From punishment to acknowledgment: tribunals of opinion in contexts of impunity

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Civil society tribunals, though unofficial, provide new spaces that fundamentally contest the state and its hold over justice. From States of Impunity.

“All justice, in its principle and in its execution, belongs solely to the State”. These words, written by Charles De Gaulle in a letter to Jean-Paul Sartre on 19 April 1967, explained his opposition to the first session of the Russell Tribunal (a newly created tribunal of opinion) being held in Paris. This opposition was grounded on one of the foundations of the modern state: the radical distinction between societal justice and state justice.

With the end of feudalism, retributive justice became exclusive to the sovereignty of the modern state: the right to punish, the central expression of state sovereignty in all its power, turned into a solemn and public ritual of repression and became hegemonic in judicial practice. Modernity was associated with criminal retribution that had come to take over societal justice. The latter, associated with private revenge, was therefore considered illegitimate: in other words, the exclusive state right to punish replaced private vengeance by restraining it.

Still today, such a distinction between societal justice (private, illegitimate) and state justice (public, legitimate) is an attribute of the rule-of-law, but its radicalism is not unchangeable. Indeed, the limits of this distinction appeared quite clearly with the radical transformation of the concept of modern state in the 20th century, the bloodiest in all of history, that gave rise to two new phenomena: on one hand, the creation of international criminal courts as non-state retributive justice mechanisms; on the other, the creation of tribunals of opinion as non-vengeful societal justice mechanisms.

In fact, along with the birth of international criminal justice in the aftermath of the second world war—a revolutionary form of justice that is neither infallible nor unlimited—appeared, starting from the 1960s in the middle of the cold war, a second innovative phenomenon, shifting the modern concept of justice just as much and giving rise to an alternative extra-judicial practise: civil society tribunals.
The contexts of persistent impunity that international criminal justice could not fight, generated the creation of such alternative, non-retributive and non-state justice mechanisms, that derive from the Russell Tribunal created in November 1966 by philosophers Bertrand Russell and Jean-Paul Sartre—a tribunal originally aiming to denounce the war crimes committed by the United States in Vietnam. Many other Russell Tribunals followed, for example for Latin America from 1973 to 1976, for Congo in 1982, or for Palestine in 2009 (then followed by others: the last one was urgently organized and held in Brussels in 2014).

One may also think, *inter alia*, of the Permanent People’s Tribunal (PPT), created by Lelio Basso—famous Italian lawyer and politician, socialist senator and anti-fascist activist—in June 1979 in Bologna. Its creation is founded on the 1976 Universal Declaration of the Rights of Peoples, and the tribunal always works on the basis of: norms of international law broadly speaking; investigations conducted on the field; as well as hearings of NGOs, experts, witnesses and victims. In other words, the work of the PPT is based on the same juridical/documental/testimonial tools usually used in the judicial context *stricto sensu*. The tribunal sits in Rome, but each session is held in a different location. Since its creation, the PPT has had numerous and regular sessions around the world (40 in total) on, for example: the Armenian genocide (in Paris, 1984); Tibet (in Strasbourg, 1992); Chernobyl (in Vienna, 1996); or, more recently, Sri Lanka (in Dublin, 2010, and in Bremen, 2013).

The PPT has always strived to contribute to the development of the rights of the peoples and to a better definition of the concept of ‘people’, strictly dissociated from that of ‘state’. Furthermore, the tribunal systematically points out the necessary and unbreakable link between human rights and the rights of people: the respect for human rights entails the respect for the rights of people, the latter being a necessary but not sufficient condition of the former.

Tribunals of opinion are a deliberative assembly made of specialists of various domains (law, philosophy, literature, history, etc.) and from various horizons/backgrounds (scholars, human rights activists, Nobel Prizes). The members are chosen for their expertise and/or their dedication and their integrity regarding the protection of human rights. Quoting François Rigaux, a Belgian lawyer, president of the PPT in 1983:

“The tribunal of opinion is that ethical instance before which the Peoples most affected by injustice express their need for justice. A need that the enlightened public opinion responds to, in the least disadvantaged countries”[i]

This kind of tribunals cannot be financed by the state. Their goal is the analysis, the recognition and the denunciation (political condemnation, awareness-raising, information, media coverage) of massive human rights violations that are yet unpunished. Their specificity lies in their purpose that is mainly ‘(re)cognitive’, independent from all sentencing or revenge. The sessions are always public, except in those cases in which the protection of the victims supposes closed proceedings. As for deliberations, they take place in closed sessions. The decisions, which are strictly declarative, are made by consensus or by absolute majority vote, have no juridical effect and never pertain to individual criminal responsibilities. The responsibility denounced is that of states, being noted that the PPT also rules on the responsibility of companies and multinationals (for example: the International Monetary Fund and the World Bank Group policies in 1988 in Berlin, or multinationals in Mexico since 2011).

Above all, these alternative, extra-judicial, practices constitute processes of investigation in contexts in which the search for the truth is not a *means* to a repressive end (as it is in criminal cases), but rather an *end* in itself with a purpose of public recognition of the crimes and their victims. Their major advantage is to assemble, most often, a great amount of information, documents, evidence and testimonies that allow for the facts to be established before they are denounced: even if they are not commissions of inquiry *per se*, tribunals of opinion also run a fact-finding task.

In the contexts of impunity that characterize the very creation of those alternative justice practises to cope with the shortcomings of the state and the international community, the civil society tribunals act
as a sort of bottom-up resistance, generated by the impulse of civil society; in other terms, a counterpower. Such mechanisms offer another voice—a voice supposed to be that of the people—which would allow to "brush history against the grain", as would say Walter Benjamin\[\text{ii}\], to apprehend it from the point of view of the vanquished.

In this perspective, it would be interesting to consider tribunals of opinion as possible tools, among others, to implement the specific new human 'right to the truth'. Such a perspective would permit reinforcing or rethinking the legitimacy (often put into question) of this type of truth seeking processes. Indeed, this observation has to do with the recent important development of the right to the truth in international law and in the soft law of the United Nations (UN). Among the milestones in this process, are the 2005 update of Louis Joinet's report on impunity, the 2006 Convention on Enforced Disappearance, various resolutions of the Human Rights Council and the Human Rights Commission, and reports issued by the UN High Commissariat. All are instruments that define the right to the truth broadly, as a right that is autonomous and both individual and collective societal. All contend that protection of this right can be ensured by multiple national and international mechanisms, judicial or not, retributive or restorative.

In the wake of this evolution and the on-going debates surrounding the consecration of a new right to the truth, the UN General Assembly, on 21 December 2010, proclaimed 24 March International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims. Finally, on 29 September 2011, the Human Rights Council adopted a resolution, in which it decided to appoint, for a period of three years, a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. The Special Rapporteur Pablo de Greiff took up his functions in May 2012.

In any case, tribunals of opinion, as part of broader 'truth-seeking processes', are, by definition, multifunctional, diverse and multi-faceted. Apart of their specificities and differences, all these processes constitute a privileged, yet surprisingly little explored, space of civil society mobilisation on human rights issues, involving a certain degree of creative transformation of the law and primarily expressing the (re)cognitive function of justice—from punishment to acknowledgment.

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