization and relativization of its legacies in the aftermath, is left largely unchallenged by court proceedings. Consequently, the norms which permitted the tolerance of the collective crime, which were and are in direct conflict with the guiding principles of equal respect, fairness, and human dignity, have become further embedded into the cultural, political and social communal customs. As Philosophy Professor Robert Sparrow argues, “The failure to respond appropriately in the knowledge of a wrong involves a failure to morally distance oneself from the wrong-doer which is not only itself morally culpable but also risks sharing the responsibility for the original crime”.

The bystander’s moral responsibility derives from the following moral predicament: due to their preference for ‘life as usual’, others have suffered at the hands of those who share our collective identity. Given that this inequality was established during the period of collective crime, when some people had rights which others did not have, which among other things meant that some people were authorized to deny the basic human rights of some other people, the task of the transitional community is to re-establish moral equality. Former rights-bearers (unlike those whose rights were denied and violated) thus have a duty in the transition to bring about this normative change.
I additionally hold that bystanders are causally responsible for the harms suffered by the community of victims during the period as well as in the aftermath of the mass crime; the loss of life, property, life chances, etc., are directly caused by perpetrators, while humiliation, fear, loneliness and abandonment are caused by the wrong moral attitudes and actions or failures to act of bystanders. More pointedly, in the last instance, it is the perpetrators who cause physical death, but it is the bystanders who participate in bringing about what Hannah Arendt, Georgio Agamben and Jean Amery have termed the “second moral collapse” or the “second great guilt.”

Although in Serbia the criminal regime has been ousted, the criminal ideology has survived. The morally and politically disruptive potential of the transition is tamed by fellow travelers who aim to amably address the question of national identity and the role of the criminal past in the ‘democratic’ present. In post-Milosevic Serbia, this amiable interpretation of collective identity is sustained by a guilt-free nationalism that synthesizes aspirations to retain Kosovo, “the cradle of Serbia,” with efforts to join the European Union. The recent past is revised in reference to the hyper-production of myths about the nation’s historical development since the Middle Ages. The recent past of mass crime is situated within the collective memory of the group as an inevitable response of the nation to the injustices suffered historically. Thus, the primary task of the political elites in Serbia today is to historicize the criminal recent past, largely by tracing the already existing narratives of victimization pioneered by the old regime in its efforts to justify its criminal policies. This speedy historicization without reflection is an attempt at a relativization of accountability for mass crime. The Habermasian “apologetic tendency” to depict the German nation as having been as much a victim as the Jewish people (Peter Baldwin) may safely be taken as a blueprint for the process of national revisionism underway today in Serbia, with the tendency of Serbs to depict themselves as much the victims as the Bosnians, Croats, Albanians and other ‘others’.

The problem we are facing in the transitional period in Serbia reaches beyond the scope of legal accountability; it invites applying mechanisms of Transitional Justice designed to address political and moral responsibility - not for the sake of retribution, but for the sake of reaffirming the equal moral standing of each and every citizen regardless of their nationality, ethnicity or religion. Until then, we will continue to observe what we saw in Germany after WWII, and which is the predominant attitude in Serbia today -- the majority of citizens as well as the political elites coming to terms with their own losses and sufferings, but not with the dead bodies, mass graves, destroyed homes and entire towns of the “others,” nor with the survivors among them. In this abbreviated account of Serbia’s nationalistic and expansionist politics of the 1990s, the Serbs were the victims, in much the same way that Germans thought of themselves in the immediate aftermath of the Holocaust.

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The first and most straightforward objective of a truth commission is the sanctioned fact-finding which breaks the silence surrounding widely known but unspoken truths and removes the possibility for continued denial. Truth commissions aim to formally acknowledge and recognize what has been denied in the past, so as to be able to establish a well-documented and agreed-upon historical account, a record which is much needed for the people of former Yugoslavia, whose truth-seeking has closely followed ethnic division lines. Truth commissions
are by design victim-centered institutions. They aim to generate authoritative historical accounts, issue recommendations for institutional change, and directly challenge the moral norms of yesteryear. They gather the testimony of victims, in the process acknowledging their suffering and affirming their dignity, and making their stories part of the historical record. These are the core elements of truth commissions and they address that aspect of the moral and political responsibility of the majority of citizens which trials, by their very nature, cannot impact directly.

In judicial proceedings, victims’ testimonies are primarily used to prove the guilt of the defendant rather than confirm the suffering inflicted on the victims. This is why we need the institutions that are focused on the victims, such as truth commissions.

Some forty such truth commissions have been established world-wide since 1974, and this number will continue to grow. And this is right, because justice after mass violation of human rights demands restitution as well as retribution. The point is, that the 160 perpetrators convicted for genocide, war crimes and crimes against humanity in former Yugoslavia constitute a very small number of those who should be held accountable; the majority of perpetrators, collaborators and ideologues have not been affected, and the great majority of the supporters, sympathizers and fellow travelers of the criminal regime remain untouched by the court rulings. Truth commissions can address these weaknesses; they give priority to victims and their testimony, and they place victims’ suffering and dignity and the need for repair center stage. These victims’ testimonies have been largely absent from the transition in Serbia. These speech acts have the potential to interrupt once and for all the social contract of silence made in post-Milosevic Serbia, and to create the possibility for re-claiming moral responsibility, without which reconciliation is not possible.

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