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# The Iranian Yearbook of Phenomenology

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## The Work of Reconciliation

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### Abstract

In the last 60 years civil war has been by far the most destructive form of violent military conflict. Civil wars break out again when the issues have not been resolved and the factions have not been reconciled. Reconciliation that prevents return to civil war is the most difficult and important political task of our times.

Phenomenological methods can clarify the kinds of allegiance individuals attest to the different collectives: the State, its legislative and juridic institutions, its armed forces. The armed forces in rebellion. Transnational mining and industrial complexes and multinational corporations. Smugglers of weapons. Agents extracting taxes from merchants, rich landowners, and mining companies, from mines and timber companies. Agents soliciting donations from diaspora. Kidnapping for ransom. Politicians and military officers engaged in war profiteering. Criminal gangs.

Reconciliation will not be possible unless the truth about the injustices that motivate conflict and about the atrocities committed during the conflict is established. What kind of truth can they produce, and what kind of truth is necessary? Does the kind of truth that Truth Commissions publish resolve conflict and effect reconciliation or does it lead to renewed conflict?

A large number of war crimes and common crimes committed under cover of war Phenomenological analysis can clarify the transitional justice and restorative justice that reconciliation may require.

**Key words:** Civil War, Phenomenology, Reconciliation, violence.



## 1. Recurrent Civil War

In 1960 the government of Colombia, South America began to actively promote industrial agriculture for export, paying subsidies to large landowners. 400,000 peasants were dispossessed of their small landholdings. Civil war broke out in 1964; it was to last 52 years. In 2016, after four years of negotiation, the Colombian government and FARC, the largest insurgent organization, signed a peace treaty. Today, three years later, the government has failed to implement much of the peace treaty and armed rebellion is breaking out again.

Since the Second World War civil war has been by far the most destructive form of violent military conflict. About 40% of countries with a population of at least half a million have suffered a civil war.

There are today fifty-seven civil wars being waged. In four civil wars—Syria, Yemen, Afghanistan, and the Mexico drug war—more than 10,000 people were killed in the past year; in six civil wars 1000 to 10,000 were killed; in 25 civil wars 100 to 1000 killed; and in another 22 countries, there were deadly skirmishes. In three of these countries total deaths have been over 400,000; in another four total deaths have been over 200,000. On average civil wars have lasted about 10 years.

Of the 103 countries that experienced a civil war between 1945 and 2009, 59 suffered a subsequent return to civil war. Since 2003 every civil war that has started has been a continuation of a previous civil war. Civil wars break out again when the issues have not been resolved and the factions have not been reconciled. Reconciliation that prevents return to civil war is the most important and difficult political task of our times.

## 2. Mapping Civil Wars

In a nation in civil war, there are different assemblages of forces in conflict.

Operations of production and power are centralized in the state, and also the semiotic systems, the codes that regulate them. Power and regulation also lie in movements of money. The state also regulates the economy, while financial interests control the political agents.



There are many collectives outside of the power and regulations of the state: transnational mining and industrial complexes, multinational corporations, also religions such as Christianity and Islam, also prophetic and messianic movements, also minorities and gangs. They equip themselves with different kinds of instruments and weapons to defend themselves and to extend their operations.

When a revolutionary or guerrilla insurgency arises, one or most often several sectors acquire arms and train for combat. An insurgency that lasts 10 or 52 years needs to obtain arms. Money is derived from taxes on its followers and on rich landowners and mining companies, from access to gems, minerals, or timber, from donations from the diaspora, also from kidnapping for ransom. Smugglers bring in weapons from foreign arms traffickers by way of ever-changing transportation routes.

The insurgent forces aim to take power and restructure the state. Most often they immediately construct a state in territories that they control, with a civil administration, police, courts, schools, and taxation. In Colombia, for many decades the insurgency controlled and governed more than half of the territory.

In a country in civil war, there are collectives without formalized organization. Movements of peasants or farmers who resist paying taxes or rise up against expropriation of their lands. Workers in mines who rise up in resistance or rebellion, without a political program and with temporary leaders or spokespersons who do not issue clear demands. Dispossessed or unemployed people who form outlaw gangs, engaged in kidnapping and theft.

There are also nomadic collectives engaged in smuggling, illegal mining of gold and gems, or narcotics trafficking.

Transnational mining and industrial complexes and multinational corporations create private armies and also induce outside governments to ship arms to one side or the other. Outside governments seeking control of petroleum production intervene in civil wars. Religions identify populations as enemies. There are war profiteers, smugglers, criminal gangs.

When a civil war ends in a peace treaty that integrates the insurgents and their state institutions into the government, there are still many collectives outside the state that may contribute to the collapse of reconciliation and return to civil war.



In Colombia, much of the ten billion dollars invested by the United States to build up the Colombian army was diverted by generals and politicians and invested in industry and in real estate. Much land is now devoted to coffee and fruit for export; foreign mining and petroleum companies are implanted, with resources to elect and influence politicians to advance their interests. They have equipped private armies. The cocaine cartels have reconstituted their private armies. Many young peasants have to seek work off the land, where their lack of education and lack of skills puts them at disadvantage; they are recruited into private militias and also into urban gangs.

Speaking orders organize; speaking about a situation or event orders, organizes it. Speaking also orders directs, commands those to whom it is addressed. Speaking orders what the interlocutors are to see, are to say, how they are to act. The state, war machines, collectives are ordered by different kinds of directives, slogans, watchwords, cues, and passwords.

### **3. Phenomenological Analysis**

Phenomenology set out to establish a vocabulary and discourse to describe the environment as we perceive it in our actions and our repose. We do not perceive and act in the landscape as physics and chemistry describe it. Our perception is always limited and what we perceive is formed as fields and paths, furnishings, implements, obstacles, objectives. Phenomenology also seeks to describe the attitudes and intentions with which we perceive our environment and initiate actions. In our actions, we respond to the layout about us as we perceive it, and by acting the environment comes to appear differently. Phenomenologists first carried out these analyses on individuals, but they can be carried out in groups. Indeed it is urgent to do so.

The phenomenological analysis traces how individuals come to see themselves as belonging to an economic class, ethnic population, a conservative or insurgent movement. The objective factors and institutional forces that provide and limit the resources available to them are not determinative. Grinding poverty and oppression do not produce revolt; indeed it is often when economic and political conditions are improving that people catch sight of possibilities and rise to seize control of their destiny. Action is not produced out of an overview and interpretation that creates meaning, assigns things as



objectives and as means to them. Instead, things become perceived as resources, implements, and weapons while initiatives are essayed, and choice is real in taking on and taking up the initiatives of others.

An analysis of the forces assembled and released in a civil war will distinguish the forces of the state and those of national and transnational corporations, the army of the rebellion and the guerrilla forces, the war profiteers and the bandits, will identify the people in each of these different groupings, their resources, and their tactics. That would constitute an “objective” account, an account as it were from outside and above the conflict. But such an “objective” account is not adequate to resolve the conflict—be it to resolve the conflict by defeating one side.

What is required is a detailed and comprehensive grasp of how individuals and associates in these different groupings perceive the situation in which they find themselves, how they perceive its possibilities and its impasses, its resources, and the obstacles. How do the agents in these very different collectives perceive the actions they undertake and those they abandon. Phenomenological analysis is conducted as it were from within; it describes their situation as individuals in a militant group perceive it and describes the actors as they perceive their actions.

To account for the eruption of violence and war we must take account of emotions of fear, anger, contempt, hatred, and resentment. The words that formulate the grievances, needs, injustices, demands, actions that issue in violence and war have great emotional intensity. Once war begins, powerful emotions of fear and trust bind troops of combatants. They fight to avenge a fallen buddy more than for the proclaimed cause. After the cause is lost they continue to fight to avenge their fallen comrades

The initiative to negotiate an end to civil war, the determination to bring about peace also have great emotional intensity. The phenomenological analysis must study the mounting of different emotions leading up to the eruption of war and violence, and also the reversal of these emotions and the surging of emotions of despair over the war, disgust for the war, and craving for peace. It must study the forces of grief over one’s dead, distrust, hatred, craving for revenge that exist after a civil war and that obstruct reconciliation.



Negotiators strive to grasp just how militants and leaders on each side perceive the resources, possibilities, and obstacles on the field in which they act, and also the attitudes, intentions, and emotions with which they act, in order to be able to catch sight of what each side has to have and what it is able to concede to bring about a resolution. Negotiators are working at what theorists call phenomenological analysis. This work is hampered by the limited knowledge they have of how those on each side perceive their situation, of how they judge and feel, hampered too by the natural resistance the negotiators and those on each side experience to empathetically perceiving the situation as their adversaries perceive it, and also by the difficulty of understanding beneath the rhetoric and propaganda what those on each side really understands and intends.

What theorists call phenomenological analysis is also done by journalists, who seek to report on how militants on each side perceive the situation in which they find themselves and how they appraise possibilities and obstacles. Journalists seek to see what militants really see and judge in the rhetoric they hear, but often journalists come with a bias that their readers must try to sift out of their reports.

#### **4. Reconstruction and Integration**

Since the end of World War II, incumbent governments have won in about 40 percent of the civil wars, insurgents in about 35 percent of them. 25 percent of them have ended through negotiated settlements. At the end of the Cold War, the great powers valued stability over ideology and promoted a negotiated end to civil wars. But in the past decade, where insurgents are categorized as terrorists, the great powers provide arms to ensure that the incumbent government achieves military victory.

At the end of a civil war, an enormous work of reconstruction is necessary—reconstruction of roads and bridges, power plants, communication systems, factories, farms and orchards, and housing for people. And reconstitution of personnel, of engineers, technicians, communication, and security staff.

Reconstruction has to integrate the formerly insurgent sectors into the national economy and into the political direction of the country.



In Colombia, a peace treaty depended on resolving the plight of the 400,000 peasants who had originally been dispossessed of their lands, and of the thousands more dispossessed during the war. The government had to agree to institutions and procedures to restore their lands to them. It agreed to build infrastructure and markets for alternative crops to coca. It also had to agree to recognize and protect a political party to represent the demands of the dispossessed and to contest elections.

## 5. The Work of Reconciliation

When civil conflict becomes a civil war, people representing adverse interests, perhaps neighbors and relatives, become enemies, to be resisted with violence, to be exterminated. In a civil war that lasted 52 years, virtually every family will have had someone killed. In some cases, the soldier or the guerrilla who killed someone in one's family is known. After the peace treaty revenge killings typically go on for years, for the whole generation.

The resolution of a civil war requires not only a political and economic resolution but also the reconciliation of the warring populations. In cases where the war ended with the military victory of one side, the defeated part of the population will have to concede their defeat and the victorious side will have to integrate the defeated into the nation. In Greece, Cyprus, Kurdistan in Turkey, and Northern Ireland there was reconstruction without reconciliation.

When there is no reconciliation of the parties at war, the war may end with the country dividing into two or more nations. As took place when Somaliland seceded from Somalia and when Yugoslavia broke up into Bosnia and Herzegovina, Croatia, North Macedonia, Slovenia, Serbia, and Montenegro.

Reconciliation is a work, programmed with research and understanding of the past, methodic, devising new procedures and institutions. Researchers who have studied cases where civil war did end in a peace treaty and civil war did not break out again have identified the methods, the work of reconciliation that was carried out.

There has to be a call for a new relationship, marked by a public and ritualized reconciliation event. The reconciliation event must be novel, an invention. It must affect a break with the past by its public



and ritualized form. Peace accords are signed in a public ceremony, and the leaders of hitherto warring groups embrace. Legislatures pass solemn resolutions. Statues and monuments to the tragedy are erected. The parties to the conflict must acknowledge the injustice, injury, material, and personal destruction that had brought about the war, and each side must acknowledge the atrocities they committed during the war.

The identity of the former belligerents has to be reconstructed. They must cease seeing themselves as victims and the opposing party as enemies. One side must cease identifying themselves as representatives of law and order and identifying the other as subversives and terrorists. People on all sides must acquire new identities as citizens with powers and with positive contributions to make to the social order, partners. They must begin to interact with mutual respect in concrete social initiatives.

The parties must forego the option of revenge. There must be a will on both sides to break the cycle of an eye for an eye, a tooth for a tooth. They must commit themselves to the rule of law.

In recent decades two new institutions have been created to work reconciliation after civil war: truth commissions and transitional justice.

## **6. Against Propaganda, Establishing Truth**

In 1983 upon the end of a military dictatorship, the new civilian government of Argentina set up a National Commission on the Disappearance of Persons. It was the first of what came to be called truth commissions, created at the end of a civil war. Since then 45 countries have set up truth commissions. Truth commissions aim to produce an accurate record of human rights violations during a civil war or period of repression and of their root causes.

Establishing the truth of the past conflict is essential for political leaders who have to reconstruct society and build political institutions with factions that have been in deadly conflict. It is supremely important to people to know when and where their family members and comrades were disappeared, if and how they were tortured, if and when they were executed and where buried or burned. The truth of the past conflict is vital for victims who have been dishonored and



maligned. It is important for perpetrators who have to come to terms with their past and their futures.

Truth commissions collect records of government and insurgent meetings and decisions, army and police records, and statements from victims, perpetrators, and witnesses. Secret prisons and torture chambers are located, hidden graves and mass graves are exhumed, corpses identified. Statements of victims of torture or sexual violence may be taken behind closed doors to protect them from stigmatization or to ensure their safety. Truth commissions may also conduct public hearings. They may conduct meetings where perpetrators give an account of their actions and are confronted by victims.

The aim is not simply to produce an objective account for the historical record. It is to promote reconciliation after the war. To reveal the extent of the atrocities makes it impossible for people to deny them, to justify their campaign, and justify themselves. When the commission interrogates perpetrators in front of their victims, the aim is to get them to agree on what was perpetrated. To agree on something is a start, leading to possible agreement on their common future.

A truth commission produces a representation of the civil war. The phenomenological analysis will identify to whom this representation of the civil war is destined, who it orders, whose understanding and discourse it is intended to order. Is it essentially addressed to the mass of citizens who supported or tolerated those who were committing atrocities? Is it rather addressed to the victims, whose narratives it acknowledges? Is it addressed to the outside world, to make the world acknowledge the injustice of the old order and acknowledge the new regime?

These truth commissions are ill-equipped to disentangle individual initiative from policy, and policy from the broad context of the military conflict, foreign interventions, demographic, ethnic, and even geographic and climatic conditions that motivate or that shape a policy.

The commission aims to obtain from each party a sincere and honest account of how each viewed the conflict, what evaluations and judgments, what goals one held, and what feelings of anger, humiliation, craving for revenge, or of empowerment, freedom, and impunity one finds in oneself.



How accurate an account can an individual give of how she viewed the conflict? How clear an account can he give of the feelings of anger, humiliation, craving for revenge, or of empowerment, freedom, and impunity he found in himself? The way the militant viewed her actions during the conflict will not coincide with how she views them later when her side has been defeated.

Greatly traumatic events are not simply retained by memory; they are integrated in a course of mental life that continually opens upon a future of new events and actions. In some cases they block access to the future: the victim lives in his or her trauma, and cannot take hold of a different present or envision a future that arrays new possibilities. In other cases the reverse happens: the trauma is closed off to consciousness, cannot be recalled, cannot be understood or interpreted. In every case, as the years pass what one has undertaken and lived through modifies what one remembers of traumatic aggression and how one remembers it.

At truth commissions victims are not cross-examined, their testimony is not independently corroborated.

It is not enough that the victims know who perpetrated crimes against them and why, the perpetrators must acknowledge them. They must declare what they did, and confess before their victims who still survive. What the perpetrator will say, can say, will be affected by the consequences he or she foresees. Will he or she be punished or amnestied? Accepted into the community or shunned as a pariah? Will he or she be tracked down by comrades on his or her own side who denounce a betrayal, or by victims on the other side who will wreak vengeance?

Do truth commissions in fact work to effect the reconciliation of belligerent parties after the civil war?

Revealing the truth about atrocities may create greater resentment among the parties that had waged civil conflict, may arouse waves of revenge killings, increase the level of hostility and violence. The military, the judiciary, the guerillas may resort to violence to prevent certain facts from becoming public knowledge. And a vision of generalized violence having long persisted in a society conveys a sense that violence is intrinsic to human nature, thus promoting cynicism, and producing more violence.



Westerners have long been acculturated with the Freudian hydraulic conception that emotions dammed up will inevitably break forth, that emotions unexpressed sicken, and that to express fully what one feels to others is a release and liberation. Then bringing victims and perpetrators face to face where each speaks of what he or she suffered and did would be a cathartic experience that is therapeutic.

But it is not clear today if the expressive release of traumatic emotion, even in a clinical setting, has a positive effect on mental health. Psychotherapists who researched victims of Apartheid in South Africa who testified at the Truth and Reconciliation Commission found that many report an initial sense of relief at having unburdened themselves. However, in the weeks following their deposition, more than half of them experienced a return and intensification of symptoms associated with the original violations as well as the onset of new symptoms, a retraumatization caused by retelling the story.”

When one has been tortured or raped, one’s loved ones disappear, when one has lost years of life in imprisonment, there is no restoration or compensation. When people have suffered a grave physical, psychological, or moral injury or the loss of those closest to them, they have to both harbor this loss, honor and cherish what was lost, and assemble whatever resources are possible to be able to live. To begin to live again, the victim will also have to find material and social resources. Vivid re-experiencing of the event, fear, nightmares, feelings of helplessness, depression, self-blame, relationship difficulties, feelings of social disconnectedness, anxiety, perhaps substance abuse are all sufferings that may take long-term community support, professional care, and time to diminish, and they may never diminish.

The perpetrator for his or her part is afflicted with the agonizing problem of how to live his or her life now that his or her cause has been acknowledged to be unjust, his or her militancy futile, and his or her person dishonored.

## **7. Transitional Justice**

The end of a civil war inaugurates a work of reestablishing the legal and juridical institutions of the nation. During the transitional period, special practices will be in use in the judicial system—a transitional justice.



A large number of war crimes and common crimes committed under cover of war have to be identified and their perpetrators removed from positions of power and held accountably. Domestic criminal courts try those accused of atrocities.

International war crimes trials were conducted at Nuremberg and Tokyo after the Second World War. These tribunals are castigated as not impartial but as victor's justice. Had the Allies lost the war, many of their senior military and political leaders would have been put on trial for the firebombing of German cities and the nuclear incineration of Hiroshima and Nagasaki.

UN war crimes courts were set up after the former Yugoslav and Rwanda civil wars, and, hybrid UN and national war crimes courts have been set up in Bosnia Herzegovina, Kosovo, Cambodia, Sierra Leone, East Timor, and Lebanon. In 1998 a permanent International Criminal Court was created. Almost all of its current cases concern African defendants. In April of 2019, the court announced that it will not investigate war crimes committed in Afghanistan.

Trials are essentially focused on the establishment of the guilt of individual perpetrators. This sets aside the broader context that made such wrongdoing possible. It promotes a distorted conception of the causes and nature of a civil war.

These tribunals prosecute individuals ascribing to their responsibility for atrocities. But is artificial to try only the top commanders, as though everybody else was robotically obeying orders. It may be that a majority of the population had been complicit in the atrocities carried out by those who had the arms. It may have been that one of the parties had long profited from the economic oppression of the other.

After the civil war with great destruction of resources and infrastructure, with penury of jurists that could conduct impartial trials, it may be impossible to conduct trials of a great number of perpetrators of atrocities. The courts will have to put practical limits on the people to be prosecuted, and the limits will be artificial and arbitrary. To make 24 top Nazis responsible, as at Nuremberg, or 5 top leaders, as at the Khmer Rouge trials in Cambodia is artificial. The trials thus promote a limited and distorted understanding of the war and of war crimes.



It is argued that war crimes trials obstruct reconciliation after a civil war. Trying the leaders of one side in the war demonizes one side whereas reconciliation requires that both sides cease identifying one another as enemies.

Victims may testify as witnesses in trials, where their testimony is subject to adversarial cross-examination. But nothing is done to restore their legal and civic dignity.

In these war crimes, tribunals justice is conceived as retributive justice realized through punishments of wrongdoers and compensation for wrongs suffered. But the enormous wrongs perpetrated in civil war cannot be righted. The deaths of so many cannot be compensated for. Museums looted and the manuscripts and archives of libraries destroyed cannot be replaced. Even homes and farms ravaged will generally not be able to be compensated for with the resources of the society now at peace.

In the aftermath of a civil war, those now in power may choose not to hold war crimes trials. They may fear that criminal trials of the leaders of the government or those of the insurgency may bring about a renewal of armed violence. In Spain after Franco, Chile after Pinochet, and in Cambodia, it was feared that prosecution of war criminals could unleash a return to civil war. The combatants and also the top leaders may be accorded amnesty.

Justice may be pursued through loss of office, privileges, reputation, and moral standing. Individuals guilty of atrocities are barred from holding public office. Or else their past is revealed to the public, diminishing their chances of being elected. Purging government offices of individuals who ordered or covered up atrocities is taken as a means of reestablishing trust in government. But it does encourage the continuation of suspicion rather than cooperation among former enemies.

When communities choose not to hold war crimes trials or purge government offices of individuals guilty of or complicit in atrocities, they are criticized for sacrificing justice for the sake of reconciliation. Amnesty for perpetrators of atrocities is manifestly an affront to justice. It is argued that justice is a precondition for reconciliation, for allowing impunity for serious wrongdoing fuels resentment and undermines trust in institutions. It is also an obstacle to the return of



the rule of law. A thief sentenced to prison cannot respect a judicial system that allows murderers and torturers to go free.

## 8. Restorative Justice

What is called transitional justice—the operation of the legal and judicial institutions during the transition period—is not simply a partial, limited practice of justice, limited for reasons of expediency. There is also the practice of justice subordinated to the aim of reconciliation. In the past forty years, it has come to be understood as not retributive justice but as restorative justice.

The concept of restorative justice invokes practices of First Nations peoples in Canada and Maori in New Zealand. A meeting is held with the victim and the offender, sometimes with representatives of the community. Wrongdoers are enjoined to explain how they came to commit the offense and to take responsibility for their actions. In a face-to-face discussion with the victim, an agreement is reached about what the offender can do to repair the harm. Victims are given an active role in the process; it provides them with an opportunity to exorcise resentments or fears, restore their sense of control over their lives, and reaffirm their status as valued members of the community. The meeting avoids shaming and stigmatizing the offender and seeks to enable him to regain a sense of self-worth. These practices aim not only to restore what the victim had lost but also to restore both the victim and the wrongdoer to the community.

An essential limitation in such restorative justice procedures is that they fail to address the fundamental structural inequalities that make certain people more likely to be offenders. They do not deal with and correct the gross inequality that may exist, the poverty, the lack of access to work, education, health care.

The Truth and Reconciliation Commission conducted in South Africa after the fall of Apartheid was conceived as a procedure of restorative justice on a nationwide scale. The objectives and procedures of the Commission were determined after much discussion by the elected representatives of the people in Parliament. Victims were given voice to restore their civic status; 2000 people testified in public hearings and another 20,000 submitted written statements. People accused of politically motivated crimes were enjoined to give a full and public account of their crimes, often in the presence of their



victims, and if they did so, were granted amnesty. They were rehabilitated, reintegrated into the nation. Expressions of remorse, if welcome, were not required, as remorse could easily be feigned. 7000 people applied for amnesty; amnesty was granted 1200 of these. A subcommittee was to study appropriate financial reparations. However, the Parliament subsequently budgeted very little for reparations.

In South Africa one research found that but 17% of those polled thought the truth commission did in fact promote reconciliation; another research found that two-thirds thought it worsened race relations.

After the civil war in Rwanda, 130,000 people accused of participation in the genocide were in prisons. The Western legal system that had been installed in the colonial period was nonfunctional, most of the judges and lawyers having been killed. The authorities returned to traditional courts called Gacaca, wherein each village nine men chosen among community leaders meet to hear defendants and victims. 12,000 such community courts were set up throughout the country; 850,000 people accused of crimes were heard. Those found guilty were usually not sentenced to prison but to restorative work such as the rebuilding of victims' homes and working in their fields.

The lack of trained lawyers to represent defendants can prejudice the fairness of Gacaca trials. Observers have discovered widespread bribery of Gacaca officials.

Such community courts are not the only place where restorative justice is at work. Restorative justice has to be pursued in many places where former enemies meet. People from the warring sides will be integrated into the national army, the police, the schools. For these institutions to function former enemies have to come to respect one another as members of one community, citizens of one nation.

Reconciliation that prevents return to civil war is the most important and difficult political task of our times. How to hold those responsible for atrocities without excusing everyone else? How to grant amnesty without denying justice? How to mitigate the antagonisms reawakened and enflamed by the work of a truth commission? How to assist those retraumatized by the memory and the confrontation? How to deal with the fierceness of emotions of



grief over one's dead, distrust, hatred, craving for revenge? So many tasks for negotiators, jurists, activists, and thinkers.

What kind of truth can be established by the procedures of a truth commission? What kind of justice can be established by institutions and practices of non-retributive restorative justice?