Seminar on New Advances in Restorative Justice Theory and Practice

Leeds, 18-19 September 2017

Restorative Justice in Post-Conflict Situations:
Looking for Innovative Intersections in Theory and Practice

Stephan Parmentier
Leuven Institute of Criminology, KU Leuven
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Introduction

- Dealing with the past, transitional justice and post-conflict justice
- Serious human rights violations and international crimes
- Mass victimisation and plenty of offenders
- A variety of strategies and mechanisms
- Towards a criminological research agenda, with a specific focus on restorative justice
Transitional justice / post-conflict justice

“The study of the choices made and the quality of justice rendered when states are replacing authoritarian regimes by democratic state institutions.”
(Siegel 1998)

“The full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”
(United Nations 2004/2011)
1. Retributive justice in post-conflict situations: the dominant approach

1.1. Types of retributive justice

- Criminal prosecutions
- Civil actions
- Administrative actions
1.2. Strengths and weaknesses of retributive justice (mostly criminal prosecutions)

+ “justice be done”
+ victims want it
+ end impunity
+ prevent (deter from) future crimes
+ legal “duty to prosecute”

- (in)dependence and (im)partiality
- (in)capacity of the judicial system
- danger for the new regime
- focus on offenders
- emphasis on “western” values
2. ‘Changing lenses’ to restorative justice: various approaches

2.1. Types of restorative justice

- Victim-offender mediation programmes
- Family group conferences
- Peacemaking circles
- Other
2.2. Definitions of restorative justice

*Process-oriented – ‘minimalist’*:

“Restorative Justice is a **process** whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future.”

(Marshall, 1996)

*Outcome-oriented – ‘maximalist’*:

“Restorative Justice is every **action** that is primarily oriented towards doing justice by repairing the harm that has been caused by the crime.”

(Walgrave and Bazemore, 1999)
2.3. Degrees of restorative justice

E.g. McCold and Wachtel (2002):

- partly restorative
- mostly restorative
- fully restorative

- including references to victims, offenders and communities
2.5. Principles of restorative justice

E.g. Roche (2003):

- personalism
- reparation
- reintegration
- participation
Principles: PRRP

- Personalism
- Reparation
- Participation
- Reintegration

Based on: Roche, 2003
3. Some examples from around the world

- South Africa
- Bosnia / Serbia
- Other: Canada, Colombia, Northern Ireland, Peru, Rwanda, Sierra Leone, Timor Leste
South African Truth and Reconciliation Commission
• Objectives and institutional framework of the Truth and Reconciliation Commission

- the third way
- “Truth, the road to reconciliation”
- one commission, three committees (HRVC – individual and institutional hearings, RRC, AC)
The TRC and restorative justice
- a mixed assessment
- limited number of cases, mostly in the Amnesty Committee
- the road to reconciliation
- the links between restorative and retributive justice
- attention to long-term and to societal effects?
Bosnia / Serbia after the war (2006/2007)
# Bosnia (2006)

### Pie Chart: Is it possible for people in BiH to reconcile with each other?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>I don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>n</td>
<td>175</td>
<td>459</td>
<td>191</td>
</tr>
<tr>
<td>%</td>
<td>21</td>
<td>56</td>
<td>23</td>
</tr>
</tbody>
</table>

### Breakdown by Religion

<table>
<thead>
<tr>
<th></th>
<th>Catholic</th>
<th>Muslim</th>
<th>Orthodox</th>
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</thead>
<tbody>
<tr>
<td>Yes</td>
<td>23</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td>No</td>
<td>56</td>
<td>52</td>
<td>60</td>
</tr>
<tr>
<td>I don’t know</td>
<td>21</td>
<td>22</td>
<td>26</td>
</tr>
</tbody>
</table>
• Serbia 2007

<table>
<thead>
<tr>
<th>What does Reconciliation mean for you?</th>
<th>Frequency</th>
<th>Valid Percent</th>
<th>Percent of responses</th>
<th>Percent of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trust</td>
<td>29</td>
<td>3.1%</td>
<td>3.5%</td>
<td>4.8%</td>
</tr>
<tr>
<td>Forgive</td>
<td>111</td>
<td>12%</td>
<td>13.4%</td>
<td>18.4%</td>
</tr>
<tr>
<td>Forget (moving on)</td>
<td>30</td>
<td>3.3%</td>
<td>3.6%</td>
<td>5%</td>
</tr>
<tr>
<td>Remembrance (not forgetting)</td>
<td>27</td>
<td>2.9%</td>
<td>3.3%</td>
<td>4.5%</td>
</tr>
<tr>
<td>Status ante</td>
<td>29</td>
<td>3.1%</td>
<td>3.5%</td>
<td>4.8%</td>
</tr>
<tr>
<td>New Start</td>
<td>6</td>
<td>.7%</td>
<td>.7%</td>
<td>1%</td>
</tr>
<tr>
<td>Better future</td>
<td>2</td>
<td>.2%</td>
<td>.2%</td>
<td>.3%</td>
</tr>
<tr>
<td>No nationalism</td>
<td>4</td>
<td>.4%</td>
<td>.5%</td>
<td>.7%</td>
</tr>
<tr>
<td>Peaceful coexistence</td>
<td>202</td>
<td>21.9%</td>
<td>24.4%</td>
<td>33.6%</td>
</tr>
<tr>
<td>Dialogue</td>
<td>14</td>
<td>1.5%</td>
<td>1.7%</td>
<td>2.3%</td>
</tr>
<tr>
<td>Better living conditions</td>
<td>6</td>
<td>.7%</td>
<td>.7%</td>
<td>1%</td>
</tr>
<tr>
<td>Respect for human rights (freedom of movement,)</td>
<td>23</td>
<td>2.5%</td>
<td>2.8%</td>
<td>3.8%</td>
</tr>
<tr>
<td>Respect and Tolerance</td>
<td>110</td>
<td>11.9%</td>
<td>13.3%</td>
<td>18.3%</td>
</tr>
<tr>
<td>Justice</td>
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<td>.2%</td>
<td>.2%</td>
<td>.3%</td>
</tr>
<tr>
<td>Prosecution</td>
<td>31</td>
<td>3.4%</td>
<td>3.7%</td>
<td>5.1%</td>
</tr>
<tr>
<td>Acceptance of responsibility</td>
<td>81</td>
<td>8.8%</td>
<td>9.8%</td>
<td>13.5%</td>
</tr>
<tr>
<td>Truth and Acknowledgment</td>
<td>57</td>
<td>6.2%</td>
<td>6.9%</td>
<td>9.5%</td>
</tr>
<tr>
<td>Respect for victims and Victim Assistance</td>
<td>10</td>
<td>1.1%</td>
<td>1.2%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Reparation/compensation/commemoration/Return</td>
<td>17</td>
<td>1.8%</td>
<td>2.1%</td>
<td>2.8%</td>
</tr>
<tr>
<td>Security</td>
<td>2</td>
<td>.3%</td>
<td>.2%</td>
<td>.3%</td>
</tr>
<tr>
<td>Impossible</td>
<td>15</td>
<td>1.6%</td>
<td>1.8%</td>
<td>2.5%</td>
</tr>
<tr>
<td>Nothing</td>
<td>20</td>
<td>2.2%</td>
<td>2.4%</td>
<td>3.3%</td>
</tr>
<tr>
<td>I don’t know</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Invalid answer</td>
<td>11</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Missing values: 20.5%, Missing cases: 320.
Referring to RJ definitions:

- Process oriented:
  - very little dialogue between communities, rather within communities
  - mixed feelings, but potential in regional truth commission

- Outcome oriented:
  - very limited reparations, largely property restitution to victims, nearly always without dialogue
Other issues:

- coexistence as reconciliation
- ‘role reversal’ between victims and offenders
- religious / cultural dimensions
- restorative justice and peacebuilding
4. Areas of innovation for theory and practice

- RJ for common / classical crimes in post-conflict settings:
  - role of criminal justice agencies (police, prosecutors, judges)
  - obstacles: lack of trust, lack of knowledge, lack of resources, implementation gaps

- other practices: e.g. Peace Committees in South Africa (Shearing et al., 2007)
• RJ for political crimes (Ross, 2002) and serious human rights violations in general, also in democratic societies

- e.g.: police corruption, political violence and killings, terrorism, sexual abuse, etc
A tribute to Nils Christie (1928-2015)
Concluding remarks

- transitional / post-conflict justice: a broad research agenda
- restorative justice: what is in a name?
- restorative justice in post-conflict settings: from ideological discourse to empirical assessment
- new innovative areas for restorative justice in post-conflict and democratic contexts
Thank you for your attention!

Further information:

stephan.parmentier@law.kuleuven.be

www.law.kuleuven.be/linc