

Facts versus Truth: The Dilemmas of a Reluctant Member of a Truth and Reconciliation Commission

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1. *The president of the Federal Republic of Yugoslavia established his Truth and Reconciliation Commission on March 29, 2001. I was listed as one of its members.*

The Commission's mandate is tentative and vaguely defined, and can remain moot here. More important is what Yugoslav society, my friends, and I myself think its purpose is. The issue is of course the conflict in the territory of the former Yugoslavia after 1990, a conflict that has dramatically affected all the constituent parts of that country, most of which have gained the status of sovereign states. The wording of the president's decision to establish the Commission suggests that its mandate takes it farther into the past than 1990; in fact the material for the first session — prepared by the president's staff — indicates that its authors imagined it as addressing the period since 1980, ten years before the armed conflicts began and eleven years before Yugoslavia dissolved (according to the earliest date ascribed to that event).¹

The atrocities in the Yugoslav wars of secession, or of dissolution, more or less occurred after 1991. Should a body fashionably styled a "truth and reconciliation commission" be looking into the causes of savagery in armed conflict or into the causes of the conflict itself? In other words, which matters more — what happened during a war, or why the war happened? If I understand the causes of the war, will I better understand why it was so much more cruel and caused more suffering than many other international or civil wars?

As words, "truth" and "reconciliation" have their range of meanings, albeit ambiguous ones. But the syntagm "truth and reconciliation," linked to a body of people chosen to say or do something about these things, has acquired some specific meaning: it is colored for me by things I have read about Guatemala, El Salvador, Chile, Argentina, Rwanda, South Africa, and other countries. There are people around me for whom the phrase has fewer associations; they think only of the most popular truth and reconciliation commission, the South African one. Most of my countrymen are exhausted by the national obsession with these wars, and with one of its major actors, the former President Slobodan Milosevic, until recently their leader. (The obsession was as mentally damaging when it opposed Milosevic as when it ran in his favor.) Those who know nothing of other nations' truth and reconciliation commissions obviously think this one will be a specifically Yugoslav or Serb affair, as unique as all of the miseries that have befallen the Serb "nation of martyrs" recently — or else, as nationalists would say, since time immemorial. Being an unhappy nation is like being in puberty: one's own depression and suffering are the only miseries around — until one meets another sufferer.

2. *I was trained as a lawyer.* I believe in my ability to deal with facts and their qualification," a word that in legalese means subsuming an event or an action under a definition — for example, whether killing someone should be called murder, manslaughter, self-defense, or euthanasia. Qualification is partly done by judges, who use juries to establish facts; qualification demands training while establishing facts demands being an ordinary, everyday person (or this is what the major legal systems assume). The jury's decision is called the verdict, which means, etymologically, "saying truth." Judicial truth is recognized as a temporary truth; judges are under no illusions about the relativity of the truth in court — the trial must at some point end, and the law must be satisfied not with "truth" but with some approximation of it. In legal systems where verdict and sentence are pronounced at the same time and by the same body, appeal can be made even of the determination of truth. The truth of a

higher court thus becomes a superior truth, but although the members of that court will probably have more experience in administering justice, they are by no means better experts in establishing the truth. In law, "truth" is an exaggeration.

I know something about law. Now, though, not only am I expected to say what happened on the level of fact, and to give it a name (genocide, ethnic cleansing, homicide, rape, torture, etc.), I and my colleagues on the Commission are also supposed to seek a "deeper" truth — to determine why this thing happened, how it was possible that it happened, what the causal links were, what the societal and moral environment of the whole conflict was. The material we received from the president even refers to crimes against peace. In legal terms this is aggression; in ordinary terms it means, Who started the war?

Do I fully understand the chain of events that led to war? Having taught international relations for a while, I remember that the Versailles Treaty, in placing the blame for World War I entirely on Germany, was not only historically inaccurate but made a huge mistake, very probably contributing to the rise of Hitler. Opinion on Germany's guilt is more uniform in the case of World War II, but the historian A. J. P. Taylor, whether seriously or for the heck of it, tried to demonstrate that other states and statesmen were as responsible as Hitler and his Third Reich. Even the Nuremberg Tribunal felt uneasy about judging war crimes; Rudolf Hess was sentenced not for war crimes but for crimes against peace. (He had been separated from the German government too early to be guilty of something else.)

As the preceding implies, I also feel I lack the professional skills to determine historical truths. Any historian, and there are some on the Commission, can come to me, show me something from the archives, and try to convince me that on a given day, so-and-so wrote to someone else, hinting that a Croat leader was scheming with his Macedonian counterpart to undermine the Yugoslav army's morale. This just reminds me of my experience with professional diplomats, who often tend to confuse information with wisdom, so that they think that they have an advantage over me because they have read the latest dispatches. Historical truths are provisional too; later generations of historians will interpret the same events differently as new documents come to light. Again, as a jurist, I fear the consequences of the Commission determining (by a majority vote!) that historical responsibility lies with this or that side in the conflict. And there is a frequent tendency in historiography to recognize self-appointed ethnic entrepreneurs as qualified national leaders.

Historians are certainly better equipped than I am to deal dispassionately with the distant past. In dealing with recent events, however, they are contemporaries and witnesses in the same way I am. Conversely, why should they trust me when I insist on the power to call witnesses? Am I not confusing historical truth with establishing facts "beyond a reasonable doubt"?

What if I determine that "Croats" started the war, or contributed decisively to its outbreak? Should I then repeat, *mutatis mutandis*, the imbecilic statement of the former president of the Croatian Supreme Court that no Croat could have committed a war crime, or a crime against humanity, because Croatia was defending itself against aggression? In group conflicts, is it only the unjust who commit crimes?

3. *I am afraid of Great Truths.* The spreading of truth has throughout history been a murderous exercise. How many wars have been inspired by the spreading of truth — truth about religion, truth about the past and its injustices, truth about races, truth about nations? At the most elementary level, truth is facts in context; it is the context that I am afraid of. Contexts can be exculpatory, replacing the brutal veracity of a crime with an abstract justification for it.

In the war we now have to deal with, the easiest way to detect a warmonger among the Serbs was his insistence on spreading truth. The Serbian state television invested a lot of money in programs which repeated ad nauseam that the Serb leader and his followers were right, and that they were entitled to combat any misinterpretation of their version of the truth, or any refusal to acknowledge it, by every means available. Back then, somewhere around 1990, an enterprising merchant opened a store in the Belgrade airport — it is probably still there — that had a sign above its doors in both Serbian and English: *SRPSKA ISTINA — SERBIAN TRUTH*. The store sold almost nothing but brandy (*rakija*) in a bottle containing a soaked wooden cross. Was this a bad joke, or the cynical essence of the Serbian version of the truth? I am reporting on this vulgar association for the first time. The poor storekeeper was neither bloodthirsty, nor an alcoholic, nor a religious zealot: he just wanted to please the powers that be. His denunciation of the baseness and manipulateness of their "truth" was quite unwitting.

4. *I was a teacher* for more than thirty years, until I was removed from the university by a nuncio of the Serbian government. That government was predominantly composed of people who are now generally believed to have been thieves and embezzlers. Am I impartial when it comes to their role in Bosnia, Croatia, and Kosovo? Yet are thieves and corrupt politicians necessarily war criminals? Is their larceny perhaps too banal to be included among the truths we have to establish and report on to the public?

What is more important about my history as an educator is that my reputation rested at least in part on my ability to talk, to organize my words, to attract students and convince them that something was, if not true, at least supported by some authority. I was conveying the "scientific truth" — the result of the most recent research in political science, the learned opinions of the highest courts or of the most illustrious legal scholars. I had many students, most of them poor in quality. Ever since 1945, successive communist governments had insisted on enrolling as many young people as possible in the universities, to postpone the moment when they would face a limited future or even outright unemployment. After 1990 this situation only got worse. Most of the students were badly prepared, read no foreign languages, and came from secondary schools that had indoctrinated them with various sorts of collectivism and cheap egalitarianism, first of communist and later of nationalist provenance. To overcome their failures of attention, I and many of my colleagues had to resort to various kinds of theatrics, making them internalize some kind of truth by using tricks. Will I bring these tricks to the Commission? Will other members of the Commission use such tricks on me, and on the public? Someone has to write the report. Other members can change a word or two, a sentence here and there, but essentially they can only vote for or against the draft. Being limited to written reports prevents the Commission from expressing its findings by other means.

5. In the last two decades *I have been a human-rights activist*. This makes me an individualist and a liberal, biased against most things collective — I am suspicious, for example, of both collective rights and collective responsibilities. Strangely enough, I have met many learned people, and read the writings of others, who choose to believe in one of these two things but not the other. Ethnic leaders clamor for the collective rights of their group, but are shocked by hints in the direction of collective responsibility or guilt. Why? Logically there is no right without responsibility; if there are collective rights, then there must be collective liability. Meanwhile most of those — especially in the Western media — who generalize about the collective responsibility of, say, Germans or Serbs, and who call for de-Nazification and for social catharsis, wouldn't dream of recognizing the collective rights of peoples, even as a metaphor for their grievances.

Shaped by my experience in national and international organizations advocating, promoting, monitoring, and protecting individual human rights, I inevitably tend to concentrate on individual cases and

destinies. I would hold, for instance, that one murder can constitute an act of genocide given the proper motive. I believe that human rights have to be respected everywhere. I am disgusted by those who try to minimize the number of victims of the Holocaust, of the Jasenovac concentration camp in Croatia during World War II, or of the more recent massacre in Srebrenica, Bosnia. Will I be able to maintain a historian's sense of proportion? Am I not ready retroactively to condemn an entire political program because human rights have been violated in implementing it? This is a pertinent point in Yugoslavia: many people here pursued the attractive political ideas of liberty and equality announced by their leaders, yet still appear to have consented in the crimes those leaders ordered. Perhaps the pursuers are victims too?

6. In the last dozen years *I have been politically active* — very much so, in fact, between 1990 and 2000, a period coinciding with the wars I now have to review. The main thrust of my involvement was to help depose the regime in Serbia, which I considered retrograde, adventurous, tyrannical, and harmful to the very people it claimed to be leading to great things — liberty, dignity, a better future. My greatest complaint against the Serbian rulers, however, was their eagerness, indeed their thirst, to spark war. Their propaganda glorified war and their journalist mercenaries engaged in hate speech. I am not sure I can be impartial in dealing with the friends of that regime outside present-day Serbia. Many Serb leaders in Croatia and Bosnia were close to Milosevic and his henchmen; many of these leaders now stand accused of ordering or committing war crimes or crimes against humanity. Am I less able to understand the situation in which they found themselves, their inspirations, and their political decisions because they were so close for so long to my principal political foes? Wouldn't I be more inclined to understand and sympathize with the people who opposed them, and who back then were in a weaker position, like the Bosnian Muslims? Victims are victims, not heroes — one does not necessarily become better by being a victim.

7. *I am a Serb, and was baptized a Serbian Orthodox Christian* — which amounts to the same thing in this part of the world, especially in Croatia and Bosnia and Herzegovina, where the war raged. Of course I didn't choose my ethnicity (or, for that matter, my nationality, my citizenship), but I cannot be indifferent to it either; just as I would expect the treatment I might receive from non-Serbs to reflect whatever prejudices — or affectation to have no prejudices — they maintained about Serbs and Orthodox Christians. For that matter, a circumcised male in an anti-Semitic environment can never stop being Jewish. Had an anti-Serb posse detected me, I would have been killed or tortured, even though the loudest Serb patriots considered me a weak and treacherous "mondialist," a *Nestbeschmutzer*. But those words are too strong — I do belong culturally to Serbia. Until the late 1980s, in fact, before the patriots got vulgar, nasty, and dangerous, I rather enjoyed being a Serb; I enjoyed telling foreigners our stories, describing our customs, our food. Believing the Serbian military tradition to be defensive, I even enjoyed being an officer in the army reserve.

On the Commission my ethnic belonging could work both ways: I might show a tendency to be soft on Serbs, but I might also be too hard on them. I cannot accept that all Serbs (or Muslims or Croats, for that matter) are criminals, but I am convinced that some of them are, and that criminal Serbs are my special concern and responsibility.

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The complicating factor for this Commission in particular is that most of its members are Serbs, and the only two representatives of the clergy are Serb Orthodox. If I, both Serb and Orthodox, streng-

then the Serb contingent by joining the Commission, will the Commission seem biased no matter what it does? On the other hand, if a body composed mainly of Serb patriots and Orthodox believers denounced only crimes committed by Serbs, its findings would gain additional authority, especially among the Serbs themselves. But this would again look artificial.

8. *Am I the best member for an ideal truth and reconciliation commission?* Is it the Commission's task to determine what actually took place in Serbia during the period of its collective nationalist obsession and (initially "democratic") dictatorship, or are we meant to find out what happened throughout the former Yugoslavia — a question involving what Serbs did to others, and others to Serbs? If pro-war and antiwar Serbs reconcile with each other, how will Serbs reconcile with the nations around them?

If the Commission is not a court of law, it should not attribute guilt, it should establish truth. Yet what is the moral use of coolly determining what is true and false? That would go against the grain of my refusal, in recent decades, to accept the determinism of the political scientists who told me that the things I was rebelling against were bound to happen, that I was resisting the inevitable course of history, and that the outcome would be decided by others. How will truth contribute to reconciliation, except by creating a basis of fact that will not be disputed forever? Reconciliation will have to be tackled by others — but then the composition of the Commission seems irrelevant. Or is it not? If I believe that some of my colleagues on the Commission uncritically supported nationalist programs, that some of them were even close to being warmongers, and if some of them see me in the exact opposite terms but just as negatively, how can the Commission members expect to help bring reconciliation to people who have lost their children, their kin, and all their possessions? Should we refuse to sit at the same table with people of opposing political views, philosophies, and dubious pasts, or would that be intellectually dishonest?

9. *Epilogue.* What follows is the text of my letter of resignation to the president of Yugoslavia. Such letters belong to a genre, and must be composed in a certain way. The discussion above should make my letter easier to understand, but it still remains in many ways affected and unsatisfactory:

Belgrade, April 15, 2001

Dear Mr. President,

I ask to be relieved of membership in the Truth and Reconciliation Commission that you established on March 29, 2001.

I attended the preliminary meeting of the potential members of the Commission, on March 23, 2001, out of deep respect for you as the embodiment of democratic change in Serbia. But I had certain queries about the powers with which the future Commission would be vested, and about its method of work — issues that were not clearly specified in writing at the time. Before I received the draft promised for the next meeting, the Decision on the formation of the Truth and Reconciliation Commission was published in the official gazette of the FRY [Federal Republic of Yugoslavia]. Therefore it cannot be held that I was fully aware of the nature and functions of the body I was supposed to join, or that I gave my full consent to be its member. I will endeavor to explain why I could not agree to join the Commission.

Given the Decision, and the material prepared for the meeting scheduled for April 17, I conclude that the Commission is vested with very limited powers, of which the most important is the power to seek "understanding and support from state authorities, which would be under an obligation to allow the members of the Commission and its expert teams to examine their archives." These

restricted powers — which do not include the right to call witnesses — blur the Commission's legal status. The fact that the Commission is entitled to adopt "an adequate document on its program and organization" does not help; the Commission cannot arrogate powers that the state has not delegated to it.

The work of the Commission is restricted by the section of the Decision that assigns to it the task of "organizing investigative activities aimed at uncovering documentation on social, ethnic, and political conflicts that led to war, thus casting light on the chain of events and its causes." In this context, as can be inferred from the material, the focal point of the investigation would be the period before the disintegration of the Socialist Federal Republic of Yugoslavia as a historical process. However, people who are not included in the present-day Federal Republic of Yugoslavia lived and worked in the former Yugoslavia. If the Commission is to pronounce judgment on a sequence of events that took place outside the present-day territory of the FRY, the public will not see it as unbiased and impartial if it is composed exclusively of citizens of the FRY (without even a single member from Montenegro).

The concept outlined in the Decision is further elaborated in the material prepared for the first meeting, which assigns to the Commission a vast field of work that no body of this nature could possibly master. For example, I quote the following tasks: confrontation with "horrifying aspects of the already established image of the Serbs and of Serbia itself"; reviewing "the demographic state of the nation"; and "linguistic studies." I am not convinced that the Commission can succeed in covering all of these issues, and am afraid that its failure might compromise the whole idea of truth and reconciliation in the region.

While the causes of war are diverse, the rules of humanitarian law, which both the aggressor and the victim of aggression must observe, are one and the same. As could easily have been assumed, the savageness of our wars is of paramount interest to me as a jurist. But the Commission seems to be expected to establish Great Truths. I am afraid of Great Truths, since brutal violence has been resorted to in their name and for the sake of their expansion. The process of reconciliation can be initiated by more modest means. The intentions don't matter here — neither who was right and who wrong, nor whose behavior can be accounted for and understood (and perhaps justified). What is important is who was human and who was inhuman.

Vojin Dimitrijevic. Facts and Truth: The Dilemmas of a Reluctant Member of a Truth and Reconciliation Commission. In: Okwui Enwezor, Carlos Basualdo, Ute Meta Bauer, Susanne Ghez, Sarat Maharaj, Mark Nash, Octavio Zaya (ed.): Experiments with Truth. Documenta11_Platform2. Hatje Cantz Verlag, Ostfildern-Ruit. 2002, pp. 205-212.

References

- 1 Some of the country's former constituent republics have officially proclaimed that Yugoslavia ceased to exist in 1991. Most foreign states recognized the new states in early 1992. The Federal Republic of Yugoslavia (FRY) was founded later in 1992, officially as the continuation of the old state. Until October 2000, the FRY government refused to acknowledge that the old state had passed away.