Restorative justice in cases of historical institutional abuse

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New Advances in Restorative Justice Theory and Practice
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Outline

1. About the phenomenon
2. Testing restorative justice practice
3. Advancing restorative justice theory
Introduction: context and position

- Belgium:
  - 2010-2011: Parliamentary Special Commission ‘on the treatment of sexual abuse and facts of paedophilia within authority relationships, in particular within the Church’
  - 2012-2016: Center for Arbitration
  - 2014: Qualitative research into the needs of victims of historical violence and abuse in youth and educational institutions in Flanders
- 2014: Oñati workshop
- 2012-2014: Daphne project ‘Developing integrated responses to sexual violence’
- Informal exchanges
1. The phenomenon
A ‘new’ category of victims?

Definition
- Historical abuse of minors/adults
- In residential and community-based institutions
- Public, private, or faith-based
- Local to nation-wide
- Education, religion, care, sports, culture, work place, army, ...
- Institutional setting as a violence-facilitating factor
Nature of violence: sexual, physical, psychological/emotional, and neglect

Sexual abuse of minors over-emphasised

Not homogenous phenomenon – often combined types of violence, and to be placed in complex life context
Becoming a victim ...

- Historical dimension: delayed victimisation experience
- Victimisation = a social process that requires cognitive re-structuring/re-defining over a period of time
- Dynamic developmental approach: coping and appraisal – adopting a victim identity in interaction with interpretative environment
2. Testing restorative justice practice
Response models/mechanisms

- Criminal prosecution
- Civil litigation
- Public inquiries
- Redress schemes
- Memorialisation
- Personal counselling/therapy
- Mediation
- Self-help groups
The Belgian model

- Centre for Arbitration, 2012-2016:
  - 628 cases reported
  - Two phases:
    1) reconciliation
    2) formal arbitration
- The meeting

Diagram:
- Victim + support person + lawyer
- Church representative + lawyer
- Members (2 or 3) of Permanent Arbitration Chambre
Complexity - Three mutually influencing dimensions: personal – institutional – societal

Both an intimate and social experience

- Authority relationship
- Loss of basic trust
- Relational impact during longer period
- No meaning attribution
- No healing, no justice
Three main challenges

1. Reporting sexual abuse
   - Shame, guilt and non-recognition (self and society)
   - Low degree of reporting to police/justice
   - Reporting to confidential victim assistance programmes
2. Identifying and understanding the needs

- Role of institutional context
- Intermediate actors: lawyers, media, politicians
- Defining the needs in which terms:
  - Private or public
  - Harm or wrongfulness?
  - What kind of reparation?
- A central need: recognition
3. Partial vs. integral types of response

- Limits of judicial response/prescription
- Involving/responsibilising church authorities
- Towards an integral (sui generis) model?
Four main findings

1. Spatial dimension: the scope
   - Personal level: a therapeutic approach
   - Institutional level
     - The abuse itself: the facts
     - Control and supervision
     - Conditions of life
   - Societal/political level
   - Lesson: beyond the ‘bad apple’
2. Temporal dimension: from past to present to future

- Knowing and acknowledging what happened: the truth
- Current institutional policies and reform
- Safeguarding the future: prevention
- Lesson: more than a reactive, one-event approach
3. Relational dimension

- To better understand authority relationships and power in institutions
- Regaining power after violence? Redress requires a relational and interactional environment
- Lesson: focus on organisational cultures and space for (ongoing) dialogue
“The mechanism (power) that starts and maintains the violence and abuse was ingeniously and could not be stopped.”
4. Justice dimension

- Understanding the experience of ‘wrongfulness’ and ‘injustice’
- Justice interests as citizen (K. Daly, 2017)
  - Participation
  - Voice
  - Validation
  - Vindication
  - Offender accountability
3. Advancing restorative justice theory
Institutional violence: a new interdisciplinary field, with general relevance for RJ

Beyond a compartmentalised, mono-disciplinary approach, towards an holistic, integral, and generalised approach

Integrating restorative justice and responsive regulation?
### Restorative justice

- Handling particular criminal ‘cases’: ‘what happens to victim and offender?’

- Strategy at individual level: participation, procedural justice

- ‘Works’ when key actors experience satisfaction (process and outcome)

- Restoring communities

### Community justice

- Collective experience: ‘what happens to the community?’

- Broader strategies, including crime prevention: to improve community level where this has been damaged by crime

- ‘Works’ when quality of live in a given place improves

- Transforming communities

(A. Crawford)
Relation to transitional justice
- Truth recovery
- Prosecution and accountability
- Institutional reform
- Reparations
- Reconciliation
‘Integral justice’ (R. Mani, 2014)

- Beyond ‘external’ assistance to victims
- Tapping ‘the tacit, invisible and internal layers of victims’ diverse and multiple needs’ (providing language to articulate them, and institutions and mechanisms to respond)
- Five deepening dimensions of justice: politico-legal, societal, cultural, ecological and spiritual
Implications for RJ theory

- How large should the tent be? Is (restorative) justice about transforming individuals and societies?

- Understanding and responding:
  - Interrelation between personal, institutional and societal level;
  - How to reach the life-world of communities?

- The interrelation between informal and formal justice mechanisms
Implications for practice

- Conventional types of crime for RJ
- Exploring other fields, for example:
  - Road traffic offences
  - Corporate violence