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## Introduction

**A**T THE END of the twelfth century, the Christian world invented the concept of Purgatory, a holding chamber between Hell and Paradise. In Purgatory, the souls leaving earth could be purified of their sins, if they repented, and then enter eternal life. The historian Jacques Le Goff observes that the creation of Purgatory brought about the modification of the Christian imagination: “To change the geography of the Beyond, that is, the universe, to modify the time of the after-life, thereby, the clash between terrestrial, historical and eschatological time, the time of existence and the time of waiting, is to work a slow but essential mental revolution. It is, literally, to change life itself.”<sup>1</sup>

Several centuries later, in response to geopolitical upheaval linked to the end of the Cold War, a new place appeared, not on the spiritual plane but on the political: transition. As in Purgatory, this new space was also about confession, judgment, and, sometimes, repentance. As in Purgatory, it held the promise of possible salvation.

With the birth of this intermediary world, the topography of the Cold War yielded ground to a new political geography. The collapse of the Soviet Union buried the bipolar world and, with it, the metaphor of international relations as a chess game between two implacable enemy camps. In the new era, international politics was no longer a “zero-sum game.” The cynical thinking of Realpolitik was dropped in favor of the optimism of political liberalism. The fall of the Berlin Wall raised the hope that democracy was now possible for all nations. Multilateralism, the renewal of the United Nations (free at last of the Great Powers’ paralyzing veto), human rights, democracy, humanitarian

action—these were the key phrases of an era whose denizens wondered aloud how to make best use of the “peace dividend.” As Ariel Colonomos notes, “The congenital evangelism of liberalism gets the upper-hand of the negative anthropology of realism.”<sup>2</sup> At the end of the 1990s, one of the theories in fashion was to interpret the rise of political and economic liberalism as the end of ideological conflicts, as political economist Francis Fukuyama puts it in his 1992 best-seller entitled (no less) *The End of History and the Last Man*.<sup>3</sup> However, the genocide of the Tutsis in Rwanda in 1994 and the politics of ethnic cleansing in the former Yugoslavia and elsewhere quickly put an end to this hope.

The exhilaration of the immediate post-Cold War era, nevertheless, unleashed profound dynamism marked by the renewal of the Wilsonian ideal<sup>4</sup> updated for the 1990s. The idea of political and moral progress and social transformation was at the heart of the new system of thinking. Imported from the Anglo-Saxon world, a new term, *transitional justice*, consecrated this shift in perspective. But this new term was misleading, for it was not justice but societies themselves that were in transition after periods of repression, crimes against humanity, and genocide.

The term *transitional justice* first appeared in 1992, coined by law professor Ruti Teitel.<sup>5</sup> It was an idea whose time has come. That same year, under the auspices of a U.S. foundation, Charter 77, some fifty participants from twenty-one countries—in particular, the ex-Communist regimes of Central and Eastern Europe, post-apartheid South Africa, and the ex-dictatorships of South America—met for two days in Salzburg to reflect on the challenge that united them: how to organize politically, judicially, symbolically, and culturally during the crucial period of transformation from an oppressive regime to democracy. What social and legal norms had to be introduced to manage this intermediary time of transition that, in many ways, resembled a new Purgatory?<sup>6</sup>

To their surprise, despite the differences of their individual national contexts, the participants of the Salzburg meeting found that they all faced similar challenges. This discovery contributed to the new idea of transitional justice—that, in spite of radically different historical situations, societies coming out of extreme situations shared “tools” that favored “reconciliation.” This conviction, both instrumental and ethical, was popularized by Archbishop Desmond Tutu, president of South Africa’s Truth and Reconciliation Commission: “Tools new and old, foreign and domestic, but above all practical and effective to design a

reconciliation process appropriate to a particular set of circumstances.”<sup>7</sup> From Capetown to Kigali, Belgrade to Belfast, common “tools” were employed to dampen the flames of war and persecution: truth commissions, international or semi-international criminal courts, memory laws, individual or collective reparation, public expressions of repentance, the opening of archives, political and institutional reforms, the rewriting of history books, and commemorative ceremonies and laws.<sup>8</sup>

It is these institutions and practices that today make up transitional justice. Ruti Teitel defines the term as “a conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.”<sup>9</sup> But what about transitional justice’s ideological foundation? What is this brave idea that pretends to “reconcile” societies? Transitional justice rests on an ambitious gamble that the politics of punishment and pardon can curb violence. If crimes against humanity, by definition, *unleash* men, then transitional justice will accomplish the path in reverse by restoring social ties and a political community.

Transitional justice establishes a period both “before” and “after” the crime. It marks the beginning of a new era, although its ambition is not to erase the past but, on the contrary, to integrate the stain of the crime into the heart of society. Transitional justice proposes a myth in the sense intended by Paul Ricoeur:<sup>10</sup> first, it identifies the wrong; then, it invites judicial or extrajudicial institutions to take account of the tragedy before proposing its resolution. This process leads to public recognition of the crime and, if possible, the criminal’s confession carries the promise of social change and gives new life to the old dream of redemption from Evil. Was it any surprise, then, that the face-off of torturers and victims during the public hearings of South Africa’s Truth and Reconciliation Commission should fascinate public opinion far beyond its borders?

In the era of globalization, the politics of punishment and pardon offer themselves not only as the answer to barbarity—an answer that is acceptable to the United Nations, a number of states, and NGOs—but also as the vector for creating democratic society. Transitional justice is both the product and the agent of a revolution that is not only judicial but also cultural and psychological. In one sweep, transitional justice modifies the political practices involved in conflict resolution, national reconciliation, and the commemoration of mass crimes. By elaborating collective identities and new national mythologies, it

raises the “threshold of expectation”: it mobilizes public opinion and the media and sets off passionate debate about democracy and impunity, restorative and criminal justice, the imperatives of justice, and the imperatives of peace. Transitional justice lays the ground rules of truth, justice, reconciliation, construction of democracy, and a state of law. It introduces terms, often of religious or psychoanalytic inspiration and totally foreign to the vocabulary of the Cold War, to the political lexicon: reconciliation, truth, punishment, pardon, repentance, catharsis. The court, as institution and metaphor, becomes the new center of international relations.

To better grasp the extent of these changes, Chapter 1 of this book retraces the genesis of the politics of punishment and pardon after 1945. Chapter 2 analyzes the construction of the idea of transitional justice and its rise in power.

The toolbox of transitional justice has become all but obligatory in the process of reestablishing peace, democracy, and regional stability. In fifteen years, the creation of some thirty truth commissions, as well as many criminal courts, both semi-international and international, has reconfigured the architecture of the international system. But what are its limits, contradictions, ambiguities, and, more important, its results? To what degree has transitional justice paid off as a way to curb violence? Chapters 3, 4, and 5 put transitional justice to the test by looking at three recent examples.

Chapter 3 examines the UN conference in Durban in September 2001. This meeting was the most ambitious attempt ever made on a global scale to put the memory of mass crimes—that is, slavery and colonization—to rest. I will explore the political and ideological clash between the African and Arab-Islamic side, on one hand, and the West, on the other. I will consider, in particular, the symbolically charged controversy that pits the Holocaust as a unique event against multiple “holocausts,” as well as the stakes involved in the definition of crimes against humanity and in the demands for reparation by the countries and NGOs of the Southern Hemisphere, particularly (but not limited to) those from Africa. In Chapter 4, I will look at the work of the first Truth and Reconciliation Commission created in the Arab-Islamic world, Morocco’s Equity and Reconciliation Commission (ERC).

I will examine how local actors may take over a truth commission and attempt to use it for their own political goals. Last, but not least, through the International Criminal Court’s charges against the leaders of the Lord’s Army in Uganda, in Chapter 5 I will examine the virulent debate on the nature of

the International Criminal Court (ICC): Is it an expression of true universalism or merely Western imperialism in new clothes?

At the crossroads of politics, law, ethics, psychology, and religion, transitional justice challenges all social actors, for it poses fundamental questions about the nature of societies trying to awaken from the nightmare of war and repression. Above all, the questions it poses are essential for each of us.