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THE RHETORIC OF TRANSITIONAL JUSTICE:

NEGOTIATING THE YEARS OF LEAD IN MOROCCO

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By

Fadoua Loudiy

December 2010

THE RHETORIC OF TRANSITIONAL JUSTICE:

NEGOTIATING THE YEARS OF LEAD IN MOROCCO

By

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ABSTRACT

THE RHETORIC OF TRANSITIONAL JUSTICE:

NEGOTIATING THE YEARS OF LEAD IN MOROCCO

By

Fadoua Loudiy

December 2010

Dissertation supervised by Dr. Calvin Troup

   Transitional justice refers to the variety of rhetorical practices and discourses (restorative and retributive) that nations engage in during the aftermath of state criminality. While examples of mass political violence abound, this inquiry focuses on the Moroccan experience of coming to terms with the Years of Lead where financial reparations have been the primary mode of redress for victims. The philosophy of Paul Ricoeur contributes to a praxis-oriented understanding of transitional justice. This work advances a rhetoric of symbolic justice that privileges the public memory of victims. Symbolic justice offers hope for the renewal of the community's ethos through public discourse and practices that seek to restore the capacity of citizens within their society.

DEDICATION

This project is dedicated to my aunt Saida Menebhi, my parents Khadija Menebhi and

Aziz Loudiy, my grandparents, all the victims of the Years of Lead, and to Leyth and

Lilya.

ACKNOWLEDGEMENTS

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Chapter One: The Urgency of the Past

> We cannot change it at will, but we can
> work on it until we have a past that leads to
> a future we can be proud of.
> --Joshua Foa Dienstag

History is riddled with violent events involving millions of innocent victims, including the Armenian genocide, the Holocaust, Hiroshima, the Rwandan genocide, Apartheid, the Darfur massacres, to mention just a few. Even for those of us who have not lived through any these events, these names are etched in our memories as historical markers that evoke injustice, grief and suffering. One cannot help but wonder how fellow human beings can be capable of such evil, and how do their victims recover from these experiences of victimhood and injustice. More specifically, how do persons and communities work through experiences of violence and injustice that strip them of their humanity and capacity to act as citizens?

This process of negotiating (or working on) the past is commonly referred to as transitional justice. As I explain in chapter two, this metaphor and associated practices emerged (or re-emerged) after World War II but it is truly the South African experience of transitional justice after the end of the Apartheid regime that popularized it. Such popularity was due primarily to the leadership involved (Nelson Mandela and Archbishop Desmond Tutu) as well as the restorative approach adopted (truth and reconciliation commissions). There are other ways to engage mass criminality at a national level, such as retribution (Nuremberg trials) or even choosing not to engage it at all, like the Spaniards decided after the death of Franco in the early 1970s (the Pact of Oblivion). However, for those who lost family and friends during the civil war in Spain, the decision

not to engage the past at that time did not mean to forget what happened to their loved ones. Recent developments in Spain suggest that there is now a strong social movement to re-open the files of the Francoist past and serve justice to its victims.[1]

It should be clear that while historical experiences of transitional justice differ in terms of their context, scope and path chosen, they all constitute a response to evil. Evil is an important philosophical and theological metaphor for discussions of justice in general; however its treatment is beyond the scope of this work. Suffice to say that evil is universal, no community is immune to its manifestations and deleterious consequences. Paul Ricoeur states that the problem of evil is "a provocation to think more and otherwise" (*Le Mal* 57). Although it cannot be explained phenomenologically nor empirically, evil actions need to be confronted, and their consequences on victims addressed. This chapter begins with an overview of the Moroccan context that serves as the basis for engaging the rhetoric of transitional justice. The discussion then moves to the metaphor of public memory and the relevance of Paul Ricoeur's philosophy to this work.

The Moroccan Context[2]

Examples of transitional justice abound. But the focus in this project is on the Moroccan experience of coming to terms with Years of Lead, which refer to the period from the early 1960s through the end of the 1990s—under the reign of King Hassan II. During these years, officials acting on behalf of the Moroccan monarchy tortured, kidnapped, arrested and murdered without a trace thousands of victims. In a literal sense, the Years of Lead refer to the bullets that security forces fired at unarmed citizens during demonstrations and uprisings; figuratively it has come to designate a time of fear, state

terror, and the victimization of thousands of innocent people—men, women and children. Details provided in many testimonials are gruesome and depict a cruel, evil and ruthless period of Moroccan history.

In the early 1990s, due primarily to international pressure, the monarch (Hassan II) in throne since1961, was forced o make changes. These changes included an acknowledgment of the existence of secret prisons, the release of s political prisoners (those who had international connections), and a loosening of constraints on public discourse. The other notable change was the introduction of concepts of human rights and democracy into the rhetoric of the State. After King Hassan II's death in 1999, his son Mohamed VI took over and ordered the creation of an indemnification commission to compensate victims of crimes perpetrated by officials acting in the name of the state. The impact of this commission proved limited; so he ordered for the creation of the Commission for Equity and Reconciliation (IER), established by royal decree in late 2003. The IER's mandate was to establish the truth about the violations that occurred during the years of lead, compensate victims, initiate a process of national reconciliation and, most importantly, promote a culture of human rights and respect for human dignity and life to contribute to the associated project of democratic transition. However, far from meeting with unanimity, the Moroccan project of transitional justice has started a conversation about the meaning of reparations, equity and reconciliation. The International Center for Transitional Justice states:

> Despite many notable accomplishments, the work of the Commission has
> not been without its critics who have pointed to its limited investigative
> powers and the lack of an accountability mechanism for perpetrators of

human rights violations. Groups like the Moroccan Association for Human

Rights (AMDH) have organized their own versions of public hearings-

though without the benefit of national television coverage—in which

victims were allowed to name perpetrators. Perhaps the most significant

complaints involved the limited information made publicly available by

the Commission regarding its investigations into the fate of the missing

and burial sites of the deceased.[3]

A recent report by Amnesty International also points to the limited impact of the IER's

work, despite the great deal of archival material gathered by the commission.

The stories presented talk about the suffering and grief victims were subjected to

and the loss of friends and family, but also of the friendships developed with others, the

solidarity amongst victims' families, and the remarkable struggle to survive. The stories

are important in that they constitute this nation's collective memory of the recent past, the

consciousness of that people, and reminders of what happened so that it does not happen

again. In addition to published narratives of the Years of Lead, there has been a variety of

events and forums where victims have had the opportunity to talk publicly about their

ordeals. These include symbolic mock trials of perpetrators, events that commemorate the

passing of victims or, for example, the state-sponsored kidnapping of the charismatic

political leader Mehdi Ben Barka. These events have showcased the stories of victims as

part of the legacy of the Years of Lead, and as such constitute an important part of

Moroccan public memory. Storytelling of state-sponsored violence has been efficacious

in compelling a moral response from both local and international audiences. Because of

the link established between testifying (telling one's story of victim-hood) and obtaining

reparations (for one's suffering or a family member's death), human life and worth was inevitably put in dollar terms. Slyomovics argues that with Moroccan narratives of suffering, as with other such narratives, "the value and worth of a man or a woman can be provisionally quantified" ("Reparations" 28). Such an argument, however, with its focus on money as a symbol of recognition of a person's unjust treatment, distracts from the more significant contribution of witnesses and their narratives, a contribution that cannot and should not be measured in financial terms. It also detracts from making accountable those state actors responsible for carrying out atrocities against their fellow citizens, as I further elaborate in chapter three, which provides a rhetorical history of Morocco's experience of transitional justice.

Be that as it may, the project of transitional justice has energized public discourse about the past, the present and the future of Morocco and thus can potentially contribute to a true (grassroots) political transition. The past has been a "foreign land" for most Moroccans for a long time, either because of a blackout on information or because of fear. Prior to the creation of the IER, to speak of the past meant to be political and to be political meant that one could be victim of state violence. Abdellah Maghraoui argues that through a policy of violence and strategic political moves, the Moroccan monarchy had managed to actually depoliticize its citizenry ("Depoliticization" 70). If this is true, then the potential for the rhetoric of transitional justice is immense as it may contribute to a re-politicization of citizens. Driss Benzekri, the late president of the IER, stated: "It [the process of transitional justice] is not only a matter of sharing knowledge and appropriation of the past but also to create in the present (through debate) norms and rules for living together and build a future."[4] In other words, discourses and practices of

transitional justice contribute to understanding of the past as well as preparing for the future.

As the opening quote by Joshua Foa Dienstag suggests, the past that is at stake in experiences of transitional justice is past to the extent that we cannot rewrite or whitewash it but we can be responsible inheritors by being accountable for it. History is not only an ontological condition as Martin Heidegger argued but also "as a moral debt to be paid off," in Nietzsche's terms. In other words, "anyone who truly dares to meddle with the past accepts the onus in doing so for what is there, accepts that the past lives on in one, and that one may be accountable for it. For if this were *not* so, there would be no need to revisit the past at all" (Dienstag 191). In addition, the past is part of the hermeneutic of the human narrative so to understand the whole (history), one needs to understand the parts, as the following section on public memory explains.

Public Memory as Engagement with the Past

The notion of collective memory was introduced in the early 20th century by French sociologist Maurice Halbwachs whose argument originated from Emile Durkheim's idea of collective conscience and consisted in showing how all acts of memory or remembrance are necessarily social—that is, when one remembers an event, one does it as part of a collectivity. In other words, to speak about public memory is to speak about acts performed in the public realm that rely on remembering. Public memory is constituted at various levels and through different mediums or "realms," as Pierre Nora calls them, and should be distinguished from both collective and social types of memory. "Realms of public memory" are revealed in geographical places, historical monuments, buildings, literary works, art works, commemorations, symbols and other genres and

practices that suggest an audience.[5] Public memory implies a dual temporal configuration

because, as Edward Casey argues, the phrase includes two time frames, possibly three:

> Public memory is both attached to a past (typically an originating event of
>
> some sort) and acts to ensure a future of further remembering of that same
>
> event. Public monuments embody this Janusian trait: their very
>
> massiveness and solidity almost literally enforce this futurity, while
>
> inscriptions and certain easily identifiable features (for example, the giant
>
> seated Abraham Lincoln of the Lincoln Memorial) pull the same physical
>
> object toward the past it honors. (17)

This view of public memory reveals the ambiguous and complex character of any attempt

to capture the past. The past is not only elusive, fragmentary and disputatious, as Matt

Matsuda suggests, but it is also prone to all kinds of appropriations and

misappropriations.[6]

Public memory is above all a rhetorical and political phenomenon; it is a struggle

for power between official and vernacular cultures to assign meaning to the past and,

ultimately, to shape the present (Bodnar, *Remaking*14). There are strong connections

between the drive to make sense of the past and a community's identity as evidenced by

the salience of memory in identity politics. Booth states that: "…it [memory] is at once a

defensive struggle to preserve a connection with the absent and the dense soil of habit

and institutional memory, that almost effortless infusion of the past into the present" (xi).

The kinship between memory and identity is evident for both individuals and groups.

The identity of larger communities relies on citizens' narratives for both continuity and

change and, most importantly, to ensure that (some kind of) justice is served. According to Booth:

> Memory-identity matters because, among other things, it is the ground of imputation, of the society (or person) as owner of its past and responsible for it, as well as identical to, and thus capable of, making commitments to a future, of binding its future by a present promise. And because we are members of a persisting and accountable community, we bear witness. That is, we seek to ensure through acts of memory a certain persistence of the crime, the victim, and the perpetrator (xiii).

Testimonies spoken in communities with a past of injustice and suffering are realms of memories but thus constitute a significant aspect of a people's public memory. These testimonies assign meaning to the past, reshape a people's identity, and serve justice by recognizing an injustice, the perpetrator of the injustice and, most important, the victim. But what does it mean to be a victim in this context? Casey makes the argument that:

> A victim is a public person—if not yet explicitly so, then potentially so (that is, as someone who can be recognized as such, present a case in court, complain in public, etc.). Precisely because a victim cannot argue for himself—because he is dead or lacks the knowledge or resources to become a plaintiff—public testimonial is the more requisite if that person (however unknown to the public initially, however much stranger) is to reclaim recognition or vindication. Without the testimonial, verbal and/or pictorial, the victim recedes into oblivion, remembered only by his or her family and friends—and thus part of individual and social memory—but

not belonging expressly to public memory, at most a cipher or empty

number in that memory (that is, as just one among the many dead as

currently counted) (20).

To qualify as a victim one must lack the capacity to speak for oneself and be reduced to a

number or a cipher. In Morocco for example, during the Years of Lead, political

prisoners were given numbers that were used to refer to them in lieu of their actual

names, and women prisoners were given male names to deny them their gendered

identity. In such cases, publicly communicating these experiences contributes to the

preservation of a people's public memory as well as victims' regaining of the status of

human being, a person worthy of respect and dignity. As Casey insists, "Without the

memory, verbal and/or pictorial, the victim recedes into oblivion, remembered only by

his or her family and friends—and thus part of individual and social memory—but not

belonging expressly to public memory" (20). The living have a duty of memory to those

who have been victimized, to humanity's victims:

> The testament, telling the heir what will rightfully be his, wills past
>
> possessions for a future. Without a testament or, to resolve the metaphor,
>
> without tradition—which selects names, which hands down and preserves,
>
> which indicates where the treasures are and what their worth is—there
>
> seems to be no willed continuity in time and hence, humanly speaking,
>
> neither past nor future, only sempiternal change of the world and the
>
> biological cycle of living creatures in it. (*Between* 6)

To be sure, for either an individual or a nation to dream of a future, they need a past that

serves as exemplar, testament and inspiration.

Testimonies put a human face onto the past and they ensure that the past does not fall into oblivion. They can provide, as Priscilla Hayner recommends, the opportunity for a nation to remember in order to forget (xi). In the aftermath of a state's violence against its own people, testimonies can serve as the opportunity for deliberation not just about past actions (responsibility, accountability and justice) but also about possibilities for the future of that people (identity, allegiance, affiliation). As Kay Schaffer and Sidonie Smith put it:

> These acts of remembering test the values that nations profess to live by against the actual experiences and perceptions of the storyteller as witness. They issue an ethical call to listeners both within and beyond national borders to recognize the disjunction between the values espoused by the community and the actual practices that occur. They issue a call…to respond to the story; to recognize the humanity of the teller and the justice of the claim; to take responsibility for that recognition; and to find means of redress. (3)

Through their stories, victims of state violence appeal to audiences' sense of justice through pathos and ethos, demanding both a listener and a response. First, for many victims and their families, the purpose for this laborious undertaking is to uncover the truth so that their stories are recorded as part of the country's history. Ricoeur argues that testimonies are part of the process of making history: "[. . .] testimony opens an epistemological process that departs from declared memory, passes through the archive and documents, and finds its fulfillment in documentary proof" (*Memory* 161). In other words, testimony is the lynchpin between memory and history.

Discussions of transitional justice have typically focused on legal rhetoric or psychological explanations of victims. While legal and psychological considerations are important, they often do not fully take into account the rhetorical and ethical implications of these events. Schaffer and Smith argue that the psychoanalytical model has been the dominant framework in the West for thinking about and explaining stories that speak of political violence (22). While the psychological aspects of experiences of abuse and trauma are certainly important, they remain personal. When one presents his or her experience of being a victim of state violence in a public forum, one's narrative moves from the private to the public realm. Thus to testify is an ethico-political act with implications for the individual citizen as well as for society at large.

Paul Ricoeur's Contribution to Transitional Justice

The past is a narrative, a rhetorical form that informs and is informed by temporality. Every national community relies on rhetorical practices for the purpose of making sense of the past, constructing the present, and imagining the future. Gerard Hauser explains that there exists a symbiotic relationship between a society's "self-production" and rhetoric (114). Ricoeur's approach to narrative hermeneutics privileges an understanding of transitional justice as a rhetorical metaphor and practice, and is an attempt to move beyond the psychoanalytical and therapeutic framework (closure) that is often implicit, if not explicit, in discussions of a community's negotiation of its past. Ricoeur's approach to narrative identity, temporality, and issues of justice is thus particularly relevant to this study.

 Ricoeur's hermeneutic approach provides the theoretical grounding for understanding the problem of transitional justice as both rhetorical and philosophical

phenomenon. While therapeutic and legalistic models of (political) transitional justice are important for understanding collective trauma and political transitions in the aftermath of state violence, Ricoeur' narrative theory provides the philosophical framing necessary for understanding how citizens, especially victims, negotiate their victimhood and attempt to reconstruct a civic identity as part of their national community. The future of a nation cannot be built on the negation or selective remembering of its past, however atrocious it is; the past is the site of people's historical consciousness and ethos. Thus, it is necessary for nations to engage their past, especially traumatic ones. The idea of a nation is inspired by Homi Bhabha when he states that:

> A nation is therefore a large-scale solidarity, constituted by the feeling of the sacrifices that one has made in the past and of those that one is prepared to make in the future. It presupposes a past; it is summarized, however, in the present by a tangible fact, namely consent, the clearly expressed desire to continue a common life (19).

In other words, the legacy of the past, with its sacrifices and injustices, is the thread that makes people part of a given nation, a community that shares a common burden for the past and the uncertainty of the future. To be willing to share the burden is also be willing to listen to those who suffered, those whose voices have been silenced and without whom, there is no nation to speak of.

The overarching goal of this project is to highlight the experiences of victims of state violence, all-too-often the forgotten voices of transitional justice. The voices of victims as told in testimonies and narratives usually stand in sharp contrast with official history. Although the hard facts presented by these vernacular voices might not be exact,

their narratives present the phenomenological truth of their experiences, in contrast to the forensic truth sought by professional historians. Transitional justice in the aftermath of national political disaster is not only a difficult (psychological) process of mutual healing, it is first and foremost an occasion for civic deliberation about the meaning of justice, national identity, and public (collective, national) memory. The memory of tragic events often becomes the foundation of a nation's new identity:

> I have in mind those events that a historical community holds to be significant because it sees in them an origin, a return to its beginnings. These [epoch-making] events draw their specific meaning from their capacity to found or reinforce the community's consciousness of identity, its narrative identity, as well as the identity of its members. These events generate feelings of considerable ethical intensity, whether this be fervent commemoration or some manifestation of loathing, or indignation, or of regret or compassion, or even the call for forgiveness. (*Time and Narrative 3,* 187)

These tragic events are rhetorical interruptions in a community's history, and their aftermath provides an opportunity for renewed self-understanding. It is a hermeneutical effort, a creative act aimed at redefining a people's ethical aim, invigorating citizens' political capacity to act, and giving "an indispensable way of giving a future to the past" (Kearney 8).

Narratives about the past are important in light of Ricoeur's argument that the identity of individuals as well as communities is constituted narratively, and that the (historical) present we inhabit is always constituted within a dialectic between a space of

experience (ideology, past) and a horizon of expectation (utopia, future). To keep this dialectic alive is tantamount maintaining a healthy political community. Along with Ricoeur, Richard Kearney argues that the tension between belonging (past) and distance (future) is helpful. Because, "cut off from one another, they run the risk of pathological extremes: ideology imprisoning us in reactionary conservatism, utopia sacrificing us to a schizophrenic image of an abstract future without the conditions for its realization" (7). The present offers the opportunity for mediation between happiness and suffering, between past and future. It is at this junction that memory, understood as the thread that links a person or a community to the past, becomes significant. Ricoeur distinguishes three levels of memory: (1) the pathological-therapeutic, (2) the practical, and (3) the ethico-political.

First, the pathological-therapeutic level of memory refers to "blocked memory," and is best understood at the individual level because each person lives or feels her emotions and deals with her memories differently. Commemorations can be cathartic, a kind of mourning, which Ricoeur argues is a necessary component of remembering. When members of a group come together after a traumatic event, they experience the commonality of their loss and plurality of their pain. Ricoeur argues further that "we can say that such mourning behaviours constitute a privileged example of the intersecting relations between private and public expression [of memory]. It is in this way that our concept of a sick historical memory finds justification *a posteriori* in this bipolar structure of mourning behaviors" (*Memory* 79). Collective mourning that takes place in funerals and commemorations can provide individuals with solace in the fact that they recognize that they are not alone in their respective feelings of pain and loss. But pain

and loss can also inhibit remembrance for fear of re-stimulating the horrors one has lived

and witnessed, leading to pathologies of memory. One example is what Ricoeur calls

"blocked memory" where memories are frozen or, in Freudian language, repressed.

Frozen or repressed memories are common at both the individual and collective level.

Many communities make a concerted effort to not remember (or at least, not celebrate or

commemorate) shameful events in their past. The outcome of collective amnesia is a

wounded national memory. The act of remembering is rarely a spontaneous occurrence; it

is a *travail*, a work that can be difficult and painful, which leads to consideration of the

practical aspects of memory (Ricoeur, *Memory* 79).

The practical aspect of remembering is about "manipulated memory" and

concerns the active side of memory where remembering becomes an instrument to

achieve something. Ricoeur notes that abuses of memory occur when there is "a

concerted manipulation of memory and of forgetting by those who hold power" (*Memory*

80), as the relationship between collective memory and political identity illustrates.

Following John Locke, Ricoeur argues that memory is the heart of identity, both

collective and individual, which makes memory vulnerable to all kinds of appropriations

and misappropriations. It is the elusive and fragile nature of identity and the temporal

difficulty in locating and fixing its essence that "justifies the recourse to memory as the

temporal component of identity, in conjunction with the evaluation of the present and the

projection of the future" (*Memory* 81). In addition, to have an identity as an individual or

a nation is to claim difference from another or a group of others, suggesting another

reason for the fragility of identity—that is the threat of the other and the potential for

humiliation and exclusion that comes with claiming difference. The threat of the other

with respect to the fragility of identity can be exacerbated by what Ricoeur refers to as "the heritage of founding violence" (*Memory* 82). Since historical memory is a collection of violent events where there is glory and pride for some and shame, death and humiliation for others, it follows that political and collective identities are always constructed against a backdrop of violence or the threat of violence. As such, memory is vulnerable to abuse and manipulation because of the demands that ideology puts on the construction of political identity. Ricoeur suggests three levels to understand the workings of such ideology: "distortions of reality, the legitimation of the system of power, and the integration of the common world by means of symbolic systems immanent in action" (*Memory* 82). In addition, "the symbolic mediation of action" is important to understand, because:

> …It is through the narrative function that memory is incorporated into the formation of identity…. It is, more precisely, the selective function of the narrative that opens to manipulation the opportunity and the means of a clever strategy, consisting from the outset in a strategy of forgetting as much as in a strategy of remembering (*Memory* 85).

The official narrative of history is the best example of the triangular relationship where memory is put at the service of identity-making in the name of a particular ideology. It is perhaps worth mentioning here that Ricoeur views memory as "the womb of history, inasmuch as memory remains the guardian of the entire problem of the representative relation of the present to the past" (*Memory* 87). History is then a "forced memorization," but it is not only memorized, it is also taught and celebrated (*Memory*

85). The obsession with the past that excesses of memory and official histories produce is not only a political problem to be reckoned with, it is primarily an ethical problem.

Finally, the ethico-political level refers to "obligated memory" and the telos of practices of memory, especially in the political realm. What is the aim of remembering, beyond the practical aspects discussed above? More specifically, what does a duty of memory entail for individuals and communities? When one speaks of an ethics of memory, one is necessarily speaking about justice, a duty to serve justice for the past, for those who passed. Ricoeur defines this duty in the following terms: "The duty of memory is the duty to do justice, through memories, to another than the self" (*Memory* 89). Indeed, is it not a sense of justice, or more accurately, a sense of injustice, that compels one to tell a story of a relative or a friend, have their side of the story heard and made public, lest their suffering and accounts of it fall into oblivion? An obligated memory is an impassioned memory that forces itself upon the living, it is an attempt to pay a debt to those who can no longer tell their story, it is a debt to victims of the past, echoing Nietzsche's commitment to history. This is exactly the kind of memory that is compelling this project.

While drawing upon the Moroccan experience as a primary exemplar, this dissertation is not about Morocco per se. Rather, the focus is on understanding how the unfolding of a tragic and violent past shapes the present and the future of a nation generally and thus, the necessity and urgency of addressing injustices of the past. From the particularity of the Moroccan case, one can gain insight into the inherently communicative and rhetorical nature of the practices involved in a community's negotiation of its past. In sum, the purpose of this inquiry is to offer a rhetorical account

of transitional justice in Morocco that moves beyond legalistic and therapeutic approaches and that is grounded in an ethical philosophy of justice. Public discourse about the legacy of the Years of Lead is a political and civic opportunity for renewing the nation's ethos and identity, an identity that should be inclusive of all citizens. This opportunity should be seized as what Ricoeur refers to as the "time of initiative," a transformative moment where past (the space of experience) and future (horizon of expectation) become a productive unity of contraries.

In sum, this project is compelled by the urgency and necessity for communities to engage their past, however atrocious it may be. It is based on the belief that any nation's future cannot be built on the negation or selective remembering of its past. The past is the site of people's historical consciousness and ethos. The Moroccan experience of transitional justice provides the phenomenological grounding for this engagement but, as previously stated, practices of transitional justice have a long history, which will be further discussed in chapter two. Chapter three provides a rhetorical account of Morocco's experience of transitional justice. The philosophy of Paul Ricoeur in chapter four sheds light on understanding transitional justice through the lens of the philosophy of communication and communication ethics. Finally, chapter five offers the metaphor of symbolic justice as a framework for negotiating atrocities of the past.

Chapter Two: The Rhetoric of Transitional Justice

> We were haunted by this idea of disappearing forever,
> vanishing into thin air, reduced to a mound of earth without
> being officially declared dead. Lost and never found. Lost
> and never buried.
>
> (Tahar Benjelloun, 9)[7]

The metaphor of transitional justice has emerged only recently but practices and discourses that are implied in this approach to intra-national conflict have a long tradition. In *Closing the Books: Transitional Justice in Historical Perspective*, Jon Elster notes that neither the idea nor the practices of transitional justice are new, as they can be traced back to the Athenians in the early development of deliberative democracy. In recent history (after the Nuremberg trials), practices associated with retributive models of justice seem to be waning to the benefit of restorative practices of justice. That is, more nations are choosing to face their traumatic pasts and address issues of responsibility and accountability primarily through practices of truth commissions, reparation programs, and memorialization. Although appealing, the increase of restorative programs and practices raises the question as to whether justice can actually be achieved through non-legalistic means even in situations of mass atrocity. Whether the approach is retributive or restorative, rhetorical practices that seek to do justice to victims through negotiations of the legacy of a horrific past do so with the hope that those whose lives were damaged and in fact wronged can recover a sense of normalcy. This question leads to a more general one, concerning how a new national ethos can and will emerge and play a significant role in preventing such atrocities from repetition.

Most scholarly discussions of transitional justice focus on legalistic and psychological aspects of such lived experiences. While some scholars in communication

studies such as Erik Doxtader, John Hatch, Bradford Vivian, Mark McPhail, Lane Bruner, Stephen H. Browne, and Barbie Zelizer, among others, highlight the rhetorical dimensions of transitional justice, these scholars amplify democratization and constitution building, or the deliberative aspect of the political process; public and visual memory, and the epideictic rhetoric at the heart of commemorative activities; or, issues of grace, atonement and redemption, which epitomize the theological undertones of discourses of reconciliation. All of these accounts make significant contributions, but they largely ignore the forensic dimension of transitional justice, and associated ethical tensions and implications. Forensic rhetoric concerns discourses and practices that seek to make a judgment, pronounce a sentence that renders justice, whether they occur in a courtroom, tribunal, or other public domain, including the media. The emphasis in this rhetorical genre is praise and blame, moral and ethical judgment and, assigning responsibilities. Aristotle articulated this species of rhetoric around issues of wrongs, judgment and justice/injustice, which are indeed the focal point of all experiences of transitional justice.

Emphasis on the forensic needs to be considered within the realm of civic rhetoric, public discourse, and political actions that are guided by citizens' active involvements with the city or polity they live in. A polis without a concern for justice is not a just city. It is worth noting that this Aristotelian perspective was challenged by Augustine, for whom justice should not constitute the foundation of a society. Put differently, justice should be a byproduct not the condition of a commonwealth. Jean Bethke Elshtain argues that Augustine's conception of (earthly) justice is rather minimalist. She notes: "There is rough and ready justice, to be sure, even in robber bands,

but earthly justice is often little more than a principle of retribution as well as an imperfect sign of our sociality—it doesn't touch on the really important stuff" (22). Contrary to Cicero who passionately argued for the triumph of justice, Augustine preached that love instead of justice and law, should be the guiding telos of a commonwealth. In *The City of God*, he explains:

> In that City, both the individual just man and the community and people of the just live by faith, which works by love: by that love with which a man loves God as God ought to be loved, and his neighbour as himself. But where there is not this justice, there certainly is no association of men united by a common agreement as to what is right and by a community of interest. And so there is no commonwealth; for where there is no 'people,' there is no 'property of people'(Book XIX, Ch. 26).

It is love first and foremost that should bring a community together, the commonwealth; and this is what, for Augustine, constitutes (or naturally leads to) authentic justice. This understanding of justice and its connection to love is important if we consider the fact that it is often easier to agree on what constitutes injustice than what constitutes justice or just action—whether retribution or restoration—especially in cases of genocide and mass atrocities.

How might the rhetoric of transitional justice serve as the remedy to experiences of injustice and impunity? How might retribution on the one hand, and truth, reparation and reconciliation on the other hand, contribute to moving from suffering, grief and enmity to a sense of peace after national trauma? In addressing these questions, I provide an overview of the history of transitional justice, followed by a discussion of the different

approaches to transitional justice, with particular focus on three practices of restorative

transitional justice: 1) truth and reconciliation commissions 2) reparations and 3)

memorialization.

A Historical and Theoretical Framework

Legal scholar Martha Minow has written extensively on the issue of forgiveness.

She states: "Vengeance and forgiveness are marks along the spectrum of human

responses to atrocity. Yet they stand in opposition: to forgive is to let go of vengeance; to

avenge is to resist forgiving. Perhaps justice itself 'partakes of both revenge and

forgiveness" (21). This suggests that responses to the many instances of genocide and

other atrocities committed by human beings against fellow human beings during the 20th

century have ranged from the most noble to the most vindictive. The ideal of justice

might be found in the continuum between these two poles. The massacre of the Armenian

population by the Turks is assumed to be historically the first genocide of the 20th

century, but the magnitude of the Holocaust caught the world's collective consciousness

as "the emblematic limit case of human rights abuse" (Schaffer and Smith , *Human* 20).

The Holocaust has marked humanity's memory because of the incommensurability of its

horror as well as the failure of world leaders and citizens to take responsibility for the fate

of the victims. This sense of guilt and responsibility, bewilderment at the "banality of

evil," as Hannah Arendt puts it in *Eichmann in Jerusalem*, coupled with the massive

archival and mnemonic work done to remember that which should never have

happened—innocent children, men, women being killed in the most atrocious and

inhumane way so that there are little or no remains, no traces left—launched a

conversation about evil, responsibility, guilt, memory, and forgiveness that continues

fervently today. While this conversation might be fallible, it remains a must, a difficult but necessary attempt to come to terms and comprehend that which is beyond comprehension but still demands accountability and justice.

For experts, the Holocaust and the end of World War II constitute the beginning of what is commonly referred to as the first wave of transitional justice in modern history. The establishment of the Nuremberg Military Tribunal and other tribunals set up to prosecute Nazi collaborators in Israel, France and other European countries are the most significant consequences of this trend.[8] The second wave took transitional justice and democratization to the Southern part of Europe, with countries such as Greece, Portugal and Spain undergoing major political shifts in the mid to late 1970s. While these experiences have first been geographically limited to Western Europe, their impact has been felt worldwide. In addition, the flourishing of human rights discourse worldwide and end of the Cold War gave a boost to these political phenomena and contributed to a domino effect of transitional initiatives in Latin America and Eastern Europe, beginning in the mid-1980s. By the end of the century, the African and Asian continents were no longer immune to these upheavals as citizens in countries like South Africa, Burundi, Morocco in Africa, and the Philippines and Sri Lanka in Asia began to call for accountability and justice for crimes committed by states against their own people and for a change in political practices and institutions to safeguard against similar future massacres. These developments point to the emergence of a new global moral barometer evident in the international institutionalization of human rights discourses and practices, an ongoing effort with setbacks as well as accomplishments.[9] With this paradigm shift came an implicit universal understanding that democratic forms of governance are the

most conducive to the actualization of these ideals, leading to calls for democratization in several parts of the globe.

These political upheavals have prompted the development of democratization studies as a field of study. For Guillermo O'Donnell and Philippe Schmitter, two political scientists who are credited with inaugurating the field of democratization studies, a transition is the period that marks "the interval between one political regime and another" (6). Typically, transitional justice implies a transition from an authoritarian or repressive political regime to a more democratic arrangement or, in some cases, from a state of war to an enduring peace, or more generally from a violence, terror, and repression to a more dialogic state of affairs characteristic of deliberative democracy where inclusion of citizens' voices is integral to the political game.[10] It is in this critical transitional period that new practices of rendering justice are formed. Because justice plays a central role in the political and moral foundation of any society, understanding the relative success or failure of these practices can provide valuable insight into how the political future of any particular national community will likely unfold.

There is an additional approach to transitional justice that is beyond the scope of this work: distributive justice, where the focus is more on the structural and institutional circumstances that led to the crime(s) or political violence. In this approach, to deal with the past and prevent it from happening again, one has to look at the material conditions that allowed the abuses to happen in the first place and change them. Some observers who are critical of the South African experience of transitional justice point out that this is the approach that needed to be followed because the restorative approach did nothing to change the political and socio-economic cultural of the country. The so-called

distributive approach is often neglected because of its lack of popularity, difficulty of execution, and effective demand that the root structures of a society be revolutionized. But it also brings to the forefront of discussion the actual conditions of those who survive atrocity, which also highlights the variety of ethical and political practices, historical and national contexts, and particular cases that coalesce in determining retributive, distributive or restorative approaches, or some hybrid thereof, that is most appropriate. It should be clear here that these approaches are not mutually exclusive and that, in some cases, societies have chosen to adopt either one, a combination or all of them, as the discussion that follows shows.

Some nations, like Germany after the fall of Nazism, chose to prosecute the guilty and compensate victims, a combination of retribution (making perpetrators accountable through the judicial system) and restoration (repairing some of the harm done to victims through monetary compensation). Other societies, such as the Spanish after the death of Franco in the mid 1970s, chose collective amnesia (the pact of oblivion) and focused on the future with an interest in rapid democratization, to the detriment of accountability and justice. Transitional justice, in post-Franco Spain, was a transition with neither punitive nor reparatory justice. Still, others like Argentina and Chile, decided that both retributive and restorative approaches to transitional justice with official trials, amnesty laws, and truth commissions were necessary to settle past accounts and build a better political future. Justice in these and other Latin American countries was meaningful only to the extent that those proven to be part of the killing squads were held accountable for their criminal actions. More recently, countries like South Africa and Morocco chose to forgo prosecutions and deal with their criminal political past primarily through truth

commissions and reparation programs, which may signal a new shift in favor of restorative processes. This shift needs further examination, especially since it is not always clear why a country chooses a particular path to achieve transitional justice. Oftentimes, it is a negotiated deal between the outgoing regime and incoming government or, in some cases, the result of international pressure, like in Germany and Yugoslavia, or simply a matter determined by those in power. Be that as it may, the differences between retributive and restorative genres are especially important to ponder. The following sections shed light on the distinctions between the philosophical and practical distinctions between retributive and restorative approaches to transitional justice.

Retribution: A Just Punishment?

Retributive justice connotes punishment or penalizing of the person found guilty of the crime and is based on the principle of an eye-for-an-eye. The focus of the entire retributive process is on the criminal act itself and the presumed perpetrator of the crime who needs to pay for breaking the law; victims are rarely involved, except for monetary damages. The argument in favor of retribution is based on justice and accountability, which first begins with forensic truth. While the exposition and recording of truth are of utmost importance in a transition, there is disagreement among scholars about what constitutes the best course of action to expose or ascertain the truth and manage it. Mark Osiel argues that, in the aftermath of mass atrocities committed by a brutal state, it is best to take the retributive approach and address issues of truth in criminal trials where such an exposition can also have a pedagogical purpose. "This is because," he argues, "such trials, when effective as public spectacle, stimulate public discussion in ways that foster

the liberal virtues of toleration, moderation, and civil respect" (2). Public prosecution of those responsible can open up a space for a conversation about the moral and political foundations of the nation, thus contributing to the emergence and fostering of the deliberative space necessary for the flourishing of democracy. The metaphor of space should not be easily dismissed, especially in relation to discussions of the past. Following Ricoeur, Hauser points out that "the term *space* is important because it suggests both that our past always contains something foreign to us to be overcome and that how we overcome it—how we traverse its *space*—depends on the itineraries we choose for our journey" (emphasis in original, 111). Public trials create a space for negotiating the past; they become the space, that is the route or path that a nation chooses to take or reestablish its moral foundation. In other words:

> [b]y highlighting official brutality and public complicity, these trials often make people willing to reassess their foundational beliefs and constitutive commitments, as few events in political life can do. […]They are 'moments of truth,' in several senses. Specifically, they present moments of transformative opportunity on the lives of individuals and societies (Osiel 2).

Public trials often become the *Event* that marks the transition of a nation from a past of violence to a future free of injustice, and where questions about public memory and national identity are engaged. Osiel refers to such public prosecutions as "refounding myths" of a nation, as they mark "a decisive break from their own pasts, celebrating the courage and imagination of those who effected this rupture" (4). It is perhaps difficult for the victims or their families to accept that a genuine transition is in effect if those

responsible for suffering have not accounted for their actions and paid a debt to society. Juan E. Mendez, a legal scholar who has written extensively on transitional justice in Latin America and a proponent of prosecutions in situations of crimes against humanity, readily recognizes that prosecutions are a tough choice to make and need to "be thoroughly justified in moral terms" (274). In these cases, retribution is not to be equated with vengeance but as the just consequence or punishment for actions that society recognizes as unlawful. Mendez states that: "An enlightened theory of punishment, therefore, puts the victim at the center of the need to redress wrongs: societies punish because they wish to signify to the victim that his or her plight will not go unheeded" (275). In other words, to not punish the person or people responsible for the victim's plight is to fail both the victims and society.

The argument for prosecution has to do with impunity and accountability and the need to signify a genuine rupture with a past that needs to be known, evaluated and judged according to universally established rules of justice. Turning the page on a bloody past without establishing the record in terms of individual and institutional responsibilities for crimes against humanity can be risky for a "re-born" nation, as it sets a bad precedent of impunity for a newly established government and may leave victims with a bad aftertaste of justice not being served. Conversely, as Mendez argues:

> Both the need to consolidate a shaky democracy and the need to stop the
> fighting in a conflict situation undoubtedly condition the possibilities of
> redressing past wrongs, placing limits on what a policy of accountability
> can achieve. Those urgent demands, however, by no means diminish the
> objectives of truth and justice. On the contrary, it is increasingly

recognized that making state criminals accountable says something about

the democracy they are trying to establish, and that preserving memory

and settling human rights accounts can be part of the formula for a lasting

peace, as opposed to a lull in the fighting (257).

Prosecutions constitute an opportunity to distinguish collective from individual guilt by

preventing or removing "the stigma of historic misdeeds from the innocent members of

communities that are collectively blamed for the atrocities committed on other

communities" (276). In other words, trials establish a moral distance between those

whose actions have destroyed social harmony and created victimage, and innocent

victims whose lives were shattered by those actions; it is a moral statement, a judgment,

about the society in which these violent crimes take place.

Despite its merits, it appears that criminal law is no longer a first choice for

transitioning societies primarily; it is not always easy for new leaders to make the case

for retribution in the midst of political shuffling and embryonic institutions. It is a

difficult decision that poses political as well as ethical challenges for societies trying to

turn the page on a traumatic past. The political price for trials is not always clear, but, of

course, neither is the moral price for resisting justice and condoning violence and

impunity, especially when committed by state officials. One argument against retribution

is that it rarely allows for the moral complexities of tragic situations to emerge and

instead regards most criminal instances in rigid, black and white terms—that is, as

perpetrator and victim. If reconciliation is part of the horizon of a society that is

transitioning, then this rigid categorization can make it difficult, if not impossible to

achieve. For instance, criminal law puts the burden on the wrongdoer alone while the

dialogic framework of reconciliation demands that both parties (victim and wrongdoer) engage one another and find common ground to move beyond the hatred, anger, and pain. For Wole Soyinka, this common ground should be framed as "a need for a purgation of the past, the creation of a new sense of being . . . after the collapse of a discredited and criminal order" (19).

A new sense of social belonging and political harmony, which may have never existed in that society previously, cannot easily be achieved within an exclusive legalistic framework, especially when it is difficult to assign blame and responsibility due to bureaucratic or logistical obstacles, or because bringing people to courts will unleash a new wave of violence, anger, and vindictiveness. Rwanda, Yugoslavia and Iraq come to mind as primary exemplars of such vindictiveness, as many observers and citizens were dubious that justice was served through trials, or whether it was simply revenge, or a political ploy to close the can of worms that transitions tend to open. The fear of further violence creating a vicious cycle of revenge is often cited as a justification, and sometimes pretext, for avoiding retribution for perpetrators. The Spanish experience is a good example of this, as I discuss further on.

Retributive justice, in short, presupposes "that even [. . .] massive horrors can and should be treated as punishable criminal offenses perpetrated by identifiable individuals," and that fairness can never be achieved otherwise (Minow 26). Fairness is rarely the outcome. For instance: "the Nuremberg and Tokyo trials were condemned by many as travesties of justice, the spoils of the victors of war, and the selective prosecution of individuals for acts more properly attributable to governments themselves" (Minow 27). If these trials were meant to set the tone and be a warning for would-be murderous

regimes to deter future mass atrocities and genocides, they failed. In Rwanda, where genocide claimed the lives of 800,000 people, several problems were pointed our within the courts that sought to do justice. These included the lack of legal representation for several defendants and the public execution of at least 22 people, despite calls from several international organizations and the Pope to halt the executions. It was perceived as another round of ethnic revenge, rather than an attempt to serve justice for the victims of the genocide. Still, Mendez argues that deterrence should never be the motivation for retribution or the sole argument in favor of prosecution: "Societies can only hope that punishment will deter the transgressor as well as other potential offenders, but can never assume deterrence" (275). Retribution is an attractive option for societies seeking to establish a clean break with a shameful and unjust past by recognizing the suffering incurred by victims and making those found responsible accountable for their criminal actions. Just punishment contributes to renewed civic trust in institutions, especially the institution of justice, whose mission is to protect citizens against violence and criminal acts. If it is difficult to achieve reconciliation between perpetrators and victims in an environment characterized by a sense of victor's justice and revenge, the same is true for a society that fails to achieve justice for innocent victims, and thus condones impunity by putting victims and perpetrators on a same footing. Still, to seek retributive justice does not preclude the possibility for restoration.

Restorative Justice: Repairing the Communal Bond

The appeal of restorative justice is that it is an approach inclusive of all parties to the criminal event: perpetrators and victim or survivors.[11] The rationale is that perpetrators and victims are part of the same community and the outcome of any justice

served must involve all. More important than the crime committed and the law broken are the consequences of the criminal act(s) on victims. We should keep in mind that restorative approaches to crime emerged first in small scale individual contexts, where bringing the offender and the victim together to face each other and seek apology, gaining forgiveness (respectfully) and ultimately reconciliation, seemed a better alternative than retributive justice in some cases, especially within small communities where there is a threat that retributive justice will bring more harm than good to the community as a whole. Through symbolic gestures such as apology and financial incentives such as monetary compensations, restorative justice typically provides for repairing the relationship between the person(s) who committed the harmful acts and those who were affected directly by it. Conversely, Minow argues:

> Restorative justice emphasizes the humanity of both offenders and victims. It seeks repair of social connections and peace rather than retribution against the offenders. Building connections and enhancing communication between perpetrators and those they victimized, and forging ties across the community, takes precedence over punishment or law enforcement. (92)

In short, the restorative approach is less procedural and more relational and dialogic than its retributive counterpart. Hugo Van Der Merwe insists that it is "a more inclusive process, involving participation by both victim and perpetrator" (119).

Inclusiveness and dialogism may explain why the restorative approach has become the dominant trend in dealing with mass intra-national human rights violations, when traditional approaches to justice do not seem like a realistic option either because of

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logistic issues or the fear that retribution would seem too much like vengeance or victors'

justice. In addition, jurists and scholars have long agonized about the difficulty of

establishing responsibilities in large-scale crimes. The dynamics of collective decision-

making are so complex that it is difficult to assign responsibility for crimes, and pointing

a finger at ostensibly responsible individuals becomes a very thorny issue. Instead, the

state typically assigns institutional responsibility to commissions whose members are

appointed by the president, king, or other ruling authority. One of the logistical and legal

challenges faced by many courts after the fall of a discredited and murderous regime is

that no viable state exists yet to assign responsibility or investigate the alleged violations.

The prosecutions are then moved elsewhere, as witnessed in the Nuremberg trials, the

International Tribunal for the former Yugoslavia, and other similar situations.

Restorative justice merits more intensive scrutiny because countries emerging

from decades of conflict and political violence often choose this approach not so much

because of moral or ethical imperatives, or the need to establish political and legal

legitimacy, but as an expedient way to turn the page on the past. Truth-seeking and

reconciliation commissions, forums for redress and compensations, and the development

of venues for remembrance of past victims are not as costly, nor as politically risky, as

legal prosecutions, which perhaps explains their global use. But restorative justice might

not always be as ethically unambiguous as retributive justice. If restorative justice can be

an acceptable model for seeking justice in small scale offenses where parties involved are

easily identified and show clear willingness to be part of the project, can the same be said

about more complex situations, such as mass violations where the state that oversees the

process is implicated in the atrocities, and where the outcome largely determines the future of society as a whole?

Transitional states have embraced truth commissions as a politically safe and socially acceptable means of coming to terms with their past. There is an ethical as well as political dimension implicit in the phrase *transitional justice*. The transition is the goal of these efforts as new leaders and society want to start fresh and build a better political future, free of the demons of the past. Still, transitions cannot happen without addressing the ethical, unethical, and perhaps quasi-ethical features of the past; that is, serving justice for those innocent citizens who had been arbitrarily jailed, tortured, disappeared, or murdered. There are exceptions, of course, like Spain, a nation that made a (seemingly successful) wild bid to turn the page and never look back at its violent past; but even the Spanish experience has recently shown that an indigested past will always come back to haunt its people. The Spanish people are now on a quest to revisit their Francoist past and make amends with its victims because, clearly, despite the political success of their transition, issues of justice are still looming in Spanish collective memory. [12]

The process of burying a bloody past is not simply one of moving on but also developing strategies that can adequately serve justice and rebuild a national political identity based on trust and a sense of belonging. Reforms that seek to redistribute shares of political power more equally within the system and establish safeguards to prevent political abuse and corruption are part of the democratization (and consolidation) package. The connection between transitional justice processes and democratization has clearly been established and is important, but a full explication of this relationship is beyond the scope of this writing. [13] Still, it is worth restating that the rhetoric of

transitional justice has borrowed much from the liberal ideals of democracy and human rights discourse. While this heritage does exist, one should not necessarily assume that countries that develop truth and reconciliation commission, and adopt juridical and rhetorical practices to deal with past political violence, automatically transition to democracy. In fact, some scholars such as Thomas Carothers have pointed out that only a small percentage of countries that are called transitional do in fact become democratic. Instead of relying on these processes as a sign or an index of democratization, perhaps the pertinent question to ask is how do rhetorical practices of transitional justice such as truth commissions, reparation programs, and memorialization contribute to the larger and more challenging task of transforming the political culture of a country from a rule of violence and terror to the rule of law, a just law?

There is no recipe or blueprint to follow in any given case of transitional justice. But it is safe to say that restorative transitional processes seek to serve some kind of justice after the end of a violent political era, an era marked by authoritarian rule and civil strife, and they do so by, a) devising means to repair damages incurred by victims, and b) making sure that similar abuses and violence do not happen again. Through civic engagement with the past and the drive to build a just society where citizens are free from coercion, fear and violence, a societal and political transformation takes place *ipso facto*. Historical and contemporary experiences of transitional justice show that the rhetoric of transitional justice seeks to reintroduce the idea of the just within the polis and within civic discourse, at the very least. Citizens who are the driving force behind experiences of transitional justice are rhetors who present arguments to advance the idea of the just by pointing out injustices in their country and in humanity generally. Thus it seems clear

that, while discourses and practices of transitional justice do not always guarantee a genuine or lasting democratization, or justice for that matter, they are necessarily transformative for the societies in which they take place.

The national experiences noted thus far reveal that transitional justice incorporates a variety of trends and practices that seek answers to questions such as those posed by Priscilla Hayner:

> What should be done with a recent history full of victims, perpetrators, secretly buried bodies, pervasive fear, and official denial? Should this past be exhumed, preserved, acknowledged, apologized for? How can a nation of enemies be reunited, former opponents reconciled, in the context of such a violent history and often bitter, festering wounds? What should be done with hundreds or thousands of perpetrators still walking free? And how can a new government prevent such atrocities from being repeated in the future? (4)

In the attempt to address these daunting questions, I elaborate in the following pages on the three major non-legalistic trends that have emerged in response to widespread violence perpetrated by individuals acting in the name of the State. The first is the establishment and recording of truth and, sometimes, mending of rifts and enmity, through what has come to be known as truth and reconciliation commissions. Here victims and perpetrators come to narrate their suffering and guilt, respectively, and confront their common past and, sometimes, attempt to reconcile. The second is the development of initiatives aimed at dealing with and repairing the physical, financial as well as the psychological harm suffered by victims and their families, a process referred

to as reparations. Third is the creation of programs for memorialization purposes, such as the building of museums, the establishment of commemorative ceremonies and other such events and spaces to document and remember the past. Beyond the political capital these processes provide the incoming or continuing leaders, I am interested in how the rhetoric of truth, justice and memory invoked during transitions shape the past, and most importantly, contribute to the development of a new ethical sensibility within a polity hit by the evil of state's violence against its own people.

Truth Commissions, Reconciliation and the Aporia of Forgiveness

In recent years, truth commissions (also called truth and reconciliation commissions or TRCs) have emerged as a new instrument in efforts to address crimes committed by a state against its own people. As previously suggested, the restorative approach has become popular because of logistical, political, and ethical issues that might arise from retribution. TRCs have gained momentum because transitional states face the moral imperative to address the injustices done to victims and their families by officials acting in the name of the state; addressing the past is also a political necessity for the new leaders to establish their legitimacy and institute a clear rupture with past politics. Hayner defines truth commissions as:

> [B]odies that share the following characteristics: (1) truth commissions focus on the past; (2) they investigate a pattern of abuses over a period of time, rather than a specific event; (3) a truth commission is a temporary body, typically in operation for six months to two years, and completing its work with the submission of a report; and (4) these commissions are officially sanctioned, authorized, or empowered by the state (14).

In other words, truth commissions are officially sanctioned bodies that conduct investigations and collect testimonies for the purpose of compiling a comprehensive story about the past: narratives of survivors, perpetrators and, sometimes, bystanders. The work of TRCs has implications for the past but also for the present and future, because by opening up the past for review and judgment, issues of accountability and impunity are addressed and norms for the future are established. In the exposition of facts about the past, responsibilities are assigned and wrongdoers identified, so these commissions have forensic value as well. It is a rhetorical effort to assign meaning and evaluate a nation's collective narrative.

Uncovering what happened in a country's bloody past is necessary, but not sufficient. Of equal importance is the necessity to "disseminate the truth about past atrocities" (Crocker 3). It is important to emphasize the dissemination of information about the past because in most countries with a history of political violence, while the repressive practices of the state are usually widely known, few people dare to speak publicly about them. As Arendt argues in *The Human Condition*, fear is one the first consequences of the rule of terror in a totalitarian, and by extension, authoritarian state. Fear is a strong political ally of the state that is terrorizing its people and serves to silence and keep most citizens in line. The fear that a friend or a family member could be the next victim of arbitrary repression and violence serves as a strong motivation for silence. While most people are typically aware that some of their fellow citizens or neighbors are being unjustly detained, tortured, and executed, the gritty details escape their knowledge because of the secrecy that is central to such political formations. Lack of information and dissemination of it contributes to keeping citizens in a state of continuous fear

because no one knows for sure what happens and why, and even those who do have some knowledge or understanding of what is going on can only speak in muffled voices. Thus, after the fall of a criminal regime, it becomes crucial that information about the past be widely disseminated; by making the "hard facts" public, "the moral significance of individual accountability, the identity of individual perpetrators is brought to light" (Crocker 3). Listening to victims' testimonies during public hearings is only the first stage in acknowledging their story; publicizing it provides greater acknowledgment and serves to symbolically repair the harm and humiliation that victims endured. But testimonies and public hearings have other objectives beyond appeasing victims by providing them with a forum to share their bleak stories. Mark Freeman argues that the fact that victims are the main focus of truth commissions does not mean that "a truth commission is always self-consciously victim-centered (because some are not), nor does it mean that a truth commission is concerned only with victims (because they are not)" (17). Besides the ethical horizon of redeeming victims and recognizing the injustice they have been subjected to, truth commissions have a political value. As a significant part of truth commissions, public hearings provide legitimacy to the entire restorative process. By showcasing victims and their stories during public hearings, national and international audiences are invited to see for themselves that silencing victims is no longer accepted and that some form of justice is being served. Public hearings showcase a "society in transition" and are meant to be an indicator of change and transformation because in this historical moment, they necessarily suggest an affinity with the South African experience of transitional justice, one that many societies try to emulate.

The purpose of TRCs is two-fold. First, they seek to reconstruct a narrative of

the past, primarily from the victims' perspective. This reconstruction is embedded in a historical (educational) horizon, but, as previously suggested, also serves a political goal. By knowing what happened, it may be possible institutionally to prevent it from happening again by putting in place reforms that safeguard against horrific practices reproducing themselves. Second, and just as important, TRCs provide victims with a voice. Suddenly, after many years of repression, having an official and safe forum to speak and share their past with their fellow citizens does grant citizen status again and welcomes citizens/survivors back into the political community. The information gathered during the hearings of the commissions typically serves as the basis for determining eligibility for reparations and for determining the type and amount of reparation necessary in each case. More importantly, truth commissions provide victims and society with hope, which might be faint and myopic, but after years of silence, violence and horror, to be able to participate in public life constitutes a hopeful moment.

The best contemporary illustration of the pursuit of such lofty goals and hope is, almost unanimously, to be found in the South African experience of truth and reconciliation, prompting some observers to refer to it as the African Athens. The creation of the South African Truth and Reconciliation Commission in the mid-1990s did indeed popularize the idea of truth commissions and political reconciliation as legitimate and appropriate means to address past violence and oppression. But, as intimated in the introduction, transitional justice did not begin with South Africa, as it can be traced (in the West at least) to the Greeks.[14] Millennia ago, like South Africa and many contemporary national communities, the Athenians had to find ways to come together as citizens of the same polis after two political transitions, resulting from civil war (Elster

3). Athenian citizens were faced with civil strife several times, and had to devise means

to deal with the aftermath of these difficult moments in their history. Andrew Wolpert

argues that amnesty and reconciliation were at the center of Athens' recovery, deemed

the best course of action due to the urgent political need to restore peace and harmony

within the polis. But reconciliation for the Athenians did not mean that people forgot the

violence that preceded the amnesty, nor the betrayal of some of their fellow citizens.

They did not simply start a new page of their history. These events served as an

opportunity to think and deliberate about the causes, consequences of and means to

address political disruptions that cause harm to the polis. This historian's discussion of

the Athenian experience of reconciliation after the War of the Thirty suggests that

reconciliation is not only an ancient approach to conflict resolution but also one that

cannot be explained in purely political terms. Wolpert states:

> Historians have advanced many explanations for the success of the
>
> reconciliation: the terms of the agreement, the political condition of the
>
> Greek world, the social and economic problems of Athens. They have
>
> shown that revenge and retribution were not viable options, but the
>
> Athenians could have simply dismissed pragmatic considerations in order
>
> to obtain private satisfaction for past grievances. Causal explanations
>
> present the reconciliation as a *fait accompli*, as if there were only one
>
> possible outcome to the civil war. But as Corcyra shows, pragmatic
>
> considerations do not always lead a people to choose the course of action
>
> that best serves its interests. (xii)

In other words, although political considerations—or negotiated deals—certainly contribute to the making or re-making of a nation, as the Athenian situation has shown, moral and ethical considerations do as well, or in any case should. The quest for truth within a national context foreshadows a rhetorical process that is ethically charged because the outcome has consequences for the past, the present, and the future for generations to come. Although truth and reconciliation have pragmatic consequences with respect to the way a nation or community reinvents itself after a period of violence, mistrust and injustice, they are fundamentally rhetorical metaphors with serious ethical implications. For a national community whose socio-political identity and sense of morality have been shattered by violence and injustice, establishing and listening to the truth and finding the words to come together as part of the same nation are indeed important goals. But so is ethical judgment, as public discourse about the atrocities establishes a new teleological orientation, one marked most significantly by the metaphor of reconciliation.

The process of burying the past in such circumstances is not simply one of moving on but also developing strategies that can adequately serve justice and rebuild a national political identity based on trust and a sense of belonging. Hence the rhetorical significance of the reconciliation metaphor, which has captured the imagination of global citizens and scholars alike, especially in relation to the South African experience. The leadership of Archbishop Desmond Tutu and Nelson Mandela in South Africa has provided legitimacy and confirmation to the practice of reconciliation. Although the term has several possible referents, it should be clear that, in the context of this discussion, reconciliation is an attempt to move beyond enmity and reach a modicum of normalcy in

socio-political relationships. One cannot expect that victims/survivors and perpetrators will become friends or convivial colleagues, or even speak to each other if they happen to meet in the street, but hope typically is that reconciliation can achieve a minimal level of civility that is conducive to peaceful political cohabitation. The question remains: How is reconciliation achieved? Or, as Marc Howard Ross asks: "How do we know it when we see it?" (198) The potential of reconciliation lies in its rhetorical power. Doxtader argues that reconciliation is a rhetorical exercise in recollecting the past for the purpose of making the future; it is very much "a call for rhetoric" that parties engaged in conflict use to move beyond the violence of the past: "With a middle voice, reconciliation both enacts and opens the potential for rhetorical invention. It is a constitutive faith in the work of those words that strive to open, make and sustain a beginning" (268). Reconciliation is an attempt to transform an event into something that is acceptable to the parties involved; it is a rhetorical framing of the past for the purpose of a present that moves beyond the violence and enmity of the past. In short, reconciliation serves to re-join the community and construct a narrative about the past that parties to the conflict accept as part of their common legacy.

As rhetorical praxis, the mission of reconciliation is to attempt to communicate even when speechless because at that very moment, the "saying" matters more than the "said" (in the sense articulated by Levinas). One trusts that the saying of the words, not only their referents, have the power or force to change enmity into trust. Trust in these circumstances, and thus the significance of the words spoke, can only be reached through forgiveness, which is often considered either a condition for, or an outcome of, reconciliation. Elder argues:

When collectivities are involved, the issue of forgiveness becomes much

more complicated than in the one-to-one model of an injured person and a

wrongdoer sharing a moral community. The increased complexity of the

situation need not lead us to abandon efforts to encourage "forgiveness" or

the attitudes that accompany forgiveness. If, ultimately, one is interested

in processes of reconciliation, the study of forgiveness as a potential

contributor to reconciliation becomes of prime importance (161).

The relationship between reconciliation and forgiveness that Elder is pointing to has been

widely debated. In *No Future Without Forgiveness*, Desmond Tutu argues that

forgiveness is a necessity, even a pre-requisite for peace and reconciliation. If

perpetrators recognize their guilt and confess it, which should indeed be the goal of every

TRC, then victims should be able to forgive them—but not be asked to forget. Joanna

North argues that forgiveness should not mean forgetting and that an accurate

understanding of forgiveness should not "require that we forgo punishment altogether or

that we should, in forgiving, attempt to annul the existence of the wrong done.

Forgiveness does not remove the fact or the event of wrongdoing but instead relies upon

the recognition of wrong having been committed in order for the process of forgiveness

to be made possible" (17).

North is correct to note that forgiveness does not preclude punishment;

forgiveness is an interpersonal (private) practice while punishment is an institutional

(public) act. But to suggest that forgiveness is a process is to miss its unconditional and,

often, unilateral character. Reconciliation, on the other hand, in South Africa or other

similar contexts, is a politically motivated practice and in the context of TRCs, it is

institutionalized. Forgiveness, however, escapes such realm and when forced into it, it becomes a commodity and loses its gift-like quality. Forgiveness does not require reciprocity, nor can it demand it. It follows, then, that forgiveness and reconciliation in the context of transitional justice are not mutually exclusive but they should not necessarily be linked. Jacques Derrida argues against the use of forgiveness in the context of a nation attempting to deal with a traumatic past: "Forgiveness does not, it should never, amount to a therapy of reconciliation" (41). They belong to different realms of action. Derrida's insights on this are noteworthy as he asks in his essay on forgiveness:

> In order for there to be forgiveness, must one not on the contrary forgive both the fault and the guilty as such, where the one and the other remain as irreversible as the evil, as evil itself, and being capable of repeating itself, unforgivably, without transformation, without amelioration, without repentance or promise? Must one not maintain that an act of forgiveness worthy of its name, if there ever is such a thing, must forgive the unforgivable, and without condition? (39)

Acts of forgiveness exist only to the extent that they forgive that which cannot be forgiven, or at least conceived as such, hence the aporia. Forgiveness is an unconditional act that is not to be used strategically or politically. It is a gift that does not ask for exchange, reward or reciprocity. Derrida insists:

> Each time forgiveness is at the service of a finality, be it noble and spiritual (atonement or redemption, reconciliation, salvation), each time that it aims to re-establish a normality (social, national, political,

psychological) by a work of mourning, by some therapy or ecology of memory, then the 'forgiveness' is not pure—nor is its concept (32). When persons or groups use forgiveness to normalize relations or to reconcile, the act of forgiveness loses its essence because it is no longer the end but the means to an end. Conversely, Ricoeur argues that "[…] forgiveness can find refuge only in gestures incapable of being transformed into institutions. These gestures, which would constitute the incognito of forgiveness, designate the ineluctable space of consideration due to every human being, in particular to the guilty" (*Memory* 458). If reconciliation requires a mediator or a mediating institution, forgiveness does not and cannot be institutionalized, otherwise it becomes something other.

In the event of forgiveness, "as soon as a third party intervenes, one can again speak of amnesty, reconciliation, reparation, etc., but certainly not of pure forgiveness in the strict sense" (Derrida, *Cosmopolitanism* 42). For authentic forgiveness to take place, it must be between the people who are directly concerned and without the intervention or mediation of another party. No state or institution has the right to grant forgiveness in the name of a victim (especially one who cannot speak for himself or herself). Arendt goes further and argues that forgiveness "unexpectedly, unconditioned by the act which provoked it and therefore freeing from its consequences both the one who forgives and the one who is forgiven" (*The Human* 241). Again, this is not to say that the quest for reconciliation and forgiveness are mutually exclusive; they simply belong to different registers. That said, the South African example needs to be considered an exception, not the rule, and the particulars of that case—regaining control of the nation, conditions of negotiation, etc. that allowed the victims not to punish those responsible for the

victimage—should perhaps be more fully considered. Each example of transitional

justice needs to be considered on its own merit because the historicity and context for

each experience are unique and attempt to either compare or import these practices are

problematical.

Reconciliation and retribution also belong to different registers—one practice

cannot be substituted for the other, or translated into one another, but in some instances

they are intimately connected. As I hope to have shown thus far, national political

reconciliation is a project to re-invent the community after a bloody past and create a

space of dialogue and deliberation that is free from violence and coercion and includes all

political actors—victims, perpetrators, and bystanders. Reconciliation as such is a

rhetorical and civic effort to find words to frame the past and negotiate the terms of the

transition into the future. Along these lines, John Hatch argues that reconciliation should

be conceived within a "tragicomic framing" that does indeed include symbolic acts such

as apology and forgiveness (753). To reconcile is then to take atrocities seriously and

assign blame, but also to transform tragedy into comedy such that the focus is on the

offense rather than the offenders or offended. This switch of focus produces the opposite

of what a retributive framework is likely to produce, as previously indicated. For Kirt

Wilson, the model that Hatch refers to does nothing to address the real problem that led

to the crisis and violence in the first place.

For instance, if South Africa is the model to emulate for reconciliation, one has

first to acknowledge that reconciliation did nothing much in changing the structural

injustices that were present during the Apartheid government. Searching for truth and

bringing victims and perpetrators together to practice reconciliation might have ended the

bloodshed and squelched the enmity and hatred but these practices have not affected the political and socio-economic make-up of the country, as white South Africans did not lose the privileges bestowed upon them during Apartheid, and the masses of black South Africans still live in poverty and despair. Mark McPhail argues that, while Hatch's call for reconciliation could contribute to a genuine dialogue about race in the United States, "it [reconciliation] will require coming to grips with the past in order to construct a new vision for the future" (398). For McPhail, this engagement with the past must include a collective effort of atonement and apology from whites, in the case of both South Africa and the United States.

Although such a collective apology does not seem to be forthcoming, reconciliation still may occur if there is a moral or theological drive on the part of the antagonists to change the present and build a harmonious and interdependent future. Moreover, reconciliation demands an acknowledgment of unjust and criminal actions and expressions of remorse for the horrific consequences of those actions on innocent people. Reconciliation is not justice but an acknowledgment of injustice; this is why issues of apology, atonement and forgiveness are almost always invoked. As an acknowledgment of guilt and expression of remorse, apologies are often a pre-requisite for reconciliation; otherwise how would a victim accept to reconcile with her victimizer? Reconciliation cannot be authentic if the victims do not have a feeling that some kind of justice has been served, not necessarily retributive justice but justice nevertheless—we might call it symbolic justice. Symbolic justice, then, should be at the heart of reconciliation and begins with the unveiling of the truth that takes place during public hearings.

As a political process, TRCs have limitations, and that is why, as previously suggested, victims often do expect more from these experiences that they can possibly deliver.[15] When victims or their families expect a sense of closure as an outcome of testifying and sometimes meeting with those who committed crimes against them or their family members, this goal can rarely be achieved. If the act of testifying and remembering the past can, in the long run, bring a sense of closure, it probably does not do so in the immediate aftermath of a public testimony where the witness (victim) must recall his or her torturous experience. Surely, the act of testifying and reliving the ordeal of being tortured, or witnessing one's sister or daughter being raped, tortured or murdered must be an excruciating experience. Still, the hope is that the pain that such an experience brings about is somewhat matched by feelings of acknowledgment and relief that the duty of memory has been accomplished. In terms of bringing the nation closer to a genuine political transition or democracy, TRCs can both contribute and hinder such a goal.

Truth commissions expose some truths about the past, provide victims with a political voice, contribute to the acknowledgment of the wrongs they have been subjected to, and establishing responsibilities. All of these contributions are positive achievements for a nation that desires to reinvent itself but there are not sufficient to achieve justice. Truth commissions alone are never enough to move a society beyond a past of violence amidst calls for justice. They constitute only the first step in engaging the past, one part of the puzzle. It is in their investigative work that the next step for serving justice is identified: reparations. The issue of reparations is a rhetorical battle about 1) what constitutes a legitimate claim for reparations or, in other words, who is a worthy recipient

of reparation, 2) how to assess the worth of human suffering and loss, and, once all of these issues have been settled, 3) what is the appropriate type of reparation required for the particular case: official apology, restitution, or monetary compensation?

The Rhetoric of Reparations, Restitutions and Compensations

Demands for reparations have become common place, and so have public apologies for past injustices. One scholar has noted that claims for restitution or compensation for past injustice have reached epidemic proportions.[16] Some see in this new phenomenon the emergence of a new global morality, others the festering of a culture of victimhood. While this trend is recent, the experiences it attempts to address are not; political and historical injustices are as old as humanity itself. What has changed is the increasing legitimacy and righteousness of these claims, especially in the aftermath of World War II and the legacy of the Nuremberg trials. As a case in point, Barkan argues that:

> In this context [post-Cold War] public awareness of crimes against humanity committed by governments is increasingly translated into a political force. The abhorrence of such violations of such human rights has even become an acceptable motive for national and international intervention in 'domestic' politics and a rationale for war waged by regional and international organizations. (…) opposition to genocide, support for human rights, and the fear of being implicated in crimes against humanity (even by inaction) have become practical, not even lofty, ideals. (xi)

Victims have become more assertive about their right to restitution and compensation, and it also seems that perpetrators no longer resist the call for reparations from their victims, due to feelings of guilt, perhaps shame and, most likely, the stigma associated with being a perpetrator of violence. We should keep in mind that there is an important distinction between reparation and restitution. To repair is to restore something to its prior state but to restitute is to give back what was taken from the victim, whether it is something with monetary value like property or something more symbolic, someone's reputation or name is the community. This is why Barkan insists that "restitution traverses the legal boundaries between actual restitution, reparation, compensation, and even apologies for wrongdoing and acquires cultural and political significance" (xix).

With this increasing legitimacy of the human rights discourse within the international political community, and its acceptance by public opinion as a legitimate framework for dealing with injustice, reparations have become linked to political morality and justice. These ideas of justice and morality are actually at the heart of discussions about reparations, and can be traced back to the Enlightenment ideals of liberty, equality and the pursuit of happiness, which, Barkan argues, have "become the predominant global ideology" (310). Barkan explains how, despite their widespread critique in academic circles over the last few decades, Enlightenment ideals have heavily impacted political claims for justice worldwide, so it is true that any discourse about restitution or reparation for lost of life and liberties under a tyrannical regime would simply be impossible otherwise. Still, he argues that "demands for political and economic justice, which go beyond the traditional liberal principles, inform [a] neo-Enlightenment that increasingly includes compensation for past deprivations and

historical injustices" (311-312). In short, enlightenment ideals alone cannot explain the redress or reparations movement; especially in the face of the incoherence that characterizes global responses to reparation claims.

For instance, many nations, like Japan and Turkey, still refuse to accept their responsibility in past genocide and other mass human rights violations. Although it has acknowledged the facts of the Nanking massacre in China, for example, and expressed regret for the consequences of the "incident" and "deeply reproaches itself," Japan has yet to present an official apology to China (Brooks, *The Age* 109). Similarly, Turkey continues to refer to the politically motivated killing of two million Armenians as the unfortunate consequence of civil war during the reign of the Ottoman Empire, and still resists calls for acknowledgment of the Armenian genocide. It would be a moral victory for victims and descendants of the Nanking massacre and the Armenian genocide, to mention just these two, if their proper names were used in reference to them, and if they received public apologies from leaders of Japan and Turkey, respectively. Their claims for reparations are symbolic; giving the massacre of thousands of people its proper name and apologizing for the harm inflicted on victims will not bring back the dead but simply honor their memory.

Given the previous discussion of the supremacy of the human rights discourse in global politics, one would infer that Turkey and Japan, two democratic countries with excellent relationships with their Western counterparts, would be either pressed to give in to these moral demands (as respectable national actors in the international community), or become political pariahs. But other issues complicate this, including geopolitical concerns. For instance, U. S. Senate Resolution 106 is a bill that sought to have the

Armenian genocide publicly recognized by the President of the United States, but it was shelved in 2007 because of concerns that such a rhetorical act might alienate our Turkish allies during challenging times. Ultimately, the United States (in the person of its leader) surrendered to purely strategic needs and did not sign the bill, so as not to embarrass our allies in the war against terror. These historical examples are a testament to the power of rhetorical acts such as apologies; their utterance literally changes the moral landscape for victims and perpetrators, which explains the Turkish and Japanese resistance. As Nicholas Tavuchis nicely puts it: "Apology speaks to something larger than any particular offense and works its magic by a kind of speech that cannot be contained or understood merely in terms of expediency or the desire to achieve reconciliation" (91).

In the context of pervasive violence that shatters people's lives and strips them from their most basic rights, it is perhaps difficult to grasp what is truly meant by reparations, or to come up with anything that can repair such loss and mitigate the pain. Reparations clearly have a symbolic aspect but there must also be a tangible gain for victims who lost loved ones and whose livelihood was compromised as a result of state violence and criminal acts. Ingrid De Kok, a South African poet, sees reparations as "*The action of restoring something to a proper or former state; spiritual restoration; the action of making amends for a wrong or loss; compensation for war damage by a defeated state*" (139, italics in original). This definition suggests, first, that reparations are about restoration, which can include restitution (of lost property, for example), compensation or indemnification (a lump sum of money to help with medical expenses or scholarship funds), and apology (a symbolic gesture). Reparations about making good again, and they are often the result of

defeat, whether political or moral. But despite the simple definition she provides above, for De Kok, reparations resist definition, as her powerful poem suggests:

What is cost no one is telling.

Can't subtract what might have been.

Can't add up to a sum we understand.

Can't subdivide what once was seen

Can carve a tombstone for the dead,

memorialize with flowers and crosses,

exhume a body, clear a name,

issue receipts for wrongs and losses.

But can't repair, and can't restore,

an uncut arm, unbruised genital,

untroubled sleep, unscarred face,

unweeping mother, children, faith

or wide unwatching private space.

(*Seasoned* 139)

In South Africa during the Apartheid regime and in similar contexts, reparations are more symbolic than material. Physical and psychological scars cannot be repaired but symbolic gestures like burying a friend, restoring a relative's name, finding a neighbor's body have a restorative potential.

Alfred Brophy's discussion of reparations about the impact of slavery on the African American community in the United States clearly highlights these nuances. There are two types of reparations: Backward-looking and forward-looking. Backward-looking reparations include efforts that seek to evaluate the damage that occurred in the past and repair it though financial means such as restitution of lost property or wages, payment of medical expenses for physical or psychological harm, as well as public apologies or calls for forgiveness. Forward looking efforts, on the other hand, focus more on the future as their goal is to improve the livelihood of those impacted by past harm as well as consider and implement institutional reforms to ensure that similar violations never happen again. Building better houses and schools, offering scholarships and other such measures seek to augment the quality of life of those who were victimized by previous circumstances. Reparations, in this case, are equated with the improvement of victims' future lives, injustices of the past can be expunged and perpetrators are able to atone for past deeds.

The most significant reparations package in modern history is the compensatory efforts towards German Jews after the fall of Nazi Germany, which have been widely documented because, as previously suggested, postwar trials established the legal precedent and historical foundation for an international legal system that not only recognized and defined genocide and human rights but also established a framework for dealing with the consequences of what is now commonly referred to as crimes against humanity. While it was clear that no money can ever resurrect the deceased nor make up for the suffering of millions of innocent people, the Jewish population had lost so much (in terms of human life as well as financial assets) because of Nazi persecution that

compensatory efforts were necessary to "make good" again (Kritz 47). In a speech meant

for German and international audiences, Chancellor Konrad Adenauer, who is credited

with starting the reparation program for victims of Nazi Germany, explained the

necessity for repairing the harm incurred by Jews:

> unspeakable crimes were perpetrated in the name of the German people
>
> which impose upon them the obligation to make moral and material
>
> amends, both with regard to the material damage which Jews have
>
> suffered and with regard to Jewish property for which they are no longer
>
> individual claimants (in Kritz 48).

These reparations were not only a political necessity but also a moral obligation for

Germany to regain its status of a respectable nation in the world. To clear their

conscience and their name, Germans developed two types of reparation programs:

Restitution and indemnification. In addition, persons who had been stripped of their

citizenship or professional degrees because of political motives were rehabilitated (Kritz,

Transitional 48). In terms of indemnification, under the Federal Restitution Law, the

Federal Compensation Law, and the Luxembourg Agreement with Israel, Germany

provided victims of the Holocaust with over 80 DM billion and some claims for

reparations are still pending. Thus, some observers note that although these billions can

never match the suffering of the Jews during the Holocaust, the scope of reparations they

benefited from has "facilitated demands for reparations by other groups that have

suffered tragic histories" (Torpey 41). In other words, they serve as precedent for groups

and communities who have been victimized.

In the United States, calls for reparations come from many directions but most vocal are members of the African-American community asking for an apology and compensation (backward and forward looking) for the suffering and trauma their forefathers and mothers were subjected to as slaves, a traumatic experience that, they argue, continues to have an impact on them and their children despite the passing of time. These efforts have thus far been met with silence and even rejection. President Clinton refused to apologize to African Americans for historical injustices suffered because of slavery and Jim Crow laws, a refusal that Brooks attributes to the lack of strong internal support. This stance is in sharp contrast to the most recent case of reparations in U. S. history, resulting from the internment of entire communities of Japanese Americans after Japan's bombing of Pearl Harbor. It appears that, despite some internal noise, this case has been settled with an official apology from President Reagan (and the passing of the Civil Liberties Act of 1988) to families affected by the internment, along with a sum of $20,000 per person to compensate for incurred damages and harm.[17] It is not clear then what accounts for the seemingly double-standard applied to these claims for reparations for historical injustices against entire communities based on their ethnicity or race. Perhaps in the case of the United States, apologizing and compensating for the internment of people of Japanese decent was a much smaller project than addressing the long overdue demands of atonement, apology and reparations from the African-American community.

Claims for reparations range from very modest and symbolic demands, like a decent burial or clearing of one's name, to more substantial ones like large sums of money. In South Africa, victims' requests for a proper burial for their relatives, a death

certificate, or removal of bullets from private parts suggests that they have no illusion about the potential for "external repair" (Minow). A primary difference between the redress movement in the United States and other places like South Africa, Morocco or even Rwanda, is that reparatory efforts have not been the genuine result of civil society efforts. I do not want to suggest that civil society has not been vocal or efficacious in these countries but simply that despite all of their efforts and good will, victims' organizations in Morocco, for example, have not been involved or consulted in the decision-making process of developing a framework for reparations. In Morocco, for example, reparations have been linked to cash. But symbolic reparations such as official apologies and expressions of remorse and regret (to survivors and their families) are just as important, if not more important, than material compensation. Soyinka points out: "And even as justice is not served by punishing the accused before the establishment of guilt, neither is it served by discharging the guilty without evidence of mitigation—or remorse" (3). Money can fix physical damages but it cannot erase the trauma and loss suffered by victims, nor can it restore trust in state institutions and officials. That would require that perpetrators acting in the name of these institutions account for their actions, at the very least. In addition, when reparations are not part of a larger project of institutional reforms that seek to safeguard against repetition of abuses, they do not advance the bigger goal of changing the political culture.

The rhetoric of reparations highlights the moral and political necessity that states (and their official) be held accountable for criminal actions against their own citizens. After all, states that aspire to be democratic should be for and by the people, and when trust between the state and citizens becomes frail or, worse, disappears, it is symptomatic

of the failure of the state to protect its citizens. In South Africa and Morocco, for instance, that state-citizen bond was never there to begin with, so it is not a matter of fixing a weak link but developing trust in government institutions and agents of the state, and nurturing that trust through symbolic gestures. Reparations can be part of the effort to repair political relationships and ensure that measures are put in place to safeguard against such happenings in the future. Crocker argues: "To reckon fully with past wrongs, an emerging democracy must identify the causes of past abuses and take steps to reform the law and basic institutions to reduce the possibility that such violations will be repeated" (3). Thus institutional reforms must to be part of reparatory or compensatory efforts. If backward looking reparations serve to acknowledge that harm was done and offer some symbolic and material compensation for it, forward looking types of reparation have a broader horizon as they seek to prevent recurrence of similar experiences and enshrine the memory of those who perished. In both cases, the burden of proof is upon victims, who are expected to make a public case to explain how they have been wrongly and unjustly victimized and why and how their injustice needs to be rectified. Whether their case is heard and heeded is a rhetorical process that is negotiated between victims, perpetrators, public opinion, and the political leadership. Slyomovics explains that victims' narratives of suffering are often used as a measure for determining the hierarchy of victimhood or victimization and the type and amount of reparations that the victims' suffering (and story) warrants. The outcome of reparations contributes to and in fact is inseparable from other practices of transitional justice, such as reconciliation and memorialization (and even the political process of democratic transition) but to think of reparations as primarily monetary is problematic. It is then important to stress, as

Minow does, that "[s]ocial and religious meanings rather than economic values lie at the heart of reparations" (110). Money does not heal scars nor repair relationship.

But to assume or expect that reparations are the end of the road for transitional justice is dangerous. In fact, the expectation that victims will forgive and forget after symbolic gestures of apology and repentance or monetary compensation is tantamount to buying them off to clear one's conscience and wipe out the guilt. In some experiences of transitional justice and historical injustice, some victims refuse to accept compensations either because they consider it to be "blood money" or because there is no other rhetorical or symbolic effort to acknowledge their suffering and make amends. The money is not accompanied by expressions of regret and remorse and public attempt to "make good again." Some victims and their families in Morocco, for example, have put uncompromising conditions on the entire process of reparations before they can accept any financial reparations, such as the state revealing the whole truth about the fate of their loved ones who have disappeared or been murdered. Otherwise, they see it as soiling the memory of the deceased. Along these lines, the International Center for Transitional Justice warns:

> Reparations that are not linked to prosecutions or truth-telling may be
> perceived as 'blood money'—an attempt to buy the silence or
> acquiescence of victims. Similarly, reforming institutions without any
> attempt to satisfy victims' legitimate expectations of justice, truth and
> reparation, is not only ineffective from the standpoint of accountability,
> but unlikely to succeed in its own terms.[18]

As will be further explained in chapter three, this has been the main criticism directed at the Moroccan program of reparations. Minow argues:

> The core idea behind reparations stems from the compensatory theory of justice. Injuries can and must be compensated. Wrongdoers should pay victims for losses. Afterwards, the slate can be wiped clean. Or at least a kind of justice has been done. [. . .] Extending this idea to victims of mass violence substitutes money or other material benefits—such as insurance, or scholarships—for the devastation inflicted by wrongful incarcerations, or tortures, or murders. This means crossing over differing lexicons of value (104).

Serving some kind of justice should be the moral horizon of reparations and when that horizon is lost, reparations become all about counting; it is indeed 'blood money.'

Reparations that seek to "make good" again can contribute to the dialogue between victims/survivors and perpetrators, a collective act of accounting that begins with the truth commission. Barkan points out that "[t]his interaction between perpetrator and victim is a new form of political negotiation that enables the rewriting of memory and historical identity in ways that both can share" (xviii). In other words, one can suggest that reparations in the context of mass violence subverts the relationship between perpetrators and victims/survivors not necessarily because of the financial exchange but because they constitute in themselves an acknowledgment of responsibility and an effort at being accountable for one's actions. As an effort towards accountability, reparations programs can greatly contribute towards democratization by setting the tone for future

regimes and restoring trust in political life but they can only do so if they include a symbolic component: acknowledgment of responsibility and apology.

For instance, Brooks argues that for many Holocaust survivors and their descendants, as well as Japanese Americans who were interned and racially stigmatized in the aftermath of Pearl Harbor, there is a real fear that the past might be revisited upon them or their children. That is why apologies as rhetorical affirmations of guilt and remorse are so important for these victims and the society they dream to build for future generations. For them, apologies and compensations act as a deterrent for the future, as a promise that their children will not suffer like they did. In addition, Brooks makes an interesting point when he states that: "Remorse improves the national spirit and health. It raises the moral threshold of a society" (3). Apologies and expressions of remorse have a symbolic value in that those who offer them recognize that their actions were wrong and produced innocent victims; repentance is a step in the right direction of becoming a decent human being again. Another important ethical implication of reparations is that they greatly contribute to efforts to preserve the memory of victims and survivors of political injustices. As such, the following section opens up discussion about practices of memorization within transitional justice.

Between Remembrance and Oblivion: The Praxis of Memory

Memorialization is one of the hallmarks of the 20th century. The fear that no trace will be left of those who perished in wars, genocide, civil wars and other catastrophes, or that their memory will be distorted, has led to a compulsive drive to remember and record all details of life. This trend has been aided by the explosion of technology and evident in the immense array of artifacts, practices and places that seek to record and

memorialize involve many media—the internet, films, cameras, recorders, biographies, books museums, commemorative events, and witnessing. As previously noted, Halbwachs' claim in the early 1900s that memory is a social phenomenon and that remembering is a collective process opened up the field of memory studies to many disciplines, resulting in an important body of scholarship that focuses on issues of identity, collective/public memory and nationalism. Hauser states:

> Although public memories may serve as a source of conflict and domination, we should not forget that, as rhetorical achievements, their life is in performance. If they can be a resource for subjugation, their indeterminacy as rhetorical inventions means they may equally open spaces for mediating difference. Every rhetorical transaction, as Aristotle taught, is a praxis created for the given case. Each rhetorical situation is marked by elements of novelty and possibility for refiguring the meaning of experience and human relations (115).

Public memories are revealed in their performance and praxis. Public memories are rhetorical in that they create a public space where their meaning is assigned and negotiated. For instance: "the question of public memory carries the questions of power into public life in at least two ways. Most obviously it raises concerns over how people find resources from their past to shape an account of their present and future. More vexingly it raises the problem of discovering the means to resist the subversive power of someone else's story to distort our own memories and appropriate our own experiences" (Hauser, *Vernacular* 115). Scholarship that focuses on historical narratives and public memory has energized the field of rhetorical studies and infused the metaphor of memory

with new overtones. [19] The connection between memory and rhetoric has shifted with the understanding that memory not only serves as the foundation for the construction of historical narratives but greatly contributes to shaping national symbols and identities. In an essay published in the *Quarterly Journal of Speech* almost fifteen years ago, Stephen H. Browne sheds light on this:

> As a form of cultural practice, public memorializing outsteps established genres, eludes intent and improvises on both material and symbolic resources. …such memorializing is a textual practice; to speak of it at all is to put into play an interpretive procedure. However varied those procedures, they collectively stress a sense of the text as a site of symbolic action, a place of cultural performance, the meaning of which is defined by its public and persuasive functions (237).

In addition, Carol Blair has noted that memory is "a phenomenon of community," which highlights the importance of memory for the study of communication. Memory has epistemological value, manifest in public expressions in museums, commemorations, history manuals, and other places, thus making it a powerful political instrument, open to all kinds of appropriations and misappropriations. And, as Avishai Margalit states: "Memory breathes revenge as often as it breathes reconciliation, and the hope of reaching catharsis through liberated memories might turn out to be an illusion" (5). In other words, as explained in chapter one, memory has many horizons.

Scholars have investigated the use and abuses of public memory during critical national times such as the national policy of collective amnesia in Spain after the death of Franco (*El Pacto del Olvido*), Germany during the Nazi regime, and then again

afterwards (the passionate efforts of survivors not to forget what happened in Auschwitz and other concentration camps). The aftermath of dramatic events such as the ones mentioned here constitutes a "rhetorical interruption" for communities impacted; it also inaugurates civic deliberation about what constitutes a people or a nation. Blair notes that, in addition to being political, public memory is also an "emotionally invested phenomenon," because of the powerful linkages between remembrance, language/culture and identity. Surely, for survivors of the Holocaust in Europe, Apartheid in South Africa, the Years of Lead in Morocco, and other atrocities, recalling experiences of torture, rape, loss of loved ones, and other forms of inhumanity is certainly an emotionally charged experience. Remembrance is necessarily and dynamically affective, not simply cognitive. Happy and peaceful feelings emerge with happy memories. Violent or traumatic memories evoke a plethora of disturbing emotions such as sadness, fear, hate, shame, horror, and guilt. The events remembered belong to a different time frame but the emotions associated with those events are very much present-lived and become enacted in the now. Public memory is a collective embodiment of past events and the motor for practices that have implications for the present and the future.

It should be clear at this point that public memory and history are distinct, despite their common theme: past remembrance. History relies heavily on memory, to be sure. In *History as an Art of Memory*, Patrick Hutton explains how history and historical work are impossible without memory:

> History is an art of memory because it mediates the encounter between
> two moments of memory: repetition and recollection. Repetition concerns
> the presence of the past. It is the moment of memory through which we

bear forward images of the past that continue to shape our present efforts
to evoke the past. It is the moment of memory with which we consciously
reconstruct images of the past in the selective way that suits the need of
our present situation. It is the opening between these two moments that
makes historical thinking possible (xxi).

Memory is a performative and dynamic practice, always enacted and re-enacted, resisting
closure and continuously infusing new meaning into past experiences. History, on the
other hand, is like a still photo of the past: static and rigid. Despite their affinity for the
same object, their missions are different and this difference is beautifully captured by
Pierra Nora:

Memory is life, always embodied in living societies and as such in
permanent evolution, subject to the dialectic of remembering and
forgetting, unconscious of the distortions to which it is subject, vulnerable
in various ways to appropriation and manipulation, and capable of lying
dormant for long periods of time only to be suddenly reawakened. History,
on the hand, is the reconstruction, always problematic and incomplete, of
what is no longer. Memory is always a phenomenon of the present, a bond
tying us to the eternal present; history is a representation of the
past….Memory situates remembrance in a sacred context. History ferrets
it out; it turns whatever it touches into prose. (3).

Experiences of transitional justice problematize the praxis of memory precisely
because the decisions that people make about both remembering and disremembering
during times of crisis impact the society they are attempting to rebuild *and* the historical

66

narrative they are writing. Much has been said recently about the role of political amnesia and forgetting in the construction of national identity, and interestingly enough, Lane Bruner argues that strategic forgetfulness is what rhetoricians call public memory. He explains: "Every articulation necessarily highlights some features at the expense of others; it is simply that some articulations tend to repress more potentially significant political issues than others (thus some articulations are more ethical than others)" (316). In other words, what is (deliberately) forgotten is sometimes more important than what is remembered. In addition, Bradford Vivian, who readily concedes that "forgetting has had a bad reputation," notes that "the notion that forgetting need not amount to amnesia, erasure, or loss of memory—that it may, as an available trope or public deliberation, constitute a principled and judicious response to the past—remains conspicuously unorthodox" (91). Vivian's review of recent works in ethics, phenomenology, and anthropology suggests that the practice of forgetting needs to be further investigated to "affirm its positive contributions to public life, ethics, and decision making" (91) Achieving an ethico-political balance between excessive remembrance and amnesia isn't easy, to be sure. Some nations have fallen prey to the totality of erasure (amnesia), hoping to start anew without disturbing shadows from the past, and others have made of remembrance their national pastime. For example, after the fall of Nazism in Germany, the stigma associated with being part of such brutal events prompted Germans to want to quickly forget and turn the page. But, it soon became clear that in the effort to forget one cannot help but remember; as Vivian points out: "asking others to forget something ironically draws attention to, and brings to mind or memory, that very thing" (102). German attempts to delete a very unpleasant period of their history were futile, although

German national amnesia lasted twenty years. But teachers and parents could not lie (by omission) to future generations; to do so was to negate that the Holocaust ever happened, which would have been adding insult to injury to Jewish people. When amnesia is prescribed as a national policy, like the "pact of oblivion" in Spain after the civil war, it might work in the short term but is bound to fail: those who suffered cannot forget; they can suppress their memories, but they do not forget, and the past comes back to haunt them. As Minow affirms: "Some countries simply forget the past and attempt to induce a national amnesia in its people. Of course that is bound to fail—the victims do not, indeed cannot, forget. And their unanswered calls for retribution develop into hate and invariably that hate is directed collectively at the group from which the perpetrators came" (ix). This is exactly what happened in Spain, as previously noted.

If some countries have worked hard to expose and publicize the horrors of their past and establish responsibilities of perpetrators of the atrocities (South Africa might be a good example here), Spain has done just the opposite after the death of Franco in the early 1970s. Spain can be seen either as an anomaly in terms of its policy of national amnesia or a model to emulate since over thirty years after the death of Franco, the country seems to have joined the club of democratized nations with a vibrant and mostly peaceful citizenry. Still, the pact of oblivion appears to have been broken as there are growing calls for the re-opening of that page in Spanish history to set the record straight, identify and bury the dead, and establish truth about the past. This new development in Spanish affairs verifies, as Madeleine Davis notes, the fact:

> that Spaniards [did not] genuinely forgot the past but that a collective
>
> decision was made, for political purposes, to place a particular

construction on that past, to suppress or de-emphasize those memories felt

to be likely to endanger the stability and consensus, and to foreground

those likely to promote 'reconciliation' (867).

To stress the importance of public memory and remembrance is not to suggest that

individual memories alone should dictate decisions relating to an entire nation in a time

of transition; but to emphasize that a society cannot build a meaningful existence without

a historical collective consciousness, made up of shared narratives about the past.

Chapter Three: The Years of Lead in Morocco: A Rhetorical Account

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No people without a memory
No future without truth
No nation without justice

--The Moroccan Forum for Truth and Justice[20]

</div>

Like many of the countries discussed in the previous chapter, Morocco is a country with a bloody past. The first part of the 20th century brought about colonization and foreign oppression while the second half was marked by state violence and repression. After colonization by the French and Spanish ended in the mid-1950s, the monarchy regained control of the state but it did not realize a just society. Susan Waltz notes: "The North African states of Morocco, Tunisia and Algeria had all won political independence by 1962, but this did not usher in the halcyon days many had dreamed of and hoped for" (viii). For the past fifty years, the kings of Morocco have managed to stay in power through a clever dual game of terror/violence and cooptation/corruption internally, with a well orchestrated PR campaign internationally. [21] In fact, the ideological polarization of the world during the Cold War era allowed for human rights violations to occur in many places without any consequences for those who committed them and no recourse for those who suffered them. Sill, demands for accountability and justice for the past have grown stronger around the globe and their echo has reached many places, including Morocco.

As I have elucidated in chapter two, the rhetoric of transitional justice slowly gained traction after World War II, as waves of democratization swept across the globe. Still, it is only after the end of the Cold War that calls for an end to violence and oppression in countries such as South Africa and Morocco have found legitimacy and

support nationally and elsewhere (see Huntington). The end of the Cold War and the globalization of the discourses of human rights and democratization have challenged the legitimacy and practices of ruthless regimes and slowly contributed to a change in the political landscape of many regimes, including Morocco. As a case in point, Patricia Campbell shows that: "To the king's credit, he appeared to recognize the changing tide of the international political scene and understood that his techniques employed to stifle the opposition were becoming internationally unacceptable." (4) In other words, the Years of Lead had to come to an end and the monarchy was faced with the necessity to introduce changes in order to survive in its own territory and sustain good political and economic relationships with European countries and the United States. These (sometime cosmetic) changes began in the mid-1990s and have been framed as "democratization" and "the democratic transition." Lise Strom considers the process of democratization to have started much earlier, in the 1960s. While these efforts at democratization first focused on some tweaking in the national constitution (amendments, etc.) and political institutions (new party laws, change in elections, etc.), it soon became evident that no transition could take place without a genuine confrontation with the recent bloody past that was filled with innocent victims and perpetrators of atrocious crimes, most of whom were still integral parts of the political game. I seek to chart this segment of Morocco's history in this chapter, and gain insight into and understanding of how Moroccan citizens have been negotiating in the public sphere.

The examples of Spain, South Africa and Chile, among others, have provided citizens in Morocco with guidance and hope for imagining a future free of state repression and violence. More specifically, rhetorical practices of truth and

reconciliation, reparations, and memorialization that seek to shape the discourse about the past (around the theme of justice and accountability) have re-energized political engagement within the civic arena and boosted citizens' demands and hopes for greater liberties and socio-political rights. Ideals of justice and accountability have wholeheartedly been adopted by victims groups and human rights activists and helped them frame claims for truth and justice in response to the mass violations perpetrated against innocent citizens during the Years of Lead. Waltz insists that human rights' organizations in North Africa are, as in most places, "essentially political actors. They are different from other kinds of political actors, however, in that they neither vie for spoils within the political system nor attempt to overthrow that system. Rather, they work from within a recognized game of national politics to change its operating rules. Neither saints nor revolutionaries, they are political actors with a stake in the system, seeking reform" (viii). Given that Morocco is a constitutional monarchy, even if in name only, these groups have focused their efforts on constitutional reforms, trying to shift the balance of power in favor of the people since, as it currently stands (and has for over fifty years), political power lies totally in the hands of the monarch. In an effort to take charge of the national grassroots' incursion into the past and the peoples' thirst for democracy, the Moroccan state (i.e., the monarchy) has adopted the rhetoric of transitional justice to frame the changes that were introduced to secure survival and regain legitimacy on the international stage.

This chapter sheds light on Morocco's efforts to come to terms with its past as it is played out in the public sphere through a rhetorical battle between two primary political formations and actors. On one side there are victims' groups and human rights'

advocates who have been waging a campaign to account for the past and secure some type of justice while at the same time trying to compel the state to launch reforms that can pave the way to a genuine democratic transition. On the other side, there is the state (the monarchy and its political apparatus, the *makhzen*) which has been focusing its efforts on political survival through an official discourse centered on democratization and respect for human rights, all-the-while making very little efforts towards consequential constitutional reforms. Although a full discussion of democracy and democratization in Morocco is beyond the scope of this work, I must agree with Robert Dahl and Susan Waltz in their minimalist understanding of democracy as a political system that first and foremost protects citizens from oppression. "For Dahl, the noteworthy advantage of democracy does not lie in the particular policies it may produce, for in their content democratically produced policies may differ little from those arrived at by other political means. Democracy's major virtue is found, rather, in the protection from massive coercion it extends to those who enjoy the franchise" (Waltz 5).

Clearly, a genuine democracy does more than protect citizens from state violence and abuse. Unless the king is only a figure head, a symbol of the country's heritage, like in Spain or Great Britain, a monarchical system of governance remains at great odds with the idea of democracy, even if it is a constitutional monarchy. For instance, a democracy presupposes that the government is representative of and subordinate to the people, not the opposite as is the case in a monarchy, especially one where power is constitutionally centralized within the head of state. For a society like Morocco where citizens are constitutionally conceived as subjects who are required to show loyalty and allegiance to the king, even an unjust one, to live in a democracy would mean to become citizens who

do not live in fear of coercion and violence and equally enjoy the rights and responsibilities that are consecrated in the constitution. It is ironic that in many transitional countries, including Morocco, democratization is presented as the "good" that brings the nation together. Democracy is offered as the reward for reconciliation, but while reconciliation presupposes a conciliatory and consensual process, democracy is neither conciliatory nor consensual; it is a cacophony of voices that do not always resonate. As Ricoeur would have it, dissensus is the backbone of a healthy political community, while oblivion and fabricated consensus can create a false sense of harmony and thus be dangerous. The reality of Moroccan politics and other semi-authoritarian regimes is that, unlike totalitarian states, there is plenty of dissensus and dissonance within the public sphere. Daniel Brumberg explains that these regimes, including Morocco, "have not tried to impose a single vision of political community, or to completely swallow up every vestige of organized pluralism in society. Instead, they have put a certain symbolic distance between the state and society in ways that leave room for competitive or dissonant politics" (40). [22] In other words, in Morocco (and other similar regimes), plurality in the political arena is not synonymous with democracy. It provides a misleading index for inside players and to outside observers, one that the state is keen on nurturing.[23]

Waltz argues that "the politics of human rights [in North African countries] are essentially a politics of rhetoric. That rhetoric is not to be dismissed for its emptiness, insofar as political discourse ultimately shapes political expectation and political behavior" (233). This is true of all societies, of course, not just those of North Africa. When violence ceases to be the primary mode of communication and power negotiation

for political actors, rhetoric assumes its proper place in the public sphere. In other words, any meaningful change in politics in Morocco is going to be the result of rhetorical efforts on the part of political actors. Central to this development are ethical appeals grounded in the culture of human rights and the rhetoric of transitional justice. According to Thomas Moriarty whose work focuses on South Africa, the rhetoric of political leaders in any given country determines the political reality for the audience. He states:

> Political figures construct a past, present and desirable and plausible future for their audiences—a political reality—by characterizing or rhetorically constructing key elements of the public scene. [. . .] The resulting political realities determine the nature of the relationship between groups in a given society. The relative proximity of these realities determines whether the relationship between the groups is one of rhetorical or violent conflict. They will disagree or bicker over issues, but their conflict will be of a political, or rhetorical, nature. But if the groups have dissimilar political realities, the relationship between them will be one of violent conflict. (3-4)

As previously mentioned, consensus is not a desirable condition in a democracy because consensus can mean that power is not adequately shared among political actors, or that some groups are under the control of others and unable to dissent. Still, I want to emphasize that dissensus should not be taken to be an adequate index of democratic practices. For instance, Moroccan political life is full of dissent and political bickering between and among members of political parties and various interests, but Morocco is not democratic in that the dissent that characterizes public discourse does not translate into a

legitimate share of political power that should be held in common. The Moroccan people are not the authors of the laws that constrain them, and they do not elect the executive that leads them. That said, to gain better insight into Morocco's current battle with the demons of its past, it is essential to understand the complex historical, cultural and political framework, which I provide in the following section.

The Alaoui[24] Dynasty's Rhetoric of the Divine

Morocco is a country with multiple identities: Arab, *Amazigh* (the original inhabitants of Morocco), Muslim, Jewish, Western and African people who have cohabitated for many centuries, at times in conflict, but at relative peace for much of the last one hundred years. The current king, Mohammed VI, belongs to the Alaoui dynasty, a monarchy that has ruled the country since the mid-1600s, now an established symbol of continuity, religious and political power, and continuity. Miller and Bourquia point out that:

> Compared to other Maghribi (Muslim North African) and Middle Eastern States, the Moroccan political system has preserved a remarkable constancy over time. Since the early ninth century, Morocco has been more or less continuously ruled by a sultan-king who has monopolized the levers of government. The present dynasty, the 'Alawis, first came to power in the seventeenth century and has governed the country ever since in an extraordinary unbroken chain of rule. This striking longevity invites questions about the institutions and social forms that have given substance to monarchial power and the role they play in implanting it so deeply in society" (2)

This longevity can be explained with the *Sharifian* principle; that is, the Alaoui family claims direct lineage from the Prophet Mohammed, providing them (their male descendents) with the title of *sharif* and the de-facto eligibility to be the *khalif* or the *imam*, a spiritual as well as political leader of their community. In Morocco and in other Muslim countries, a Sharif is a person who claims to be a descendant of the Prophet and this lineage grants the person great respect in society.

This divine connection has provided the Alaoui dynasty with the rhetorical arsenal to hold onto power for so long, as the *Sharifian* argument cannot be debated nor defeated in a Muslim society. Patricia Campbell emphasizes that: "[. . .] the longevity of the Al'awid dynasty, one of the oldest in the world, contributed to Hassan's prestige as did a series of myths and symbols encouraged and often created by the monarchy to promote its own legitimacy" (2). The king, Hassan II, to whom Campbell refers, is the father of the current king Mohammed VI, whose rule by most accounts is a continuation of Hassan II's. Cleary, the son has benefitted from his father's symbolic capital, as the concept of power in Morocco is defined by royal authority (Miller and Bourquia). Claiming descent from Prophet Mohammed provides the monarchy and its descendants with legitimacy they would not have otherwise, ostensibly endowing their persons with sanctity. In other words, the lineage from the Prophet (and thus connection to God) has been instrumental in gaining and maintaining power for centuries. Maghraoui argues that Moroccan citizens see in the king the embodiment of "institutional monarchical authority, not of personal royal power" (2001: 73). The king's person is not only symbolically sacred but it is legally so as well as the Constitution of the Kingdom of Morocco (CKM)

clearly constructs the king as "sacred and inviolable," and anyone who attempts to violate his person, even symbolically, is thus constructed as a criminal.

Along these lines, Waltz argues that this type of relationship between the ruler and the prophet creates a psychological contract. Instead of a social contract that can either be affirmed, broken or renewed, a psychological contract is difficult to dissolve or break because that would be considered a betrayal of the Prophet himself or even a rejection of one's father, which in Muslim societies would be the ultimate sin. In addition, Campbell argues that the trinity (God, King, Country) created by Hassan II is powerful rhetorically because of the mythical (constructed as mystical) link to the Prophet and God. Campbell claims that "by linking himself to God, through the Prophet, the monarch ensures that challenges to his divine right to rule are indeed challenges to God" (3). King Hassan II justified his absolute power with religious arguments. To explain the legitimacy of Article 19 of the CKM, which de facto makes Morocco a monarchy that is not actually constitutional, Hassan II stated that: "Islam forbids me from implementing a constitutional monarchy in which I, the king, delegate all my powers and reign without governing. […] I can delegate power, but I do not have the right, on my own initiative, to abstain from my prerogatives, because they are also spiritual" (3). The king's religious and spiritual role preceded or overruled his political role, making it easier for him to have absolute power in all matters, religious and political. To challenge this connection or the legitimacy of the monarch's authority is to risk being accused of heresy and treachery. In fact, "it is this position that enabled the monarchy to retain stature and power under French colonialism (1912-1956) and to emerge as the symbol of nationalism during the struggle for independence" (3). As Slyomovics points out in *The Performance*

of Human Rights in Morocco, the only time that the rule of the dynasty to which the current king belongs was seriously undermined was during French colonial rule and, accordingly, Morocco gained independence in 1956 thanks to a strong local resistance and the symbolic role of the king, which at that time was Mohamed V, Hassan II's father.

For the monarchy, the outcome of French colonization was short of miraculous in that it boosted the monarchy's symbolic power considerably. Miller and Bourquia explain that by the time Morocco fell to French powers, the "sultanate was exhausted and close to expiration, torn apart by internecine struggles and successive European incursions. Preserved and resuscitated by the French under the Protectorate, the monarchy arose from the ashes, stripped of its political power but with its symbolic richness intact and even raised to new heights" (11). Ironically, then, French colonization did a huge favor to the monarchy as it somehow restored its symbolic capital and endowed it with a heroic aura. In contrast, another byproduct of the French colonization is that it created a state of what can be called (for lack of a better term) cultural and political schizophrenia in Morocco, as it did in Algeria and other countries that were subjected to foreign intervention. Miller and Bourquia state that: "During the period of French rule, structures of power inherited from the Maghribi past were overlaid with other kinds of authority derived from Western sources. After independence in 1956, French and Spanish rule gradually melted away, but the institutions it had imposed on Moroccan political culture remained behind" (12). The influence of this mélange of cultures explains the variety of references and models that the monarchy and Moroccan people resort to in both private and public spheres. As Miller and Bourquia put it:

On the surface, the state appears to be rational and coherent; in actuality, it is made up of layers of authority derived from many sources that coexist and interact but without the benefit of any overriding principle or theme. A dual legal system, one respecting Sharia law and another inspired by Western legal codes—the two often in conflict—is only one example of this disjuncture, but there are others too numerous to recount that permeate public and private life (12).

This duality is also manifest in the mix of both religious and secular references in the monarchy's official discourse, which combines the image of the king's role as the commander of the faithful with that of a modern leader seeking to democratize. In fact, the appeal of modernity and democracy has not escaped the people of Morocco who quickly became disenchanted with the monarchy's iron fisted rule and demanded a share of power, both economic and political. This disenchantment became particularly acute when the monarchy's heroism during French rule was replaced by a rule of bullets and iron bars, coupled with a lack of economic opportunities for most Moroccan citizens.

Like many other post-colonial contexts, independence from French (and Spanish) rule did not lead to greater freedom or justice for most Moroccans. On the contrary, in the course of the past fifty years, the Moroccan State has arrested, tortured, disappeared, exiled, and executed thousands of its own citizens.[25] The violence has targeted people across all ethnic (Arab, Amazigh, Jewish), religious (Muslim, Jewish and non-religious), and gender lines as well as political affiliations. Any person or group who has voiced a political opinion that runs against the official line is deemed a threat to national security and stability, and dealt with violently. Speech that criticizes the monarch or his family,

or is perceived as a potential threat to its legitimacy, is considered unlawful and potentially punishable. During the Years of Lead, those who were targeted with torture, imprisonment or disappearance were typically citizens (or dissidents) who had the courage to denounce corruption or unjust policies, refused to show allegiance to the king, challenged his religious title, or questioned the legitimacy of the king's claims over Western Sahara.[26] In other words, the policy of the State from the 1960s through the 1990s was a zero tolerance for dissent and this policy was made explicit in the acts of violence perpetrated by state officials against citizens who dared to cross what came to be known as the "red lines": territorial sovereignty (the nation), the king and the royal household (*dar al mulk*), and Islam as a state religion, all of which are considered inviolable and sacred.

It would be naïve to suggest that violence alone can explain the longevity of the Moroccan monarchy or any authoritarian regime, although violence is the defining feature of such systems. No regime can sustain power based on violence alone, as Hannah Arendt argues, because force alone undermines legitimacy. The Moroccan monarchy's rule has been one of savvy rhetorical skill that projects an image of being a protector and even a savior from colonialism, militarism, Islamism and territorial encroachment from aggressive neighbors such as Algeria. What this rhetoric has been lacking, however, is grounding in a civic ethic of accountability and responsibility, one that is in harmony with the king's role as the spiritual leader, or Commander of the Faithful (*Amir al-Mu'minin*).

In an interesting study, Mariana Ottaway offers some explanation for the development (and relative longevity) of authoritarianism or non-democratic regimes in

recent history. She suggests that while true authoritarianism and totalitarianism are on the decline, they have been replaced by a new political genre, labeled "semi-authoritarian regimes" and defined as "ambiguous systems that combine rhetorical acceptance of liberal democracy, the existence of some formal democratic institutions, and respect for a limited sphere of civil and political liberties with essentially illiberal or even authoritarian traits" (3). Ottaway insists that this ambiguity is not only deliberate but even nurtured. Morocco, according to this political scientist, is a good candidate for this category of semi-authoritarian hybrid along with countries such as Algeria and Yemen. Morocco, according to this line of thinking, is attempting to modernize and institutionalize its semi-authoritarian practices rather that embrace a democratic genre of governance. The status quo is maintained through the ambiguity that Ottaway suggests and through the creation of paradoxical situations and arbitrary acts and actions (4). In Morocco, this state of affairs is secured through "patronage rituals, legal shackles, spiritual rarefactions, political constraints, symbolic invocations, and, of course, the tacit threat of force" (Smith and Loudiy, "Testing" 1107).

While different ancestries and cultures make of Morocco a complex tapestry of identities, the language and religion that are consecrated in the constitution are Arabic and Islam. Morocco is considered an Arab and Muslim country, and, as noted previously, the political system is referred to as a constitutional monarchy. Elaine Combs-Schilling emphasizes that "Islam and monarchy have been essential to the Moroccan nation since its beginning but have been articulated in different ways" (177). Only after the country gained its independence did it adopt a constitution and become a constitutional monarchy. But Maghraoui warns that one should not to be fooled by the "constitutional"

designation: "Officially, Morocco is a constitutional monarchy, but in practice, ultimate authority continues to rest with the king" (78). While Morocco's political system allows for plurality (in terms of political parties) and does have a bicameral parliament that is elected, there is no balance of power in the three branches of government, and, as Maghraoui argues with reference to Hassan II's rule, "the three branches of the government operated more as a rubber stamp for [the king's] decisions and policies than as autonomous institutions" (78). In other words, all branches of the government are subservient to the king who has the ultimate say in all political and economic affairs— which was true of King Hassan II's rule as it is now of with Mohammed VI. In his explanation of what he calls "the paradox of the popular (but unjust) prince" (which became evident during Hassan II's funeral in 1999), Maghraoui argues that there is actually no paradox and that "while they may consider the king personally unfair or unjust, they [the overwhelming majority of Moroccans] nonetheless identify with the monarchy as a symbol of national unity and a legitimate form of governance" ("Political Authority" 74). Indeed, the conflation (or lack of formal differentiation) of religious and political spheres is legitimized by the way in which the person of the monarch is constructed constitutionally. As Smith and Loudiy point out:

> The rationale behind this concentration of power [in the constitution] is
> intimately tied to the relation between religion and state. Because the
> sovereign is sovereign by virtue of his royal *sharifian* lineage (from the
> Prophet Mohammed), his speech and symbolic acts are necessarily
> virtuous, just, and right; this principle is articulate in Article 23 of the
> CKM [Constitution of the Kingdom of Morocco], which states that '[t]he

person of the King shall be sacred and inviolable,' a proscription against

discursive as well as physical acts. In fact, not only is the King's person

sacred, but so is anything that is linked to his person, even physical

structures, as demonstrated by the November 2002 incident in which Ali

Lmrabet was sentenced to four months in prison for suggesting in his

weekly magazine that one of the thirteen lavish royal palaces might be for

sale (1108).

This analysis coheres with what other scholars have suggested about the

Moroccan monarchy, that it has managed to keep its power for so long through a mix of a

carrot and stick approach while also nurturing political segmentation, by fueling conflict

among political actors so that there is never a potentially serious and viable alternative (or

threat) to the regime. Of course, fear and violence have also been an important part of this

strategy. For instance, in his seminal book, *The Commander of the Faithful: The*

Moroccan Political Elite—A study in Segmented Politics, John Waterbury states that:

> The administration in a global sense, but particularly the Ministries of
>
> Interior and Justice, the army and police, the royal cabinet and the press
>
> are the essential instruments of royal control. They constitute the means or
>
> channels by which the king can intervene directly in the political process.
>
> Through the administration the king is able to maintain the inner conflicts
>
> of the elite and to reaffirm the primacy of the throne in the allocation of
>
> goods and power. (298)

Although Waterbury's research is nearly four decades old, it is by no means outdated.

The monarchy continues to fortify its control of economic resources and the king still has

absolute political power, despite a few minor changes in the constitution and many

popular outbursts. In other words, like most semi-authoritarian regimes, the monarchy

does not rule with a stick alone. It has managed to stay in power this long because it

continues to entice or otherwise buy off the allegiance of key actors of society that help it

stay in control and counteract resistances within the system. In so doing, the monarchy

and those it protects, maintain immunity from prosecution or any check or balance in the

system. The immunity ensconced in the constitution, that 'the person of the king shall be

sacred and inviolable,' is extended to all those who serve him loyally.[27] Correlatively,

Ottaway's analysis suggests that political cronyism and hybridity are evident in semi-

authoritarian regimes, which are quite crafty in that they "leave enough political space for

political parties and organization of civil society to form, for an independent press to

function to some extent, and for some political debate to take place… [but] they allow

little real competition for power, thus reducing government accountability" (3). These

regimes manage to give the illusion of democracy but never truly allow other political

players a share of power in the political game. Ottaway argues that: "Semi-authoritarian

regimes are not failed democracies or democracies in transition; rather, they are carefully

constructed and maintained alternative systems. If semi-authoritarian governments had

their way, the system would never change" (7). But authoritarian and semi-authoritarian

systems cannot have it their own way for long because to stay afloat and in power they

ultimately resort to violent means to squelch citizens' demands for a share of power in

the political sphere. In this day and age where technology makes it relatively easy to

communicate information about violations and abuses despite all attempts on the part of

the regime to maintain opacity, individuals and groups are taking more responsibility into

their own hands and demanding accountability. An overview of the Years of Lead is necessary to provide some appreciation and understanding of how citizens have attempted to deal with the aftermath of these horrific times, and how the State of Morocco has responded to their demands.

The Years of Lead: A Culture of Violence

The Years of Lead or the "black years" refer to the years of Hassan II's reign, from 1961 when his father Mohammed V died, to his own death in July 1999. These years were marked by sheer violence and utter repression of all those who were considered a threat to the legitimacy or survival of the king. Maghraoui describes this period of Moroccan history as follows: "From 1961 to 1999, King Hassan II reigned over Morocco exactly as if he were running a medieval absolutist state. Suddenly endowed with the power of a modern bureaucracy, he was accountable to no one but God and commanded total obedience" ("Political Authority" 3). In other words, these years are the equivalent of the modern dark ages for Moroccan citizens, especially those who did not obey the rules of the game or revolted against the "un-modern" aspect of the times, namely the absolutist and repressive trend of the king. Similarly, Slyomovics defines the Years of Lead as "an era of grayness and lead bullets" and the black years as evoking "the times of fear and repression, and *les annees sombres*, the gloomy years of forcible disappearances, farcical mass political trials, and long prison sentences for large numbers of people who from a variety of political positions voiced opposition to the regime and became prisoners of conscience" (*The Performance* 2). This gloomy state of affairs began right after independence and the first targets were pre-independence political parties who yearned to be part of the political game and have a share of power with the monarchy.

The International Commission for Transitional Justice's (ICTJ) report argues that "the roots of state violence can be traced to the struggle for independence that spawned regional revolts and two major political parties" (4). These political parties were the *Istiqlal* party (the party who led the struggle against the colonial powers and whose name means independence in Arabic) and the Union Nationale des Forces Populaires, which was an offshoot of the *Istiqlal* party and led by Mehdi Ben Barka, a charismatic leader who Hassan II perceived as a threat to his power and whose actual fate remains unknown, despite some evidence (by credible witnesses) that he was kidnapped in Paris, killed by Moroccan security forces, and his body was dissolved in a vat of acid.[28] The violence of the Years of Lead against Moroccan citizens who had the courage to voice their discontent and make the case for a just society did not remain without echo, despite the culture of fear and loathing that the monarchy and its security forces developed.

According to most historical accounts, political violence has been the instrument of choice for the Moroccan monarchy before independence and this reality did not change after independence. In fact, soon after the country gained independence and even before Hassan II came to power, violence was used against political adversaries as a means to silence them and scare off potential opponents.[29] Ironically, as Maghraoui points out, it was "with the acquiescence of the nationalist parties" that the king "emerged as the symbol of national liberation and, became, constitutionally, the supreme arbitrator, legislator and guarantor of political legitimacy" ("Political Authority" 3). This alliance did not last long as it became clear, as previously noted, that not only did the nationalist parties that fought for independence and supported the legitimacy of the

monarchy want a share of the political pie, so did entire regions that had given their blood

to free the country. The ICTJ's report provides details:

> In an effort to eliminate opposition, entire areas that had joined in the
>
> struggle for independence were subsequently subjected to severe
>
> crackdowns under Morocco's first post independence ruler, King
>
> Mohammed V. The Northern Rif, for example, found its anticolonial
>
> struggle turned against it as soon as independence was achieved. The
>
> region revolted in 1958, only to be brutally crushed by the Royal Armed
>
> Forces, resulting in thousands of deaths(4).[30]

The repression of the Northern Rif was conducted under then Prince Hassan II's orders

despite the ICTJ suggestion that when his father Mohammed V died and he took control

of the country, "he adopted a softer style of repression that blended handsome rewards

and harsh punishments" (5).

Hassan II's style differed from his father also in that he understood that violence

alone would not secure his longevity. The ICTJ states that: "His preferred tactic was to

neutralize potential power contenders through incentives such as generous land grants,

business deals, and offers of well-paid government positions. Indeed, Hassan II's skill lay

in the fact that he 'could co-opt members of various parties, squelch dissent, crush

enemies, and still be regarded by many as a beloved monarch'" (5). The squelching of

dissent and crushing of enemies (real or imagined) included torture, forced

disappearances, arbitrary arrests, and executions.[31] Those who were lucky escaped and

lived in exile in France or other European countries, and worked hard to alert

international public opinion and human rights organizations to abuses that were taking

place in Morocco. Still, Maghraoui argues that: "From 1961 to 1999, King Hassan II

[was . . .] suddenly endowed with the power of a modern bureaucracy, was accountable

to no one but God and commanded total obedience" ("Political" 1). The exact number of

victims is difficult to pinpoint but estimates according to the ICTJ are around 50,000

people. The exact number of citizens who were victims of gratuitous violence will

remain unknown, but it was substantial. During these years, even foreign nationals, like

Amnesty International reporters, were not safe in Morocco as they were harassed and

scared by the police apparatus.

   As public testimonials and published memoirs about the Years of Lead continue

to demonstrate, the use of torture, physical as well as psychological, was commonplace

and used indiscriminately, regardless of age or gender. Torture and violence targeted men

and women, children and old people, sons and daughters, mothers and fathers, husbands

and wives, sisters and brothers. In her study of women and political violence during the

Years of Lead in Morocco, Nadia Guessous explains how, like in wars, rape and sexual

violence were used by Moroccan security forces against women to satisfy their bestial

desires or simply to humiliate them and the men in their family. Even children and babies

were not safe from the violence and were used as weapons against their family, especially

their mothers, in order to extract information or simply to intimidate, to shame and to

humiliate. She states that "In effect, the state created a culture of impunity, where rape

and sexual assault were tolerated and potentially encouraged… Mothers were tortured in

front of their children and children were tortured in front of their mothers" (103). And, in

most instances and according to many women's accounts, despite the woman's reference

to religion (Allah) or any other powerful symbol, the torturers would not stop.[32] One

former female political prisoner, Fatna El Bouih, recounts her experience: "Torture as part of a thorough search was permitted because we were *hors la loi* (outlaws). We were condemned before we were even judged, we were considered already guilty. It was not for what I did but what I wrote: I threw tracts but I never threw bombs" (In Slyomovics, *Performance* 20). In the introduction to Fatna El Bouih's memoirs, *Talk of Darkness*, Slyomovics and Moustapha Kamal describe her kidnapping and arrest:

> Fatna El Bouih […] became active in the National Union of High School Students, the organization deemed illegal by the regime of King Hassan II because it was formed by the underground Marxist movement. By the mid-1970s, during El Bouih's high school years, Morocco's political crisis came to a head: there were two failed military coups in 1971 and 1972 against Hassan II, and in 1973 the brutal suppression of an armed insurrection, followed by a wave of mass kidnappings targeting the regime's opponents that swept the country. Fatna El Bouih was arrested briefly for the first time as a leader of the January 24, 1974 high school student strike to protest conditions in Morocco's secondary education. Her second arrest came in 1977 for membership in 'March 23,' a Marxist group named to commemorate the Casablanca uprising of March 23, 1965. She was forcibly disappeared with other women activists from May to November 1977 into Derb Moulay Cherif, Casablanca's notorious secret torture center (xi).[33]

Dissent in all its forms was not tolerated, even among high school students, even if the dissent was based entirely on rumors.

This repression was possible thanks to the *makhzen*, the political police apparatus that King Hassan II consolidated during his rule. Maghraoui argues that this system is the most difficult to dismantle because it is engrained in the political culture of the country and constitutes the most rooted and ominous "institutional and ideological component of Hassan II's legacy" ("Political Authority" 3). Storm states that "The makhzen does not officially exist apart from in a few administrative denominations. In popular language, however, the term is often used to describe the State and its agents, while the term is used politically to refer to the King and his entourage" (175). Remy Leveau argues that historically, the *makhzen* referred to the "territory administered by the monarch, as opposed to the *bled siba*, which was territory outside the control of the central administration" (in Storm 175). While it historically refers to the royal household, the storehouse of power, the one in charge of law and order, in today's Morocco, the *makhzen* refers more to anyone associated with the ruling class and its police. The *makhzen* is also associated with fear and loathing, as citizens who are not within the good graces of the king and his entourage, live in fear of its wrath and ubiquitous violence.

As a case in point, Bourqia argues that the omnipotence of the *makhzen* has created a situation whereby citizens feel threatened by the same entity that is supposed to provide for their safety and security. The degree of fear the *makhzen* provokes in Moroccan citizens is captured by the following popular sayings:

> Three things cannot be overcome: fire, flood, and the makhzen;
>
> Only God and the makhzen can defeat you;
>
> The makhzen takes care of itself;

We cannot match up to the makhzen (244)

Hence, the role of the *makhzen* in Morocco's Years of Lead is important to underscore. The *makhzen* is the security apparatus that is in charge of keeping the monarchy afloat at all costs, actually in everyday life and figuratively in its mythical aspect. It is this mission of protecting (and propping) the monarch that has motivated *makhzen* involvement in the thousands of cases of torture, abuse and, sometimes, execution. The *makhzen* do not wait for a warrant or proof of guilt to take care of the situation. It is important here to point out that the military was also part of the *makhzen* during the Years of Lead as the security apparatus includes the police and the military and, in many instances the military alliance with the monarchy has served to crack down on regional revolts. As Storm puts it: "As the King came to enjoy the support of the military, he changed his strategy from interaction with his political opponents to that of harsh repression, thereby letting most of the air out of the struggle for power, as the parties found themselves in a situation where they were too weak to present a genuine challenge to the monarchy-military power alliance" (23).

The *makhzen* acts "both as investigator and as judge presuming the crime while imagining, indeed foreshadowing, the eventuality of criminal charges and while preemptively acting on a punishment that might be meted out" (Slyomovics, 15). When a person is arrested, she or he is presumed guilty from the start—just by virtue of his or her arrest—and then the police works hard to prove that they were right in arresting that individual, even if that involved forced confessions resulting from torture and other violent means. Typically, the defense in court is not allowed to provide any evidence or witnesses to prove the contrary, so the *makhzen* continue to operate with impunity. What

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makes matter worse is that this approach is entrenched in the legal system. Slyomovics rightly points out that "The nature of the Moroccan approach to criminal procedure—the inquisitorial system—serves to reinforce bureaucratic attitudes that presume the guilt of the accused" (19). This inquisitorial system is of course problematical: "According to law, non-adversarial pre-trial investigations should have been conducted by judicial officers and examining magistrates employing all the resources of the regime to gather evidence. The state, supposedly neutral and acting in the best interests of all parties, instead actively prosecuted and persecuted detainees who voiced opposition. In the case of political detainees, the state broadened the definition of a crime" (20). Abderrahman Benameur, a Moroccan former political prisoner, human rights advocate and lawyer, offers this explanation of what constitutes a political act (or crime, according to the state): "Detention for political and union offences is not a contingent fact in contemporary Moroccan history, nor purely a series of provisional measures required by particular circumstances, nor a kind of extortion on the part of certain officials exercising the authority conferred by their job. On the contrary, detention for crimes of opinion, political and union activity is a method constantly used to destroy non-official opinion" (2).

If one was a political dissident during the Years of Lead, the state spared no tactics to criminalize that person's actions, even if there was no evidence that a crime has been committed. But as noted earlier, the simple expression of discontent or denouncing of abuse of power was considered a crime. Slyomovics affirms that: "The state, in effect, has criminalized all manifestations of political activity and thought that promote *l'opinion non-officielle*: political acts such as writing tracts, holding meetings, and

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demonstrating" (20).[34] Arrests and prosecutions of persons with an opinion that clashed with the status quo constituted cases of collusion between all branches of government, where the judiciary was subservient to the executive and had no independence in its decision-making process, which is typically the case in authoritarian and totalitarian systems of governance. As previously suggested, despite the label of constitutional monarchy, there are no checks or balances in governance, which makes citizens at the mercy of the monarchy's whim. The relentless advocacy efforts of civil society organizations, coupled with the shift in the international geo-political order and globalization of technology have contributed to some changes.

Demands for Change

The end of the cold war brought with it popular demands for democracy and social justice around the globe. In Morocco and other countries where political violence was used as a means to control dissent and terrorize citizens, that meant that Western powers could no longer sustain a 'blind eye and a deaf ear' approach to the human rights violations occurring in allied (but oppressive) regimes. Mohammed Karam, a Moroccan human rights lawyer, explains that in Morocco:

> 1989 was a turning point but only after decades of internal and external
> pressures... Demands for respect for human rights coincided with the fall
> of the Soviet Union. Morocco's role as a pro-Western ally, as opposed to
> neighboring Algeria's alignment with the Soviet Union, became geo-
> politically irrelevant. Morocco, no longer shielded from scrutiny about
> domestic violations, was forced to accede to changes, among them the
> practice of human rights. (in Slyomovics, 21)

Within this new geo-political climate, the investigative and advocacy work of Amnesty International and other international human rights organizations made it difficult for Hassan II to continue to deny the accusations of human rights abuses and forced him to modify his public discourse, as "the 1990s was a decade of change in Moroccan law and procedure" (Slyomovics 21). This is not meant to imply that Moroccan citizens had no or little impact on the political change in the country; on the contrary, it is the efforts and courage of thousands of citizens that other countries and organizations took on their struggle. International organizations exposed the truth about human rights violations in Morocco, which forced foreign governments to pressure the monarchy into change so that they would not be seen as complicit with the murders and disappearances of innocent citizens, but these international organizations were grounded in the their research and advocacy efforts by accounts of suffering and atrocity by local Moroccan dissents and human rights organizations. Waltz argues that the development of the human rights discourse in Morocco in the 1990s was aided by international pressure on the monarchy to favor the human rights movement to the detriment of the Islamic movement as well as the development of human capital and resources within the human rights movement itself. One can add that technology itself has been on the side of the human rights movement as the internet and other novel means of communication have facilitated the work of organizations by providing them with access to information as well as allowing them to publicize their work to larger audiences. In a similar vein, the ICTJ notes that the 1990s were the beginning of the end as far as systematic human rights violations in Morocco were concerned, and they attribute this development to the changing international geo-political climate and to the explosive book (*Notre Ami le Roi*,

or, *Our Friend the King)* by French author Gilles Perrault, who revealed embarrassingly atrocious details about the situation of human rights in Morocco. Further, Amnesty International's report on Tazmamart, a secret prison where military officers were being held in total isolation from the rest of the world and in conditions comparable to those of concentration camps, put Hassan II's regime in the spotlight.[35]

These circumstances were instrumental in changing the tide of human rights in Morocco by empowering local activists and organizations working to put an end to political violence and impunity. In the early 1990s after nearly four decades of iron-fisted rule, Hassan II introduced some changes, including an acknowledgment of the existence of secret prisons (Tazmamart in particular), the release of selected political prisoners, and a loosening of constraints on public discourse. In fact, it is uncanny how Hassan II had repeatedly and for many years scoffed at and denied accusations by human rights organizations such as Amnesty International and others as being smear campaigns to taint the image of Morocco, a so-called country of peace and democracy. In one public statement, he even said that "if 1% of the human rights violations suggested by Amnesty International were true, I would not get a wink of sleep" (in *ICTJ's report*: 8). What is even more troubling is the fact that in a speech to the nation, King Hassan II said the following:"[…]and you should know my dear People, that I told you what my late father told me: 'Remember this essential point in your political education. Never lie to your people, because this is a very intelligent people, who will discover your lies immediately, and will not forgive you, and your credibility will be affected."[36] It is difficult to believe that as a ruler with absolute power, King Hassan II did not know of the rampant violations taking place in his country and, in fact, many accounts clearly show that he did

know but he did nothing. The story told by Salah Hachad of his daughter who, at ten years old, at considerable risk to her own life, is a good example. When Hachad was in prison, his daughter appealed to the King while he was playing golf, asking why he would not allow her to see her father or improve his jail conditions, since he was innocent, never brought to court but left to die a slow death in the gulags of Tazmamart.[37]

So even though Hassan II first denied any knowledge of abuses or secret prisons with inhumane conditions, he later advertised his tolerance of human rights development because he wished Morocco to be perceived as a civilized state. However, these progressive developments did not signal a democratic revolution or an end to crimes against citizens who expressed an opinion that was critical of the monarchy or infringed upon the "red lines," but rather a softening in the magnitude of the oppression, hence creating an ambiguous and paradoxical situation where it was not always clear what was allowed or tolerated, and what was not. Lise Storm argues that "as much as the King was in favor of the democratic element of political contestation when it came to competition between the parties, he was entirely opposed to the idea when there was a chance that it might eventually result in a diminished role for the monarchy in political life" (13). Conversely, while the monarch rhetorically accepted human rights and democracy as legitimate and "civilized" frameworks for managing political affairs, the fear of actually making these principles an authentic part of public and political life was too great. The king has absolute power while in a democracy, that power is shared among different players in the political arena. So, if respect for human rights meant to allow citizens to express their discontent as well as their consent in the public sphere, then there was a

serious problem because that constituted a significant threat to the king's tight hold on power.

This ambiguity regarding legitimate power and the exercise of rights (and wrongs!) was evident in the discrepancy between the public discourse of the king and actual political practices on the streets. Still, the introduction of the concept of human rights into state rhetoric coupled with the 1992 constitution constituted an important development; it was a point of no return. Article 9, for example, provides for freedoms in keeping with the Universal Declaration of Human Rights, while Article, while Articles --- ensures that the sanctity of the monarch, his discourse in all of its manifestations, and his household, are consecrated constitutionally as sacred (see Smith and Loudiy). Due to Article 9 and Articles ---, Storm argues that although the constitution "duly followed the tradition established by the 1962 constitution and although it was a case of cosmetic surgery, this time the changes made bordered on being substantial in that the 1992 constitution contained new provisions which provided Morocco with a basic framework that made further democratization very much a possibility" (61). While the idea of democracy was introduced and adopted in official communication in the early 1990s, its practice has been extremely slow. Campbell argues that "Hassan's flirtation with democracy began with the 1962 constitution" but she also clearly states that despite the different constitutional amendments (1970, 1972 and 1992), each only served to confirm "the preeminence of the monarchy and subordination to it of all other political institutions, whether legislative, executive, or judicial" (3). As previously suggested, although certain Articles refer to the sanctity of the king, the discourse that grants absolute power is found in Article 19 (of the 1996 revised constitution), which states that:

The King, 'Amir Al-Muminin'(Commander of the Faithful), shall be the

Supreme Representative of the Nation and the Symbol of the unity thereof.

He shall be the guarantor of the perpetuation and the continuity of the

State. As Defender of the Faith, He shall ensure the respect for the

Constitution. He shall be the Protector of the rights and liberties of the

citizens, social groups and organisations. The King shall be the guarantor

of the independence of the Nation and the territorial integrity of the

Kingdom within all its rightful boundaries."[38]

In fact, the introduction of the discourses of human rights and democratization into the

State's rhetoric has had little impact on how citizens who voice an unpopular opinion are

treated today. Many national and international watchdog (and human rights)

organizations continue to report instances of arbitrary arrests, disappearances and other

violations of physical integrity.[39] Maghraoui unambiguously states that "Morocco is no

closer today to a decisive democratic breakthrough than it was four decades ago" (73).

Still, the state's rhetoric of democratization has led to the implementation of new

practices to remedy the harm that was done to innocent citizens (mostly political

dissidents) during the Years of Lead.

Morocco's transition is a-typical in the sense that it is a transition within a

continuation. Waltz argues that: "regime transformation necessarily involves alteration of

the system itself and entails efforts to reset the operating political parameters. It is the

nature of a transition to call into question old arrangements" (8). The death of King

Hassan II and the enthroning of his son, Mohammed VI, gave a boost to the changes

discussed earlier. The newly enthroned King rushed to make public statements about the

country embracing a democratic transition (hinting at the beginning of a new era) and gave orders for the creation of an official body to investigate the Years of Lead and provide recommendations for dealing with the legacy of his father's rule. As Slyomovics notes: "Eight days after the death of King Hassan on July 23, 1999, his son and heir Mohammed VI affirmed in his first throne speech a commitment to establish the rule of law, and to safeguard human rights, individual and collective liberties, a constitutional monarchy, a multi-party system, economic liberalism and policies of regionalism and decentralization" (2001: 2).

Ironically, these moves by Mohammed VI were in keeping with Hassan II's later efforts, after the acknowledgment of secret prisons and detention centers, when he moved to establish government agencies to tackle issues of human rights. The first of these steps came with the creation of the Advisory Council on Human rights (Conseil Consultatif des Droits de l'Homme, or CCDH), presented as "a national institution for the promotion and protection of human rights."[40] The CCDH was created by royal decree in May of 1990, and in the speech where he addressed the members of the newly formed agency, Hassan II urged the members of the council "to help bring fairness where a wrong has been done and for help so that we can together succeed in raising this country to the level of civilized countries and states of the rule of law. I finally ask you to judge in all serenity whether in such or such case, human rights have been violated. In the affirmative, you will cry out the truth. In the negative, you will not hesitate to state that human rights have not been violated, that there was a lie, false testimony, or fabrication" (quoted in the ICTJ's report: 8)[41]. At the same time, Hassan II cautioned (if not threatened) Moroccans that if anyone was foolish enough to believe that this signals a change in how citizens

who dared to support or claim that "such and such a region is not part of Moroccan territory" they would be considered heretics and would be dealt with outside the framework of the law and in such a case, the king made it clear that "neither the status of a detainee nor a political prisoner could apply" (quoted in ICTJ's report: 8). The king here indirectly invokes Article 19 and his responsibility to protect the borders (even as those very borders are being contested) and not be subject to the law he was directing CCDH to carry out against wrongdoers. As the Wrongdoer par excellence, he was exempt from the law that he himself creates, just as his people would not be allowed to be authors of the laws that constrained them.

Despite published accounts of extensive human rights violations, the CCDH's first mission was to focus on legal reforms, which had not much to do with acknowledging the situation on the ground or stopping abuses. The ICTJ's report notes: "Despite these and other notable advances, the CCDH failed to directly address cases of abuse from the Years of Lead" (9). The file on human rights violations was shelved until a later date, despite the continuous focus in official rhetoric on the issues of human rights and democracy and their importance for the Moroccan state. But in 1993, a Ministry of Human Rights was set up to address similar issues that CCDH was already dealing with, namely to look into the accusations of human rights violations and promote a culture of human rights in the country. But the prerogatives of this new ministry were clearly limited so its existence was of little consequence for those who had hoped that the book of the past was going to be opened and investigated. This is perhaps not surprising given that no authoritarian state creates agencies (even one with human rights as its raison d'etre) to promote greater liberty and accountability; rather they are euphemized fronts to

be used to further control citizens' efforts. For instance, Ministry of Human Rights was created when it became increasingly evident that human rights organizations in Morocco were forming transnational alliances and having international reverberations. As Murray Edelman argues, the administrative system is nothing more than a mere symbol or as Ricoeur would say, this is yet another example of the political paradox where bureaucracy (and the violence it produces) is a necessary evil.[42]

The year of 1996 brought about several new developments, most significant was Morocco's ratification of an important United Nations convention, a change in the penal code, and amendments to the elections system in the new constitution. Storm states that:

> It was the adoption of Morocco's sixth constitution in 1996, which slowly
> reignited the flame of the democratization process, as reasonably
> competitive elections, devoid of massive fraud and with broad suffrage,
> were once again provided for in the constitution having been missing since
> the adoption of the 1970 constitution. […]the adoption of the 1996
> constitution and the provision of this core democratic principle was not an
> improvement to the situation under the original constitution of 1962.
> However, compared to the four constitutions immediately preceding it,
> this was a substantial advancement as Morocco went from not having
> provided for this core democratic principle in a period of no less than 26
> years—an era that included the holding of three parliamentary elections—
> to providing for reasonably competitive, free and fair elections in the two
> most recent parliamentary elections of 1997 and 2002 (96).

In addition, 1997 marked the first time since Morocco gained its independence in 1956 that the country's legislators were elected directly; however, the impact of this major development was limited by continuous corruption and unlawful practices. Storm notes:

> Pledging the country's support to democratic values and commitment to embark on a democratization process by adopting a new constitution in 1996 seemed to have a positive effect on the parliamentary elections of 1997 as these turned out to be the country's first reasonably competitive elections, devoid of massive fraud, with broad suffrage. As in previous elections, however, fraud and manipulation did take place, with the points of criticism centering on the issue of direct manipulation by the makhzen (79).

Positive institutional developments (reforms) continue to be overshadowed by rampant corruption and nepotism. In other words, even when the law provided citizens with rights, these rights were not automatically granted or exercised. The rights that citizens have and, as prescribed in the constitution, are, in practice, a privilege that can be taken away from one under any arbitrary condition. Morocco's ratification of the United Nations Convention Against Torture in 1996, followed by a new law enacted in 1998 whereby it was required that autopsies to be performed for deaths that occurred during an arrest.[43] Whether the law was enforced or not in those cases was a different story but, again, this is the main problem in Morocco: even the laws that are in place to protect citizens from abuse and violation are often disregarded and not enforced, because of a lack of accountability at all levels of government, especially at the highest levels, which sets a poor example for those in even lower levels of governance. The same year the autopsy

law was enacted, the king summoned the members of the CCDH to inform them that they had six-months to investigate all of the human rights cases of disappearance, execution, torture, etc., so that the file on human rights issues can be closed for ever.

These changes were followed by what seemed to be a radical shift in Hassan II's rule as he invited Abderahman El Youssoufi, one of his most famous long-time political opponents, a former exile for almost twenty years and the leader of the main opposition party, the Socialist Union for Popular Forces (commonly referred to in Morocco as the USFP), to lead the country's government as its prime minister within what was referred to as "the government of change."[44] Storm argues that this was a sign of the King's willingness to "open up the political system and move the country further towards democracy" since his invitation to El Youssoufi to join the government was "a move he was by no means forced to make" (97). In fact, 1998 was a year full of hope for Morocco's future as it appeared that change was indeed happening, especially with the nomination of El Youssoufi. This extraordinary development was only matched by what seemed to be "reconciliation" between the king and Amnesty International, an organization that he had previously discredited because of its public and continuous criticism of the human rights situation in Morocco. So in 1998, the organization was given the green light, so to speak, to open up a regional office in the Moroccan capital, Rabat, which seemed to be an indicator for better days to come. Perhaps King Hassan II was about to cash on his 1994 promise "to turn the page definitely on the abuses of the past" with Morocco on its way to becoming a democracy where the rule of law was supreme. Or perhaps, these developments were a ploy to persuade Moroccan citizens as well as international public opinion that Morocco was indeed becoming a democracy

since the country was now governed by a socialist prime minister and Amnesty International now had an office on its grounds.[45] In reality, these positive developments were contradicted by a resistance on the part of the king to confront the country's recent past, a past full of accounts of violence and violations as well as the continuation of the practices that caused the past to be called the Years of Lead in the first place.

It was until a few months before his death, in April of 1999, that there was an acknowledgment of the veracity of the allegations of abuse against thousands of innocent citizens leveled by human rights organizations inside and outside of Morocco. So as to appease those insisting on unveiling the truth about the past, in a press release, the CCDH confirmed that its members had established a list of 112 disappeared people, half of whom were declared dead and with the rest suffering an unknown fate. Slyomovics notes that "While these figures were absurdly low, the ACHR memorandum confirmed official recognition by the state of the fact of forcible disappearance" (*Performance* 22). These figures were the first acknowledgment of Morocco's ugly and traumatic past, but they were, of course, not accurate and far from the whole truth. This confession did not appease victims and their families, but despite this and the frustrations that they caused the human rights community and the victims of the Years of Lead, they provided an opening that could be furthered. It signaled the beginning of the digging into Morocco's past. Slyomovics states that:

> The disappointing early 1998 CCDH bulletin that announced a mere 112 "disappeared" could still serve as a point of departure for a genuine truth commission. A Commission of Verification of the Inquiry (Commission de la Verification de l'Enquete) was established within the CCDH in 1998.

[…]The commission's original inquiry that identified 112 disappeared

could be redone, and the commission's mandate and powers be expanded.

In this way, the new king could preserve an image of continuity with the

initiatives of Hassan II's regime. Mohammed VI has made no public

criticism of his father -- in fact Moroccan law prohibits negative

commentary about members of the royal family, present and past (*Truth*

8).

Another important outcome of the CCDH's investigation was that the council's members

recommended that a compensation commission be created to repair the harm incurred to

the victims, a fact that constituted yet another acknowledgment that damage was done

and something needed to be done to address it. But the decision to follow up on this

recommendation was left to Hassan II's son, the new king of Morocco, Mohammed VI.

The Monarchy's Rhetoric of Financial Compensation

Early in his reign and only a few weeks after his enthroning, Mohammed VI gave

the CCDH orders for the activation of the Indemnity commission to start looking into the

eligibility of victims for reparations, meaning financial compensation. The mandate of

the commission, which was set up before Hassan II's death in 1998, was clear: to

financially compensate those people who suffered moral or physical harm due to

disappearance or arbitrary detention. What was not clear was the time limitation imposed

on its mission: less than six months to address injustices that took place for close to forty

years (1961-1999). Still, it appeared, as Storm states: "On 16 August 1999, after years of

campaigning for truth and justice, the efforts of the country's human rights campaigners

and their international supporters eventually bore fruit, as Mohammed VI announced the

creation of the *Instance d'Arbitrage Independante* (Independent Arbitration Commission, IAI), a commission charged with addressing the claims and compensation of victims of disappearance and arbitrary detention" (102). It is interesting to note here that in most experiences of transitional justice, the first step taken is the establishment of the truth or, in other words, constructing a narrative about the past that identifies the victims, the violations and those responsible (either directly or indirectly) for the violations. The purpose, typically, is to gain understanding and appreciation of the causes and consequences of these events on individuals and society as a whole. It is after these important elements of the past have been settled—who did what to whom, why and how—that the next course of action is discussed and, compensations restitutions or reparations provided, and prosecutions ensue. This process has been the case, for instance, in South Africa, which served as a model for Morocco and other countries seeking to deal with a past of rampant political abuse. As explained in chapter two and summarized here:

> Human rights violations evoke several national responses: create a
> governmental organ intended to record the truth about past history; declare
> an amnesty, prosecute those responsible, or do both; arrange indemnities
> for the victims and their dependents by means of official rehabilitation and
> material compensation. (Slyomovics 27)

In Morocco, the process of transitional justice was *inaugurated* with talk of money and financial reparations, contrary to most, if not all, similar cases. One major problem with this first stage of transitional justice was that no victim was asked to testify in a public hearing and no perpetrator was asked to give an account of their actions. In fact,

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Slyomovics argues that during this phase "there were […] no attempts to provide the nation with an account of the past, and blanket amnesties were part of the creation of the Indemnity Commission" (*Performance* 25). In sum, it was an expedient attempt to turn the page on the past without giving history and its victims their proper due.

The new king's impulse to buy off the victims of the past was an old trick for the monarchy since it was not the first time money was used to deal with the consequences of the regime's violent actions against its own citizens. For instance, there have been various money-based programs to indemnify victims of state abuse throughout the 1990s and these programs included cash payments as well as job re-integration, which have been referred to at one point as "reclassifying." But these programs were secretive and did not include official recognition of the harm done; worse, the citizens who were included in such programs were not allowed to break the vow of silence about their experience, lest they would be punished again. Mr. Chari El Hou, who was part of such a program, talked about his experience during a public testimony and stated that for him silence was "greater than fear," and in his case, because he was a teacher, his silence was a condition of his job application at the Ministry of Education (in *Slyomovics, 2009:* 100). It is interesting that the figures recently published by the CCDH suggest that at least one-third of the victims of the Years of Lead were educated intellectuals, which is an indicator that "the Moroccan regime targeted most ferociously its own intellectuals." (100). Be that as it may, initial (unofficial and above the law) financial reparations, conducted behind closed doors and in absolute secrecy, were considered a favor bestowed by the monarch upon his disloyal subjects, not a legitimate due or an attempt at serving some kind of justice. As such, they can be seen to be as arbitrary as the violations

that those citizens where harmed—the same trend, same register but, of course, different outcome. Conversely, Slyomovics states that these programs "served to wipe out past suffering by redefining restitution in extreme and novel forms in Morocco: Past suffering never happened" (100).

In addition to the fact that this indemnity commission worked on the principle that money could buy off the years of suffering that people endured, or even attempt to erase them, it wanted to do so expediently and rigidly. With a mandate set to expire less than six months after it was set up, it was clear that not all victims, not even the majority of victims, would have the opportunity to apply for the indemnities and even, more important, gain the state's recognition that a wrong was committed on their behalf.[46] So by the end of its mandate, the commission had received about 6,000 applications, a number that was far from a reflection of the reality of the Years of Lead. In the end, the indemnification commission's intended goal was defeated as it clearly did not succeed in closing the accounts on the Years of Lead; on the contrary, the immediate and most positive consequence of the commission's work was that it opened up public discourse about the entire process of a nation confronting its past: the genie (of the past) was out of the box. Let the conversation begin.

The humiliation and frustration that many victims and their families felt as a result of the expedient attempt of the state indemnity commission to close the books on the past led to an attempt to take ownership of the framing of the conversation about the past. The Moroccan Forum for Truth and Justice (le Forum Marocain pour la Verite et la Justice, or, FMVJ) was created soon after the indemnity commission as a response to the inadequacy of such an effort to deal with the past and its victims. It was established by a

group of former political prisoners and human rights advocates and its mission was to join and guide the conversation about the Years of Lead by stressing the importance of the truth, justice and accountability for Morocco's attempt to come to terms with its past as well as establish a foundation for a democratic future, free of the abuses of the past and the culture of impunity that accompanied them. For the FMVJ, if the monarchy was serious about engaging the consequences of the culture of violence and fear it had created and cultivated for almost forty years, its members would be willing interlocutors in the conversation.

Like Jamal Ameziane, a former political prisoner, members of the FMVJ have been working to lift "the veil on the dark years without fear of repression in the future" (in ICTJ's report, 1). Since its inception, made explicit in its name, the mission of the FMVJ has been to unveil and communicate the truth (since they consider it to be known, not simply made public) about the Years of Lead, serve justice for those victims who are still living, and preserve the memory of those who perished like Saida Menebhi, Abdellatif Zeroual and Amine Tahani, among many others. This was evidenced in the commemorative activities that the FMVJ's members organized in collaboration with other local human rights groups. One of their most publicized events is "the truth caravan," where citizens were invited to join members of the Forum in visits to infamous places such as the secret prisons of Tazmamart and Ka'laa M'gouna, and torture centers of Derb Moulay Ch'rif and Dar Mo'kri. Slyomovics observes that: "Since its formation as a non-governmental association, the Forum has publicly insisted that a more extensive national process—one that resembles truth and reconciliation commissions elsewhere—is essential" (5). While its members agree that reparations (financial and other) are a

necessary part of the Moroccan project of confronting the past, they are not sufficient and should be only one aspect of it. In addition to reparations, the FMVJ has been asking for a comprehensive approach to the past, one that includes "rehabilitation of the victims, restitution of remains of 'disappeared' persons for reburial and monetary benefits to victims and relatives with medical care, education and shelter for all those involved" (5). They also demand that the State recognizes its responsibility in the suffering that citizens endured and offers an official apology to victims. For the FMVJ, the goal of transitional justice should be to establish the truth so that responsibilities are assigned and a culture of accountability develops. Like other victims' groups in Latin America, the FMVJ's slogan has been "so that it never happens again."[47] The report of the National Commission on the Disappeared in Argentina, entitled *Nunca Mas* (Never Again), has popularized the phrase "never again," which has become a common motto among truth and reconciliation commissions worldwide.[48] For the Years of Lead to never be reproduced, the members of the Forum believed that it was necessary to delve into their history and learn from it. Otherwise, the past would come back to haunt them or their children, like what is currently happening in Spain after it seemed that the country had definitely turned the page after the end of the Spanish civil war and Franco's death. As explained in chapter two, one of the victims' main concerns after a past of abuse and violations, like Nazi Germany, Franco's Spain, or South Africa, is to ensure non-repetition for future generations.[49] The state's focus on financial compensation as the primary idiom for dealing with the legacy of the years of lead has been inadequate and insufficient. So, in a response to this rhetoric of accounting, victims and their families have advanced a

rhetoric of accountability to reveal responsibilities for the past and establish safeguards of non-repetition for the future.

Truth and Accountability

The rhetoric of transitional justice suggests that practices of responsibility and accountability are important to cultivate during a phase of democratization so that they can become an integral part of a nation's political culture. The rhetorical negotiation of the past that Morocco is undergoing is not unlike that of South Africa and similar countries with a traumatic past. Like South Africa, the rhetoric and practices of transitional justice that are central to this public deliberation about the past are important to underscore. The members of Forum for Truth and Justice have shown leadership by inaugurating the conversation about the how, why, who and what of the past that should be included in the deliberative process.[50]

In addition to the FMVJ, the Moroccan Association for Human Rights (Association Marocaine des Droits de l'Homme ou AMDH), the most critical and vocal human rights organization in Morocco, was a great catalyst for these efforts. Through their advocacy work, the state was forced to recognize that they are a force to be reckoned with. For the AMDH, as expressed by its former president, Adbelhamid Amin, a former political prisoner who spent twenty years in prison because of his political opinions, there are five principles that need to be part of the transitional justice in Morocco:

(1) Exposing the truth (the extent of the violations, their conditions and consequences) and establishing responsibilities (state, the institution of the monarchy, the army, and different police and security forces).

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(2) Putting an end to impunity by bringing criminal charges against those found guilty

(3) Achieving equity, which includes reparations (financial as well as moral, individual and collective) and the preservation of public memory (memorials for victims and a public official apology presented to the victims and society as a whole).

(4) Initiating reform (institutional, educational and other) to ensure the "never again" as well as the establishing of the rule of the law.

(5) Ensuring that the conversation about political crimes includes economic crimes as well as these two are intimately linked. [51]

When these demands fell on the state's deaf ear and in an attempt to consolidate efforts, the AMDH and the FJV put together a list with the names of those people (state officials) deemed responsible for crimes against Moroccan citizens during the Years of Lead and sent it to the Minister of Justice and to the Parliament, asking for a judicial investigation into the allegations contained in the document. This move led to an invitation in 2001, for all interested parties, to participate in a national symposium on the violations that occurred during the Years of Lead and the feasibility of a national truth commission in Morocco. Finally, in 2003, the CCDH presented the king with a recommendation to set up a truth commission that would contribute to the consolidation of "the democratic transition," as well as close the books on the Years of Lead once and for all. The Equity and Reconciliation Commission (*Instance pour l'Equite et la Reconciliation*, or IER) was the fruit born out of this dialogue. A self-described "national commission for truth, equity and reconciliation," although the word "truth" does not

appear in either the Arabic nor French title of the commission and unlike previous commissions, the mission of this new body was to listen and record the narratives of those who were victimized by the State and, then, provide redress for the harm incurred by them.

The late Driss Benzekri, a political prisoner who spent almost twenty years in prison (1974-1991) and former president of the FMVJ, was appointed by royal decree as the president of the IER.[52] The mandate of this new commission, which covered a forty-three years period (1956—1999) and about 9000 cases, was to:

1) establish the truth (through testimonies and interviews with victims and their families);

2) provide recommendations aimed at preserving public memory and guarantee a genuine rupture with the abusive practices of the past, erase the scars of the violations and restore and reinforce trust in the State and respect of human rights;

3) foster reconciliation, defined as "the contribution to the culture of dialogue in order to consolidate the democratic transition and a state where the law rules, in order to promote civic values and a culture of human rights. [53]

During its mandate (which lasted less than two years) the IER organized and held a series of public testimonies where victims and/or surviving members of families have been invited to speak about their respective ordeals, tell their story of disappearance, torture or arrest but with strict instructions not to assign responsibility. Recent information suggests that the king had specifically requested from the IER that two conditions be respected: one related to the memory of his father, King Hassan II, that he is not named as responsible for any of the violations so that his memory is not sullied.[54]

The second condition is intimately connected to the first and relates to the naming of

perpetrators during the testimonies. Therefore, witnesses were prohibited from invoking

individual responsibilities or naming of torturers, even if they knew them by name. In its

constitution, the IER is referred to as a non-judicial body. Pierre Hazan explains that the

future leaders of the IER, Driss Benzekri, Salah Ed-Ouadie and Driss el Yazami made a

deal with the king:

> They accepted the price to be paid: the absence of punishment of those
>
> who had committed human rights abuses. For these human rights activists,
>
> renouncing justice was easier to accept because 'the conditions for an
>
> impartial process for the perpetrators and those that gave the orders are not
>
> feasible due to the lack of a proper judicial system,' […] They also
>
> believed that without an alliance with the palace, no way existed to pursue
>
> democratization (4).

Given the reality that the Moroccan judicial system is corrupt, trials of perpetrators would

have been a farce at best. The deal then was to eschew punishment for perpetrators in

exchange for providing victims with the opportunity to tell their story publicly. In other

words, at the same time that victims were recognized as such and acknowledged in their

suffering, those who were responsible for their grief were shielded not only from

prosecution but, most importantly, from public scrutiny and shame. What a tragic irony

given the fact that the focus of the IER seems to be very much on the victims and their

ordeal, as shown in the time allocated to public testimonies and their broadcasting on

national television.

For many Moroccan citizens whose families had been spared during the Years of Lead, broadcasted hearings of victims were their first introduction to a story/history that had been hidden from them. During the Years of Lead, fear was the Moroccan regime's modus operandi so even talking with or about neighbors or friends involved in politics could then be interpreted as a crime and become an excuse of arrest, torture or kidnapping. Fear produces silence and political silence produces historical amnesia, so entire generations were growing up in total ignorance of the recent history of their country or had partial or distorted knowledge of it. So, the public hearings that the IER organized in several cities across the country become the occasion for the nation as a whole to come face to face with the horrors of its past and be acquainted with its history. For those who testified, it was time for recognition and acknowledgment, it was time to break the vow of silence. Many of those who testified spoke of the catharsis that resulted from testifying. Catharsis here can be interpreted as relief, fulfillment of a duty, feeling free to speak about the Years of Lead."

M., the widow of a political prisoner who died because of police torture, was a political prisoner herself (arrested due to her marital status) and experienced torture and other inhumane treatments during her time in prison.[55] M. took part in the hearings organized by the IER and when asked to reflect on her experience, she said: "I felt some relief after my testimony, due mostly to the fact that I was finally able to verbalize what I had repressed for so many years."[56] M. also stated that her decision to participate in the public testimonies was motivated by her desire to ensure that "we don't forget and to inform our young citizens about the history that our textbooks omit." The theme of memory is echoed by another female former political prisoner, W., who stated that she

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accepted the IER's invitation to participate in the public testimonies it was "a duty of memory," a duty she felt compelled to fulfill.[57] W. stated that wanted "to inform the public about what was happening during the Years of Lead, and what dissidents have endured because of their opinions." In addition, her testimony had a gendered goal in the sense that "it was an opportunity to denounce practices of torture in secret detention centers and show that women too were victims of arbitrary detention and torture in all its forms."[58] During her public testimony, W. explained how "women were not respected in terms of their privacy and intimate needs, which made our suffering even worse." As Guessous' study details, no one was spared during the Years of Lead, including children and women. In a public hearing, Khadija El Malki told her audience that during her kidnapping at age fifteen, the police subjected her to practices that she cannot talk about. Mrs. Malki's crime was that her father was a political dissident in the mid-1960.[59]

For many victims, this was an opportunity to be seized to "reclaim the history of Morocco, as B., a former political prisoner insisted. For him, "it was more of a catharsis […] and also the opportunity to raise the questions again so that it can be solved." In other words, B.'s testimony was "once again an opportunity to question the political system." B. echoed a theme discussed by other victims who testified and mentioned earlier in that he too was aware that his testimony was part of collective consciousness and a tribute to those who disappeared and died. He wanted to "remain faithful and loyal" because "to forget about them would be treason." Mohammed Bouderdara was arrested, kept in isolation and tortured for four months before being brought to justice and then acquitted of all charges three years later. Prior to his arrest, Mr. Bouderdara had been sentenced in absentia for life because of his involvement with a leftist organization

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known as the "Anis Balafrej and Co" group. For this victim, testifying was about "collective memory of the Moroccan wound," because he adds: "When one person is the subject of repression and the sufferings of detention, it is the whole community that becomes violated in its dignity and freedom".[60]

Part of the IER's mission (or hope) for these testimonies was that victims would be able to reconcile as an outcome of their participation in the public hearings. But for B., reconciliation "is part of the demagogy." Genuine reconciliation depends on a number of things such as "moving away from a system of arbitrariness to a political system where there is a balance, where law prevails, where the disappeared reappear." It is also interesting that B. linked the idea of reconciliation with the preservation of memory as he pointed out that: "To reconcile with society is to avoid the falsification of collective memory." For many victims, reconciliation is intimately connected with genuine political change. W., for instance, noted that "reconciliation cannot happen at an individual level, through one simple testimony. On the contrary, a genuine reconciliation can only be achieved through access to truth. It is only by pointing to the truth that it is possible to guarantee that old practices are never reproduced….Access to truth does not always imply establishing tribunals for torturers, but at least riding them from positions of authority." W. is pointing here to what is commonly referred to in the transitional justice literature as lustration. This practice was popular in many Eastern European countries after the fall of the Soviet Union and consists in what Hayner defines as removing "from employment based on their affiliation with the prior regime." (13)

But lustration has not yet been considered in Morocco. Not only that, none of those responsible for disappearances, torture and murders were asked to participate in the

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public testimonies, which led many victims and/or their families to question the sincerity of the IER. Only a select number of victims were invited to participate in the hearings and the selection criteria seemed arbitrary. For instance, A., who when he was a student member of a Marxist-Leninist movement and accused of threatening state security and condemned for ten years in prison without a fair trial, stated that he was never invited to participate in the formal testimonies. Although he said that he would have refused to participate had they invited him, A. felt excluded from the process and believes he and others were excluded "because they are perceived as having a critical position vis-à-vis the IER."[61] For him, the IER is another "PR stunt" by the monarchy to legitimize its power and stay in charge without making any substantial reforms. For this process to be genuine and fair, the state cannot be both party and judge; otherwise it is yet another case of "victors' justice." In addition, A. insisted that the process of accounting for the crimes of the years of lead has to include all victims and all perpetrators, otherwise it lacks both fairness and thoroughness and does not contribute to the culture of human rights and democracy that all citizens are so eager to embrace.

Conversely, El Boukili, a member of the AMDH, argues that the main problem with the IER is that it was solely focused on the victims, not those responsible for the suffering of the victims. Thus because its mandate was restricted in terms of its scope, the IER was unable to get to the full truth about the years of lead. In fact, "El Boukili maintains that this actually hindered reconciliation because many victims of the grave abuses committed during this period could simply not forgive nor forget unless those responsible for these atrocities were held criminally responsible" (Storm, 104). The exclusion of perpetrators from the process was not accidental. As previously mentioned,

it was part of the deal negotiated between the monarchy and those former political prisoners who accepted to be part of the IER. The mandate of the IER did not allow for judicial prosecutions or indictment of those accused of torture, disappearance or murder of thousands of innocent citizens. Furthermore, the fact that the IER's scope was limited to victims is evidence that any truths that the State has been seeking through this process are bound to be one-sided and partial.

Authentic reconciliation, as presented in the previous chapter, involves or should involve all parties, in a conjoint effort to seek the truth. There is truth in the stories that are told by victims, but truth also requires acknowledgment. The truth of the stories that present atrocity and grief requires recognition from those who committed those atrocities, a public validation of victims' experiences, not only compensation. Victims and their families are not interested only in forensic truth, revealing physical marks and seeking remains of those tortured and disappeared, since it is not retributive justice that most victims seek, because they know that retributive justice is unrealistic for several reasons, not the least of which is a corrupt and broken judicial system. Victims and their families, those who participate hopefully in the testimonial process and critics who remain on the sidelines, voluntarily or forcibly, want first and foremost acknowledgement and recognition of wrongdoing.

In short, the IER's hearings were seen as disingenuous and exclusive by many victims and human rights advocates, so the Moroccan Association of Human Rights (Association Marocaine des Droits Humains , AMDH) and the FMVJ sponsored alternative public hearings. Hazan notes that "a number of former victims, human rights activists, Islamists, and most of the victims from the Western Sahara complained that the

IER had granted impunity to the torturers and their superiors. They accused the IER of

distorting transitional mechanisms to protect those responsible for the repressive

system—if not whitewashing their past then sparing them any punishment"(6). In these

alternative hearings held in 2005 (February-July), which the government did not allow to

be televised or broadcast through media outlets (most of which are state owned or

controlled), victims were allowed to name their torturers and even implicate those who

still hold high office in the government. These events, held in several cities across the

country as well as France, were held under the slogan: "Completely Free Testimonies for

Truth." Hazan argues that these hearings were "an unprecedented step in the history of

transitional justice" (6). The naming of perpetrators is primarily symbolic since the

AMDH does not have judicial power, but unlike the IER hearings, these had credibility as

naming sought accountability from those responsible for the death and suffering of

innocent people. Shielding perpetrators of atrocities provides them with impunity, which

should not be the case in a society that is democratizing. In effect, the FMVJ and the

AMDH argue that the State is attempting to construct a future that is free from the ghosts

of the Years of Lead, without accounting for (explaining, understanding, and

adjudicating) the actions of the past. The truth theses victims' groups attained had little if

anything to do with the forensic but did indeed involve a validation of their experiences

of suffering. In this instance, hidden from public view, public naming of perpetrators

became part of securing and recognizing that truth, but eluded justice.

Since the alternative hearings were held in both France and Morocco and were

open to all victims or family members who wished to participate, witnesses included

dissidents who had sought political asylum abroad, in France mostly. Abdellah Zniber is

a victim who preferred political asylum to life prison (sentenced in absentia) for a crime he did not commit. During the AMDH sponsored hearings, he identified himself as part of the young generation of the 1970s who dreamed of social justice and paid the price for the struggle for dignity in the face of a corrupt regime that does not respect even the most basic human rights.[62] As Mr. Zniber escaped arrest and the torture, his family was harassed for years. His testimony was an homage to his family and all families of victims, especially the brave mothers who were never defeated by the inhumane approach of the regime despite the physical and psychological toll of police harassment.[63] Mr. Zniber did not name anyone in his testimony but intimated that he holds King Hassan II to be responsible for the suffering of thousands of citizens, in Morocco and abroad. Many other witnesses mentioned Hassan II as responsible for the grief their families suffered during the Years of Lead.

Sion Assidon, was kidnapped from his house in 1972 and sentenced to fifteen years two years later for "planning a regime change and threatening national security." Mr. Assidon spent twelve years in prison, during which he was kidnapped from jail twice. He stated that he was testifying for "truth and justice" but he also made it clear that he did not conceive of himself as a victim. During his testimony, Mr. Assidon provided detailed information about torture and terror methods used on him during what he called the "dark journey." He also talked about his torturers by name and explained that his mentioning "of names is not meant to make these people more responsible than they are, since it is clear that political responsibility lies much higher. Still, they are certainly not innocent of the crimes of torture and kidnapping that they engaged in during that period."

(118) In other words, Mr. Assidon distinguished between guilt or culpability and political responsibility.

It is interesting to note that despite the fact that these parallel hearings focused on naming the perpetrators or those that victims knew to be responsible for their ordeal, few victims did actually provide names. But many of those who testified in the talked about the fact that the state's efforts have not been successful in providing either truth, justice, or reconciliation. In other words, the IER's efforts and the rhetoric of transitional justice has not provided closure to their suffering. Many noted this is compounded by the fact that the violent practices there were victims of during the Years of Lead are still being used against innocent citizens, in total impunity. Some victims link this aspect to reparations. For instance, K., who spent twenty year in prison for his political opinion, suggested that the reparations program should not be based on monetary compensation, which he has refused despite his eligibility.[64] For him, to accept money from the same state that victimized him and thousand others without a genuine change in the system would signify "defeat," that his suffering and that of his family can be put in financial terms, which he insisted, it cannot. In addition, to accept the money would also suggest that he accepts the status quo (no change), which he does not. For K., genuine reparations should focus on effecting political and economic change that is conducive to social justice and democracy and "I would feel 'repaired' then," he stated. He added that, in any case, "reparations can only be symbolic, not monetary." This is a contested claim, however.   Not all victims of the Years of Lead feel the same way about reparations. For instance, the majority of those who were eligible for financial compensation accepted it because they felt it was their right, that the damage they suffered because of state's

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violence should be monetarily compensated, at least to cover for lost wages. Others

would accept no compensation at all, or if they did, it was by pressure or encouragement

from other family members.

Partial Truths

A recently published report by Amnesty International evaluating the Moroccan

state's effort to deal with the legacy of the human rights abuses of the Years of Lead

states:

> A major shortcoming of the IER truth-seeking process is its offer of only partial
>
> truths: truths as seen and lived by the victims and their families, without including
>
> in its work the narratives and perspectives of the perpetrators and the forces
>
> behind such human rights violations. This timidity was perhaps out of fear that
>
> unveiling the whole truth would lead to unacceptable conclusions, from the
>
> perspective of the Moroccan authorities, about the monarchy and about
>
> individuals who continue to hold powerful positions of authority thereby, shaking
>
> the fundaments of the country's political structure (5).

Morocco's official efforts towards transitional justice have been hailed as a novelty in the

Arab and Muslim world because most leaders in this part of the world have not shown

particular respect or appreciation for human rights and democratization. So, in

comparison to countries where violent leaders are still in power and repressive practices

against innocent citizens continue in total impunity, regardless of creed and ethnicity,

these developments are positive. In addition, the fact that the commission was headed by

a former political dissident who had spent fifteen years of his life in the country's prisons

has provided it with much needed legitimacy. While it is true that this commission and

previous commissions have provided monetary compensations for some of the victims and have recorded the stories of their suffering, they fell short of providing them with a sense of justice being done. In fact, to insist on financial reparations as a major accomplishment is insulting to victims. In the aftermath of grave human rights violations where people have been raped, maimed, disappeared, murdered, to speak of repairing or restoring things to the way they were before, is tantamount to obscenity. Reparations in this context have a symbolic meaning and need to be understood as such.

The official rhetoric of transitional justice in Morocco has been focused on counting, to the detriment of accountability, which should be the primary focus of any genuine attempt at providing redress and justice for those who were victims of State violence. If Morocco is indeed attempting to "transit" into a democratic system, it is important that democracy includes discord and division and any attempt to squelch dissensus are usually anti-democratic. In addition, to avoid discord and division (regardless of the search for truth), the commission' choice of victims who participated in the public hearings was anything but transparent and democratic. Unlike most TRCs, in Morocco, a handful of witnesses were chosen and the selection criteria never made public. It was clear that anyone who was deemed a threat to the peaceful proceeding of the hearing or anyone who was expected to challenge the established red lines, was not invited. This is to say that the first steps of this commission were in essence anti-democratic.

The truth and reconciliation process launched and carried out by the State failed to promote the democratic values it set up to cultivate in its mandate and, as such, despite some positive outcomes of the commission such as the archival material gathered and the

public acknowledgment of the victims as such, the work of the IER did not do much to advance democracy. One of the pillars of democracy is accountability. As far as freedom of expression is concerned Storm notes that "[…] freedom of speech was actively discouraged in the country's truth commissions as the mentioning of the names of those responsible for committing human rights abuses during the public hearings." (102) The connection between freedom of expression and democratization is not lost on Storm either as she insists that even if the example cited above is not the most outrageous. How can a society that provides impunity to criminals establish norms and practices that are in harmony with the rule of the law? It is simply not possible to claim that a country is democratizing while not only tolerating but encouraging criminal behavior on the part of those acting in the name of the state by promoting them to higher positions, as is the case in Morocco. Thus, it is important to think about the rhetoric and practice of transitional justice as a process, an ongoing experiment, one that requires never ending dialogue, negotiation and agony about what it is that the nation is seeking to accomplish, what citizens imagine as their future.

The mandate of the IER states that the commission will seek to determine "the responsibility of governmental entities, or others, for the violations, and the facts under investigation." The conducted investigations and testimonies led to the collection of a huge amount of information and archival material but all of this information is incomplete, highly partial in both senses of the term. While one could argue that some aspect of forensic (partial) truth has been achieved, this is not the truth that victimized citizens have been seeking. The truth they have been seeking is a validation of their experience, a recognition of the injustice they suffered. As observers, we only know what

happened to whom, not who did what to whom. Responsibilities have not been assigned

because the perpetrators of the violations have been provided anonymity and truth has not

really been sought, nor has any kind of justice been achieved as those responsible have

been provided with immunity and impunity. The third goal of the commission has been

reconciliation, but within the framework of the IER, reconciliation is conceived as a

monological process since Moroccans are expected to "reconcile with themselves"

(monological) and "their history" (an abstract entity).

Chapter Four: Paul Ricoeur and the Praxis of Justice

> But more important than punishment—and even
> reparation—remains the word of justice that
> establishes responsibilities of each of the
> protagonists and designates the respective places of
> aggressor and victim in a relation of appropriate
> distance. (475).
> Paul Ricoeur

Previous chapters have pointed to the metaphor of justice and its salience for

societies struggling to achieve some type of closure in the aftermath of political violence.

Like so many other people, Moroccans have been confronting "crimes that can be neither

punished nor forgiven."[65] When justice in the form of retribution is difficult to achieve,

what kind of justice can a community hope for to move beyond the grief caused by a

violent past and envision a hopeful future? What does the praxis of justice entail in

situations where a procedural form of seeking the just is neither feasible nor desirable?

In this discussion, the philosophy of Paul Ricoeur provides guidance in terms of our

understanding of justice within a rhetorical and communication ethics perspective.[66] As

described in chapter three, the negotiation of the legacy of the Years of Lead that is

raging in Morocco features citizens demanding accountability for past actions, and a

State that refuses to take responsibility for murderous actions against its own citizens.

The recent history of Morocco is a narrative loaded with implications for the praxis of

justice in the aftermath of violence and suffering on a national scale that are linked to the

pursuit of the good, the right and the legal in a historical community.

Ricoeur's work spans over half a century and addresses a wide range of

philosophical questions and concerns. While the phenomenological tradition constitutes

the basis of his meditations, he was most recognized for his contribution to the

hermeneutic turn of phenomenology as well as his continuous "interpretation of the 'mediations' of meaning through symbol, myth, dream, image, text, narrative and ideology" (Kearney 13). Ricoeur's inquiries focused on understanding the human condition in both its fallibility and its capability. Bernard Dauenhauer sums it up as follows:

> This anthropology, which he came to call an anthropology of the "capable person," aims to give an account of the fundamental capabilities and vulnerabilities that human beings display in the activities that make up their lives. Though the accent is always on the possibility of understanding the self, Ricoeur consistently rejects any Cartesianesque claim for an absolute transparency of the self to itself that would render self-knowledge independent of any kind of knowledge of the world.[67]

For Ricoeur, the self cannot be an autonomous or transparent self. The self can cogently emerge only in communication with the other or others. [68] Very much like his colleague Emmanuel Levinas, Ricoeur's thought involves alterity as a necessary companion to the self. Although he did not agree with Levinas on all accounts, Ricoeur conceived of the other in Levinasian terms, or, as Muldoon puts it in his elucidation of Ricoeur's work, that "our need of the other is so radical that self-esteem is coeval with solicitude for the other; that is, solicitude is not merely altruistic, it is necessary. This means that our very realization of our capacity to act, to initiate, to intend, and to project requires the mediation of the other" (90). As an alternative to the Cartesian transcendental arrogant ego, Ricoeur presented the metaphor of oneself-as-another, a communicative metaphor where the self emerges through others and through signs, symbols, myths and other

communicative forms (Kearney 2). Furthermore, this self-as-another's identity is best reflected in narrative, a narrative that is necessarily enmeshed in other narratives. In other words, the "self-as-another" is revealed in praxis; praxis is always situated in the polis and developed in relation to concrete others.

Ricoeur's philosophy of justice owes much to his earlier work on time, narrative and ethical theory, and thus a brief review of these themes is helpful. In the three volumes of *Time and Narrative* Ricoeur posits a narrative framework as a potential antidote to the aporia of time or the false dilemma of thinking about time either in cosmic (universal) or lived (phenomenological) terms. In addition, Ricoeur situates narration at the core of both ethical and political philosophies as it opens up understanding of self and other(s) and their relationship within the polis in important ways.[69] The following section provides an overview of Ricoeur's contribution to narrative understanding that serves as the ground for his later philosophy of justice.

Narrative Identity, History and Memory

The Years of Lead belong to the past but what Moroccans choose to do with the legacy of these violent years belongs to their future. And, thus, the narratives of that history provide the ground for any discussion about what Moroccans should now do. More generally, narratives about the past are important to consider (describe, evaluate and remember) because the identities of individuals as well as communities are constituted narratively, and the (historical) present we inhabit is constituted within a dialectic of experience (ideology, past) and a horizon of expectation (utopia, future). To recognize the relationship between past and future is important, and to keep this dialectic alive is paramount for any healthy political community. For instance, the avalanche of

memoirs and autobiographies about the Years of Lead are a great contribution to the framing of the public memories of those events and a constant reminder that those who suffer from tyranny deserve remembrance. These testimonies are both homage to those who perished (a way of doing justice to them and the past they inhabited) and a negative example for the future, so that generations to come create a future that is free of violence and grief. A healthy community should not forget its past and its legacy, nor does it lose sight of its future by dwelling on the former; a healthy community finds balance between the legacy of its past (whether a bright or a bleak one) and the opportunities that the future brings. It is the complex relationship and tension between past, present and future times that Ricoeur sought to untangle in the three-volume treatise on time and narrative.

Narrative theory is helpful in understanding the rhetorical linkages between time, identity, and selfhood. Ricoeur inaugurates his three-volume treatise on time and narration as follows: "The world unfolded by every narrative work is always a temporal world. Or, as will often be repeated in the course of this study: time becomes human time to the extent that it is organized after the manner of a narrative; narrative, in turn, is meaningful to the extent that it portrays the features of temporal experience" (*Time 1*, 1). This statement suggests a symbiotic relationship between temporal categories and narrative where the latter serves as the answer to the aporia of time: "Narrated time is like a bridge set over the breach speculation constantly opens between phenomenological time and cosmological time" (*Time 3*, 244). Ricoeur argues that while Augustine did "contribute a lasting solution to the problem Aristotle left in abeyance concerning the relation between the soul and time," he failed to refute Aristotle's cosmological understanding of time, a tradition "according to which time surrounds us, envelops us,

and dominates us, without the soul having the power to produce it" (*Time 3*, 12). For

Ricoeur, the Augustinian theory of time is problematical because it attempts to substitute

a psychological conception of time for a cosmological one. He states that:

> despite the undeniable progress this psychology represents in relation to
>
> any cosmology of time, the aporia lies precisely in the fact that while this
>
> psychology can legitimately be added to the cosmology, it is unable to
>
> replace cosmology, as well as in the further fact that neither concept,
>
> considered separately, proposes a satisfying solution to their unresolved
>
> disagreement (*Time 3*, 12).

It should be clear that for Augustine, as Calvin Troup argues, "Time does not create us,

speech does. Time is a discursive construct" (175).[70] While "there is no pure

phenomenology of time" for Augustine, time is certainly an existential construct (*Time 1*,

6).[71] Bridging the gap between phenomenological and cosmological (and psychological)

conceptions of time is a task that Ricoeur takes up in *Time and Narrative* because time

provides a window into the meaning of human existence, an opening that Augustine

clearly pointed the way to. Through the stories that we weave, time becomes human and

we can then qualify narrative as the "guardian of time." For example, the testimonies

presented in the previous chapter provide us with a glimpse into The Years of Lead. Or,

in other words, when one listens to victims recounting their ordeals; history is no longer

an abstraction because one can imagine it or, in some sense, get close to what happened

through such listening; the past becomes palpably human.

　　　This humanized time is a "third-time," a temporal category that overcomes the

dichotomy that pits one perspective of time against the other. Ricoeur explains that "[…]

time becomes human to the extent that it is articulated through a narrative mode, and

narrative attains its full meaning when it becomes a condition of temporal existence"

(*Time 1*, 52; emphasis in original,). The "humanization" of time is at work in both

historical and fictional narratives, and therefore, history and fiction must be considered as

a dialectic because of "the criss-crossing processes of a fictionalization of history and a

historization of fiction" (*Time 3,* 246). The marriage of these two creative temporal

categories gives birth to the metaphor of "narrative identity," which emerges within a

given story, assigned to a person or a people, and necessarily grounded in a particular

historical context (*Time 3,* 246). Such an understanding of identity moves beyond the

philosophical impasse caused by thinking about personal identity either as a static

phenomenon, or as an ephemeral one. Indeed, Ricoeur explains:

> Without recourse to narration, the problem of personal identity would in
>
> fact be condemned to an antimony with no solution. Either we must posit a
>
> subject identical with itself through the diversity of its different states, or,
>
> following Hume or Nietzsche, we must hold that this identical subject is
>
> nothing more than a substantialist illusion, whose elimination merely
>
> brings to light a pure manifold of cognitions, emotions, and volitions. This
>
> dilemma disappears if we substitute for identity understood in the sense of
>
> being the same (idem), identity understood in the sense of oneself as self-
>
> same [soi-meme] (ipse) (*Time 3*, 246).

This understanding of narrative identity is three-fold: First, the self understands itself via

interpretation; second, this interpretation is mediated primarily through narrative, among

other signs, myths and symbols and; third, narration combines history and fiction for the

construction of a life story (*Oneself* 114ff). One's identity is the result of a circular

relationship (a hermeneutic circle) between one's history and the narrative of that history.

But this hermeneutic circle is an open one, it evolves with time and experience, one's

identity is a dynamic phenomenon, continuously shifting and changing with the story.

A narrative-based framing of identity sheds light on the identity of societies that

are in transition and helps in understanding national identity, for example, as a continuum

or, a continual negotiation and renegotiation. In addition, Ricoeur's approach to narrative

hermeneutics contributes an understanding of transitional justice as a rhetorical metaphor

and practice, an understanding that textures the legalistic and therapeutic framework

(healing, catharsis, mourning) that are often implicit, if not explicit, in discussions of a

community's negotiation of its past. While it is important to address the psychological

toll of violence and terror on individual victims, their family and society at large, as well

as legal/judicial issues related to the state's criminal actions and their consequences on

citizens, it is just as important to consider other aspects of "working through" in relation

to the narratives these experiences engender and the ethical and political implications of

these events for the society in which they take place. Victims' narratives constitute a

legacy with great lessons and often serve as the foreground for the re-thinking and

remaking of national ethos and identity. One can only think of the impact of the civil

rights movement in the United States, the stories of struggle that it showcased and their

impact on the American ethos. Or, in Morocco, how the public testimonies of those

tragically impacted by the Years of Lead have forced even the State to change its rhetoric

in relation to that history. Tragic events shake the moral core of a nation by the sheer

agony and suffering endured by victims and (can) re-awaken citizens' sense of what it means to be human and be part of a community, that is, to be responsible for each other.

As previously mentioned, the history of the Years of Lead came as a shock for many citizens who either did not know (or did not want to know) the sinister details of the recent history of their country, or who did not realize the extent of the abuse and violence that the state was engaging in against their fellow citizens. The public testimonies about the suffering of victims were an ethical reminder for many Moroccans. Those stories and testimonies tell as much about the state officials who committed the crimes as they do about them as citizens of the same nation, bystanders, fellow human beings, who did nothing to prevent such crimes and who thus have a share of responsibility in the fate of those victimized in their "presence." The grief that victims of the Years of Lead endured is not to be forgotten, nor easily forgiven. As Ricoeur tells us:

> Horror attaches to events that must never be forgotten. It constitutes the ultimate ethical motivation for the history of victims. (I prefer to say the history of victims rather that the history of the vanquished, for the vanquished are also, in past, candidates for domination who failed.) The victims of Auschwitz are, par excellence, the representatives in our memory of all history's victims. Victimization is the other side of history that no cunning of reason can ever justify and that, instead, reveals the scandal of every theodicy of history." (*Time 3*, 187)

The history of victims constitutes the impulse for an ethics of memory. Such an ethics should be grounded in the idea of history as homage (a debt) to the victims as well

135

as an admonishing response and an act of judgment towards those who committed atrocious acts towards their fellow human beings. Kemp explains that:

> [. . .] Ricoeur takes this stance [vis-à-vis the history of victims] as an expression of *debt* to the victims of the past. But it is also an expression of *anger* towards the oppressors, so that historiography is not only a commemoration of those who were defeated and crushed, but also a revolt against present-day oppression which largely lives on the legacy of past oppression ("Ethics" 381).

An ethics of memory is both a celebration of victims and an admonishing of oppressors because historical narratives shape the identity of an entire society, a society that includes both victims and oppressors. As the people's story or the vernacular form of history, public memory is both epideictic (commemorates and celebrate the victims) and forensic (provides a judgment about those who committed harm) and is never ethically neutral because "there is no ethically neutral narrative" (*Oneself* 115). It should be clear that the epideictic genre is at the heart of public memory as this rhetorical genre is particularly attentive to the present and how the past should be projected into the now.

The ethical implications of narrative identity stem from the interconnectedness of identity and action: our actions describe who we are. In addition, as one's actions always involve others, so does one's narrative. For instance, Ricoeur points out that "Life stories are so intertwined with one another that the narrative anyone tells or hears of his own life becomes a segment of those other stories that are the narratives of others' lives" (*The Just* 7). One cannot not be transformed by the suffering and injustice that others live through. The self is revealed through our relationship to others and through narratives. Narrative

identity is both *idem* identity (self-same) and *ipse* identity; in other words, our identity is both ours (unique and stable) and related to that of others (dynamic and collective). It is only with others, in being-in-the-world (in Heideggerian terms) that we become persons, and it is through the unfolding of stories (our story enmeshed in others' stories) that our identities are revealed. Dauenhauer explains how "Ricoeur holds that the self's *idem*-identity is that which gives the self, among other things, its spatio-temporal sameness. Its *ipse*-identity gives it its unique ability to initiate something new and imputable to himself or herself" (35). The self's *idem*-identity gives the self its spatio-temporal sameness or its temporal stability; the *ipse*-identity gives the self its ability for change (*Oneself* 35). The self requires both types of identity and thus a comprehensive account of any action should consider the way action is revealed to both levels of identity.

The Implications of Narrative for Ethical Praxis

Narration is both descriptive and prescriptive. Stories, whether fictional or historical, open up readers to a world of possibilities and, as previously stated, each possibility is pregnant with ethical implications. Ricoeur explains:

> This notion of narrative identity is of the greatest importance in inquiry into the identity of peoples and nations, for it bears the same dramatic and narrative character we all too often confuse with the identity of a substance or a structure, at the level of the history of different peoples, as at that of individuals, the contingency of turning points in the story contributes to the overall significance of the story that is told as well as of the protagonists (*The Just* 4).

For Moroccan citizens then, to engage in interpretation of their past is to be attentive to a promise made to their predecessors, it is part of self-understanding and self-identification, an exercise in the construction of a new narrative identity that is grounded in an understanding (description, evaluation, prescription) of the past. To dismiss the past or forget it is to be, in a way, a historical orphan, a people without a beginning, a tradition or a trace; in brief, it is tantamount to historical homelessness. Thus, the implications of the past for identity are significant because: "[n]arrative identity…is not just a psychological construct, but a composite of detailed memory and present re-evaluation. Narrative is both testament to the diversity of past human accomplishment and the possible basis for further self-determination" (Joy xxii).

The dialectic of the past and the future is most manifest in the importance that we give to history or historical work, which Ricoeur defines as the rediscovery of the "dialectic of the past and the future and exchanges in the present" (*Memory* 343). He also argues that the "making" of history is taking place in the present for the present (a present pregnant with the past) and certainly for the future. History is a narrative about the suffering of our predecessors, as both Ricoeur and Arendt argue. In fact, one of Arendt's critiques of modern history is that it lost touch with its original raison d'etre, in that it no longer concerned itself with the sufferings of human beings (*Between* 58). Human suffering is a necessary result of action: "it is within the dimension of acting (and suffering which is a corollary) that thought about history will bring together its perspectives within the horizon of the idea of an imperfect mediation" (*Time 3:* 208). It is important to point out that suffering is not always a physical experience or, perhaps, not solely a physical or even psychological pain. In fact: "Suffering is not defined solely

by physical pain, nor even by mental pain, but by the reduction, even the destruction, of the capacity for acting, of being-able-to-act, experienced as a violation of self-integrity" (*Oneself* 190). The power or capability to act is constituted through "power-in-common"—a power vested and shared proportionally, communally and communicatively.

Following Arendt, Ricoeur distinguishes between power and domination because violence often results from the conflation of the two, resulting in the suffering and incapacitation of citizenry. It is the role of (just) institutions to ensure that the line between power and domination is not crossed. Just institutions are important, then, in ensuring that "power-in-common" triumphs over domination, which is possible through the valorization of a bond of common mores rather than constraining rules or laws.[72] Institutions refer to "the diverse structures of wanting to live together, which, to this end, secure duration, cohesion, and distinction" (*Oneself* 227). One's share of power is eviscerated in instances of suffering, and one's ability to make public that which has forestalled the capacity to act is diminished or destroyed (192). Suffering is a state of incapacitation, when one's capacity for action is diminished, violated or destroyed. It is to be held hostage by another's domination and denied the capacity to act and be responsible for one's actions (190). This is perhaps why Ricoeur insists on the urgency of a history of victims. That is why it is important to be attentive to the history of those who survived atrocity, like those who took part in public testimonies in Morocco or in the South African truth commissions and who shared their stories and the stories of friends or family members, in an act of courage, as an ethical call, a moral imperative.

Ricoeur's own life was one lived in close confrontation with evil, violence and grief. Even his personal family life and his intellectual life were not spared from pain and suffering.[73] But Ricoeur's life, however traumatic or grief-ridden as it certainly was, did not turn him into an intellectual cynic nor a cynical intellectual. In fact, unlike many of his contemporaries, Ricoeur's ethical theory never falls into moral relativism or plain cynicism, nor does it provide easy fixes for the complex and brutal world we live in. As many have pointed out, there is no doubt that we live in a time of total debacle and confusion in terms of ethics, and those who have the gumption to tackle the murkiness of these times are few.[74] Ricoeur was one of the latter. Dallmayr states: "Although frequently sidelined by changing 'fashion trends' in his native France, Ricoeur over the decades has proven himself to be one of the most perceptive analysts of contemporary social-political dilemmas as well as one of the most sober and clear-minded voices in the complex (and often over-heated) controversies of our time."[75] Indeed, much to his credit, Ricoeur has confronted the contemporary ethical "malaise" head-on and never hurried to provide quick and easy answers for morally challenging questions. The major contribution of Ricoeur's ethical theory comes from his grounding of ethical action in the public sphere and his implication of persons as well as institutions in the ethical practice. In addition, he somehow managed to successfully navigate through many controversies in contemporary moral theory by weaving together different moral traditions from Aristotle to Levinas. For James Marsh, Ricoeur can be credited with solving the dilemma between the right and the good, or providing a solution to "the communicative ethics controversy" and "putting this humpty dumpty together again." [76]

Ricoeur planted the seed for his treatise on ethics in the conclusion of *Time and Narrative Volume 3* with the metaphor of narrative identity. In *Oneself as Another*, Ricoeur digs deeper into selfhood through an investigation of what it means to be a capable, responsible and imputable agent by bringing a variety of schools of thought into conversation. . Based on Ricoeur's 1986 Clifford Lectures at the University of Edinburgh, these investigations seek understanding of the different expressions of action and selfhood. They are divided into four subsets: the first is rooted in a philosophy of language (both semantics and pragmatics), the second in a philosophy of action and the last two subsets draw on the implications of these philosophies for ethical and moral understanding of praxis-driven selfhood.[77] These subsets or studies are linked by virtue of the connection between speech acts and action.[78] Ricoeur explains that "it is in speech acts that the agent of action designates himself or herself as the one who is acting. In another sense, the second subset annexes the first, inasmuch as speech acts are themselves action and, by implication, speakers are themselves actors." [79] The implications of these two approaches are brought full swing in the third subset of the book with the discussion of narrative identity. Here, the Aristotelian notion of praxis provides much needed content to the concept of action, with the agent being both actor and acted-upon. The ethical dimensions of action are fully explored in the fourth subset where "the *autonomy* of the self will appear then to be tightly bound up with *solicitude* for one's neighbor and with *justice* for each individual."[80] This constitutes the heart of Ricoeur's argument on ethics.

Ricoeur's main theses in *Oneself as Another* are: "(1) the primacy of ethics over morality, (2) the necessity for the ethical aim to pass through the sieve of the norm, and

(3) the legitimacy of recourse by the norm to the aim whenever the norm leads to impasses in practice—impasses recalling at this new stage of our mediation the various aporetic situations which our reflection on selfhood has had to face."[81] Ricoeur insists on the primacy of ethics, defined as "the *aim* of an accomplished life," over morality, defined as "the articulation of this aim in *norms* characterized at once by the claim to universality and by an effect of constraint."[82] But he does not sacrifice morality altogether and, in fact, subsumes it in ethics.[83] The ethical aim should guide our actions as prescribed in Aristotelian ethical theory, norms are important in that they regulate our life together as members of the same human community, as Kant professed in his treatise on ethics. But when the two aims or claims clash (the teleological/ethical and the deontological/normative), the answer is to be found in the former through *phronesis*. The actualization of ethical practice must take into account particular historical, political, social and individual contexts, and the practical wisdom necessary for this actualization should be integral to institutional development of persons, purposes, programs.

Conversely, practical wisdom goes hand in hand with reflection on "the good life with and for others in just institutions" and is cultivated through self-esteem on one hand, and taking oneself as another, or others. Ethics relate to the good life as a life that is lived with and for others, in just institutions (172). Note here the three aspects of the good life; it is at once individual, interpersonal and societal. Ricoeur is clear that the good he is referring to is Aristotelian in origin: "In Aristotelian ethics, it can only be a question of the good of us. This relativity with respect to us does not prevent the fact that the good is not contained in any particular thing. The good is rather that which is lacking in all things. This ethics in its entirety presupposes this nonsaturable use of the predicate

'good'" (Ibid). The good is not predetermined but revealed in praxis, as Aristotle states

in the beginning of his *Nicomachean Ethics*, that "[e]very craft and every investigation,

and likewise every action and decision, seems to aim at some good" (1.1. 1094a). It is

useful to note that Ricoeur sees a paradox in Aristotle's treatment of praxis when he

(Aristotle) posits it as at once being its own end and aiming at a higher good. This

paradox "forces us to admit that the ends-means model does not cover the entire field of

action but only that of *tekhne*…What is worse, the means-end model seems to lead us

along the wrong path, inasmuch as it invites us to construct all the relations between

subordinate ends and an ultimate end on the basis of a relation which seems essentially

instrumental" (*Oneself* 174). This paradox is mitigated by resorting to deliberation (about

means, not ends) and practical wisdom, as "deliberation is the path followed by

phronesis, practical wisdom (translated in Latin as *prudencia*), and, more precisely, the

path that the man of *phronesis—the phronimos—*follows to guide his life" (*Ibid*).

Following MacIntyre, Ricoeur points to the idea of "internal good [that] constitutes the

teleology immanent to action, as is expressed on the phenomenological plane by the

notions of interest and satisfaction, which must not be confused with those of pleasure"

(176-177).[84] This means that one cannot separate the end result of an action and the

means to get there, the means and the end are one and the same.

What is at stake for ethics is the good life, which is "for each of us, the nebulus of

ideals and dreams of achievements with regard to which a life is held to be more or less

fulfilled or unfulfilled" (*Oneself* 179). This good life is that towards which one's actions

are aimed, actions that have internal ends, as previously suggested. But, "[t]his finality

within finality, however, does not destroy the self-sufficiency of practices as long as their

end has been posited and continues to be so" (Ibid). Still, uncertainty or doubt about one's life plan creates a productive opening or tension within praxis, which prompts one to think about "the idea of a higher finality which would never cease to be internal to human action" (Ibid). This higher finality is the individual task of *attestation*, which can be grasped as "the certainty of being the author of one's own discourse and of one's own acts becomes the conviction of judging well and acting well in a momentary and provisional approximation of living well" (180).

Morality, on the other hand, has two functions: "that of designing, on the one hand, the region of norms, in other words, of principles about what is permitted and what is prohibited, and on the other hand, the feeling of obligation associated with the subjective aspect of the relation of a subject to such norms" (*Reflections* 45). Norms are self-referential in that morality requires (or at least assumes) that "the obliged subject" is able to impute his or her actions to himself or herself. Morality, as Kant expressed in his categorical imperative, is about the universal while ethics is about particular cases where the universal does not hold or fails. In addition, as Ricoeur so eloquently states, "moral obligation ensures the transition between a fundamental ethic and regional ethics" (*Reflections* 4). It is important to note here that in his later work on justice, Ricoeur provides a corrective to his claim about the primacy of ethics over morality. He readily confesses that "One result of this categorization modeled on the history of doctrines was the impression of a juxtaposition and of a weakly arbitrated conflict of positions" (*Reflections* 2). He later clarifies this argument by stating that this is not meant to privilege teleology over morality but to emphasize the connection between the two. He

insists that one approach cannot survive without this other and that morality is necessarily included in teleology and vice versa.[85] He provides the following explanation:

> It seems to me, on the one hand, that the rootedness of moral experience in desire, which with Aristotle we can speak of as reasonable or rational, does not exhaust itself in the test of a claim to the universal validity of the maxims of our action. …On the other hand, on the downstream side of morality, I see ethics as being distributed into different domains of application, such as medical ethics, judicial ethics, business ethics, and, today, environmental ethics. Everything suggests that the basis of rational desire, which makes us aspire to happiness and seek to stabilize ourselves in terms of a project of a good life, can only reveal, expose, and unfold itself by passing successively through the filter of moral judgment and the test of practical application in determinate fields of action. From a basic ethic to ethics passing through moral obligation—this seems to me to be the new formula of what I called my "little ethics" in *Oneself as Another*."
>
> (*Reflections* 3)

This understanding of ethics and morality has great implications for the praxis of justice in Morocco in the aftermath of the Years of Lead. The search for the just must incorporate ethical and normative dimensions, as the following section explains.

Seeking "the Just"

The just is at the heart of both ethical and moral experiences, as Ricoeur puts it:

> The just is at work in each of the way stations of ethical and moral inquiry. Better: it designates their circularity. Moral experience, defined by the

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conjunction of the self and the rule, under the sign of obligation, refers to

what is just as soon as others find themselves implied in the formulation of

the rule, others to whom harm, a tort, can be done and therefore who can

be treated unjustly (*Reflections*: 3).

Ricoeur insisted again in *Reflections on the Just* that living well or living this good life is

impossible without others who are both *capable* of and *willing* to embark on a similar

path toward realization of this "good" in just institutions. Thus, the teleological (the

good) and the deontological (obligatory) demands of justice must be both necessary

(although not always sufficient) for achieving the just. Ricoeur sums it up:

On the teleological plane of the wish to live well, the just is that aspect of

the good relative to something other. On the deontological plane of

obligation, the just is identified with the legal. It remains to give a name to

the just on the plane of practical reason, the one where judgment occurs in

a situation. I propose that the just then is no longer either the good or the

legal, but the equitable. The equitable is the figure that clothes the idea of

the just in institutions of incertitude and of conflict, or, to put it a better

way, in the ordinary—or extraordinary—realm of the tragic dimension of

action (*The Just* xxiv).

Ricoeur distinguishes between the idea of justice as a moral law and justice as an

institution. But above all, justice is a virtue, the most complete of virtues because it is

about others, a virtue (or a good) that others benefit from.[86] Although justice is similar to

the virtue of friendship, it concerns the distant other more than the neighbor or the friend.

Justice is a public virtue, hence the necessity of distance. Concern for justice arises most

acutely in violent situations or in situations that result from tragic action, situations that are characterized by conflict, uncertainty and urgency and require practical wisdom (*Reflections on the Just* 8). Ricoeur insists that a philosophy of law, as opposed to political philosophy, is mostly concerned with establishing peace. The penultimate goal of justice as an institution is to overcome violence, the violence that results from "the irrepressible presence of evil in history" and leads to unjust consequences and suffering for innocent victims. He states:

> If, in fact, conflict, and therefore, in some sense, violence, remains the occasion for judicial intervention, this can be defined by the set of means by which the conflict is raised to the rank of a trial process, this latter being in turn centered on a debate in words, whose initial incertitude is finally decided by a speech act that says what the law is and how it applies. Therefore there exists a place within society—however violent society may remain owing to its origins or to custom—where words do win over violence (*The Just* ix)

Justice is the attempt to reduce or eliminate violence from society and replace it with words and arguments. A just society is indeed one characterized by reasonable argument. When injustice is the norm rather than the exception in a society, distance between aggressor and aggressed needs to be established as the first step towards the re-establishment of the good life and solicitude within the community. The role of justice is first and foremost the establishment of distance between aggressors and victims; it is not revenge nor necessarily punishment or reparation but a public imputation of actions and responsibilities for the consequences of criminal acts. Pellauer states: "From another

angle, however, the idea of the just runs through all the three stages of this ethics, from its teleological aim through the level of norms to that of practical wisdom and back again. For both these readings, the idea of the just as characterizing the idea of a just distance is central" (136).

The failure to establish distance between the perpetrator and victim, as noted earlier, contributes to further violence and suffering as this is tantamount to condoning violence and failing to recognize victims' grief and empathize with them. Vengeance is the other end of the spectrum, as it adds grief and violence to the original act. In addition, vengeance can be an obstacle to achieving a just distance between the one who committed the injustice and the one who suffered it and, in fact, it reduces distance between oppressor and victim instead of establish it, which should be the goal of justice. Ricoeur explains:

> The great conquest, in this respect, consists in separating vengeance and justice. For the short-circuit of vengeance, justice substitutes creating a distance between protagonists, where establishing a difference between the crime and the punishment is the symbol of penal law. …Just distance, the mediation of a third party, and impartiality present themselves as the great synonyms of a sense of justice (*The Just* xi).

The necessity of a third party emerges because justice does not belong to the realm of interpersonal or private relationships, as noted earlier, but to the public realm where third-party mediation through institutions is needed. This explains why critics of the Moroccan Instance for Equity and Reconciliation (IER) have pointed out that the State (in the person of the king) as both party and judge makes the entire enterprise lack

sincerity and legitimacy because it is impossible to be both party and impartial judge to a conflict (or an accusation of unjust and criminal action). Their critique suggests that judgment necessitates impartiality and distance. While friendship belongs to the realm of interpersonal dialogical relationship, justice should be conceived within a triad where a third is invited to mediate between the two parties in conflict. The philosophical understanding of justice has to be considered within two axes—a horizontal axis, which refers to the dialogical constitution of the self in relation to narrative identity (idem and ipse identity), and the vertical axis, which refers to the morality of human actions.

The first axis reveals the interpersonal nature of our world, one that includes not only our friend or parent, but all human beings to the extent that justice is not limited to those we love or have an intimate relationship with; justice concerns all. This second axis of justice refers to responsibility, which Ricoeur explains in terms of imputation (or imputability) and capacity, the ability to assign an action to its author (*The Just* xvi). Imputability is "our ability to recognize ourselves as accountable (comptable, from the latin root *putare*) for our acts in the sense of being their actual author. I can hold myself accountable, imputable, in the same way that I can speak, can act on the course of things, can recount my action through an emplotting of events and characters" (*Reflections* 2). Capacity and imputation are intimately connected in that imputability is the building block (or lynchpin as Ricoeurs puts it) of all capacities and "essential to the assignment of rights and duties" (*The Just* 3). A capable person is a person who is "a subject of imputation [that] results from the reflexive application to agents of predicates like 'good' or 'obligatory'" (*The Just* 4). Muldoon points out:

This brings us back to Ricoeur's claim that the ethical aim must pass

through the sieve of the norm—that there is a place for duty and

obligations. It is the place where ethics must give way to morality since

the aim of the good life invariably runs up against violence in all its forms.

Where self-esteem and esteem for others belong to the ethical aim, respect

for self and others belong to the level of morality (90).[87]

Justice cannot be fulfilled within a dialogic relationship because the interpersonal

I-Thou relationship is inadequate in ensuring justice amongst strangers. The fulfillment

of justice necessitates the presence of a third, a mediating party. In fact, "however

wonderful the virtue of friendship may be, it is not capable of fulfilling the task of justice,

not even of engendering it a distinct virtue" (*The Just* xiii). Friendship requires closeness

and intimacy while justice requires a distancing because "the virtue of justice is based on

a relation of distance from the other, just as originary as the relation of proximity to the

other person offered through his face and voice. This relation to the other is, if I may so

put it, immediately mediated by the institution. The other for friendship is the 'you'; the

other for justice is 'anyone,' as is indicated by the Latin adage *suum cuique tribuere* (to

each his own)" (*The Just* xiii). Justice (or equity) necessitates institutions to ensure the

good life of all citizens. The necessity for the mediation of institutions is born out of the

truth that friendship and love alone cannot secure justice for all, those one knows and

loves and those one does not. Therefore, as citizens wishing to live the good life (with

and for others), it is important to ensure that institutions carry on their mission of being

just institutions for ourselves and for others (See Muldoon 91; *The Just* 7). In addition,

Pellauer explains that: "If we connect the idea of the just that arises here closely to the

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idea of justice, this leads to placing the emphasis on those cases where many others are involved, for Ricoeur agrees with Rawls that justice is a virtue of social institutions and relations, not something that applies to isolated individuals" (RGFP 136). However, Ricoeur is well aware of the limitations of Rawls' theory of justice and considers it insufficient in securing justice because of its procedural approach.

Ricoeur's understanding of justice is content-driven but he also recognizes the necessity of institutionalizing the *virtue* of justice as communicative action in the polis because the fulfillment of justice requires a framework that is different than that of interpersonal relationships. The role of justice in the polis is primarily rhetorical; justice is about forensic (or judicial) rhetoric, as noted in chapter two. Judicial rhetoric is about judgment and establishing guilt or innocence for past actions. The primary role of courts (the institution in charge of serving justice) is to pronounce a judgment, a sentence, a sanctioning of a violent action that destroys social harmony and causes suffering. Ricoeur explains the relationship between judgment and rhetoric in the following terms:

> With the judicial sense, judgment in effect intervenes in social practice, at the level of that exchange of discourse Jurgen Habermas links to communicative activity, thanks to the central phenomenon of this social practice constituted by the trial in a law court. It is within the framework of the trial that the act of judging recapitulates all the ordinary senses: opine, assess, take as true or false, and finally, take a stand (*The Just* 128).

Recall from previous chapters that the argument in favor of retributive justice is that trials can provide closure to victims by taking a stand. Judgment restores peace through rhetorical means by giving to each his or her own back, if at all possible. Ricoeur states:

A given society distributes goods of all kinds, those that can be exchanged and those that cannot. Taken in a broad sense, the act of judging consists in separating sphere of activity, in delimiting the claims of the one from those of the other, and finally in correcting unjust distributions, when the activity of one party encroaches on the field of exercise of other parties. In this respect, this act of judging certainly consists in separating. (*The Just* 130).

The judge is not necessarily the one who punishes, he or she can also be the one who reconciles (66). Judgment can be "the occasion to underscore the therapeutic and pedagogical role of *civis dissensus* raised by controversies animating the public space of discussion at the points of interference of history in the arena of collective memory" (Ricoeur 2004, 295). Still, if justice is about restoring civic harmony and exchange among citizens, the third is a necessary figure in this exchange.

The Limits of Justice for Victims of the Years of Lead

In the Moroccan experience, the process of transitional justice has lacked coherence because none of the goals of transitional justice have been achieved: truth has not been unveiled, equitability has not been achieved, people have been paid but there are no other symbolic or social goods delivered. The practice of reconciliation is hollow and devoid of any meaning in such a context. No justice as traditionally or symbolically conceived has been served. For many victims, such as those represented by the AMDH and the FJV, the State's stated goals, approach, and recommendations confuse the moral idea of the pursuit of truth and justice with the more practical issue of financial reparation. To add insult to injury, in the case of the IER, victims were given two or

three months to apply for reparations claims from the state and if they did not do so within that window of opportunity, they did not qualify. This constraint was criticized both locally and internationally, but never reversed. Further, the state (in the person of the King) never officially apologized for its decades of repression and violence against its people. No one in Hassan II's regime has ever stepped forward or taken responsibility for his murderous acts, let alone asked for forgiveness. As detailed in the preceding pages, the equity and reconciliation process in Morocco (thus far) has produced a truth commission for victims to relate their ordeal, with clear instructions not to name any perpetrators. Several Moroccan victims I spoke with have suggested that, for them, reconciliation as presented by the State's commission is meaningless because no one has even acknowledged wrongdoing, which is why many victims and observers question the authenticity of the entire process of transitional justice.

Justice cannot take place in any public sense if the two parties (the victim and the accused) are left to manage the conflict, as is happening in Morocco where the State, as previously noted, is at once the accused and the party trying to mediate the consequences of its horrific actions. Justice for the victims has been reduced to monetary allowances while no genuine attempt in securing an avowal of guilt or responsibility for the thousands of crimes committed for over forty years has emerged. For the victims, justice cannot be handed down by the same party that victimized them; thus they continue to conceive of themselves as victims who have no recourse because there is no mediating party to listen and adjudicate between them and those who harmed them. Seeing their perpetrators still in office, or worse, promoted to higher position is an additional injustice

that further exacerbates their suffering and their position of powerlessness and incapacitation vis-à-vis the guilty party, the state.

The rhetoric of transitional justice, as previously noted, also typically pays lip service to democratization as an end. With respect to Morocco, Abdeslam Maghraoui wrote in 2003, after the first set of monetary reparations had been made and several years before the work of IER, that the country "is no closer today to a decisive democratic breakthrough than it was four decades ago" (73). That statement is arguably true now, several years after the work of the IER and a variety of compensatory programs. So what actually constitutes a transition to democracy? Waltz states that transitions "are more than just an old contest with new actors. To a significant degree, they engage energies in an effort to create a new political game" (8). The institutionalization of human rights values and civil liberties are part of that political game. So is the establishing and nurturing of a vibrant civil society, free and fair elections, and a representative legislature that functions independently of coercion from the executive (or judiciary for that matter). Democracy presupposes an ethics of recognition whereby justice becomes a public virtue. The last chapter provides a workable philosophical framework to engage the rhetoric and practice of transitional justice in the aftermath of atrocity at a national level.

Chapter Five: Toward a Rhetoric of Symbolic Justice

> I hold that every expectation must be a hope for humanity as a whole, that humanity is not one species except insofar as it has one history, and, reciprocally, that for there to be such a history, humanity as a whole must be its subject as a collective singular.
>
> Paul Ricoeur[88]

As I previously mentioned, the Moroccan experience of the Years of Lead and engagement in transitional justice is part of my own narrative. While many members of my family were violated by the Hassan II regime during the Years of Lead, the absence of my father due to his political imprisonment during the first ten years of my life was probably the experience that most impacted me. This inquiry emerged initially from my own struggle to come to terms with this experience, which also includes the death of my aunt who was a political prisoner at age 25, my uncle's disappearance and exile for almost 20 years, and my mother's struggle with the absence of her husband, disappearance of her brother, and loss of her sister. Although this dissertation is not about my family's experiences per se, my story is necessarily part of it. What I hope is clear is that these experiences are not unique to my family nor to Moroccan citizens, but are part of the history of many past and future communities..

In this concluding chapter, I address the limits of approaching the problem of transitional justice in the aftermath of state crimes from either a strictly retributive or an exclusively restorative perspective. In such cases, transitional justice should include both ethical (teleological) and normative (deontological) perspectives while ultimately relying on practical wisdom (*phronesis*) as the measure of ethical praxis in singular situations. In the case of Morocco, I argue for the rhetoric of symbolic justice, a perspective that

privileges the public dimension of justice, and focuses on victims' narratives of suffering

as the motivation for justice. Before I discuss symbolic justice in more detail, however, I

wish to return briefly to the dialectic of the retributive and restorative.

This inquiry began with a focus on the rhetoric of reconciliation, as it initially

seemed that the praxis of reconciliation was at the core of discourses and practices of

transitional justice. But it is clear that the *praxis* of justice lies at the heart of discourses

of transitional justice. Justice is about actualization of the good life with others in just

institutions, as Ricoeur insists. In the aftermath of atrocity, the search for justice is

situated in given historical, political, social and individual contexts, and thus requires

practical wisdom.[89] The discussion of the different types of justice that are available to

countries in transition offered in chapter two suggests that there are different approaches

to seeking justice, even in tragically complex circumstances that societies face after the

collapse of a regime of terror. In general, justice pertains to issues of establishing

responsibility, guilt and appropriate punishment for the perpetrators, and reparation or

compensation for victims. Justice's mission is typically to correct injustices that victims

incurred and, if possible, contribute to deterrence of future similar instances. In the case

of mass atrocities, as the aftermath of the Holocaust, Apartheid and Years of Lead reveal,

these are not easy tasks to embark upon, or questions to address, especially when the

state's bureaucracies are involved and crime has been institutionalized as part of the

state's policy towards its citizens. In these cases, distinguishing between guilt and

responsibility can become a tedious and morally challenging endeavor. But despite the

difficulties and challenges associated with these questions, issues of responsibility and

accountability need to be addressed. Avoiding this is tantamount to condoning criminal

acts against innocent victims, providing impunity for those responsible, and encouraging similar actions in the future.

Ricoeur argues that both retributive and restorative justice can be inadequate in achieving the just because each of these perspectives runs the risk of reproducing the original injustice. Retributive justice focuses excessively on the guilty party and is not only coercive and violent but can sometimes lose sight of the victim. Conversely, restorative justice focuses excessively on the other party, the victim. Ricoeur goes further to suggest that the restorative model can succumb to the appeal of victimization, and thus contribute to a culture of victimage, one that consists in the triumph of victims' logic over retributive logic (*Justice* 65; my translation). The goal then is to find some equitability through these different approaches to provide just due to victims, perpetrators, and their community. There is perhaps another way of thinking about the possibility for equitable treatment while incorporating all three goals of justice for victims, the accused and the community—that is, through what Ricoeur conceives as "a reduction, if not a complete elimination, of the punishing nature of the punishment" (*Justice* 57; my translation). This approach is the heart of symbolic justice and provides a minimal approximation of justice for survivors of tyrannical regimes, given that the state (especially one with blood on its hands) will likely not provide any other form of justice.

Symbolic justice is public, content-driven, teleological and contingent on the ground upon which it is taking place. While focused on restoring past's victims within society, its penultimate goal should be to guide reforms through various forms of public discourse in civil society. Symbolic justice requires, first and foremost, recognition of victims, listening to them and acknowledging their suffering. Second, symbolic justice

requires imputability and accountability. Recognition of victims is impossible without imputability of crimes. Symbolic justice thus involves recognizing the victims as well as the authors of criminal action in order to rebuild a responsible and ethical community. Third, it is important to that victims regain their capacity or capability as citizens through reparation and other such means. All of this contributes to restoring solicitude within the community through dialogical practices of apology, forgiveness and reconciliation. The following section elaborates on the three coordinates of symbolic justice..

Coordinates of Symbolic Justice

Recognition and capacity.   Most experiences of transitional justice in recent history have focused on truth commissions as a public forum where victims can share and make public their narratives of suffering. The purpose for this public inquiry is the discovery of truth as well as recognition of victims as human beings worthy of a voice and some measure of justice. As discussed in chapter two, there is disagreement among scholars on what constitutes the best means to ascertain the truth about the past in cases of mass atrocities where the state is a major actor. Some, like Osiel and Mendez whose work focuses on Latin America, insist that public trials are the most appropriate mode of obtaining truth; because trials involve public indictment of perpetrators and recognition of victims as persons worthy of legal justice. Trials can be the occasion for public shaming of perpetrators, and provide society with an opportunity to stand against criminality. In societies that are in the midst of political shuffling with embryonic political institutions, retributive justice is for all intents and purposes impossible if it is justice that is really sought. In Morocco, for instance, the judicial system is corrupt and lacks credibility, so victims of the Years of Lead could not possibly trust its judges to

serve justice for them. Even when institutionally feasible, trials can sometimes end up more like show trials than an actual meeting of justice. For example, in the case of Holocaust, Arendt has pointed out in *Eichmann in Jerusalem* that Eichmann's trial was more of a show to legitimize the newly established state of Israel and Prime Minister Ben-Gurion than it was to achieve justice. Others, like legal scholar Martha Minow, who advocate a restorative approach tend to dismiss retribution as overly procedural and vindictive, and oftentimes difficult for achieving justice without confronting ethical dilemmas having to do with differentiating between guilt and responsibility, for instance. Minow favors instead inclusive and dialogical means of addressing mass political crime such as forgiveness and reconciliation. But one can only imagine the difficulties associated with expectations or demands that victims engage in dialogical encounters with those who murdered, raped or maimed their loved ones, especially when there is doubt about the authenticity of the perpetrator's motives; so this approach can have limitations in terms of its practical implications as well. What is common to both approaches, however, is the fact that victims should be center stage in these experiences and their narratives recognized as constituting a valid rendering of the truth about the past.[90] This explains why truth commissions have become the platform of choice for experiences of transitional justice.

Truth commissions constitute the opportunity par excellence for a nation to listen to its victims' narratives. Recall that Ricoeur's understanding of narrative reveals that one's identity is grounded in one's narrative. Victims' identities are intimately enmeshed with their stories and thus, when victims are provided with the opportunity to recount their narratives of suffering, their identities as victims and as citizens are necessarily

transformed, and consequently, their societies are transformed as well.. Beyond the cathartic aspect of the experience of testifying that many victims report, these previously silenced citizens experience recognition as an attestation of their status as persons worthy of respect and integrity. Recognition of victims is an attestation of trust in their narrative and an engagement with their experience of suffering. This has great implications for the metaphor of capacity introduced in chapter four.

Capacity adds a dimension of value as it relates to "being-able-to-do, to which corresponds on the ethical plane, being-able-to-judge;" despite it being an individual value, capacity can only materialize within a societal bond through the "*mediating* role of others" (*Oneself* 181). Citizenship requires others, and when others fail to recognize one as a capable citizen or, even worse, deny one the ability to fulfill such status, one's capacity to act for oneself and others in the polis is undermined. In the case of Morocco where many of its citizens have been denied their status not only as citizens but as human beings, literally incapacitated, justice becomes tantamount to regaining status as a citizen, a sense of capability, a power to act that is shared with others. This can take place through active, ongoing public discourse about the past, one that truth forums can indeed inaugurate. Writings and testimonials should also be published and widely distributed in order to gain knowledge of the past, remember the victims, and preserve the community's public memory. In addition to insisting on truth commissions and other public forums as means to recognize victims and contribute to their re-capacitation, reparations programs can contribute to these goals as well. As discussed in chapter three, beyond their material content (which for many victims should not easily be dismissed), reparations programs have symbolic content and thus contribute to a great extent to recognition of harm done

to victims and also their re-integration of society as members worthy of respect, integrity and dignity.

Public memory about the past should be expansive, encompassing many narrative accounts—those of perpetrators, and those of the victims. While many victims have testified publically in Morocco and many others have written memoirs and other artifacts about the Years of Lead, what has been sorely missing is the voice of the other(s): the perpetrators. Actors in civil society should seek means to engage perpetrators so that they too can contribute to the recognition of victims, who are their victims after all. This kind of ongoing public discourse, though difficult and potentially cacophonic, might also be cathartic. It most certainly will motivate judgment that can be "the occasion to underscore the therapeutic and pedagogical role of *civis dissensus* raised by controversies animating the public space of discussion at the points of interference of history in the arena of collective memory" (Ricoeur, 2004, p.295). In the cacophony of public memories that emerge in times of transition, the testimony is a symbol of public consciousness, and witnesses do contribute to the praxis of public memory that seeks to rejoin those who have passed away and those still to come. Indeed, testimony distinguishes the moral witness as a citizen with a burden or obligation (or a promise) to tell the story of his/her and others' ordeal. In doing so, the moral witness records this struggle in the annals of humanity's history, and ultimately reconciles official history and memory (the vernacular type of history). In the aftermath of national violence, the narratives of witnesses serve as a powerful opportunity for deliberation not just about past actions (responsibility, accountability, and justice) but also about possibilities for the future of a people and the inauguration of a new collective identity.

To restore justice is to speak but also to be heard and listened to. I am not advocating that the past be finalized or totalized, but that the past be brought into the present as an ongoing conversation. The praxis of justice then entails recognition of victims as suffering human beings worthy of esteem and dignity. Recognition also entails that victims recover a share in the power to act, with others, towards the common good. To regain self-esteem and self-respect (necessary conditions of the good life) is to undergo a transformation from "incapacitation" to capacity. It is important to insist that actors in civil society negotiate these two interrelated conditions of justice and discuss them in the public forums, rather than allowing the state to make decisions behind closed doors. Restorative approaches to transitional justice bring out the symbolic and political implications of testimonies, moving trauma and suffering from the private realm to a public (and political) sphere. They do so not only through testimonies, but through public acknowledgment and apologies, lustration or vetting (instead of promotion) of state officials known to have participated in torture of political dissidents and other atrocities, and through a more sustained effort to account for the fate of the disappeared, among other actions. As discussed, many victims and their families have refused to accept any financial compensation before the state reveals the whole truth about the fate of their loved ones who have disappeared or been murdered. Otherwise, they see it as soiling the memory of the deceased. This refusal marks the need for symbolic justice most poignantly. For such a forum to exist in any authentic way, it should not only involve narratives of victims, but also public recognition of and testimony of alleged victimizers. When culpable parties do acknowledge their wrongdoing, reparations that yield symbolic justice are possible.

Imputability. Implicit in the forgoing ideals of symbolic justice related to recognition and capacity is an imperative for some measure of accountability for criminal behaviors against innocent victims, especially when these actions are masterminded by officials acting (or claiming to act) on behalf of the state. This aspect of justice concerns the issue of imputability, which Ricoeur defines as "the idea of being able to bear the consequences of one's acts, in particular of those taken as faults, wrongs, in which another is reputed to have been the victim" (Ricoeur, 2000, p.106). Imputability refers to taking responsibility for or having the capability to be accountable for one's actions. This idea of imputability is necessary in several ways. If a criminal act cannot be imputed to its author, impunity becomes the rule that undermines the law in a society. Thus, imputability is about not only accountability and responsibility, but establishing morality as the basis of social and political relations and interactions. If actions, whether just or unjust, cannot be imputed to particular actors within a society, impunity becomes the norm rather than the exception and that particular community is then doomed to ethical confusion and moral corruption.

In addition, imputability serves justice by establishing a just distance between the author of a crime and his or her victim(s), which is, as noted in chapter four, a necessity for serving justice. When authors of criminal actions are recognized as such, even without retribution in the sense of jail time or other types of punishment, they are still judged by their fellow citizens and their actions recognized as unlawful. In other words, they are publicly shamed and bear the burden of their harmful actions, as should be the case socially and morally if not legally. Securing accountability contributes to a culture of responsibility. Obviously, most perpetrators would try to avoid, or actively resist,

being held accountable for their actions, even when institutional retribution is not a consequence. They may go so far as to file defamation suits against any publication or civil society organization that accuses them of acts of illegal detention and torture, or being complicit in such acts. The simple fact of social recognition as engaging corrupt and evil acts would be retribution in itself, so long as such actions do not instigate further acts of repression on the part of the state. Given the likelihood of litigation, and intervention by the state, it is important to find means to compel perpetrators to come forward and confess, like in the South African experience. When such an option is not viable or possible, it is still important to try securing accountability by other means, even when it involves considerable risk on the part of investigative journalists, human rights organizations, and other civil society groups. It is indeed impossible to speak of justice when authors of criminal actions are not recognized as such. Their ethos needs to be revealed so that any their authority they might still have is effectively destroyed. Even if restorative justice is the approach taken, perpetrators must necessarily be part of the conversation.

In Morocco, as noted in chapter two and elaborated in chapter three, the major problem with the so-called process of transitional justice is that there has been no accountability. The state has met demands of the victims of the Years of Lead for truth and accountability simply with reparation monies, and then closed the books. While the goal of reconciliation is intimately connected to truth and justice, these virtues have not been genuinely sought nor fulfilled in the Moroccan context, as noted previously. Even though the state has washed its hands of past atrocities, and many people have received compensation, a lacuna remains, manifesting as an unhealed wound that continues to

fester. Without accountability and with continued impunity, the state can and does

violate the integrity of any person or group that is considered a threat to its legitimacy.

  Solicitude— apology, forgiveness, reconciliation. Solicitude is important in

relation to self-esteem but it is not something that is grafted upon it; solicitude and self-

esteem are different sides of the same coin since they "cannot be experienced or reflected

upon without the other" (180). Self-esteem does not necessarily refer to oneself. As

Ricoeur insists, "the reflexivity from which self-esteem proceeds remains abstract, in the

sense that it does not mark the difference between me and you" (181). Solicitude vis-à-

vis one another is paramount since one does not live in solitude but with others, suffering

others, others other than oneself; so similitude is "the fruit of the exchange between

esteem for oneself and solicitude for others. This exchange authorizes us to say that I

cannot myself have self-esteem unless I esteem others *as* myself" (193). One arrives at an

understanding of solicitude through the detour of suffering and similitude, which "adds

the dimension of value, whereby each person is irreplaceable in our affection and our

esteem" (193).[91] In other words, justice cannot happen without perpetrators joining in the

effort, either voluntarily or involuntarily. In South Africa, for example, the gain for

perpetrators was quite attractive: amnesty in exchange of their confession of guilt. It was

an opportunity for perpetrators to take responsibility for their actions and express genuine

remorse, or obtain one's freedom and clear one's conscience of guilt and responsibility.

In either case, perpetrators had the courage to show their faces and accept the shame and

stigma associated with their actions.

  Suffering and similitude constitute the heart of practices of apology, forgiveness

and reconciliation, which are indeed conducive to solicitude. These dialogical encounters

require at least two parties, without which they are self-serving and monological exercises. When one party is missing from the exchange, as in the case in Morocco where perpetrators have been absent, solicitude becomes difficult to achieve; hence the importance of including perpetrators in the process, as already stated in the discussion of imputability. Practices of apology, forgiveness and reconciliation can contribute to solicitude; healing wounds, restoring communal bonds and renewing political trust. But it is important to point out here that apology and forgiveness in particular change meaning when they become institutionalized. As Ricoeur insists: "If it is true that justice must be done, under the threat of sanctioning the impunity of the guilty, forgiveness can find refuge only in gestures incapable of being transformed into institutions. These gestures, which would constitute the incognito of forgiveness, designate the ineluctable space of consideration due to every human being, in particular to the guilty" (2004, 458). In addition, if justice requires a just distance between aggressor and victim, these dialogical practices entail just the opposite: bringing both parties closer. Justice so conceived is also about restoring power to all those involved in the act of justice so that self-esteem and thus human relationship to the other is somehow salvaged.

This kind of public discourse is fundamental to the renewal of the community's ethos. Such a new way of conceiving justice, as symbolic justice, offers a change in the *telos* embodied in the ideas of restoration and reconstruction that are often invoked in resolution of social conflicts (57). In this approach, "the end is neither the law, nor the victim or the accused, but it is rather the organic bond that holds together a human community that is ultimately meant by the ideas of restoration and reconstruction" (*Justice* 58; my translation). When harm is done, it is not only the suffering of the victim

and her intimate identity that are at stake but more importantly it is the bond of alterity that is harmed by the multiple forms that the denial of recognition can take. As Ricoeur eloquently states, "the competence of the relationship consists in reviving power in [for] all" (*Justice* 65; my translation).

Conclusion

Transitional justice is an ongoing, agonizing process that is continually enacted and re-enacted, tested and challenged. The rhetoric of transitional justice provides a framework for thinking about how best to address the aftermath of atrocity; the forensic categories it recommends allow for judgment to take shape. Transitional justice, then, should first and foremost be an occasion for civic deliberation about the ethos of the polis. This should involve conversations that aim at reconfiguring a distant past, redefining a people's ethical aim, and reinvigorating citizens' political capacity to act. In Ricoeurian terms, transitional justice is "an indispensable way of giving a future to the past" (Kearney 8). When engaged with the goal of making good again and establishing trust and friendship in the community, these practices can modestly contribute to serving justice, albeit a symbolic justice where victims gain some modicum of justice or, at least, recover a sense of self-esteem, capacity and solicitude and experience some real restoration of participation in the symbolic life of the community/society.

Without focus on justice, humanity loses its moral compass. As Soyinka puts it: "Justice assigns responsibility, and few will deny that justice is an essential ingredient of social cohesion—indeed, I have asserted elsewhere that justice constitutes 'the first condition of humanity' And even as justice is not served by punishing the accused before

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the establishment of guilt, neither is it served by discharging the guilty without evidence of mitigation—or remorse" (31).

That said, the rhetoric of transitional justice has become commonplace, sometimes as an authentic framework for negotiating the dramatic consequences of a horrific past and other times as a travesty of justice that stifles democratization. As elaborated in chapter three especially, the rhetoric of transitional justice can become a rhetoric of deceit, an unethical practice that seeks to pay off victims' suffering in return for their silence or cooptation. In Morocco, the rhetoric of transitional justice means different things for different actors. For the state, it is an expedient and politically safe practice meant to close the book on the Years of Lead and, in effect, forget the past. For victims and their families, transitional justice should be about understanding the past, assigning responsibilities, recognizing victims, and gleaning lessons so that such a traumatic experience does not happen again, to anybody, no matter his or her political affiliation or allegiance.

After thousands of citizens experience violence and injustice through arbitrary arrests, physical and psychological torture, disappearances and murder for many decades, there is no closure; only continuous efforts to negotiate the grief and anger associated with the wounds of the past and nurture the hope for a better tomorrow. No process of political transition or reconciliation is perfect. There is also no recipe for such an undertaking, which is why comparative studies are sometimes problematical. In fact, not all experiences of transitional justice are created equal. Be that as it may, all recognize that transitions from one kind of regime to another represents an important moment in the history of a nation, a rhetorical opportunity for rethinking the ethos of that society.

In Morocco, the state's efforts to remedy the harm incurred by victims of the Years of Lead have procured some positive gains, but they have been insufficient in securing accountability, justice and reconciliation for victims and citizens generally. The focus on monetary reparations means that little attention has been given to listening to victims' suffering. In addition, the lack of political will in instituting reforms to safeguard against a repetition of the Years of Lead has made victims wary and cynical about the authenticity of the state's motives in addressing that legacy. In short, the state's efforts fall short of paving the way for the democratic transition that has been hailed as the ultimate consecration of justice for all victims. Given the importance of accountability in democratization processes, the Moroccan so-called transitional justice plan is lacking the fundamental tenets of an authentic truth and reconciliation process, and, so far, is failing to provide the nation with renewed ethos, one based on a sense of justice conceived in the narrative and symbolic sense. It is a missed opportunity. As previously noted, transitions constitute rhetorical interruptions that shape a community's ethos and provide its members with a renewed sense of belonging. The rhetoric of symbolic justice contributes greatly to such an ethical transformation and has pragmatic implications in terms of political reforms.

Symbolic justice may be counterfactual, and some may argue never attainable. Some may argue that even if attained, it would not be good. Still, it should be the horizon that guides the types of societal transformation discussed here. When engaged within a genuine desire to recognize victims and make amends, and work through the suffering that a past of political violence produces, the rhetoric of symbolic justice can be a rhetoric of possibility. But for this to happen, the negotiation of the past needs to focus

first on redeeming and restoring victims symbolically. Paying close attention to victims'

voices and narratives is essential if society is keen on working through its inglorious past

and morally redeem itself. But all voices need to be heard, victims and perpetrators, even

those who may argue in the face of public indictment that they bear no responsibility and

have nothing to say.

Paul Ricoeur was invited to testify in the scandal of the HIV-tainted blood in

France in 1999. In the closing of his testimony, he asked:

> Why should we listen to the victims? Because when they come to court,
>
> what we hear is not a naked complaint. It is already a cry of indignation: it
>
> is unjust! And this cry involves several requests. First, we are asked to
>
> understand and welcome an intelligible and acceptable narration of what
>
> happened. Second, the victims request that acts be qualified so that a just
>
> distance between all protagonists is established. And perhaps we should
>
> also hear, in the acknowledgment of their suffering, the victims' call for an
>
> apology from politicians. Their call for indemnification comes in last (*Le*
>
> *Juste* 2, 297; my translation).

Although the context is different, the suffering of the victims of the Years of Lead and

those of the scandal of the tainted blood in France is comparable. Ricoeur's answer points

to an important aspect of justice: it should be about the victims, and the rest of society

should lend a listening ear to their stories of suffering. As Ricoeur notes, the monetary

aspect of justice is last. First should come the public transformation of the society and

political culture in which atrocities have taken place, which portends a collective

transformation that has potential to enhance the ethical sensibilities of humanity

generally. Symbolic justice does not simply put a restorative veneer on the past, it brings it vibrantly into a meaningful present.

It is important to point out that human rights frameworks, although making inroads, have been largely inadequate in dealing with these larger issues of symbolic justice. The problem is that they frame the problem in terms of rights instead of symbolic justice. We should perhaps emphasize solicitude and the power-in-common instead of domination, which might lead more readily to equitability for citizens.   Human rights institutions with influence might do well to highlight the importance of this Ricoeurian middle way to justice, a narrative symbolic justice, where reparations focus not on money but on recognition of wrongs and suffering, repentance and apology. Even if genuine forgiveness cannot be institutionalized as Ricoeur suggests, then at least seeking apology and recognition might evoke new practices and further aims of transitional justice.

Martha Minow warns us that there "are no tidy endings following mass atrocity" (102), because no response to the consequences of genocide and other violations of life is ever adequate. There are, in fact, no endings. Coupled with trauma and grief, injustice leaves indelible wounds on individuals and the communities who were victimized by the state. Despite the inadequacy of any kind of justice in securing closure for these wounds, citizens must engage the past and respond to evil. As emphasized throughout this work, it is paramount for nations to read and understand their past and pay tribute to its heroes and its victims. In the case of a past of grief and suffering, where people and families have been destroyed, it is even more important. To do nothing is not only to provide impunity for those who are responsible for the injustices, it is also to fail to recognize the pain and suffering of those who were victimized, it is to fail to recognize others as

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persons worthy of respect and dignity. In a way, to do nothing is to fail to recognize the just distance between the torturers and the victims of history, a distance that is crucial for the ethical and moral health and sanity of any political and human community. In addition, failure to establish distance is also a failure of recognition toboth torturers and victims.

The rhetoric of transitional justice initiates a difficult but necessary conversation about the past and future of particular communities and humanity at large. The potential that symbolic justice offers for public discourse and democracy is immense. As citizens of the world, and scholars of communication, ethics and rhetoric, we would do well to be attentive to these phenomena and the modes of communication they engender to further contribute rhetorical accounts and interpretations of such lived experiences. Ronald C. Arnett argues that communication does not always originate with us but, often, with history: "…the historical moment speaks. It is our response that furthers the conversation. History is marked by public points of memory…calling us from the routine of everyday life into response" (5). The historical moment that emerges after mass atrocity compels all of us and must be engaged. It is not always clear what such engagement would entail, or what the end product would look like. But certainty is not a feature of life generally and that is why the focus on rhetoric is so important. The rhetorical practices of restorative justice, such as truth and reconciliation commissions, reparations, memorialization, and other symbolic forms mark a transformation of the society and political culture in which they take place, a collective transformation that has potential to enhance the ethical sensibilities of humanity generally. As this chapter's opening quote suggests, while there is a multiplicity of histories, the story of mankind is one because

our stories are necessarily interconnected, we are part of a single humanity. Whether proud or shameful, the legacy of the past weighs on the present humanity inhabits in so many ways and thus atrocious pasts in particular need to be relentlessly engaged.

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Endnotes

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[1] See Davis and Aguilar.

[2] It may be helpful for the reader to have some indication as where the author of this work is situated in relation to the proposed project. My personal history in enmeshed in the Moroccan experience of transitional justice, which provided me with incentive for pursuing this inquiry. But this work is not an auto-ethnography but an invitation to think about a nation's experience of making sense of its past. It is my hope that this project will provide an accurate account of Moroccans' attempt to come to terms with their past, and suggest potential avenues for thinking philosophically about the rhetoric of transitional justice in other national contexts.

[3] See http://www.ictj.org/en/where/region5/591.html#resources

[4] See www.ier.ma

[5] See Nora.

[6] See Matsuda, 15.

[7] This quotation comes from *This Blinding Absence of Light*, a historical novel based on one man's disappearance and imprisonment in Tazmamart, the infamous secret prison in Morocco where military officers were left to die a slow death for their alleged role in the attempted coup d'etat against the king, Hassan II, in 1972. Many of these officers claimed their innocence but they were not allowed legal representation in the military court, presumed guilty and sent to jail. The majority of these young men died due to the inhumane conditions they were subjected to, living in rat, cock-roach and scorpion infested dungeons where they could not stand up; those who survived, like the man

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quoted, lived with the fear that he would die and his family would never know what happened to them.

[8] See Huntington.

[9] For more on this, see Barkan.

[10] See Hayner; Elster.

[11] The term used to describe people who have been victimized by a criminal state has been problematized because many so-called victims have rejected the label of victim, preferring to be referred to as "survivor." Hence, I will be using the two terms interchangeably to refer to citizens who have been at the receiving end of political violence and repression during the Years of Lead in Morocco.

[12] For an in-depth discussion of the Spanish experience, see Aguilar.

[13] According to Huntington , about thirty countries have "shifted from authoritarianism to democracy, and at least a score of other countries were affected by the democratic wave" (5).

[14] For additional information about the history of transitional justice, see Elster.

[15] See Hayner.

[16] See Thompson.

[17] See Minow.

[18] http://www.ictj.org/en/tj/..

[19] See White 1975; Ricoeur 1984; Phillips 2004

[20] This is the slogan of the Moroccan Forum for Truth and Justice; my translation.

[21] See Kausch.

[22] See Ricoeur, *Memory.*

[23] See Kausch.

[24] There are different spellings of the name of the dynasty that rules Morocco: Alaoui, Alaouite, Alawi and Alawid. I will be spelling it "Alaoui" in keeping with the standard Moroccan practice.

[25] The disappeared or disappearance refers to citizens who have been kidnapped and typically murdered by state officials, without leaving a trace. In other words, the fate of the disappeared remains unknown and their body has not been recovered by their family. This is exactly what the opening quote in chapter 2 points to.

[26] See Smith and Loudiy; Maghraoui.

[27] See Slyomovics, *Performance*.

[28] There is a wealth of articles, memoirs, books and movies that deal with the death of Ben Barka, who became a symbol of resistance in Morocco and other neighboring countries. His death still remains a mystery, partly because his kidnapping and murder were supposedly a collaboration of Moroccan, French and US agencies. While some people have come forth with stories of what happened to him, the official version of his disappearance continues to be sought by his family and friends. There is an ongoing investigation to unveil the truth about his remains.

[29] Arendt makes a beautiful distinction between power and strength when she argues that violence: "can destroy power more easily than it can destroy strength, and while a tyranny is always characterized by the impotence of its subjects, who have lost their human capacity to act and speak together, it is not necessarily characterized by weakness and sterility…Strength, on the other hand, nature's gift to the individual which cannot be shared with others, can cope with violence more successfully than with power—either

heroically, by consenting to fight and die, or stoically, by accepting suffering and challenging all affliction through self-sufficiency and withdrawal from the world" (203).

[30] For additional details, see Vermeren and Perrault. Perrault's book was banned in Morocco when it was published in 1990 and a major campaign was launched against it. The book was based on information gathered by Perrault from correspondence with a political prisoner and depicted Hassan II as a ruthless dictator who may have even participated in his own father's death in order to be the only one in charge of political matters in Morocco.

[31] The report published by the ICTJ provides details of these events.

[32] For a discussion of women and political violence during the Years of Lead in Morocco, see the study conducted by anthropologist Nadia Guessous for the Moroccan Council on Human Rights, available at: http://www.ccdh.org.ma/IMG/pdf/GUIDang.pdf.

[33] See also http://www.merip.org/mer/mer218/218_bouih.html.

[34] The ICTJ reports that "The 1960s and 1970s witnessed the worst abuse against perceived or potential enemies. Trade unionists, Marxists, intellectuals, farmers, Islamists—anyone suspected of being critical of the monarchy—could potentially be subject to a wide range of punishments, often just for the 'crime' of a rumored political affiliation" (5).

[35] After the failed coups of 1971 and 1972, fifty-eight military officers (air force pilots mostly) were taken to Tazmamart for their supposed involvement in the coups. They were kept in abject conditions and less than half of these men survived after eighteen years of captivity. Their superiors, including those who masterminded the coups, were executed without trial or opportunity to talk about planning and accomplices so these

officers were detained in this prison without any proof of wrongdoing and, as it turns out, most were innocent and had nothing to do with the coups.

[36] This was a speech given after the first visit by an Israeli prime minister to an Arab state, given to explain his actions to the people of Morocco.

http://www.mfa.gov.il/MFA/Foreign%20Relations/Israels%20Foreign%20Relations%20since%201947/1984-1988/178%20Address%20to%20the%20Moroccan%20people%20by%20King%20Hassan

[37] See *KABAZAL: Les Emmurés de Tazmamart, Mémoires de Salah et Aida Hachad (Kabazal: The Walled up People of Tazmamart: Memoirs of Salah and Aida Hachad).* These memoirs tell about the inhumane conditions that Hachad and his colleagues endured for twenty years in total isolation in a secret prison because of their presumed guilt in the 1973 failed military coup against Hassan II. Hachad was innocent but the state never provided with the opportunity to either state his innocence nor prove it. Most inmates in the Tazmamart prison died within a few years; those who survived lived in those conditions for almost twenty years.

[38] See http://www.al-bab.com/maroc/gov/con96.htm.

[39] The Moroccan Association for Human Rights (AMDH) has documented hundreds of human rights abuse cases; the target this time is the Islamists. For details: http://www.amdh.org.ma/ .

[40] For information about this Moroccan state organization, see: http://www.ccdh.org.ma/?lang=en.

[41] This commission was established by a Royal Dahir (a royal decree) and chaired by Driss Dahak, the president of the Supreme Court. The commission's members included ministers and members of political parties represented in the existing parliament.

[42] See *Ideology and Utopia*, and *Critique and Conviction,* in particular *147.*

[43] See Slyomovics, *Performance* 21.

[44] El Youssoufi is considered to be one of the founding fathers of the socialist left in Morocco, even before the country's independence.

[45] There were rumors that El Youssoufi and the king had made a pact (a secret pact) and no one knows for sure what the details of the agreement was exactly. But there are suggestions that the pact involved El Youssoufi's assurance (he supposedly swore on the Koran, which means that he gave his word to never tell anyone) that the monarchy will be "saved" and that the name of Hassan II will not be sullied in the investigations of the Years of Lead.

[46] Slyomovics notes here the distinction between indemnity and compensation as they belong to different registers. She states: "Indemnity gives evidence of acknowledging an official policy of illegal state practices; compensation means that something compensable occurred" (2009, 106).

[47] The report of the National Commission on the Disappeared in Argentina, entitled *Nunca Mas* (Never Again), made this idea of "never again" one of the goals of most truth and reconciliation commissions that come afterwards. For more information about this commission and other commissions, see Priscilla Hayner.

[48] For more information about this commission and other commissions, see Priscilla Hayner.

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⁴⁹ There are many instances of transitional justice throughout the world, primarily in Latin America, Eastern Europe after the fall of the Soviet Union and Africa. The examples are numerous and too many to cite, so those that are mentioned are for illustration purposes only and do not pretend to cover the whole range of national experiences.

⁵⁰ This information is based on meetings and interviews conducted with members of the Forum during summers 2006 and 2007. These members have been direct victims of the Years of Lead and suffered imprisonment, torture, kidnapping and other forms of torture. For instance, one victim spent ten years in prison and was released in the early 1980s. He was tortured on several occasions during his arrest and although he was unjustly detained, which resulted in his family's suffering and struggle during those ten years, he believes that their struggle was a necessity. Two other members of his family were victimized during the Years of Lead: his brother-in-law, who was tortured and kept in secret detention (disappeared because his family was not informed of his whereabouts) for several months and then fled to France to get treatment for a blood disease that was a consequence of the torture sessions he endured for months, and his sister-in law, a young woman in her mid-twenties who died in prison after a forty-day hunger strike to protest her and her prison mates status and failed to receive adequate medical care to save her life.

⁵¹ Amin provided this information in an unpublished document in 2006. Campbell also makes the connection between political and economic liberalization, although the argument typically advanced against democratization is that because they are poor and

uneducated, citizens are not ready for democracy and, therefore, democratization has to be postponed until citizens are adequately prepared for it.

[52] While the IER had seventeen commissioners, the commission's leadership was made up of former political prisoners, mostly from the left, in particular the Marxist-Leninist movement. Pierre Hazan comments that "These activists have abandoned their revolutionary ideologies and invested themselves in human rights organizations" (5).

[53] See http://www.ier.ma/_fr_article.php?id_article=147, my translation

[54] Hazan notes that "As a result of the strict limitations of its mandate, the IER's position during the hearings was delicate. Its goal was to signify the beginning of a new era with the opening of the democracy desired by Mohammed VI. But the break with the past had to be made with great care. The reign of King Hassan II, under which almost all the human rights violations had taken place, could not be criticized" (6).

[55] The initials refer to individuals I have interviewed.

[56] Personal interview conducted in Summer 2006

[57] Personal interview conducted in Summer 2006

[58] There are five infamous secret detention centers in connection with the torture and secret detentions of the "Years of Lead:" Tazmamart, Agdaz, Qal'ar M'gouna, Dar-al-mokri and Derb Moulay Cherif. The first three were reserved for military officers and armed revolutionaries and the second two were reserved for political prisoners. For additional information, see the ICTJ report and Slyomovics, *Performance*.

[59] See http:///www.ier.ma/article.php3?id_article=805, my translation

[60] Ibid.

[61] Personal interview conducted in Summer 2006

[62] See "Completely Free Testimonies for Truth."

[63] See "Completely Free Testimonies for Truth" 2006.

[64] Personal interview conducted in Summer 2006.

[65] See Garapon :

[66] Ricoeur's work contributes a great deal to the study of rhetoric and communication ethics. But, as Andreea Deciu Ritivoi points out: "Ricoeur's endeavors in moral and political philosophy, or more recently in memory studies have received little attention from rhetorical scholars, although they elaborate and clarify his work in hermeneutics and in the philosophy of language" (3). The work that is perhaps most familiar to rhetoricians is the three volumes of *Time and Narrative*, where Ricoeur posits a narrative framework as a potential antidote to the aporia of time or the false dilemma of thinking about time either in cosmic (universal) or lived (phenomenological) terms.

[67] http://plato.stanford.edu/entries/ricoeur/ retrieved 02/20/10. It is helpful to note here that for Ricoeur, knowledge, especially knowledge of oneself, is also mediated. Ricoeur defines hermeneutics as "the site of three interrelated problematics:

1. The indirect approach of reflection through the detour of analysis;

2. The first determination of selfhood by way of its contrast with sameness;

3. The second determination of selfhood by way of its dialectic with otherness."
    (*Time 3*: 297

[68] See Lenore Langsdorf's discussion of subjectivity in light of Ricoeur's discussion of identity and selfhood. In "The doubleness of subjectivity: Regenerating the phenomenology of intentionality," Langsdorf advances a notion of "mediated self (in

contrast to a Cartesian self) that …is multiple, mutable, and permeable; loosely woven to the extent that it is fragmented in creatively powerful ways" (34).

[69] Kearney explains the relationship between Ricoeur's critical hermeneutics and narrative, as he states that the former offers, we believe, a compelling response to such questions by outlining four central tasks of narrative: (i) to realize our debt to the historical past; (ii) to respect the rival claims of memory and forgetfulness; (iii) to cultivate a notion of self-identity; and (iv) to persuade and evaluate action. (Owl of M., 99).

[70] Troup notes: "What Ricoeur misses in Augustine is the argument that in Aristotle, *cosmos* is eternal, not co-temporal. In Augustine, *eternity* surrounds us, envelops us, and dominates us, without the human soul having the power to produce it. Therefore, both *cosmos* and *human being* are derivative and co-temporal because created." Personal communication, 10/11/10.

[71] See Troup.

[72] See OA, 194.

[73] See Dosse, *Les Sens d'Une Vie*, for details about Ricoeur's life.

[74] F. Dallmayr, *Achieving Our World: Toward a Global and Plural Democracy, (Maryland: Rowman & Littlefield Publishers, 2001),* 172.

[75] Ibid, 172.

[76] "The Right and the Good: A Solution to the Communicative Ethics Controversy,' in *Ricoeur as Another: The Ethics of Subjectivity*, *Ricoeur as Another: The Ethics of Subjectivity*, edited by R.A. Cohen and J.L. Marsh, (New York: SUNY Press, 2002) 223.

[77] OAA, 16-17. It is worth mentioning here that Ricoeur takes his philosophy of action here "in the limited sense that this term has acquired principally in analytic philosophy" p. 17.

[78] Ricoeur's task in this first part of his treatise is to show, through these different approaches to action, how human action can be approached in three modes of language, what Ricoeur calls the polysemy of action: description, narration, and prescription. See OAA 152

[79] Ibid.

[80] OAA 18, emphasis in original.

[81] OAA 170. It is perhaps worth noting here that before this statement, Ricoeur acknowledges his indebtedness to Aristotle for the teleological orientation and his equal indebtedness to Kant's deontological orientation. Still, he is clear that what he proposes in terms of ethical practice is not too concerned "about Aristotelian or Kantian orthodoxy, although not without paying close attention to the founding texts of these two traditions." This statement is important in light of his later work on justice. In his *Reflections on the Just*, he corrects the thesis he advances in OAA about the primacy of ethics over morality and in doing so, tries to show the labels applied to both Aristotle and Kant can be intellectually constraining and are perhaps missing the inherent connections between these two approaches to ethics. I explain this later in this chapter, but for a direct reference, see Reflections 2-3.

[82] OAA, 170. Emphasis in original text.

[83] Ricoeur explains: "[…] morality is held to constitute *only a limited*, although legitimate and even indispensable, actualization of the ethical aim, and ethics in this sense would then encompass morality." OAA 170, my emphasis.

[84] See also Gadamer's discussion of phronesis in *Truth and Method* (Chap. 2).

[85] Marsh reminds us that, for Ricoeur, "the former [ethics] takes its bearing from Aristotle, whose ethics is teleological; the latter [the normative] is influenced by Kant, for whom morality is defined by teleological norm" (224). But when the two aims or claims clash (the ethical and the normative), the answer is to be found in the ethical through phronesis, which leads Marsh to state that Ricoeur can be granted with solving the dilemma between the right and the good, or providing a solution to "the communicative ethics controversy" (223). The communicative ethics controversy that Marsh refers to is about different perspectives in ethical theories that have pitted the right and the good against each other. Marsh defines it as "this general set of antinomies, even though specific thinkers may understand it to refer to more specific issues such as that of particular context versus universal norms." (223) See Benhabib and Dallmayr, *The Communication Ethics Controversy.*

[86] See Aristotle, *Nichomachean Ethics* 117.

[87] Ricoeur argues that morality and ethics cannot be conceived without one another. He states: "Just as moral philosophy cannot do without some reference to the good, to the wish for a good life, except at the price of ignoring the rootedness of moral philosophy in life, in desire, in what is lacking, and in what we wish for, so the transition from the wish to the imperative, from desire to interdiction appears to be inevitable. … For the fundamental reason that action implies a capacity to do something that gets carried out on

the interactive plane as the power exercised by an agent on another agent who is the recipient of this power. ... In short, it is owing to the wrong that one person inflicts on another that the moral judgment given an action has to add the predicate of the obligatory to that of the good, usually under the negative figure of what is prohibited. In this respect, an investigation that deliberately aims at the idea of the just must not allow itself to be caught off guard here" (*The Just* x).

[88] *Time 3*: 204

[89] Let us recall here Ricoeur's discussion of phronesis is based on Aristotle's understanding of phronesis as both a moral and intellectual virtue. In *The Rhetoric*, Aristotle defines practical widsom as "the quality of mind concerned with things just and noble and good for man, but these are the things which it is the mark of a *good* man to do, and we are none the more able to act for knowing them if the virtues are states of character, just as we are none the better able to act for knowing the things that are healthy and sound, in the sense of producing but of issuing from the state of health; for we are none the more able to act for having the art of medicine or of gymnastics. But if we are to say that a man should have practical wisdom not for the sake of knowing moral truths but for the sake of becoming good, practical wisdom will be of no use to those who are good; but again it is of no use to those who have not virtue; for it will make no difference whether they have practical wisdom themselves or obey others who have it, and it would be enough for us to do what we do in the case of health; though we wish to become healthy, yet we do not learn the art of medicine. (Bk. VI: CH. 12, 1143b-20)

[90] These victims' narratives are testimonies, which Ricoeur states are very similar to promises in that they rely on confidence and trust and because they both fortify the

"institution of language, whose customary practice encompasses a tacit clause of sincerity and, if we may put it this way, of charity: I want to believe that you mean what you say" (131).

[91] A full discussion of solicitude is beyond the scope of this work; the Seventh Study (*The Self and the Ethical Aim*, 190-194) provides a good explanation of the metaphor, an important one for discussions of ethics in general and friendship in particular.