

I wish to express my gratitude to the organizers of this meeting, all belonging to a remarkable psychological field and I apologize to them in advance for the diversity of my language and for the incursion in “other knowledges”, hoping that this diversity could represent a source of mutual enrichment.

### **Part 1 - From retributive justice to restorative justice.**

In more than thirty years long of professional experience, I have often bumped into the shadows of evil: how much vile darkness there is in a raped child, in a colleague magistrate or in some friends, policemen blown up by mafia-related criminals. Or in those innocent victims blown up while they are going to the beach, to a concert or to watch a football match at the stadium, or even in the bodies of young women, children and men floating in the same sea where new slave traders, unscrupulous merchants, have dragged them with the promise of a better life.

After a pistol shot, a burst, after the cries of the shipwrecked victims on a sinking boat ... after all ... it remains only darkness and quiet. Where there previously was life and joy, now there is silence. Darkness replaced the light.

To continue the metaphor, dear to people who are familiar with symbols, the legal order of a democratic State is a rational construction, and generally an ideal, geometric and illuminated city. Any time this order is violated the geometric shape is compromised and the lights turn off or dim according to the entity of the crime that has violated the law.

Rationality gives way to emotionality.

From the earliest times the violated law, or better the violated order, is restored through the punishment and the expulsion from the civil cohabitation of the criminal.

Since the earliest times, men have always responded to evil with evil: this happened with the vengeful God of the Jews (... it will take centuries until he becomes the Merciful God of the Christians). It happened with the Romans up to the Islamic world. If you do evil you will receive evil.

But be careful: it is a good thing that the order has laid down certain rules to overcome the rupture and go ahead, otherwise, we would still be stuck to the ordeal.

The Western juridical civilization has provided rules with universal validity: “*Nullum crimen nulla poena sine lege*”, stated the Latins, the creators of the principle of the strict legality in the criminal law. This principle is still a pillar of the Western civilization.

Likewise, the principle of non-retroactivity of the criminal law and the one corollary to the right to a fair trial, are fixed points in our civilization, codified in the European Convention on Human Rights.

And nonetheless, our human and legal sensibility has been more and more refined to get to understand that the violated order doesn't always recreate through the punishment and the expulsion from the civil cohabitation.

This is not the place where to reaffirm (something too obvious) the necessary re-educative function of the punishment or the rejection of the death penalty. Or even, the tendential unconstitutionality of the life sentence with the "never ending serve the term of imprisonment".

What we want to highlight here, is that there are moments and contexts where it is necessary to go beyond the concept of retributive justice and enter the restorative or reconstructive justice: the so called "**Restorative Justice**" in the Anglo-Saxon world.

A justice that allows the executioner and the victim to communicate and together overcome evil. Only then, the violated order can be recreated through the germination of healthy cells instead of being mutilated of its sick parts through surgical operations.

There are now many examples of this "other" justice, and all are renowned. The best-known of all is perhaps the one of the *Truth and Reconciliation Commission of South Africa*.

Where the apartheid was brought to an end not through the victory of a faction against another and with the imposition of the criminal law from the winner, but through a process of voluntary participation where was given voice to the victims; where the executioners recognized their own faults and promptly act to fix them; where everybody made every effort to create a new state and where the prosecution intended as a punishment remained in the background of this process until it disappeared.

Other examples of restorative justice are found in the juvenile criminal law, in the criminal mediation and now, at a European level and in the international legislation, the principle of a "different" justice is also appealed in official documents (see the Council of Europe Recommendation of 1999 on the criminal mediation).

There are also older examples, such as the extended amnesty issued by the Italian Minister of Justice Togliatti that, by the pay off of crimes, committed both by the winners and the losers, allowed the Italians to resume a peaceful and democratic dialogue with each other

after the civil war following the 8<sup>th</sup> September 1943.

For instance, the latest laws on the matter of stalking, highlight the need to take action not only on the victim but also on the stalker in order to understand its push toward violence and to educate him to the respect for women and more generally for vulnerable people.

Furthermore, family mediation tries to make a couple, facing an hard communicative time, in a dialogue situation in order to help them solve together their troubles, in the main interest of their children, leaving as a last resort, the authoritarian decision of the judge.

Thus, rebuilding starting from the victims, giving them voice and helping them to dialogue with the responsible for the crimes committed against them.

Then, restoring the order not through the isolation or the state violence, but through the restorative reconstruction where the voice of the victim, in a central position, is able to generate a process of reviewing of the evil by the criminal, with the aid of a third impartial mediator.

Certainly, this is an easy-to-apply paradigm in case of less serious crimes, i.e. a paradigm to apply in case of global and complex situations where the basis for the dialogue still exist.

But, is it possible to apply this paradigm against the international terrorism that threatens us inside our houses, or against the humanity and war crimes? The most obvious reply is negative: the answer to the most serious crimes can be only a punitive reply, although with the most evolved forms of the international criminal law with which we have hardly endowed ourselves, since the Nuremberg trial of the Nazi war criminals.

Anyway, the choice of a proper international criminal law appeal doesn't exempt us from the duty to understand and to face the **shadow**... to keep satisfying the symbolic language, well appreciated in this forum.

This is not the right place where to discuss the matter of the international criminal law, its entitlement as a non-codified right applicable to any person recognized as a guilty of crimes against humanity, regardless of where the crimes have been committed, or to reject the accusation put forward to that punitive claim as the criminal law of the enemy, as the winner's right.

It must be stressed that, with the creation of the International Criminal Court (The Hague - July 2002), the western society, once again, has tried to overcome the de-structuring of the

civil cohabitation through the rational means of the written law, the certainty of the rules and the punishments, by codifying fair and guaranteed procedures, overcoming a principle that had established after the tragedy of the Second World War, according to which “*in delictis atrocissimis potest iudex juratransgredi*”, i.e. “*in delictis atrocissimis juratransgredi licet*”.

Principles that unfortunately came again to the surface after the 11<sup>th</sup> September in USA with the use of legalized torture and the opening of special detention centers, such as Guantanamo.

Moreover, not all States took part to the Rome Convention, and as a matter of fact only 124 States approved the Rome Statute, and 32 signed but not approved the same agreements, such as USA, Russia, China and Israel.

“To Understand” is now then the new imperative to overcome, restart and restore.

Essential condition to face any attack to the civil cohabitation is to never give way to irrational and authoritarian temptations. It is also necessary a big effort of all social sciences and the combination of all methods for the development of a **social heuristics**.

Who's then this terrorist that threat us right inside our home, that prevent us from going to a concert, enjoying an exhibition or enjoying the right to democratic participation?

## **Part 2 - The identity of the terrorist.**

Speaking of Mafia, as I already marked before, I defined the mafia-related criminal as an individual without identity who finds it inside the mafia organization by moving the ideals of this selected group which is in contrast to *the others*, and whose language is only violence and prevarication. A cooperating witness used to say that before becoming part of “*Cosa Nostra*”, he was “***nuddu immiscatucù nenti***” (Italian translation in the text: ***I was anyone mixed up with anything***).

Likewise, I would like to define the denominational terrorist (and I deliberately adopt this definition, not only to be politically correct) as a weak individual in search of a strong identity.

On the basis of our experience in investigation, we know that the terrorist organizations recruit young people in the occupied territories by the illusion of a status and the flattery of belonging to a selected elite, that the systematic recourse to acts of violence is justified in

the name of a higher project; that all those people who don't belong to the group are considered inferior because they are traitors, unfaithful and corrupted.

They usually wear black uniforms and have a long beard to underline the difference between them and the others. We all know the images of the ISIS troupes on the Internet, with a black background and waving black flags. It's no coincidence that they choose this color: black is the denial of all colors, as the Nazi aesthetics had already stated about 100 years ago.

Certainly their weak, or better, wounded identity, is the result of centuries of a western ethnocentrism that turns a deaf ear to the claims of the third world countries.

It is no coincidence that terrorism develops in the occupied territories where people live in marginal conditions, but also in the suburbs of the European cities where the cultural integration process hasn't occurred.

And I want to dispel here a cliché that identifies terrorism with immigration.

And I will dispel it with my long professional experience and the strength of the actual numbers issued by the Italian Ministry of the Interior: the terrorists don't arrive here with the immigrants on the boats in the Sicilian Canal. And even if a terrorist that is running away from the war in Libya, reaches our shores, he doesn't travel on unsteady boats, but only on comfortable motorboats for deep-sea fishing. It means only under safe conditions.

The terrorists are in our houses, in the suburbs of our cities, in our prisons where they often radicalize themselves. Descendants of past immigration, result of the post-Colonialism period, never integrated into the cultures of the host countries, they are often unemployed and express their hate towards the West culture through terrorism. A culture that they envy for its level of well-being and quality of life; hated and denied at the same time because unreachable.

The terrorist is often formed on the Internet that deliberately provides him the image of a fake and virtual world, just and ordered, opposite to the real world, represented as corrupted, that for the aspiring terrorist is a source of desire and frustration at the same time. And even the "holy war" is represented on the Internet as a triumphal advance full of violence and cruelty that the Foreign Fighters will experience and that probably they will never be able to leave.

I would like to make it clear that terrorism has nothing to do with immigration.

The terrorist is in search of a strong identity, the immigrant instead, has a clear and rooted identity and he is only in search of a country where he can express its identity, denied in his own country because of wars, famine and persecutions.

The terrorist exports blind and angry violence. The migrant instead, only uses violence against himself by putting at risk his own life and the one of his family, undertaking journeys under unsafe conditions, during which they are often physically and sexually abused.

We shouldn't be scared; we shouldn't fear the immigrant; we shouldn't fear the cultural influence because it is only a source of enrichment; we should feed from the culture of acceptance; we should have the ability to distinguish between hate and fear, to recognize other people's roots, to listen to the other: the victims of this epic phenomenon.

I would like to conclude my speech by going back to the need to listen to the others, the victims, and inviting you to listen to these people coming from the other part of the Sicilian Canal and to pay attention to their stories.

Stories full of pain and violence. They travelled thousands of miles through the desert, in the hands of unscrupulous human traders that drive poor people on overloaded old off-road vehicles letting them to die of thirst in the desert.

Stories of human traders that sell these poor people to the best bidder; migrants that are sold to different military factions, raped, divested of their belonging and harassed; traffickers that extort considerable amounts of money from their victims by blackmailing them with their abandonment; traffickers that cram the immigrants inside sheds located along the coasts of Lybia, under the burning sun and in slavery conditions. Stories of migrant women that quietly accept to be constantly raped by their captors, trying only to avoid unwanted pregnancies. The government forces are absent, legality is absent, there are only armed and violent factions and tribes that live by trading human beings.

These are the voices we must listen to, voices that make us act and qualify what happens on the Libyan coasts and in the Sahara desert as crimes against humanity. Those voices must lead us to strongly claim the opening of an humanitarian corridor from Libya, under the ONU signatures, to accommodate and redistribute migrants in Europe.

There is a right that must be affirmed as "Human Right", and as such protected, and that is the right to migration, the right to escape from wars and deportations, to famines and

epidemics. It is mandatory to stop military operations, and its political strategies and reversals between the various European nations committed to governing the Canal of Sicily. Stop with political disputes made of ephemeral and uncertain boundaries to be protected.

Pope Francis said: "***it is necessary to become builders of bridges not of walls***".

Let's just look inside, we should not be afraid, but believe in our Western, lay, tolerant, relativistic culture, produced after the dark years of the two World Wars. A cultural model open to multiracial and multi-confessional society. A cultural model we must insist on building a Europe of Nations, of people, not a Europe of banks and markets.

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