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Verifiche. Associazione di Studi filosofici
Sede Operativa e redazione: via Giorgio Schiavone, 1 - 35134 Padova
Direttore responsabile: Antonella Benanzato
Amministrazione: info@verificheonline.net
Autorizzazione Tribunale di Padova n. 2445 del 17/09/2017
Poste italiane - Spedizione in Abbonamento Postale
Chinchio Industria Grafica srl, Rubano (PD) - Via Pacinotti, 10/12
Anno XLVIII - N. 2 Luglio-Dicembre 2019
www.verificheonline.net

PREZZO € 35,00

«VERIFICHE» ISSN 0391-4186

VERIFICHE 2019

2

*Philosophical Insights
for a
Theory of Restorative Justice*
Edited by G. Grandi and S. Grigoletto

L. Alici, T. Chapman, G. Grandi, S. Grigoletto, B. Pali,
F. Schweigert, E. Tiarks, S. Worboys, H. Zehr

2019
ANNO XLVIII N. 2

Verifiche

Rivista fondata da Franco Chiereghin e Giuliano Rigoni

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Publicato con il sostegno del progetto sull'innovazione sociale di Area Science Park e del progetto 'Restorative Justice. Potenzialità e limiti di un paradigma di giustizia' del Dipartimento di Filosofia, Sociologia, Pedagogia e Psicologia Applicata (FISPPA) dell'Università di Padova.

«Verifiche» is an international biannual, peer-reviewed Journal (ISSN: 0391-4186)

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Verifiche

International biannual, peer-reviewed Journal (ISSN: 0391-4186)

ABBONAMENTO/SUBSCRIPTION PRICE (2019)

Italia: privati € 55,00 (sostenitori € 65,00; studenti € 35,00); enti: € 80,00.

Europe and Mediterranean Countries: € 75,00 (students: € 55,00); institutional: € 100,00.

Other Countries: € 90,00 (students: € 70,00); institutional: € 115,00.

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Other Countries € 40,00 (plus € 16 shipping charges).

MODALITÀ DI PAGAMENTO/METHOD OF PAYMENT

Con bonifico bancario intestato a / By bank transfer to:

«Verifiche. Associazione di studi filosofici»

Intesa Sanpaolo Spa – Filiale Accentrata Terzo Settore, Piazza Paolo Ferrari, 10 – Padova

IBAN: IT54X0306909606100000142839

Nella causale specificare il numero o l'annata (per ordini) oppure solo l'abbonamento (in caso di abbonamento annuale). Please indicate *issue number* and *year* (for single issue) or *year* only (for yearly subscription).

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Cover Design by Giulia Battocchia

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Anno XLVIII, N. 2 Luglio-Dicembre 2019

Dir. resp. Antonella Benanzato • Amministrazione: Via G. Schiavone 1 35134 Padova
in corso di registrazione, Tribunale di Padova RVG 6214/2017
Poste Italiane s.p.a. - Spedizione in Abb. Postale 70% - NE/PD
Chinchio Industria Grafica s.r.l. - Rubano (PD) - Via Pacinotti, 10/12 - A. XLVIII (2), 2019

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A POLITICS OF REMEMBRANCE. TOWARDS AN (INTERNATIONAL CRIMINAL) JUSTICE OF REPARATION

by Luca Alici*

Abstract. *Philosophical categories such as remembrance, forgiveness, revenge and reparation are central to the debate concerning the plausibility of international criminal justice. This essay attempts to draw connections among three concepts: the ‘politics of the past’ in Portinaro, ‘transitional justice’ in Elster, and ‘reparation’ in Garapon, with the aim of clarifying what contributions may help break the poisonous cycle of revenge and comprehend what kind of justice could be imagined. The reflection highlights the needs to harmonise international criminal justice and restorative justice; to invest in the idea that international criminal justice cannot be reduced to mere jurisdiction; to re-discuss the relationship of justice with politics, recovering the political significance of such topics; to reopen a conversation with the anthropological field, which can shed light on how debt does not equate to sacrifice, as well as on the regenerative potential of trust.*

Keywords. *Politics; Past; Memory; Restorative Justice; Transitional Justice*

1. Background

Anger is the first of Europe’s words¹: this inflammatory expression of Sloterdijk’s forces us to stare in the face of the Western world’s ultimately unhealed wounds. It is true in many ways: the anger of Peleus’ son Achilles opens the Iliad, one of the foundational texts of the European tradition. Emerging from literary history, Homer’s hero keeps knocking at our consciences, demanding that we learn ‘what to do’ with rage when we ‘feel it’ – that is, any time we are subject to injustice. The words remind us

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¹ P. Sloterdijk, *Zorn und Zeit*, Frankfurt am Main, Suhrkamp, 2006.

that we have been locked, since ancient times, in a thousands-year-long combat of revenge against justice.

Aristotle², a few centuries later, stated it with great clarity: when stripped undeservedly of an asset, betrayed, wounded (to the death), we cannot but feel angered. Once anger overtakes us, we must choose whether to keep inhabiting it, making it our habit (in both senses), fashioning rage into a project of revenge, or else channel the feeling of injustice in some other way. If we choose to channel it, anger becomes merely a, legitimate, momentary reaction, and the hunger for revenge is dulled, replaced by the quest for an effective form of justice, one which may truly be 'just'. The Christian mindset later added the dimensions of love and forgiveness, which brought on new questions concerning whether forgetfulness is even possible, or right, and on the relationship of forgiveness, forgetfulness, and justice.

Looking at the 'revenge/justice' pairing, we should note that the scenario is further complicated by the fact that, as noted by numerous scholars, justice itself carries the risk of being no more than a formalised, aseptic form of revenge. This is true insofar as it fails to distinguish retribution from suffering: a manifestation, as well illustrated by, among others, Ricœur³, of a problematic heritage present in all political organisations, that is, the lingering scar of residual violence. If it holds true that coexistence cannot be built upon foundations of seminal violence, and if it also true that coexistence is impossible unless violence is transformed into legitimate force, held by an established power, then certainly any retribution, or more in general any punishment, will necessarily be conceptualised in terms of inflicting suffering. We are therefore trapped into the calculating delirium of human rationality, which attempts to weight and balance suffering felt against suffering inflicted. In such a scenario, with an order based on 'accounting', to inflict punishment without causing suffering is impossible.

This intersection has therefore been, for centuries, anthropological and political even before it was legal and judicial: it exists in

² Aristotle, *Rethoric*, II, 2, 1-3.

³ P. Ricœur, *Le droit du punir*, «Bulletin périodique d'information de l'Aumônerie des Prisons», XLI, 2002, pp. 8-22.

tales, myths, literature, reflections, philosophies, and jurisprudential conflicts of interpretation. It eventually made its way into the debates that have characterised, in the past few decades, the collective discussion concerning the possibility of international criminal justice and, therefore, the «quest for a, juridically, morally and politically negotiated, as well as socially acceptable, way out of violent and oppressive regimes, civil wars or genocidal situations»⁴. The path towards international criminal justice certainly moves on treacherous terrain, encumbered by many heavy burdens. We can trace its origins in the trials of Tokyo and Nuremberg (themselves rife with challenges: justice for the winners or the losers, the last chapter of the war or the first chapter of peace?) and since then it has covered the Cold War and September 11th, former Yugoslavia, Rwanda, South Africa, among other tragic circumstances. This is not an easy legacy.

Many planes, disciplines and factors feed into the issue of whether international criminal justice is possible. All the same, the urgent question at the heart of the matter remains, essentially: how can we ‘manage’ and, possibly, defuse, a residual disposition towards revenge, and the risk that it shall remain «like an unmelted clot at the bottom of every judicial procedure»⁵?

The issue is complicated in the international field, given that typically the international criminal courts are confronted with crimes that are beyond measure, often committed by established powers, i.e. not ‘against’ the law but ‘in accord’ with the law. The cases are ‘typical’, but the subjects and scope certainly ‘atypical’. Crimes are not committed against individuals (this is not, of course, to say individuals have not suffered the consequences of such crimes on their own bodies and in their own lives) but against ethnic groups, peoples and thereby, often with inhuman violence, against humanity as a whole. Conversely, the accused are not merely individuals (this is not, of course, to say the personal criminal responsibility of perpetrators should be ignored), but the very people tasked with representing and guiding balanced coexistence

⁴ P.P. Portinaro, *I conti con il passato. Vendetta, amnistia, giustizia*, Milano, Feltrinelli, 2011, p. 11 (my translation).

⁵ Ivi, p. 9 (my translation).

and unity: heads of government or state. This gives rise to numerous open issues, which I do not intend to expand on, but which I will briefly list:

- institutional and formal: is the International Criminal Court an effective, representative body, given that certain great powers are not Parties in it (above all, the United States)?
- universal, in terms of values: is it possible to talk about humanity, now that universalists concepts are in crisis and, if so, which ‘common’ values should we reference?
- of time and space: in what relation do the extraterritoriality of crimes and punishments stand with the entirety of humanity and the absence of limitation periods?
- in terms of current events: what happens to claims of universal validity when politics turn identitarian and sectarian, when discourses of localism and ‘sovereignty’ prevail, and justice, if not full-on revenge, is invoked for oneself, one’s kin, and one’s neighbours?

This article aims to elucidate the core of the discussion: how to abandon the poisonous compulsion towards revenge and try to understand what response could be imagined in terms of justice. I will attempt to do so by underlining a few relevant elements and their interconnections: identifying the reasons for relating international criminal justice to the paradigm of restorative justice; looking into the relationship of justice with politics, thereby touching upon the ‘political’ value of these topics; having the subject matters of transitional justice and restorative justice dialogue with the anthropological framework, which leads to an understanding of the value of debt (not in terms of sacrifice) and the regenerative possibility of trust.

Many efforts risk slowing down the application of international criminal justice (for example, the institutionalisation and public recognition of the international criminal court); by inviting it into a dialogue with models of transitional justice, and pointing to the structural elements of restorative justice, the hope is to weave together reconciliation («with the aim of ending a conflict

among distant subjects») and justice («to judge a crime among subject in a relation of proximity») as well as international law (which «is founded upon the model of combat, war and reconciliation») and criminal law (which is founded upon the framework «of transgression, justice and atonement»⁶). The aspiration is to contribute to opening a fecund space for dialogue among justice, politics and anthropology. This is, clearly, not the only aspect to be covered, but we should not set meaning aside with respect to other operational, strategic, diplomatic and legal aspects.

I will attempt to open this space, where justice politics and anthropology intersect, in two sections. Firstly, by looking into the works of Portinaro and Elster to describe the general context. From the works of the Italian scholar I draw upon what he defines as forms of ‘politics of the past’ (as this is the overarching scenario within which a restorative model of international criminal justice sits). Through the research of the Norwegian author, I will explore the manifold, heterogeneous landscape of what he has contributed to define as ‘transitional justice’ (a multiform and quite ‘open’ framework, consolidated yet subject to constant renewal, defining the governance of a transition connected to crimes against humanity). Secondly, I will attempt, by referencing writings by the French jurist Garapon, to highlight certain relevant commonalities between the field of international criminal justice and the field of restorative justice, in a reciprocal, and hopefully fruitful, exchange. The most salient of these commonalities appears to be the relationship intercurrent among victim, past, democracy; the connection between punishment and truth, justice and debt. The final aim is to focus attention on how the restorative approach is deeply entwined with politics (and contributes to redefining it), by strengthening the case for applying the anthropological lens to any authentically political reflection, beginning with the possibility of reconnecting broken political bonds, in view of renewing trust.

⁶ A. Garapon, *Des crimes qu'on ne peut ni punir ni pardonner. Pour une justice internationale*, Paris, Odile Jacob, 2002, p. 52 (my translation).

2. *Review*

Since my first encounter with Portinaro's *I conti con il passato*, I was struck by how he frames the concept of reckoning with the past as a political one. This has to do with the fact that the emergence of international criminal justice fits into the context of democratic regimes, and is therefore one of the many factors setting democratic systems apart from authoritarian or totalitarian ones. This also has to do with the fact that State sovereignty is fully recognized in the move from internal justice to the international level. And it also has to do, most interestingly in my view, with the fact that this challenge responds to the need to restore «that mutual trust most necessary to peaceful coexistence»⁷. There cannot be any real, final process of closure with the past, nor any actual chance for a collective future, unless actions are taken to rebuild the essential foundation of all peaceful human relations: namely, trust.

Coming to a review of the text: in Western history we find two main types of 'politics of the past', two paths which political societies have taken in response to past violences: indiscriminate vengeance, and negotiated forgetfulness. In the twentieth century, a few more options appeared: the legal system of international trials, and the 'truth and reconciliation' commissions. Often, these experiences did not originate in the European continent, but in various far-flung corners of the planet, thus increasing not only the number of cases, but also the cultural contexts involved. We can therefore speak of 'globalised' attempts to transnational management of the past, and review paradigms of transitional government that expand the range of policies of the past, and of possible action plans. Where we once could choose among the risk of adding injustice to injustice, the temptation of ignoring past injustice, and the decision to sanction injustice by legal means, now we may add other types of reparation, having in common the aim of stabilising memory and recreating trust. Not all of these were born in Europe. As the range of ways in which, historically, societies have chosen

⁷ Portinaro, *I conti con il passato*, p. 12 (my translation).

to reckon with the past is now wider, it deserves some work of categorisation. This is the task Portinaro has set for himself: he lists four categories, with restoration being, chronologically, the newest.

The first method is a 'payback', including all forms of revenge and purge, in which attempts are made to end a war or conflict, but the result is often one of continued violence through different means: destruction, plunder, massacres of military and civilian targets, individual and collective killings, ethnic cleansing, all the way to armed revolution and the imposition of totalitarian regimes. In what can be read as a political version of the psychological mechanism of repetition compulsion, many times in history the transition from one regime to the next has not been able to 'contain' high rates of violence. This is particularly true when the time passing between when violence was committed and when punishment was called for is not a time dedicated to appeasement, reflection and discernment, so that such punishments are more the offspring of anger than the premise to true justice. In the words of Portinaro, «the measure in which the desire for revenge is discharged or contained during a regime transition» depends on a number of variables, including «the level of arbitrary violence and cruelty attributed to the previous regime or to its components»; «the time required by the new regime or its leaders to assume control of the situation and impose a legal system»; and, lastly «the point to which the general population has interiorised the rule of law or, conversely, the level of societal anomie»⁸.

The second type of politics of the past is probably the most common in the West: the institution of a trial. From the Greek Furies to our time, the idea of entrusting a third party and creating a separate time and space for a trial, has practically defined history in the West and beyond, to the point of being seen as an almost 'natural' solution to manage the aftermath of war crimes and transition phases, also given that, despite its alleged impartiality, a nation-state's judiciary would likely have been 'involved' in some way in the crimes being tried. This 'solution' is rife with its own challenges: such trials have political dimensions, there is a risk of

⁸ Ivi, p. 56 (my translation).

establishing ‘winners’ justice’ and of encouraging preventative war. All this without even delving into the consequences of the fact that the law is ineffective, if not outright harmful, in dealing with remembrance.

The scenario is further complicated by the fact that, at the level of international law, there is an open tension between creating international legal institutions and ‘applying existing international law within international courts’. There is also a risk that legal procedures may attempt to close with the past without «having actually reckoned with it»⁹. A lot of work on this topic concerns the vast jurisprudence on the Holocaust; until recently, international trials have continued to dominate the field.

A third possibility is represented by amnesties, ‘the other face of political justice’, which Portinaro describes through three features: they stem from «opportunistic and cautious political calculations» which «prevail over more strictly legal motivations as well as over requests for justice on the victims’ part»; «are often mandated or strongly encouraged by external actors»; and are also «often the political action of a weak winner, who uses them to attempt to consolidate a position of power» or, taking it further, can be the «political action of a morally compromised victor, who will evidently benefit from the erasure from memory of all crimes, including its own»¹⁰.

Despite appearing to interrupt the chain of revenge, and frequently interpreted as a cautious, sensible political act, amnesty «often taken to mean guaranteed impunity»¹¹, cannot be the final word, is not enough in itself to be integral to a transition, but can be the premise to something else, to another, different course of action.

The fourth option, both most recent and most current, is restoration. Portinaro does not gloss over monetary compensation,

⁹ Ivi, p. 131 (my translation).

¹⁰ Ivi, p. 143 (my translation).

¹¹ Ivi, p. 152 (my translation).

subject of an entire book by Garapon¹², but focuses mostly on the principles of restorative justice. Specifically, he highlights some valuable innovations introduced by the concept of restoration. First of all, the path of conciliation requires redefining the importance of legal procedures: conceding to wordplay, we could say it shifts attention from the ‘procedure’ to the ‘process’ of mediation between justice and truth and, therefore, evolves beyond ‘legal’ truth and retributive justice. Secondly, restoration demands an investment in the work of remembrance, in order to defuse any risk of incubating renewed hostilities. Thirdly, as aforementioned, reparation approaches carry in themselves the recognition of an evolution beyond the euro-centric model; we now find ourselves in an international context, and these approaches help us avoid the risk of applying the Western legal framework and a «hegemonic model of the law». In Portinaro’s words: «The European model of elaborating the past is, in many ways, a product of secularization. As such, it attributes the role of peace-building and stabilising mutual trust to secular institutions. Furthermore, it is bound to a culture which sanctifies human dignity and human rights [...]. Non-European experiences are born of a different context, in which religious beliefs are still entrusted with the task of regulating coexistence in all aspects, and churches are among the subjects charged with administering the politics of the past»¹³.

The most relevant element of the analysis is how it highlights the innovative character of restorative justice’s focus on the victims, «adopting the victims’ point of view and pursuing, as main

¹² A. Garapon, *Peut-on réparer l’histoire? Colonisation, esclavage, Shoah*, Paris, Odile Jacob, 2008.

¹³ Portinaro, *I conti con il passato*, p. 35 (my translation). Here, Portinaro is pointing to the role religious institutions may take in restorative processes. We will not expand further on the topic here, and his, not fully explicit but still clear, position on the matter remains open to criticism. In many non-European traditions, religion plays a clear, acknowledged role in reconciliation processes (one can for example think of Desmond Tutu’s position in South Africa). In secular Europe, this would likely be perceived as undue interference. But would that really be the case? Or could it be one more terrain upon which to give way to the multiplicity of voices forming of the public sphere, as described, among others, but Habermas in his late writings?

objective, reconciliation between two opposing factions in a nation divided by the tragic experiences of civil war or dictatorship. As the focus shifts from the perpetrators to the victims, the subject of social remembrance in the West as well shifts from the memory of *inflicted wrongs* to the memory of *suffered wrongs*¹⁴. This paradigm shift, whilst framing the elaboration of the past through the relationship between reconstructing truth and defining justice, changes the focus: from paying attention to the crimes' perpetrators, to recognizing the central role of victims.

International criminal justice, in its sensitivity to the topic of reparation, is heeding the call of restorative justice (but not merging with it) and takes on aspects of transitional justice, in that it tends to «balance the four tools available to politics in order to reconstruct a society torn apart by violent conflict: trials, truth commissions, symbolic and material compensation, and institution reform»¹⁵. The commonality is clear: also in transitional justice we find a distinct regard for the victims.

On this topic, Jon Elster, one of the first authors to conceptualise and shape transitional justice, in describing it as a phenomenon centred around observing and managing «*describing and explaining* variations in how societies close their open accounts from the past after regime transitions»¹⁶, comes to the same conclusion, the centrality of the victims' suffering, and this while describing transitional justice as a whole. In his words: «Transitional justice is made up of the processes of trials, purges, and reparations that take place after the transition from one political regime to another»¹⁷. Contemporary transitional justice theory, while spanning many traditions and disciplines, and a range of interpretations, represents today an «innovative interdisciplinary frame of reference for the analysis of the principles and mechanisms that shape the transition from an authoritarian to a

¹⁴ Ivi, p. 27 (my translation).

¹⁵ Ivi, p. 33 (my translation).

¹⁶ J. Elster, *Closing the Books. Transitional Justice in Historical Perspective*, Cambridge, Cambridge University Press, 2004, p. IX.

¹⁷ Ivi, p. I.

democratic regime»¹⁸. A vast range of studies fall under this name, more than can be discussed here; furthermore, «the context-dependence of the phenomena»¹⁹ resists generalisations and formalisations. I will therefore limit myself to pointing to a few of its essential features as described by Elster, with the aim of attempting to understand how come it includes actions of restoration and victim rehabilitation, and why it can be itself included amongst the politics of remembrance.

Transitional justice is first and foremost a research laboratory studying emotions in politics. Many parties are involved: wrongdoers, victims and the beneficiaries of wrongful actions; those who bring charitable assistance; neutral observers; other actors promoting or hindering a smooth transition. With such great variation and number of parties, the possible outcomes are innumerable. Furthermore, the final results imply legal, judicial and administrative decisions which urgently demand a choice between justice and truth. This leads to even more variables, but does require choosing between retributive and restorative justice. Also, it is necessary to decide what type of perpetrators to identify: fanatics, opportunists, conformists. Every choice determines an outburst of emotions, from which there descends the centrality of the topic of faded memories and soothed feelings. Each emotion corresponds to vastly different legal responses. Thus, transitional justice helps to identify what emotional field is charging political and judicial discussion, and to uncover the possibility that justice and politics lend their ears to suffering, thereby allowing for a shift from the memory of wrongs inflicted to that of wrongs suffered.

¹⁸ C. Corradetti, *Che cos'è la giustizia di transizione (Transitional Justice)? Uno sguardo d'insieme*, «Parolechiave. Nuova serie di 'Problemi del socialismo'. Giustizia», LIII, 2015, pp. 231-242, p. 231 (my translation); also Id., *Transitional Times, Reflective Judgment and the 'Hōs Mē' Condition*, in C. Corradetti, N. Eisikovits, J.V. Rotondi (eds.), *Theorizing Transitional Justice*, Aldershot, Ashgate, 2015, pp. 185-198; and P. Arthur, *How Transitions Reshaped Human Rights: A Conceptual History of Transitional Justice*, «Human Rights Quarterly», XXXI (2), 2009, pp. 321-367, pp. 349 e segg.

¹⁹ Elster, *Closing the Books*, p. 77.

The entire field of transitional justice is in a phase of critical reflection, but may have already led, or may be in the process of leading, to a new 'act' of history, in which the aim is no longer 'to punish the past' and the individuals who committed violence, but 'to reconcile the future', through repairing past wrongs. Requests for restoration may take different forms, including material compensation, and (while remaining open to critical questioning) may not be limited to transitional processes, but include the needs of stable democracies in dealing with episodes of their collective past, even very remote events. The coveted prize would be to see transitional and restorative justice take their place not only in the context of a change of political regime, in history's 'no-man's land', but also contributing to reshape situations that appear to have reached conditions of balance. Doing so would reveal the fact that there can be no truly peaceful, orderly coexistence built over residual (hidden, removed, unconscious) lumps of hate and rage left to fester and poison the groundwater, or the actual source, of the water flowing through peoples, ethnic groups and family, even in democratic governments.

3. *A proposal*

I do not intend to get into the endless argument on whether transitional justice and restorative justice are the same thing or not. My concern has been to define two contexts which I believe may be relevant to framing Garapon's reflections and proposals, which we will examine from here on: the politics of memory and transitional justice, and how these relate to the challenge of reconciliation, particularly as expressed by the attention given to victims. I will continue by underlining how, thanks to the contribution of the French jurist, the debate comes to include other elements worthy of note, from which we can draw two significant consequences.

Firstly, I believe it is very interesting to highlight how reparation actions touch upon political philosophy, in that taking such actions implies an understanding of the political nature of the distance upon which they insist. Reparation actions have the intention

to «ease the feeling of political exile caused by historical injustice»²⁰; they ask to correct «a banishment, an exclusion from a political community»²¹ and also concern «the challenges faced by the political body in the radically new context of globalisation»²². Secondly, because reparation actions are responses to a broken social unity, they imply a focus on the interplay of memory and history, justice and truth. Remembrance's purpose is to hold on to memories, while justice is an attempt to bring closure: this requires an effort in mediation. If truth is the only aim, justice can yield some of its sovereignty, but must then recover it in political terms. The historian returns the past to the past, while those who work with reparation must provide a new representation of history, one that can be inclusive and responsible, opening to a new, communal (re)writing of the future. Social cohesion becomes central, and so does another category, translated from the economic to the anthropological field: I am referring to debt, seen as a «way of overcoming political aporia, as well as spatial and temporal distances»²³.

Antoine Garapon was close to Paul Ricœur, and his reflections call to mind Ricœur's focus on the topics of memory, forgiveness, and history: the words of *Memory, History, Forgetting*²⁴ come to mind. Garapon constantly returns to the connections between memory and identity, violence and politics, restoration and social unity. In this scenario, which emerges clearly even for those only loosely familiar with the works of the French philosopher, whom Garapon often references directly, the judge's writings are part of a wider attempt to legitimise the field of international criminal justice, and to argue that it may have value for the work of restoration, in which justice makes space for victims, for the suffering and pain of the victims' bodies, without prejudice to the defining triangle 'victim-perpetrator-law'.

²⁰ Garapon, *Peut-on réparer l'histoire?*, p. 19 (my translation).

²¹ Ivi, pp. 19-20 (my translation).

²² Ivi, pp. 20-21 (my translation).

²³ Ivi, p. 20 (my translation).

²⁴ P. Ricœur, *La mémoire, l'histoire, l'oubli*, Paris, Seuil, 2000.

Garapon offers three directions for justice to redefine itself without (necessarily) punishing, directions which have a lot in common with current discussions around international criminal justice and the paradigm of restoration.

The first concerns the recognition of the victim, which is one of the strongest elements tying into what we have highlighted earlier: restorative actions, and a justice system based on them, transfer the centre of gravity, viewing history mainly through the victims' eyes. In Garapon's words: «Victimhood is not best described, in fact, as a subjective experience, social degradation or historical trauma. What is affected is the very essence of identity, in its political dimension»²⁵. The victim is simultaneously excluded from humanity and from community (which, in itself, says a lot about the connection between these two). Victims therefore look to this type of justice, which is sensitive to their plight, as a possible release from passivity: narratives and testimonies, on the one hand, and listening, on the other, represent the channels through which victims recover dignity and citizenship.

The second concerns the fact that to provide justice for past events requires awareness of how ascertaining truth is more important than punishing the perpetrators. The first imperative is to state what happened, then to identify perpetrators, and lastly to publicise the events. This is because, as Garapon reminds us, the experience of minimising the actuality of a crime has devastating effects on the victim»²⁶ and also because, as Garapon states, in direct reference to 'his' Ricœur, «justice [...], by extrapolating the exemplary value from traumatising memories, transforms memory into a project: the very project of justice which crowns remembrance with the duty to take care of the future»²⁷.

This all opens to the overall topic of democracy and its ability, in what Garapon refers to as the 'scene of justice' to «give the community the power to be master of its own history. What would be impossible in the material world, becomes possible in the symbolic

²⁵ Garapon, *Des crimes qu'on ne peut ni punir ni pardonner*, p. 161 (my translation).

²⁶ Ivi, p. 205 (my translation).

²⁷ Ricœur, *La mémoire, l'histoire, l'oubli*, p. 107 (my translation).

domain. What time has made irreversible, can be represented again, in the now, made into matter pliable to human action»²⁸. Within this public representation, democracy is renewed by the meeting of the narrative and reconstructive planes. Justice inaugurates the time of remembrance, and remembrance faces forward, working in favour of life and within life, regenerating democracy. In this way, it becomes possible to recover an essential political bond, the mechanism of representation. Once those who represent have massacred those who should have been represented, reconciliation can bring people who would otherwise no longer be representable back on the political scene. Democracy, regenerated by reconciliation, returns to its proper state as the most hospitable political space for vulnerability, by giving space to victims who risked no longer having any. In its reconciliatory function, justice becomes truly worthy of its name, because, in Ricœur's words, «justices' chief virtue is to be, by its very nature, facing towards the other»²⁹.

Reconciliation returns justice to its true form, and a restorative justice reinstates democracy as the site of hospitality and recognition of rights to the excluded and dispossessed. It's worth quoting a whole passage by Garapon: «The act of placing the victim at the heart of reconciliation, rather than encouraging a competition among each faction's miseries, invites to look at History from a point of view alternative to the nation-state's. History is seen from the bottom up, through the lens of those who have suffered, and can bear witness to, the danger of certain political discourses. What the concept of victimhood illustrates is how certain points of view cannot be simplified [...]. To recognize the victim is, ultimately, to incorporate the other in oneself, both in a temporal sense, by integrating the demons of the past within the present, and in a spatial sense, by reserving a seat for minorities. Victims are always more than just themselves: they embody the impossibility of self-containment. They stand as reminders of the plurality immanent in the political body, that very plurality threatened by crimes against humanity. [...] Any reconciliation attempted in the absence of the

²⁸ Garapon, *Des crimes qu'on ne peut ni punir ni pardonner*, p. 237 (my translation).

²⁹ Ricœur, *La mémoire, l'histoire, l'oubli*, p. 109 (my translation).

victims prolongs injustice, and criminal trials which do not keep the context into account endanger any newly-found democracy»³⁰. Political power cannot be only an affirmation of might, concerned by nothing else but its own preservation or, worse, aggrandizement.

The third direction is founded on how we conceptualise debt, which is a form of intergenerational justice, because «the deepest source of this sort of action may well be the desire to reconnect ties with previous generations, towards which we feel a perpetual sense of debt»³¹. Garapon writes that «the challenge of a *globalised political body* is to allow for coexistence, in the same political community, amongst the descendants of slaves and slave-owners, of the colonisers and the colonised, of the grandchildren of Vichy collaborators and the Jews»³².

His analysis carefully assesses both the positive and the critical elements of connecting financial compensation with healing history's wounds, and contains an element I find particularly interesting. Garapon does not limit himself to noting, indirectly but starkly, that personal elements are 'priceless', but goes on to highlight the need for political restoration to reject the logic of equivalence, abandoning the principles of economic exchange. This leads us to consider whether to rebuild coexistence is to abandon the plea for vindication. A politics of debt is to be conceptualised as able to discern debts that can and cannot be repaid, and learning how to coexist with the latter.

Garapon certainly interprets the word 'debt' quite literally, particularly when dealing with compensation as reparation, but on a more general level the author brings to our attention the fact that the entire European post-Holocaust construction is grounded, erroneously, on the idea of paying back mutual debts through the medium of politics. But the idea of a world in which all debt is repaid is about as unrealistic as a return to ideal innocence. Furthermore, as Garapon states while referencing Godbout, debt is

³⁰ Garapon, *Des crimes qu'on ne peut ni punir ni pardonner*, p. 300 (my translation).

³¹ Id., *Peut-on réparer l'histoire?*, p. 64 (my translation).

³² Ivi, p. 131 (my translation).

not intended to generate guilt and payment, but rather gratitude, and the acknowledgement that nobody is ever going to be ‘fair and square’ towards the most important people in one’s life. He therefore adds that the attention given to victims does not translate into an attempt to repay all debts, because on the level of human history such an attempt would be never-ending and, also, there are debts which are impossible to repay, which reminds us of the impossibility of interpreting reparation literally. «Debt is always there but, like the Furies transmuted into Eumenides, they remind us that we cannot act as strangers or enemies, as insolvent debtors or merciless creditors»³³.

Moving beyond the transitional exchange of objects, such as money in the case of financial debt, Garapon’s reflection invites to widen the angle. Europe became a promise, an invitation to a common work, by means of a single currency which did not imply the extinction of all debts. Similarly, not all debts are paid via extinction, but also through «the suppression of their first cause: deadly rivalry among States»³⁴, something which would then promote loyalty to the actors that freed us from the circle of repayment. This raises the stakes to «rebuild a political community from the grounds of mutual indebtedness»³⁵. The ambiguity of debt is also its strength: «it loves a bottom line but does not exclude generosity, [...] it closes with the past without injuring the future, it allows everyone to save face, it forces parties to recognize each other, without having to love each other: in short, it offers a way to remain political without turning everything over to politics»³⁶.

4. *Conclusions*

Garapon writes: «justice does not rebuild, but it enables rebuilding»³⁷. We can take this statement as a starting point for our conclusions.

³³ Ivi, p. 250 (my translation).

³⁴ *Ibidem* (my translation).

³⁵ Ivi, p. 256 (my translation).

³⁶ Ivi, p. 262 (my translation).

³⁷ Ivi, p. 251 (my translation).

The restorative contribution to the paradigm of transitional justice attributes to the field of justice an overarching political value which ‘rescues’ politics from a merely formal and procedural interpretation while at the same time ‘rescuing’ the field of justice from being read in merely juridical terms. This contributes to reinstate the idea that there is a concept of justice that cannot be reduced to its legal and formal aspects, but is rather linked to the idea of a good life, and of the common good. This ‘good’ has too long been kept apart from what is ‘just’ and now appears to be claiming its space. There cannot be true justice, nor can politics be just, unless they revolve around the promotion of reciprocity and trust.

Justice’s restorative character, attempting as it does to construct a possible alternative to the merely retributive function, can also offer, at the level of international criminal justice and transitional justice, a new point of view which helps to not «limit [...] politics to little more than an administrative body applying juridical principles», but instead reframe it as «the art of organising to act together in an uncertain world», also in order not to reduce «the legal field to a polite application of force, but to define it instead as a ceaseless, perpetually endangered effort to peacefully regulate human relations»³⁸. The reparation paradigm reaffirms a need for the political to be a «narrative offering meaning to human coexistence, as both *philia* – the will, reaffirmed time and again, to form a society and shape a common history – and as the space for collective action to move within an uncertain world»³⁹. If justice gives up on mending fissures, and politics abandons the weak, social distance becomes separation, and coexistence nothing more than a cold and neutral regulation of differences.

This leads to other reflections I wish to mention in conclusion.

Restorative justice invites power to listen to suffering, asking that it make space for the victims, and inviting the West to listen to other experiences, thus improving cultural decentralisation. Politics and culture are not set aside: the State recognises that citizens have power, and grants them power; reconciliation protects us

³⁸ Id., *Des crimes qu'on ne peut ni punir ni pardonner*, p. 14 (my translation).

³⁹ Id., *Peut-on réparer l'histoire?*, p. 259 (my translation).

from any risk of cultural colonisation, and the West can learn from other experiences. As Lodigiani writes: «The paradigm of restorative justice is part of an effort composing the model of a State in which every single individual is a full-fledged member able to relate in proximity with the others»⁴⁰. The view of power which emerges is one which accepts mediation and does not shy away from the risks of relationship, but rather accepts as essential every individual's ability to relate, and considers the need to take care of this skill one of its priorities. Such a reconciliation effort draws together every individual, at every latitude, and inaugurates an era in which we are able to imagine relations of proximity even with cultural traditions that we have up to now allowed ourselves to judge (simplistically and based on a groundless feeling of superiority) too distant from ours, with nothing to teach, or have labelled as 'backward'.

In conclusion, also keeping in mind what has been said about debt, the core of the matter is the regeneration of trust. For human beings, coexistence with strangers is probably the most difficult challenge of all. The collective response to this challenge has always been to create an architecture of coexistence (politics), which looks at the meaning of cohabitation, and an engineering of coexistence (policy) with the aim of creating institutions to manage the daily business of cohabitation. Policy and politics have attempted to shape time and space in such ways as to encourage peaceful cohabitation through every form of organisation: city-states, nation-states, cities, prisons, businesses, public administrations. The same thing happens any time this sense of unity needs rebuilding. Cases of wounded, betrayed coexistence require responses at the levels of both politics and policy, the first touching upon the deeper meaning drawing peoples and traditions who have hurt each other to find new bonds, the second constructing the institutional forms that may facilitate this.

⁴⁰ G.A. Lodigiani, *Prologo. Alla scoperta della giustizia riparativa. Un'indagine multidisciplinare*, in G.A. Lodigiani, G. Mannozi (eds.), *Giustizia riparativa. Ricostruire legami, ricostruire persone*, Bologna, Il Mulino, 2015, pp. 13-29, p. 24 (my translation).

A form of justice developing beyond the conventional logic of fair balance and juxtaposition of right and wrong, and looking to the future rather than merely reckoning with the past, building new relations rather than fixing what is already there forms, in this context, a vital 'bridge'⁴¹. This type of justice looks to the future and focuses on the victims. It supports the political field in finding itself and re-imagining innovative policies. It is important therefore to remember that the dynamics of restoration are not designed around forgiveness, and do not necessarily imply the difficult work of forgiveness. This fact does not in itself detract from their revolutionary aspect: to the contrary, it helps us understand that reparation is not a 'philanthropic' form of justice, nor does it imply benevolence on anyone's part. Rather, it deals in what is structurally at the heart of any attempt to build and rebuild coexistence: trust.

⁴¹ F. Viola, *Il perdono nella giustizia di transizione*, in R. Ragonese (ed.), *Fraternità ferita e riconciliazione*, Milano, Ancora, 2017, pp. 106-118.

Finito di stampare
nel mese di dicembre 2019
dalla Chinchio Industria Grafica s.r.l. di Rubano (Pd)