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## RESTORATIVE LAW AND JUSTICE SEEN BY A TRANSDISCIPLINARY APPROACH

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### Restorative Law and Restorative Justice approached by a transdisciplinary methodology

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#### 1-Introduction

An *international common sense* is what we are trying to find through the studies we are processing. We suppose that it has to be defined with the use of intuitive notions like space-time-matter-energy and beliefs, mediated by transdisciplinary methodology. Modern conceptions of right are connected with the idea of what is possible to be considered objective. Positive Right means what is expressed in Written Law. The *global common sense* of justice does not include the necessity to be written, but to be effective. Therefore, Restorative Law and Restorative Justice are concepts to be known and accepted by the whole nations and peoples of the world.

The *common sense* is present in the historical cultures. It has been built with the social human experiences along centuries and centuries. The *common sense* exists under a continuous process of alterations, mutations and achievements. Since old times and more recently assimilated by the integration of exchanges between international systems of communications, the *global common sense* is totally dynamics and present on several sort of experiences that demonstrate how media and informs interfere in their results. The common sense is dynamic. It varies according with the daily waves of alterations in the scale of the human values. We should agree that there are some statistic formulas able to identify those variations, sometimes to prevent and other times to contribute in its constitution.

#### 2. Intuitive notions and beliefs

The intuitive notions of space, time, matter and energy are not enough to guide the desired approach of what should be the *international criminal justice* in face of the *global integrative procedure*. Therefore, to go close to such concept it is just to suppose that we need other ways, dimensions and levels of reality. At least, we feel that what we need has to be revealed in the same dimension where our *beliefs do exist*.

We think that beliefs exist because they are effects of some causes, that is, their *necessary existence* is claimed by previous external or internal *stimuli*. Experience teaches that belief is not a contingent *phenomenon*. It appears to be a mental support to some other *phenomena* occurring in the human beings. Without beliefs we do not survive. Faith is a sort of believe. Faith and beliefs are essential parts of human being, supposed to exist as mental phenomena. The memory is the container where beliefs remain existing. With the help of faith and belief we become able to recognize some hierarchic orders based on *mystic values*.

To try to understand what is *mind* we first believe that: 1) brain is a physical structure giving material support to the existence and functions of mind; 2) the mind operates in total dependence of that structure; 3) the mind seems to be an electromagnetic field where some powerful systems of electric and electromagnetic forces function; 3) the mental process and functions occur within some sort of electromagnetic fields; 4) thoughts and memory are phenomena of similar nature; 5) the structure of brain defines the physical limits of the mental process; 6) thoughts are the result of an electromagnetic process; 7) archives of thoughts are contained in electromagnetic fields; 8) to decode stimuli and thoughts you do not need a verbal idiom but only to be able to understand what is contained in the *forms of thinking* transmitted by diverse expressions; 9) similar to what happens in the micro and

macrocosmic realms, the mental power is revealed by four vectors: a) electromagnetic forces transmitted by thoughts, ideas, lines and forms of thinking; b) gravitation forces expressed by the formula  $E=mc^2$  applied to the relation matter and energy; c) strong interaction forces and d) weak interaction forces; 10) therefore, the notions of mind necessarily include the existence of some probable field of electromagnetic interaction<sup>1</sup> between human beings; 11) the idea of a *global common sense* expresses the possibility of some sort of forces existing towards the global interaction of the electromagnetic fields where do exist the human beings.

### 3. Nations, states, communities and societies

To advance in that sort of speculations we need to clear what *nationality* is, what *community soul* means and which are the beliefs that make a *human global society* possible. History shows that the *international written laws* are more useful during some periods, not serving the weak nations but the strongest ones. *International written law* is used as an argument to justify international interferences. Currently it gives moral support to the interests of the stronger nations over the rights of the weaker people. The supposed *international laws* are used to justify the strong offenders against the weak communities. Those beliefs result from our studies of history. We normally receive and study the history written by the winners. The truth of who loses is not the same as that of the winners. The moral valuation of historical facts teaches us that, in general, the winners are more criminal than the losers.

The actual world shows that no institutional structure, system or organization exist with enough moral power to inhibit international crimes. UNO has not materialized the ideal accepted in its foundation. In fact, world memory does not register experiences in the international extension we are talking about. We do not have notice, during the last 10000 years, from any similar period of globalization.

Information systems, mixture of cultures and construction enterprises are simultaneously dismantling the *soul* of nationalities. Starting from some inner characteristic of a community, the nation becomes the result of its adoption by others communities. If the nation is structured under a juridical order it becomes recognized as a state. Internationality is connected with nationality. That relation develops the enlargement of the original idea.

We have learned that any juridical order without the support of a *national soul* is nothing. The social group formed without the support of a juridical order is anarchic and has no conditions to survive as a state, neither as nation, tribe, community or society.

### 4. Intuitive notions of space, time, matter, energy and beliefs

*International* suggests an imaginary relation between the intuitive notions of space, time, matter, and energy and beliefs ruling the human societies. It supposes the existence of nations located in our planet, defined by their countries on the geographic space they are located. *International* is linked to national cultures and their internal energies and is connected with ideas guided by space and time, that is, to

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<sup>1</sup> The Theory of Field has first been suggested by Einstein. In 1927 Eisemberg has given a remarkable contribution to the development of that theory.

circumstances related to some periods of time and space, traditions, uses and customs. International soul has its meanings reported to various nations established over ethic codes or juridical orders, even when they are not structured in states. Therefore, we are induced to believe that what is recognized as collective has to be in itself a conjunction of some individual characteristics. Those reasons induce us to understand the meaning of internationality with its linkage to an international soul.

The *human international soul* is now being revealed. The word *community* contains not only the idea of physical limits of space, time, matter and energy, but also some transcendent concepts as *common goals* and *individual* interests. *Word community* translates some transcendent ideas of abstract and imaginative relations. The expressions *community* and *society* are usually used in the same sense. Human societies are defined by their *objectives*, that is, by *teleological reasons*. Human communities are possible to be recognized by their *nature*, not only in face of beliefs, dreams and purposes. *Communities are and exist in themselves* but materialized in *our beliefs*.

*To be* and *to exist* are verbal forms implicated with the notion of time. Those concepts shall occur consciously or unconsciously, subjectively or objectively. They are registered in our memory when their connections are perceived and cultivated. *Soul* is not what should or shall exist: *soul exists* in the individuals, in the communities, in the nations and it seems just to suppose, also in the planet. *Collective* and *individual souls* do exist in themselves. *Community soul* is not the same as *social purpose*. *Community* has in it self the *community soul* as the ontological reason to exist. The *community soul* is a sort of transcendent characteristic of the group. Society survives supported by a teleological cause. To live, societies are always dependent on the *animus societatis*. *Animus societatis* expresses *external causes* inherent to the partners but transcendent to society in itself.

Collective interests drive the societies. The collective interests command the individual ones during social activities. The association of individuals around some objectives transforms the human multiplicity into singular common purpose. That abstraction is translated by the *intention to preserve the goals* of society. The essential rule for the partners to preserve the human society is to cultivate the same *final goals* and to preserve the teleological reasons of existence. Within the notions space-time it is possible to clearly discern distinctions between *final goals* and *permanent goals*. The support to maintain society finishes when the final goal is materialized. Permanent goals reflect the reason to preserve social groups. Communities have permanent goals. Because of that they are considered *natural groups*. Societies have causes of existence supported by *futuristic intentions* of the partners.

Communities define a large amount of relationships. The individuals have to be respected in the natural characteristics. They do not need other intention than the *will to continue as they are*. Communities receive individuals who include themselves in the group because *they are of the same nature*. Individual and community have a *common soul*. Societies and individuals have *common goals*, not recognized as *common soul*. *Common soul* exists in itself as present phenomenon. *Common goals* are futuristic abstractions: they shall

become concrete. The idea of an *international community* is similar to that of international soul, and shall not to be ignored.

### **5 - Notions of submission and independence**

*To submit* is a verb of Latin origin which brings the idea of *mission*. To submit denounces a sort of hierarchic missions. *Mission* means a sort of transcendent greatness that gives sense and direction to our movements and procedures. *To submit* somebody to others is to recognize *order* and *hierarchy* in their ensemble. Therefore, the idea of an ensemble is related to some mission. *To recognize* is the expression that translates the action of a *re* (perceive in the past) a common (co-) *understanding* (-gnosis) of some similar image of somebody or something experienced before. The submission of nations and peoples to the some *natural hierarchic order* of *phenomena* is, in fact, *the submission of human beings to their nature*.

All the nations have a sort of independent social state, but, at the same time, they are all dependent on nature: cosmic nature, planetary nature, ethnic nature, national nature, geographic nature etc. What we intend to clear up is what sort of human nature offers the possibility to practice an international system of justice. For this we need to recognize the international social structure over which should function a common system of laws and rights through efficient organs. To practice international law and justice does not mean to submit nations diminishing their autonomy. International law and justice have to respect states and communities without reducing the sovereignty and independence of their nationality.

Effective international systems of justice will be possible: 1) if they become able to understand the *natural complexity* of all *phenomena* involved with human beings; 2) if they accept that *complexity* is submitted by nature to different *levels of reality*; 3) that *the existence of the undefined other* transcends any hierarchic principle of order, space, matter, energy and beliefs; 4) that the scale of human values has to be reported to some sort of Sacred Entity, so in individual as in collective extension.

### **6. Structures of International Systems of Law and Justice**

When we talk about *systems of justice in a community* we are talking about *what functions* in that group intending to assure Justice for everybody. The common objective is the principal aim of the human communities. *International systems of justice* are abstractions about the idea of what we suppose possible to exist with the capability to rule the relations between political states. In fact, the conscience of that possibility of existence in the limits determined by the order of greatness is the parameter adopted when we define our intentions, plan our actions and feel the international empirical results of that behavior.

The order of greatness of our thoughts reduces the limits of our imagination. It announces a sort of freedom not limited by our sensible forms of perception but, even so, restricted to the capacity of the mental functions. We suppose that the order of greatness of our mental perceptions is not limited by the intuitive dimensions of space, time, matter, energy and beliefs, but that those dimensions guide the movements of lines and forms of thinking.

*Community of scientists, community of prayers, community of nations* are abstract ideas, translating a casuistic order of concepts, in which sensible perceptions are supposed to become possible within the limits of greatness of our thoughts.

What does *financial community* means for people not interested in finances and economy? Which is the meaning of *community of weapons producers* for people not worried about the logistic of wars? The expression *nation of gays* seems to be false, but we understand correct to say *community of gays*. There is a more clear distinction when we talk about a *syndicate of labors* and a *community of labors*. A *syndicate* is a sort of society whose partners are included in the category of labors or entrepreneurs. The written Law in Brazil recognizes two sorts of categories that give support to the syndicates: *professional categories* related to *employees* and *economical categories* constituted by the *entrepreneurs*.

*International criminal justice* reports to relations of all sorts of human elements integrating communities, societies, syndicates and associations. Those relations need to be referent to the supra national connections between states, nations, individuals and communities. Those entities shall be institutions or individuals, offenders or victims, subject or object, partners or competitors in view of the effects and extension of crimes. The notions contained in those sort of ideas are so obvious that they are becoming international concepts and are considered as proper and necessary elements to build the global community. They strongly interfere with the conducting of a holistic imaginary form of thinking.

The individual mind receives and adopts those concepts with a sort of unconscious receptivity, what seems to mean that the majority of human beings proceed submitted to those conceptions. Lead by powerful minorities we feel that the oligarchic form of policy is one of the most present forms of submission in human history. Originated in that sort of authoritarianism, we receive and accept the distinction between right and wrong as a common sense. The usual distinctions between right and wrong are not established through democratic methodologies. Their use does not express what we call Justice. I believe that those contingencies will be changed through the results of our collective work. It is possible to identify those results as our intellectual mission in life.

### **7 - Transdisciplinarity and methodology**

Scientific knowledge results from a cognitive process organized and mounted on methodology, metaphysics and the theory of values. Methodology, using resources of logic and epistemology; metaphysics objectifying ontology and cosmology, and finally the theory of values integrating ethics and esthetics enable the weaving of the threads of the magic carpet that transport us through what we call *fields of knowledge*. Backed by science within a transdisciplinary approach, the delimitation and ordering of thoughts is materialized fundamentally by four ideas called the transdisciplinary postulates, namely, *complexity*, the *levels of reality*, the *participation of the other* and the *existence of Sacred*. In writings about transdisciplinarity, some call *the other* an indefinite

*third*, which may or may not be included, or excluded in expressing the relationship. The contours drawn by the *levels of reality* where the disciplines are applied compel us not only with the need to recognize them as *objects*, but also to adopt appropriate methodology and *language*.

The forms of communication codified in *signs* and *symbols* are recognized in the generic indicator as *language*. Language, therefore, is the oratory code through which thoughts and ways of thinking are articulated and classified. All language is based on referential parameters. In other words, the disciplines can be identified through parameters that lend support to their own specific jargon. Distinct thoughts and ways of thinking, though contrary or contradictory, incompatible or incongruent, can coexist even if codified by means of diverse processes. For what we call knowledge, however, it is necessary and essential that these incongruence and fundamental opposites do not occur at the same level of reality; or better, that the contradictions do not occur at the same time within the same system of thought, for to admit that incoherent and contradictory thoughts are true simultaneously is to deny the paradigms of the truth or falseness with which they are concerned.

At the beginning of transdisciplinarity people have based their attitudes on three postulates. After some years it becomes clear that a fourth postulate was inherent in the proposal of a transdisciplinary methodology: the Sacred exists. Therefore, that contribution to advancing knowledge has been addressed: a) the *complexity* of the phenomena; b) the *levels of reality* at which thoughts occur and c) the existence of the *other*, whether guardedly or expressly included, or not in the cognitive formulations, and d) the Sacred exists. It is important in this presentation to clarify the intrinsic meanings in such presuppositions.

### **8 - First postulate: complexity**

The experience of our lives teaches that it is impossible to isolate completely one phenomenon from the others. Even with the greatest precision and rigor to define the fields of experimentation and observation, by laboratory procedures, the observer sees himself obliged to appeal to imaginary limits in order to isolate the phenomena under observation. The observer has to have present in mind that only by hypothetical fiction it is possible to obtain total isolation of any phenomena.

In so far as all phenomena are dependent and interlinked, one must admit that *nothing is simple*, but quite the contrary, that *everything is complex*. There are no isolated phenomena; nothing is singular in the world in which our perceptive forms function. All the phenomena, including all living beings, are interlinked and are interdependent. This leads us to believe that *complexity* is an assumption for the knowledge we intend to acquire.

The perception of complexity teaches us that everything is linked to everything. The details of that sort of complexity show that wherever we shall be we are always involved in an enormous universal embrace (*universus magnus plexus*). The daily experiences confirm that our links with the world are unlimited. The net of complexity submits every being, at least by the chain past, present and future.

In the Universe, the fragments of the whole continue to be part of that whole, as tiny as they may be. Deprived of any of its fragments, the Universe would no longer be *universe*, but a quasi-universe. Thoughts are always abstract thoughts and related to fragments of the Universe. They occur within the Whole; their references integrate the Whole and remain always connected with the Whole. For such observances we adopt as the first postulate of transdisciplinary methodology that *all phenomena, of whatever nature, including thoughts, are complex and nothing happens alone or independently from all that exists in the Universe.*

### **9 - Second postulate: level of reality for knowledge and communication**

The observation of the processes and methods that lead us to knowledge and for this reason become propitious to communication, show that the varied available resources originate, and subsequently are processed and externalized from distinct observable points. Such resources follow pre-existing language and concept parameters. Each person, from their observations, reads the phenomenon differently from another resulting from personal subjective and objective reasons insofar as they come from distinct presuppositions. In view of this verification, we are led to recognize the *state of consciousness*, which is intellectual by nature and the signals with subjective and objective perceptions.

These markers, when differentiated, make it possible to read several distinct results and to consider them valid and efficient even though the forms of perception may indicate incompatibilities and incongruence. When this happens, the solution for resolving the difficulties in this state of consciousness requires an artifice like that used for calculating, or a simple perceptive resource to identify and locate the contradiction at the different *levels of reality*. With this approach, the antagonisms can be overcome through use of the diverse forms of perception at each *level of reality*.

The chronology of the transdisciplinarity documents began with the Declaration of Venice, dated March 07, 1986, to which Brazilian mathematician, Ubiratan D'Ambrósio contributed and helped to elaborate. Items 3 & 4 of the Final Communiqué originated from the colloquium on *Science and Tradition: transdisciplinary perspectives for the XXI century* held in Paris from December 2-6, 1991, organized by UNESCO. They are part of the conclusions of seven items formulated by the editorial committee comprised of René Berger, Michel Cazenave, Roberto Juarroz, Lima de Freitas e Basarab Nicolescu, and say the following:

*3. Paradoxically, one of the conceptual revolutions of this century (XX) came from science, and particularly from quantum physics bursting the old view of reality with its classic concepts of continuity, locality and determinism still predominant in contemporary political and economic thought. It gave birth to a new logic corresponding in many aspects T.N.- the old logic forgotten. A capital dialogue evermore rigorous and profound between science and tradition can now be established to construct a new scientific approach: the transdisciplinary approach.*

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T.N. Of the many conferences sponsored by UNESCO the Declaration of Venice emerged from the symposium “Science before the Boundaries of Knowledge”, organized with the Giorgio Cino Foundation in 1986. “Science and Culture for the 21<sup>st</sup> Century was the name given to the Vancouver symposium held in 1989.

*1. Transdisciplinarity does not seek to construct any syncretism between science and tradition: modern science's methodology is radically different from traditional practices. Transdisciplinarity pursues points of views from whichever enables science and tradition to interact. It seeks to find intellectual space that will take it out of its unit while respecting the differences, especially those supported by a new concept of nature.*

In the Transdisciplinarity Charter, struck at the First World Transdisciplinarity Congress, held at the Arrábida Convent, Portugal, November 2 - 6, 1994, article 2 reads:

*The recognition of the existence of different levels of reality governed by different types of logic is inherent in the transdisciplinary attitude. Any attempt to reduce reality to a single level governed by a single logic does not lie within the scope of transdisciplinarity.*

And in Article 14:

*Rigor, openness and tolerance are fundamental characteristics of the transdisciplinary attitude and vision. Rigor in argument embracing all existing data is the best defense against possible distortions. Openness involves an acceptance of the unknown, the unexpected and the unforeseeable. Tolerance implies acknowledging the right to ideas and truths contrary to our own.*

At these diverse *levels of reality* the perceptive, exteriorizing and communicative forms of thought require paradigms with distinct natures to enable them to measure intelligibility. Acknowledging that *different levels of reality* process the thoughts and worth of experiences constitutes the second presupposition of transdisciplinary methodology. Our studies lead us to believe that there are at least eight *levels of reality* in which humans think and consciously act. That is, what we call *conscious states* occur at these different levels with a particular state of consciousness corresponding to each level.

#### **10 – The third postulate: the undefined other**

The transdisciplinary approach suggests a third state of consciousness wherein *the other* exists. That state of consciousness enables that other to be or not to be included or excluded in relation to the observed. We know that *other* is an indefinite pronoun: a different or an additional person or thing. It can refer to something personal as well as impersonal, human or inhuman, great or small, colored or uncolored, opaque or transparent, a lot or a little, lasting or transitory, light or heavy, present or absent, current, past or future.

Transdisciplinary vision is resolutely sensitive to propitious openings of new knowledge in so far as it surpasses the dominion of the exact sciences. It imposes, through its dialogue and tendency, to reconcile not only with the human and social sciences but also with literature, poetry and spiritual experience. To try to understand the amplitude of the thoughts is the same as to try to understand the dimension of what is universal: it is a sort of procedure that do not give us other consequences than to confirm our personal limits and to confess our incapability to go over the order of greatness of our perceptions.

When we want to connect our thoughts with unlimited beings – to imagine an *unlimited being* seems to be an absurd – in fact we try to link ourselves with the infinitude of the Universe. Only by the imaginary we should approach it. But even the imagination has to have its points of relation. Which is the possible reference to the Universe? Eternity? No-limited extension?

Therefore, to that sort of thoughts the language has built the concept of an undefined reference: the Other. Other in self-being. Other in extension. Other in time. Other in matter. Other in energy. Other in believes.

### **11 - The fourth postulate: the Sacred exists**

The process of thinking occurs in our mind. We are informed by science that the mind works with distinct fountains of energy. The field of energy and forces operating in the fields of mind seems to be dominated by electromagnetic systems of forces. In some part of that field the parameters of procedures are limited by memory, which includes our previous beliefs. Some of those beliefs are considered so strong and helpful that we attribute to them a sort of sacred forces. Sacred is the adjective related to that sort of *intuitive beliefs*. So present and strong as the intuitive notions of matter, energy, space and time, the notion of sacred is contained in our thoughts as a primordial step to arrive to knowledge.

A hundred years ago, cultivated by the positive forms of knowledge, the scientists and philosophers disregarded the fourth postulate. Law had to express a constant relation between cause and effect and knowledge was only related to that sort of expression. Now, so in science as in philosophy, knowledge is related to the true and justified belief. To believe is to give support to some remarkable thought adopted as a truth. In the human tradition truth is sacred. Therefore, to believe in truth is to believe that in it there does exist some sort of quality named sacred. The sacred exists.

### **12 - Methodology**

We identify as levels of reality those in which methods for apprehending knowledge are exercised. That's why *mysticism, authoritarianism, rationalism, empiricism, pragmatism, skepticism, amorousness* and *intuitionism* can be considered simultaneous paths that lead us to knowing while coexisting at the same *level of reality* at which knowledge is processed.

We call *state of consciousness* the period during which, in the personal physical and mental context, knowledge occurs. In the Greek origin *method* means way, system of procedure, marks on a route. Methodology for knowledge is understood as the field of knowledge which object is the study of the routes, trails and ways that do limit the approaches to knowledge offering us the possibility to become successful. Our studies in the fields of methodology have led us to the belief that there are convenient methods able to help our transdisciplinary thoughts.

We did not try to become imprisoned by the methodology of one or various disciplines, but moved by a sort of transcendent methodology. Therefore, we have concluded that the transdisciplinary attitude has to be served by a transdisciplinary methodology.

As elements of a methodology integrated by a necessary conjunction of methods which general characteristics are always open to the transcendent possibilities existent in the abstract fields of knowledge, we have elected eight ways of thinking to be necessarily used during our reflections: mysticism,

authoritarianism, rationalism, empiricism, pragmatism, skepticism, amorousness and intuition.

### **13 - Mysticism**

Observation corroborates the affirmative that we all have mystic and mythological roots. When these roots are not personal we are able to identify them by their origin in the collectivity in which we live, or to which we belong. They are formed by mediation of use, customs and prevailing traditions in the social context in which we are, or were rooted. Each one of us accepts and incorporates as substantiated and true, certain historical narratives of mystical and mythological character referring to the origins of the universe, the world, the planet, and of us.

In judgments that come to us from rationalism and empiricism, there subsist irresolute doubts and pertinent query as to the origins and causes for existing, whether of individual, or of universal nature. Accordingly, in a *state of consciousness* we want information that exceeds the levels of empirical and rational reality. An intellectual anguish, by nature intimate and personal, leads us to perceive the existence of a *mystic level of reality* integrated by spaces of diffused images formed by movements of shadows and mist. It is usual to perceive this as much by the emphatic denial of the incredulous, as by the credulous affirmation of those who consciously adopt mysticism as a reason for living.

In view of these premises, it is easy to understand the reason behind the assertion in article 9 quoted from the same Transdisciplinarity Charter cited above:... *Transdisciplinarity leads to an open attitude towards myths and religions, and also toward those who respect in a transdisciplinary spirit...*

We observe a *level of mystic reality* in which we are all ensconced when we go to church, to religious meetings, or to gatherings of mystic or mythical nature. At this level the fourth postulate becomes obviously confirmed: the Sacred is real, it does exist. It is also possible to note that the effort made by clergymen and pastors, who seek to retain their followers at this level of reality, not only use mystic arguments and mystics with origins in its use, customs and traditions, but also use rational, sentimental and emotional propositions.

### **14 – Authoritarianism**

However skeptical we may be, we always let ourselves be convinced, through acceptance and appropriation, of beliefs adopted by someone else as being true and justified. Accordingly, we receive and adopt as our own truths, the thoughts and ways of thinking that, in fact, integrate another's reality. This supposed *true knowledge* is, or was formulated by others to whom we give credit by attributing them with intellectual, moral and mystical authority. Furthermore, because we believe in these people, we accept their affirmations as truths. Acceptance, therefore, stems from the subjectivity and the credibility we lend to the human source from which the information originates. This method of acquiring knowledge, called authoritarianism, assumes the characteristic of a *level of reality* imported subjectively, which we claim and by which we form our own judgments, reap opinions and garner values.

There are thinkers who affirm that around ninety percent of what we think we know actually has roots in information which takes its source from authoritarianism. It is at this *level of reality* that we adopt as true, information inherited from our parents, received from our teachers or gleaned from third parties in whom we trust. The *level of reality* called *authoritarianism* is formed by alien experiences and beliefs through the translating of what *others* establish, and whether through personal conviction or convenience, becomes easy and advantageous to espouse as a truth.

Thus, for example, we accept as truth, neither questioning nor delving into rational or empirical verification that the theory of relativity corresponds to a scientific truth. After all, it has been confirmed by different authorities in the field of physics, and also derives from the intellectual authority we attribute to Albert Einstein. Furthermore, we take our children to be vaccinated against poliomyelitis based on the *scientific authority* we credit our scientists and the authority we attribute to the information published in the newspapers and ads when they affirm that a vaccine is effective and has no side effects.

#### **15 - Rationalism.**

There is a level of *rational reality*, by nature abstract, which is not only identified in algebraic and geometric expressions, but is also in linguistic formulations. It becomes perceptible in expressions, judgments and ordination of thoughts and ways of thinking. The *level of reality in which reason* seeks to harmonize, identify or signal what appears to be real and true uses symbolism, the mode shown to be the most readily accessible to the getting and projecting of ideas. Processed in this symbolic context, is communication by mathematicians, physicists and other scientists, be they active in empirical fields or simply in theoretical ones, as are also the conveyance of mystic and religious teachings. The essential requirement of rationalism in mental processing demands the compatibility, congruency and verifiability of conclusions in relation to their premises and those between them.

#### **16 - Empiricism**

The codification of presuppositions, where the tower of knowledge is seated, the one we call corpuscular physics, when applied in another scenario such as quantum physics renders it necessary to establish whether or not the same scientific language used in corpuscular physics can be adjusted to the communication needs imposed by quantum physics. This occurs because the conceptual presuppositions that rule the relationships between the thought forms of these disciplines have shown themselves to be empirical and rationally incongruent. This means that saying that what does one observe empirically as the materialization of bodies, to the other is only a probability of existence.

Hence, we can observe an *empirical reality* that comes through our senses of taste, touch, smell, sight and hearing, conditioned by forms of perception such as the auditory, which sensitizes us by the sound uttered, or is articulated through sounds and noises. One also observes other *empirical realities* such as those expressed in body language, in the art forms of

communication, those perceived through the intermediation in the culinary arts and in so many others that we learn to decode throughout our lifetime.

We can ascertain that the existing codes in the different scientific languages lose their value and effectiveness when they are incoherent, contradictory and controversial when they are considered at the same *level of reality*. Experience teaches that a sole scientific language is not always best for communication when used within different levels of reality.

Up to now we have spoken of transdisciplinarity as a method of approach that, related to interdisciplinarity and to multidisciplinary, is multidimensional and does not exclude a trans-historical horizon. Transdisciplinarity endeavors to open all the disciplines to paths of knowledge that transverse and transcend them. And it does this by evoking *mysticism, authoritarianism, rationalism, empiricism*, but also *pragmatism, skepticism, amorousness and intuitionism*.

### **17 - Pragmatism.**

*Pragmatism* and *practicability* are not the same thing. Pragmatism, also called practicalism, sees the usefulness of things. Practicism, one of the manifestations of pragmatism, above all, holds in view the *ease and speed to which actions may be reverted*. Montaguë signals that ... *The pragmatic principle is implicit in the statement that the truth of a theory depends on the practical validity of its consequences. Therefore, if in this statement the word "consequence" is highlighted, pragmatism becomes a general tendency or attitude and so widely disseminated that we end up studying it as futurism; but if we emphasize the word practical, its color and character change because it is designated as practicalism. And, being thus, more specifically applies to the problems of logical methods.*<sup>2</sup>

A more polished approach leads us to understand that the same anthropocentric beacon that has directed humanistic thinking since the XII century guides modern pragmatism. In fact, to the extent that we attribute practical validity to knowledge seeking to better adapt ourselves to respond to future situations, we are moved by the idea that the future is created by us and for us. Therefore, the reasons so many understand *pragmatism* as *futurism*.

### **18 - Skepticism**

The philosophical content paramount to *skepticism is the possibility for knowledge* that comes imbedded within the limitations of the human mind and results in the subject's inaccessibility to the object of knowledge. *Certainty* and *skepticism* oppose one another because of the a) confusions of language; b) different meanings attached to the same words; c) different levels of reality in which the phenomena and thoughts processed are focused d) ambiguities in the conceptual field.

The criticism to skepticism is that by adopting the principle of systematic doubt as certain, the skeptic behaves as though the truth contained in the doubt itself were an irrefutable dogma, and for this reason, incurs in the same error as the dogmatists. Moral skepticism sustains: a) that moral principles cannot be proved; b) that there are no moral truths; c) that morality

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<sup>2</sup> MONTAGUE, William Pepperell. *Los caminos del conocimiento*. Buenos Aires: Sudamericana, 1944, p.113.

has no rational base and d) right or wrong is a question of preference or convention. As one can see, *skepticism* is a *level of reality* in which shocks of ideals become evident when one intends to fit them into thought forms processed at other levels of existence.

In approaching transdisciplinarity, one must consider that the empirical sciences depend on two essential approaches, namely: a) *empirical nature* dictated by common sense objectively when adopted to alien singular or collective experiences becomes recognizable by usual forms of communication; and b) *perceptive nature* when that which results from observations becomes the researcher's own, incorporated into his/her own personal and subjective experience, manifesting in his/her attempts to communicate and transform the results into *objective communication* assimilated by others. Skepticism serves approaches of experimental nature that not only occur through intermediation of the intellectual capacity of the collective (*common sense*), but also through the subjective neurophysiologic perceptions of the observer (*personal sense*).

### 19 – Amorousness

When we treat relations of *love* garbed in the meaning contained in the word *amorousness*, we do not exclude the *common sense* indicated by sex, nor do we confine ourselves to the understanding that sexuality is the essence of love or of amorous gesture. The Christians affirm that *God is Love*. In Latin, the word is linked to the meaning of *cupid*, which as a noun translates into *sexual desire, wanting, appetite, passion*. Reported to mysticism and mythology, *love* initially denotes a divinity.

In social relations, *mystic love* unveils as *vocation* or as *a response to divine calling*, expressed in devotion of the human being to the chosen deity. It is the generating force of the cult that externalizes the feeling of adoration. In biology, love manifests as a force. It acts on live beings determining the special attraction of one being to another. When between beings of different sexes, it generally manifests itself with the reproductive force component called the *survival of the species instinct*. It is said that *amorousness* is the behavior, which reveals respect, zealousness, care, attention and lovingness.

It does not seem possible to arrive neither at a conceptual content, nor at the practices of knowledge without including the idea of *amorousness* in the approach, and even more so, *love of another*. Love is a sort of vectorial magnitude defined by intensity, direction, meaning, application and temporality point without excluding the possibility of adding other characteristics.

Within the methods that can propitiate knowledge, *amorousness* is the most pleasurable, efficient and productive. It resolves problems, dissipates doubts, is creative and skillful, and seeks to induce processes, systems and solutions that render the human assimilative capacity efficient and productive, harmonious and pleasing whether to the spirit as to the soul and body.

*Amorousness*, when comprehended as a method that identifies a *level of reality* in which certain *conscious states* are manifested, signals with the transcendent power that the human mind conquers over limited meanings, and what we suppose is structured knowledge is *uni, inter, multi* or *pluri-disciplinary*. Without love, there is no creed to connect the subject to the

integrating elements of a supposed objective truth. Without a creed, no justification is possible. Hence, intellectual experience shows that without *amorousness* there isn't the slightest possibility of practicing transdisciplinarity. Moreover, without *transdisciplinarity*, scientific knowledge defined as a *true and justified* creed becomes a mere *fictional hypothesis*. Induced by the mysticism by which we are possessed, we assume the belief and accept as *intuitive truth* that there is a level of reality in which *love* is the *supreme force* that induces to encountering knowledge. At this point we become cognizant of the meaning of the expression *God is love*.

## **20 –Intuition**

For five thousand years the Bonist monks, followers of the Bon Po religion, the oldest in Tibet, have studied the phenomenon they call *Dzogchen*, which we understand as *intuition*. In *intuitionism*, they recognized an efficient method for *revealing* knowledge. In *common sense*, the lexicon conveys the idea that we intuit what is made conscious through the intermediation of the internal forms of perception, regardless of all a priori knowledge, rational activity or personal experience.

In view of intuition, logical or empirical reasons lay open, for it is proper of *intuitionism* to emerge distanced from the claws that bind us to verbalized thoughts. What we designate as intuition is neither imprisoned in discursive language, nor in other specific forms of communication such as words, ideas, lines or ways of thinking, geometric or plastic forms, sensations caused by sound, noise, luminosity, taste, touch or smell. Truly, it appears that intuition translates existence at the *level of reality* from whence stem intuitive thoughts.

## **21 - The fragments and the disciplines in the knowledge process**

When we refer to the object of a discipline we mean to convey the set of phenomena whose characteristics are, or can be contained or delimited by the intellectual resource in that specific field of knowledge. We know, and scientific practice has proved, that only theoretically, vis-à-vis the artifacts of the *imaginary* of *science fiction* can the phenomena be totally isolated, contained and perfectly delimited. In practice, such procedures always present themselves at certain levels of reality according to the order of magnitude, which is particular to each of them and is contained within the limits of acumen of the respective forms of perception. There is also no doubt that the process of reduction in the fields of observation are subordinated, when less, to one of the rules of Cartesian method, which is that of analysis. This, by its very nature is fragmentary and, as it is inherited from Greek culture, we are not used to separating ourselves from it.

When we order our ideas, the analytical process leads us to reducing our difficulties and incomprehension to the smallest possible dimensions, focusing them in a more appropriate level of reality where they can be classified, understood and resolved, one by one. From the smaller variables, the synthesis enables us to form a set of answered questions that allows a broader range for comprehension and understanding. From an analytical fragmentation point of

view through transdisciplinary methodology founded on holistic perspectives, we endeavor to render our intellect fit to better comprehend our context. Exploring at the same time the diverse levels at which distinct realities coexist, the transdisciplinary attitude offers an ample perspective of human wisdom announcing the broad scope of holistic view. Through that vision we turn possible to transcend space-time-matter-energy and to approach the idea of Sacred. Along the ways to knowledge, according to the Oracle of Delphi, in Greece, ca. 600 a. C., to Descartes (1596-1650) transdisciplinary methodology guides our anxiety for the truth and propels us toward knowledge of our own selves in connection with the world context.

## **22 - Human memory and the memory of sciences**

So as the physical experiences my beliefs have induced me to conceive memory as a phenomenon that occurs in the mind. Several notions inform that mind, spirit and soul are similar phenomena. But, even when they should be considered of the same nature, as abstractions of matter, they seem to be very distinct ones. Each phenomenon has to be considered as existing in the whole (*Mitsein*) but not always strictly understood in the same level of reality (*Midasein*). Human memory register similar possibilities of existence related to the possible occurrence of similar phenomena in distinct times. To be registered in itself and to exist registered by the human context are different expressions of the memory phenomena. Similar to the memory of sciences the social memory tries to fix facts and observations to become helpful for the human gender. That was one of the main purpose of Herodotus of Halicarnassus ( V Century b.C.), known of the Father of History. Spirit refers to spiritual *phenomena*. Soul is related to psychic *phenomena*. Mind is connected with mental *phenomena*. Spiritual *phenomena* seem to link what is eternal in the universe to the individual. Some philosophers consider spirit as the Eternal present in the beings. My conception of spirit refers to what should be considered eternal in the relations of *Dasein* and *Mitsein*, mentioned by Heidegger.

Soul is related to the proper characteristics of the *Dasein*. Mind is the structured material-energetic field where the mental processes occur. Brain contains mind, but mental phenomena do not occur limited by the material limits of brain they are electromagnetic phenomena. They are not contained in the material field where brain has existence. Mental process has to be studied in face of *quanta* theories. The anatomy and physiology of brain has been studied till recent years submitted to the positive forms of thinking and limits suggested by empiric sciences. Now, brain is studied implicated with electromagnetic phenomena. We are conduced to think that memory has to be studied in its implications to the electromagnetic phenomena.

Usually memory is considered the capacity of evocation of previous experiences in face of similar stimulus. It seems to present the characteristic of the electromagnetic phenomena. The intellectual perception of the stimulus is a mental phenomena. The sensitive acuity is a sort of neuron-physiological perception containing the possibility to become mental perception.

It is important to understand those distinct concepts under a sort of precise terms because we will try to understand the scales of memories that interfere in the human context. To suppose memory as a mental individual phenomenon we have to consider that only the possession of mind allows the capacity of memory. The question is: is it possible for a collective memory to exist if communities do not have a brain? Is it possible for a social memory to exist without a social brain? And a national memory? We understand memory as the individual capacity to generate mental process.

Now, it becomes essential to our purpose to consider the sort of phenomena we are trying to evaluate when related to what national and international procedures are, common, private, individual and social intentions, purposes and solutions. Therefore, we have to understand that we are strictly limited and connected with mental phenomena because here, in fact, we are working in the apparently abstract fields of thoughts, ideas, lines and forms of thinking. We need to understand the relations of matter and energy, space and time, doubts and beliefs and, through them, we will be able to integrate the notion of *historic common sense*.

### **23 - Common sense and social memory**

What does it mean to restore some state, some existence, some being? *Necessary* are the phenomena which non-existence implies in the inexistence of nature. They are not only possible, but are a sort of permanent potentiality of the existing nature. Those *phenomena* are necessary occurring in face of their essential potentiality. *Contingent* is the attribute of what is possible but not necessary. Contingent phenomena are always possible, but may be more or less probable. And shall not occur. *Nature* exists because it is a necessity in itself; therefore, it is not a contingent possibility of existence. To admit the non-existence of nature is to admit our non-existence. But our mind does not accept the possibility to be true the expression of somebody saying that he does not exist. If somebody says something is because he exists, that is, his existence is implicated when he says something. That sort of thinking should induce to the absurdity of *to be and not to be at the same time*. Therefore, *natural right exists for all the existing entities* (existent beings) because they exist, and the *right to exist is contained in all the existing beings in Nature and Cosmos*.

We believe that the *natural right exists because it is necessary in it itself*. To learn that sort of cosmic and planetary relationship we need to understand the life phenomena not only in its private, individual and collective existences, but also connected with a sort of integrative procedures. These procedures rule the circuit and context of all other beings, human or not human, in our planet or out of it, so in the micro as in the macrocosmic entities. The *natural law* rules the real and the imaginary worlds even when they are only possibilities of existence. To disregard that principle of Natural Right is a fragmentary conception of the whole. This fragmentation does not contribute to the approach of knowledge. By that way the supposed approach to knowledge should drive to a goal very distant from the real meaning of what is Justice.

What happens and exists in the universe is a *complex whole*, existing simultaneously in different levels of reality and always connected with the

unlimited and undefined other. In some way, when we try to understand the meaning of Nature, we think Nature is the connection of what we are and that sort of unlimited named *other*. Sometimes we are talking about Nature with the significant of Spirit of Nature. Monks of the Bon Po religion, in Tibet, believe that nature is God. For many western people Nature is sacred. Therefore, to be linked with Nature is to be linked with the Sacred. We believe that the *conception of global law* has to be based on a *global common sense* purpose. The procedures to transform *global right to global law* give support to the acceptance of an international structure of laws as consequence of the *global common sense*. That sort of agreement does not imply in a human written system of rules or in a submission of nations to an international written code. .

The supposed demand of an international system of justice based on written law has to be substituted by a *global common sense conjunction of principles of action*, whose significant has to be adopted but not necessary to be written.

#### **24- Human kind and the natural Law**

When the offender suffers some sort of natural reply against the criminal procedure, we say that he has been condemned by natural justice, relating the fact to some sort of natural system of justice. Many times those words are connected with some mystic beliefs and include the meaning of some Divine Justice.

The studies on criminology, victimology and juridical sociology announce that international criminal law should be an answer related to international crime, which we suppose to be an offence against some sort of international natural law. That means international criminal law should prevent some phenomena against some imaginary international ecosystem or against the natural development of human beings. The offender and the victims may be individual or collective, communities or nations, human beings or Nature. Really, till now, the concept of some sort of *international criminal laws* is not supported by a *democratic decision* of the planetary people. We never have had a planetary election of representatives to express the international desire. Therefore, the *international criminal law in a global conception* has not to be faced with some *written rules*, but has to be reported to some *ethical rules* accepted by the common sense of humanity.

The *order of greatness* of the efficiency of an international criminal law has to be defined as the *minima conditio* to protect the planet, the human nations and the ethnic structures from its competitors or invaders. Experience teaches that, under the pragmatic human goal to acquire and exercise the strongest power, the intended *international criminal law* has to be related to some useful arguments needed in the abstract world of some fields of knowledge like Ethics, Right and Justice.

The idea of an *international criminal law* excites the international relations of space-time-matter-energy and believes. Those intuitive notions instigate mental functions in the abstract theoretic field of human understanding. They seem to be a sort of necessary energy to give support for the international intentions, similar to a *necessary element to conduct* the

*human collective mind*. The arguments used by some nations of a *good cause* are *false essences* giving support for international aggressions and offences. They seem to be but are not the *teleological necessary cause to justify* the necessary morality of the international acts. *International crime procedures* are so necessary as the international responses against them. Those answers have to be supported by a *necessary international common sense*.

## 25 - Law, Crime and Justice

Law and justice are words linked to the ideas of rights and duties. Rights and duties have existed over the face of the planet since its creation. International Right, International Law and International Justice have to be adopted as *concepts* linked to Nature by the perception of human intuitive notions of time-space-matter-energy and beliefs. Experience induces us to think that to live is a right. The right to live exists since long ago, much before the presence of the human beings in the planet. We have to clarify that law, right and values are different concepts. Right to live is something linked to the *structure* of nature. Law is a symbolic way to define positive or negative duties. Justice and values are notions connected with systems and organs of Nature.

During the trip through the fields of knowledge it becomes essential to understand the concept of Nature. If something exists, it exists related to the right of existing. The right to exist is an answer to a *necessity* of Nature, not to a contingency. We suppose that the words *necessity* and *contingency* are clear concepts only in the *human mind*, related to *human forms of thinking*. Probably the other entities living in Nature are not able to distinguish necessities from contingencies, but even so they have their right to exist. .

The idea of *crime* indicates an abstract relation between some human action and *what is considered* wrong or right: if it against of what is considered right or in accordance with what is considered wrong. Right and wrong are concepts respecting to Ethics. Ethics is not a discipline but, in fact, is a field of knowledge. The last five thousand years have conducted human society *to connect the idea of crime to the written law*. History teaches that the beginning of that linkage has its start point in the Sumerian culture. It has been fully materialized in the Code of Hammourabi, circa 1.850 years before Christ.

Human history tells us that the *written law* is not an essential requirement to characterize crimes. What that means is that *to conceive a crime in the human action* it is not necessary to relate the fact to the written rule, but to understand it as an offence in itself against some other entities or human beings. However, experience shows that the most abstract notion of crime is always connected to facts and real *phenomena*.

Crime is a conjunction of *phenomena* composed, at least, by three figures: the offender, the victim and the infinite and unlimited *other*. The sense of order and disorder is submitted to previous notions. Offence and defence, injury and affront are abstract concepts relating to what we designate *crime*.

The conception of crime takes us to the beginning of the history of men on earth, where the main principles of Nature were recognized when they were serving the perpetuation of the species. What was against that principle was against Nature. We believe that this concept is the seed of the notion of *crime*.

The modern positive punishment of crime is imprisoned, since the text of Beccaria<sup>3</sup>, to the previous existence of law: *Nullum crimen nulla poena sine lege*.

In the colonized nations that principle, since the Roman Empire, is reported to the limits of written law. Many of the modern national states accept that “*Crime is a positive or negative action or act in violation of penal law... A “Crime” and “misdemeanour”, properly speaking, are synonymous terms; though in common usage “crime” is made to denote such offences as are of a more serious nature. In general, violation of an ordinance is not a crime<sup>4</sup>...*”

Those definitions express some different orders of thinking. First: crime is not *the idea* of what should offend the social order but is *the fact* in concrete. Therefore crime seems to be contingent. Second: Crime is not the real *phenomenon* contained in law, but only the *abstraction of crime* is expressed in law. Third: Crime is not the *hypothetic relation* previously described, but the *materialization* of the hypothetical fact projected in law. So, we have to conclude that crime exists when materialized. The projection of crime expresses a contingency, that is, a possibility of existence. When its cause exists the crime becomes reality. We are induced to confirm that crime is the effect of some sort of causes.

Crime has to be understood as a sort of human answer to some *natural necessity*. When we talk about *international crimes* we are talking about *phenomena* existing as consequence of different causes. Therefore, they have to be included as elements inherent on the *nature of human existence*. If we define the extension of the crime, we need to measure its effects, even when these effects are only contingencies. We are usually talking about *crimes against the ecosystems, crimes against Nature, crimes against institutions, crimes against people and crimes against rights and goods and, of course, crimes against objective dispositions of Law*. The concept of *justice* usually corresponds to the contingent procedures capable to assure what we think is *right*. *Justice* and *right* are distinct concepts. Concepts are necessarily abstracts. We designate different abstractions as Natural Right, Natural Law and Natural Duties. In the same way we distinguish three main characteristics of Justice: distributive, retributive and restorative.

## **26 - Distributive and retributive justice**

Since the oldest times of human history the organized nations, not necessarily states, have adopted the idea of a distributive justice. That is, a form of the procedure that the main authority of the nation (or state) assure to individuals and private entities their rights to exist in their natural private conditions. The principle of the distributive justice is that the *power of the public authority, even when not enough legitimate*, has the right to distribute justice and to assure what is supposed to be the right to be applied. .

Retributive justice *is based on the theory, which bears its name and (is) based strictly on the fact that every crime demands payment in the form of punishment<sup>5</sup>*. *Retribution* means the formal action of punishment: *Retribution is a*

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<sup>3</sup> BECCARIA, Cesare Bonecasa . ( 1735-1793). *Dos delitos e das penas*.

<sup>4</sup> Black´s Law Dictionary. St. Paul Minn.:West Publishing Co. USA - 1990.

<sup>5</sup> BLACK´S LAW DICTIONARY. St. Paul Minn.:West Publishing Co. USA - 1990.

*severe punishment for something seriously wrong that somebody has done*<sup>6</sup>. The word retribution is adopted from the Latin name *retributio*, *Onis* with the meaning of *compensation*, that is, some measure (lat. *pensum, i*) of something that somebody gives to someone because he has hurt or damaged by him.

Usually, in our modern times, retribution as a sort of compensation, is translated into money. The word retribution is linked to the meaning of the radical *tribus, us*, (*tribe, a sort of political division contained in the organization of peoples*) and to *tributum, i* (*contribution raised by the political authority (state, prince, sovereign) from his subordinates to sustain the expenses of the state*). Retributive Justice means the forms of payment to which the offender is submitted by the political power to compensate the offences committed in face of state, groups or individuals.

*International criminal sense of law* still now obeys that principle of retribution. But it seems to be possible to substitute this sense of justice. It is what we are trying to do with our proposition of a Restorative System of Justice.

### **27 - Restorative Justice**

Over the whole world the systems of justice are not answering to society with the necessary and expected efficiency.

We are studying the claims against that situation.

At first, it is a question of principles. The failed structures, systems and organisms to produce justice are not well equipped to do it: the principle of partition of state power is, in general, focusing three autonomous powers: executive, legislative and judicial. In some states people have included a fourth one: moderator power.

But that division is an artificial fragmentation of the state: it remains the ideas of Montesquieu, who lived in the XVIII century, under an absolutist monarchy.

First, our criticism to that artificial division is concentrated in the historical and social reality: the human society survives using methods, respecting metaphysics and changing values.

The human beings do not accept a total submission to nature because our beliefs are linked to the idea of Somebody and Something Sacred. Christian, Islamic and Jew mystic tradition have the same origin. God has given *soul* to human creature *blowing* over it. Majority of us believe that in ourselves is the *Spirit of God*. Born and created in the western world, we suppose that we have been originated differently from the other beings. Our origin is attributed to an extraordinary conception of the *divinus spiritus*.

The word *spirit* has its root in the Latin *spiritus*, with the meaning of *wind, blow, expiration*. The mystic sense includes an adjective to that meaning: *sacred wind, sacred, blow and sacred expiration*.

Restorative Justice will not deny that belief: in fact, it is the practice under the respect for all beliefs: Gnostic, non-Gnostic and agnostic ones. Restorative justice intends to become the practice of a justice which main power is the beliefs and the credibility of the community. Restorative justice

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<sup>6</sup> OXFORD ADVANCED LEARNERS DICTIONARY. Oxford:University Press. Sixth edition.

has to be understood as a recall made by the community against the state, which purpose is to devolve to community the judicial power where the state is not efficient. Some modern states are theological. Some other ones are laics.

Within the ordinations of theological or laics states, the distributive justice has not the expected efficiency. Historically, when somebody claims for justice, the answer is not just, and, in face of the results, people feel injustice. We do not believe that it is impossible to change the actual structures and systems of justice. When we report to the state we intend to translate the idea of a big conjunction of social and individual forces. If we fragment that whole, we shall have the chance to adjust better the people to their ideals.

The proposed recall of the jurisdictional power back to community makes possible to rebuild, starting from that molecule of the state, the original scale of the lost human values. The common sense is the most present instrument for our proposals: the *common sense* of the communities has to prevail in face of what they consider offences. In fact, the *community common sense* is the expression of the most essential human values. The practice of restorative justice needs to hear the community, directly. Because of that it becomes essential to build a local restorative chamber expressing the soul of that human groups. Also the presences of the offender and the victim become essential.

As a consequence, the practice of restorative law through restorative justice seems to be more effective in the small communities than in the big ones. But this thought it is not more than an appearance. We have learned with a Greek, Thales of Miletos (ca. sec. V b.C.), and the theory of similarity of forms. The analogical reasons serve also to be applied in the conception of the social structure: what is characteristic on little structures has similarity in the big ones. The restorative justice functioning in the little social structures announces that it may function also in the generic human society.

The characteristics of the restorative justice should be resumed in the necessary elements of the restorative practice: 1) the restorative chamber representing the community, 2) participation of the offender(s); 3) participation of the victim(s); 4) participation of some facilitators

The main objective is to restore as much as possible the previous state of community, the victim, and the offender. That denies the intention of retribution or punishment starting from community to the offender. There are some essential requirements to practice the restorative justice: a) the intention to be as just as possible; b) the repentance of the offender(s) and the intention to compensate the victim(s); c) the victims intention to pardon; d) the common compromise of all the parts, community, offender and victim, to respect and to confirm the agreement and e) the definition of the nature of social forces to make respected the decision.

### **III - The Age of Globalisation**

#### **28 - National and International Restorative Law**

Restorative Law is connected with the belief that in some part of the multiple dimensions of space, time, matter, energy have possible existence

some of human societies ruled by Right, Law and Justice. If they are not cultivated in present may be they were existent in the past, or shall be a promise for the future. Restorative theory and practices intend to restore that model of human societies. As we know, it is very difficult to conciliate ideas and their materialization. But it seems to be easier to work with ideas than to work with empiric realities. The precedent text has tried to show how important are the concepts to build thoughts and to formulate propositions.

To work towards the conception of Restorative Law and Right is the consequence of our belief. We believe that Nature exposes human beings to a cosmic and universal experience. But as we are not able to be conscious of our limits in such an order of greatness as to perceive the phenomena in such cosmic dimensions, we understand that our limitation is projected to what we are able to think and to feel daily.

Hundred years ago the idea of internationality was understood and embraced only by some strong nations. Those nations, even when conduced by absolutist leaders, were organized in accordance with some juridical orders and principles. The force of authority was exercised under a supposed legitimate order. We are neither intending to restore absolutism nor other non-democratic orders. In fact, we are examining, through history, the human profile to find in its projection the best image useful to build a just, peaceful and harmonic international society. We have only discovered fragments of that possible model. They are not enough to restore the basic necessary concepts of Right, Law and Justice.

Mythology has helped, but has not been enough History has given its contribution, but has not completed the necessary foundations. Questions remains about what we want restore. It seems to be a dream, but we want to restore the planet. And that international process due to humanity has to begin in ourselves, within each of us. There is no other chance to succeed.

*Globalisation* is an extraordinary phenomenon. Of course it seems to be a new experience of the human beings. It embraces the individuals, groups, communities and nations. Its effects are not possible to be measured. The only international patterns we have to conceive the globalisation as a good way are the human values.

To understand restorative law and restorative justice we need the transdisciplinary attitude as a starting point: we will never arrive to such practices founded in uni, inter, pluri or multidisciplinary postures. We have not to go inter knowledges, but we have to cross them, to penetrate them. We need to get from the most different disciplines the human values in which they are based. Therefore, as we *feel* strict relations to human kind, it shall be possible that the progress on the basic human values will give us the necessary conditions to apply efficiently the international justice supported by the international transdisciplinary common sense.

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