

The second model is more ambitious. Unlike the first, it envisages a trial directed toward shedding light on the broader context. This involves painting a complex historical fresco, not only to establish individual guilt, but also to use the dramatic setting of the trial to build the collective memory that will enable victims and perpetrators alike, and even entire populations, to purge their brutal past. (For a very persuasive argument in support of this model, see Mark Osiel, *Mass Atrocity, Collective Memory and the Law*, Transaction Publishers, 1997.)

If we consider both the nature of the crimes involved and the efforts, at the international level, that have been put into prosecuting the people responsible, it seems to me that the second model is the one that is needed. A commitment to that model, however, involves serious consequences that must be clearly stated at the outset, and accepted as the unavoidable price of such an ambitious vision. In order for the criminal process to be able to undertake this historic task, certain basic premises and traditional requirements of criminal justice at the national level may need significant modifications.

It is also important to consider from the outset whether it is realistic to expect a criminal prosecutor to take on the job of an historian. Criminal prosecution is a much more threatening endeavour than historical analysis, for peoples that have already built a collective memory in which the truth as it is understood by a court of law is not a major ingredient. History leaves room for doubt. It is a work in progress, that seeks to reconstruct a past that has been influenced, understood and revised having regard to the present and even the future. The justice system, on the other hand, demands irreversible conclusions. It allies itself with a permanent, official interpretation of the facts, which often produces irreversible consequences. It prefers detailed reconstructions of specific events, with proof to a high degree of certainty, to satisfy its own need for finality. The need for review and, worse, the possibility of error, must be kept to a minimum, both to protect those who would suffer the irreversible consequences of the initial erroneous judgment and to ensure the credibility, and thus the continued legitimacy, of the justice system itself. At the same time, if it is genuinely possible for a criminal trial to result in acquittal, which is an absolute prerequisite for a fair trial, this could be perceived as an affront to historical reality, as there are those who will characterize an acquittal as an official repudiation of everything the prosecution alleged, including the context that was relevant to the question of guilt under the law.