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Larissa Fulop

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Transitional Justice: An Overview

Larissa Fulop

Transitional justice is an approach to achieving justice in times of conversion, from conflict and/or state repression, to a peaceful condition.¹ By trying to achieve accountability and redressing victims, transitional justice provides recognition of the rights of victims and promotes civic trust. Each of these objectives are ultimately aimed at strengthening the democratic rule of law.² Moving forward as a collective in the aftermath of gross human rights abuses requires that a victim's right to see perpetrators punished be realized. Yet, a society affected by mass atrocity inevitably fragments along various social, cultural, political, and economic frontiers. These societies cannot be repaired without an added element of reconciliation between both the victims and the perpetrators of such atrocities.³

Justice and reconciliation are often viewed as competing objectives in the process of sustaining peace.⁴ However, through the efforts of a wide range of judicial bodies such as international tribunals and United Nations (UN)-funded special courts or, on a smaller scale, domestic judicial processes such as the Rwandan Gacaca courts and truth commissions, retributive and restorative justice can effectively uphold reconciliation efforts.⁵ Peacekeeping in

¹ "What is Transitional Justice?" International Center for Transitional Justice, accessed March 13, 2012, <http://ictj.org/about/transitional-justice>.

² Ibid.

³ Larissa Fulop, "Post-Conflict Reconstruction in Transitional Societies: Should Societies turn to Retribution or Restoration, or Both?" *Undergraduate Transitional Justice Review* 1 (2010): 2.

⁴ Ibid., 4.

⁵ Janine N. Clark, "The Three Rs: Retributive Justice, Restorative Justice, and

the aftermath of genocide, such as that conducted by the UN, requires a concerted effort by regional actors. These actors must support local projects geared at reforming national institutions that have proven either unwilling or unable to prevent abuses prior to and upon their occurrence.⁶

The decision of what types of transitional justice mechanisms ought to be pursued in a given post-conflict circumstance must take into account the uniqueness of such contexts. Reconciliation is too great an undertaking to be limited to a single mechanism.⁷ Although retributive justice may serve an important individual or moral end, restorative justice may have a greater potential to foster national reconciliation and therefore should complement criminal prosecutions and direct resolution initiatives.

Reconciliation amounts to a common goal between diverse transitional justice mechanisms. Yet, it is often indistinctly defined. Contrition from perpetrators, forgiveness from victims, and reintegration of reformed offenders into civil society together constitute a basic framework for the reconciliation process.⁸ National reconciliation can be said to have been achieved once socio-political reforms advance without lapsing into their past corruptive or abusive forms.⁹ Individual reconciliation occurs when community members feel that neither fear nor hatred continues to restrain their lives, and plays an indispensable and independent role with regards to national reconciliation.¹⁰ It is possible to have national reconciliation in the absence of individual reconciliation, whereby the former comes at the expense of the latter. Following violent conflict, social reform and governmental restoration may thrive while victims and perpetrators

Reconciliation,” *Contemporary Justice Review* 11 (2008): 331.

⁶ “What is Transitional Justice?”

⁷ Fulop, 4.

⁸ Clark, 340.

⁹ Eirin Mobeck, “Chapter 9: Transitional Justice in Post-Conflict Societies— Approaches to Reconciliation,” in *After Intervention: Public Security Management in Post-Conflict Societies – From Intervention to Sustainable Local Ownership*, ed. Anja H. Ebnother and Philippe H. Fluri (Geneva: Partnership for Peace Consortium Working Group on Security Sector Reform, 2005), 263.

¹⁰ *Ibid.*

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alike find it difficult to live with and overcome their deep-seated experiences.¹¹ Transitional justice mechanisms, therefore, must not only work to pacify and preclude warring factions, but also to resolve discrepancies between national and individual spheres of operation within an integrated society.

It is ultimately possible for retributive and restorative mechanisms of justice to coexist and complement one another during the transition to peace in post-conflict nations. Truth commissions can facilitate the work of trial procedures by establishing accountability for widespread human rights abuses, while trial procedures can impart factual evidence so as to enhance the value of truth commissions.¹² It is simultaneously true that the rule of law is the foundation of safety and stability in civil society, and that acknowledgement and forgiveness coupled with institutional reform can best advance both individual and national reconciliation. Thus, a harmonization of retribution and restoration will best promote the reform of domestic judicial systems and support reconciliation procedures in transitional societies.

¹¹ Fulop, 5.

¹² Mobekk, 273.

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