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BOOK OF ABSTRACTS

Introduction: Comparative restorative justice

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Abstract

The introduction chapter aims to provide the context for the book's topic of comparative restorative justice by meeting three objectives. First, it puts three common denominators between comparative *criminal* and *restorative* justice in a historical continuum. Without understanding the journey that has led us talking about comparative restorative justice today, we run the risk of seeing its emerging study only partially. Second, the chapter attempts to define comparative restorative justice using a consensual conceptual model. Subsequently, it presents six comparators within restorative justice. The chapter argues that they have been presented in the extant literature in the form of faultlines, when, in reality, they are merely comparative expressions of the restorative justice norm and practice. These comparative axes have been missed in research and policy analysis. This misdirection can only be addressed and our understanding and implementation of restorative justice can only be improved, if the study of comparative restorative justice is further developed. The chapter claims that this volume takes the first collective step towards this direction, as its various contributions provide context for these comparative axes within the restorative justice field and study.

Part I: Comparing restorative justice in its implementing environments

Chapter 1: Rethinking Accusation and Two Formative Restorative Justice Promises

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Abstract

The first chapter of this volume returns to two early promises of the restorative justice movement that have fallen by the wayside in current socio-cultural and political environments. First, a formative promise was to divert neighbourhood social harm from state-based criminal justice institutions to pursue conflict resolution within communities — sometimes with overtures toward decolonizing concepts. Secondly, the early promise of a paradigm shift in justice thinking was to recast dispute resolution techniques beyond narrow ideas of crime, individual culpability, and punishment. Restorative justice was to distinguish

itself from individually centred crime control by focusing on transforming social relations that resulted in conflict. Rekindling such promises in light of restorative critiques of criminal justice and engaging with the pivotal role that accusatory practices play in sustaining criminalization, the discussion examines what these promises might mean for legally plural contexts. Through a comparison of promise, practical effect, and future revitalization, it argues that restorative justice should embrace new forms of accusation to divert individuals facing criminal accusations, and to transform intersectional social relations that produce harm.

Chapter 2: General Terms of Comparison: Two Cores of the Restorative Justice Apple

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Abstract

What does it mean to be doing restorative justice in different criminal justice contexts? In order to answer this question, we must first reflect on the general terms of restorative justice that make comparisons possible. Comparative research often takes for granted the existence of a tangible object for empirical study. As a result, it tends to overlook deep theoretical issues that have not been resolved and which have consequences. This is problematic because a sound understanding of theoretical issues and their implications is ultimately fundamental to any comparative project. In this chapter, I embark on laying the necessary theoretical groundwork to enable meaningful comparisons of restorative justice. I do this by exploring two general terms that are common to restorative justice in the implementing environment of criminal justice: 1) a relationship to criminal justice; and 2) a relationship to moral psychology. I proceed by examining the dialectical relation between restorative justice and criminal justice and where restorative justice sits in the broader criminal justice field. I then turn to develop a more adequate account of the moral psychology of restorative justice than currently exists. What it means to do restorative justice in criminal justice requires a sufficient understanding of both of these core elements. The preparatory theoretical standpoints that I pursue in this chapter facilitate the advancement of important issues central to contemporary comparative restorative justice inquiry.

Chapter 3: An East African Comparative study of indigenous vs post-colonial restorative justice in Tanzania

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Abstract

The inherited concept of justice in Tanzania is closely tied to the concept of imposing punishment on the wrongdoer. Prior to colonialism by the Germans and later the British, Tanzania's indigenous justice system was mostly restorative in nature. The system was based on the idea of *udugu* (brotherhood). The European "imported justice" was not compatible with the native laws that aimed at restoration of harmony and peace in tribal communities, mainly because native laws were subjected to the repugnancy test: the British defined what was "just" or "moral." Now, more than a century later, Tanzania's imported legal system

is replete with challenges, particularly delays, citizen's lack of confidence in the system, prison overcrowding and the inability and perhaps unwillingness to reintegrate offenders. The country enacted various laws such as the Ward Tribunals Act of 1985 and the Criminal Procedure Act of 1985, to mention only two. Such laws allow the use of mediation in criminal matters and the imposition of community service in lieu of incarceration to ease the burden of caseloads and costs in Tanzania. Rather than an attempt at a wholesale return to pre-colonial tribal laws, a restorative justice approach is meant to complement the conventional justice system. Nevertheless, it is a worthwhile effort to compare attempts to implement restorative justice in Tanzania as a post-colonial initiative with pre-colonial practices of restitution and restoration. It is equally apt to suggest some possible changes. This chapter should be useful for researchers and policy makers from around the globe: it contributes to knowledge on how the thought of as 'weak' pre-colonial justice system could complement the post-colonial justice practices, which would enhance national pride.

Chapter 4: The shadows of bloodfeud in the development of restorative justice – illustrations from Albanian and Scottish history and literature

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Abstract

Bloodfeud is reflected in the literature of both countries, in Albania by the novels of Ismael Kadare in the 20th Century, and in Scotland in the 19th century by two novels of Sir Walter Scott. In different ways these literatures reflect the concerns of the novelists about the direction of modernity and the place of tradition in the emergence of the modern state.

In essence, the Albanian *Kanun* has had a strong impact on post-communist efforts to introduce restorative justice. In Scotland, *Assythment* has had a more muted impact, but it has influenced contemporary legislation relating to compensation and the conceptualisation of restorative practice. Albania and Scotland have had ancient traditions of responding to bloodfeud which remained well into the 20th century. However, the two systems of response had completely different focuses, rules and ways of operating. Both systems have had a direct influence on discussions and development of restorative justice, and both have deep roots in their respective cultures.

Therefore, this chapter will compare the historical context and application of bloodfeud responses in Albania and Scotland. Furthermore, it will illuminate the cultural, historical and critical issues surrounding the responses in the literature of the two countries. Finally, the chapter will reflect on the impact of cultural inheritance upon the contemporary development of restorative justice in the two countries. The comparative findings aim to inform international policy, research and practice.

Chapter 5: Canada: Rethinking restorative justice and its implementation in a postcolonial era

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Abstract

Canada has a rich and diverse criminal justice system. Before its colonization by mostly Europeans, Canada's Aboriginal peoples had their unique model of justice. As has been well documented, the Aboriginal people practiced what is now commonly referred to in the criminological and criminal justice literature as 'restorative justice.' However, because of what has been more recently acknowledged as cultural genocide, little attention was given to how Aboriginal people maintained 'law and order' before the arrival of foreign settlers. It was not until the early 1970s that the colonizing nations began introducing elements of restorative justice into the conventional Western European model of criminal justice. Such elements, however, were implemented and operationalized differently than the various traditional practices of the Aboriginal peoples. Canada has had two different models of restorative justice that have not always been complimentary in their implementation or operationalization. This chapter will compare the evolution of both models of restorative justice in Canada, and offer an assessment as to how history has reshaped the meaning and practice of restorative justice for wider learning by the international community.

Chapter 6: Opportunities and challenges for race equality in the age of COVID-19: Comparing virtual with face-face approaches to restorative practices in schools and communities

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Abstract

In recent years, academics, practitioners, and activists have been expanding implementation and evaluation of restorative justice as an antidote with potential to heal and build social fabric across school and neighbourhood communities. Almost exclusively, however, this implementation has involved face-to-face interaction. Amid the coronavirus pandemic, many schools within the United States were forced to close or move to alternate instruction and gathering people together in a community became difficult. Within this context, we, along with other educators and practitioners, were forced to adapt practices of restorative justice to virtual spaces. In this chapter, we explore the potential of virtual restorative practices with a comparison to current literature on its in-person practice, as well as the concrete experience and application within the coronavirus pandemic. First, we describe what virtual restorative practices could look like, drawing on and extending current literature. We next detail our own involvement in processes of adapting restorative practices to virtual spaces in schools and communities during the pandemic. Finally, we end by highlighting opportunities, challenges, and questions to be addressed in considering the potential of virtual spaces for practices of restorative justice.

Part II: Comparing restorative justice: Adversarial vs inquisitorial criminal justice systems and beyond

Chapter 7: Comparing the transition from an inquisitorial to an adversarial criminal justice system: An opportunity for restorative justice in Chile

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Abstract

The chapter aims to analyse the differences in the application of restorative justice in Latin America and particularly in Chile after twenty years of transition from an inquisitorial criminal justice process to an adversarial one. During this time, some countries made penal mediation a normative part of the penal reform process, along with other more communitarian penal conflict management mechanisms as a way to put the opportunity principle into practice, granting prosecutors the freedom to take decisions on penal action. By contrast, in other countries these restorative mechanisms were not regulated, producing highly diverse effects. For this study a dogmatic and qualitative methodology was used, with a descriptive and exploratory design. Our conclusion is that in Latin American countries where restorative mechanisms were regulated by norms and in some cases the Constitution, their development and the acceptance of its operators was much higher, with a better perception of the people who took part in them vis-à-vis justice. By contrast, in other countries where no full regulation existed and these mechanisms only operated as pilot programmes, they tended to disappear after only developing alternative options and abbreviated or simplified trials, without using restorative methods, but rather with quick and superficial negotiations between the prosecutor and the defender, with little victim participation and no fulfilment of the goals and quality intended in their design. These outlets focused on judicial decongestion, which the parties involved to no understand and the general public considers negligence by the state apparatus faced with citizen safety, granting no effective solution to penal conflicts.

Chapter 8: Comparing the implementation of restorative justice in the inquisitorial system of China with the adversarial tradition in Hong Kong

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Abstract

This chapter compares the use of restorative justice processes in China and Hong Kong, the latter having a post-colonial era of adversarial justice tradition whereby the State adopts an inquisitorial approach based on the civil law system. The practice of restorative justice in Hong Kong is minimized as a diversionary measure exercised under restricted circumstances because no formal procedural rule is in place. In China, however, the inquisitorial approach is much institutionalized and formulated that resembles not only a legal justice process, but also embedding a rich socio-legal traditions that exist in a Chinese society. Based on fieldwork

in Hong Kong and case studies from China, it emerges that though the inquisitorial system in China might have provided a better premise to embed the practice of restorative justice within the system than the adversarial tradition in Hong Kong, in real practice, the true essence of restorative justice practice is entrenched more in the cultural root, the people, and the administrative structure within the systems. This Chapter compares the differences of the legal systems and the similarities in cultural norms that have influenced the use of restorative justice at practice level in China and Hong Kong. The convergence of socio-cultural norms resulting from a homogenous population in both China and Hong Kong supports the practice of restorative justice. However, from the research results on real cases handled, a divergence in the implementation of restorative justice is revealed.

Chapter 9: Roadblocks and Diverging Paths for Restorative Justice in Australia and Aotearoa/New Zealand

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Abstract

In this chapter we examine contemporary uses of restorative justice in Australia and Aotearoa/New Zealand. Restorative justice is well-established in both countries, especially in the context of youth justice. Research on restorative justice from both countries, but especially Australia, has documented clear benefits for both victims and offenders. On the other hand, restorative justice also faces substantial challenges that are frequently overlooked in scholarly research in Australia and Aotearoa/New Zealand. There are also tensions or fault lines in both countries between the scope and limits of restorative justice within “mainstream” youth and adult criminal justice, and advocacy for its growing use outside of mainstream justice. Our chapter looks at these challenges on three levels – macro (i.e. political and social structural), meso (i.e. institutional, community, and group) and micro (i.e. practice and delivery). We explicate these challenges in the context of issues specific to Australia and Aotearoa/New Zealand, but also comparatively when possible in terms of similar problems in other jurisdictions where restorative justice is used within adversarial justice systems. We conclude with discussion of how these challenges may or may not be resolved in terms of possible trajectories for restorative justice.

Chapter 10: Community and Restorative Justice Practices in India, Nepal, and Bangladesh: A Comparative Overview

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Ram Tiwari, Director, Nepal Forum for Restorative Justice, Nepal
Nibras Sakafi, Development Professional, Bangladesh

Abstract

Practices grounded in restorative justice values and principles are not new to South Asia. Contemporary justice practices such as panchayat in India, salish in Bangladesh, and melmilap in Nepal trace their heritage to the pre-colonial era. These justice practices were gradually marginalized with the advent of colonization. Colonialism not only distorted pre-colonial state and governance mechanism, it also replaced informal justice practices with punitive criminal justice system. Nonetheless, in recent times, the authors see a resurgence of informal justice practices such as restorative justice South Asia especially in India, Nepal and Bangladesh. The authors articulate key highlights of these informal justice practices. Additionally, the authors analyze themes emerged from literature review on colonial legacy, role of civil society, and state and its connection to community-based justice practices in South Asia. Even though this study is primarily a review of works happening in the region, nonetheless, it is significant because this study sets the foundation for a comparative analysis of justice practices in India, Nepal and Bangladesh.

Chapter 11: A comparative review of the incorporation of African traditional justice processes in restorative justice child justice systems selected in Sub-Saharan Africa

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Mike Batley, CEO of the Restorative Justice Centre, South Africa

Abstract

This chapter presents a comparative assessment of Uganda, Lesotho and Eswatini. These countries all have common law adversarial justice systems, but also all have African traditional justice procedural systems running parallel with the formal legal system, making them plural legal systems. All three states have introduced new legal frameworks for child offenders that include restorative justice elements, and have attempted to fuse the formal state system to the informal non-state system in relation to restorative justice processes. The chapter begins with an examination of the extent to which traditional court processes are similar to (and differ from) contemporary restorative justice approaches. A comparative analysis is then undertaken of the child justice systems in the three selected countries, drawing out their history and context, how each of the new child justice laws has incorporated restorative justice principles and practices, and the extent to which each has formally embedded African traditional justice systems into the legal framework. The analysis of how well this has worked in practice, from the limited information available, is somewhat disappointing. There is little evidence that the embedding has provided a sustainable, accessible or effective system in any of the three countries reviewed. The proposed solution is to develop traditional systems through co-operative work between traditional leaders and restorative justice practitioners, policy makers, academics and stakeholders.

Part III: Comparing impetuses for restorative justice

Chapter 12: Comparative Statistics in the Field of Restorative Justice

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Abstract

International regulations and recommendations urgently demand to promote and implement statistics in the field of Restorative Justice. For example, the UN Basic Principles on the use of restorative justice programmes in criminal matters claimed that Member States should promote research on and evaluation of restorative justice programmes. More recently the EU Victim's Directive regulates that Member States should communicate to the Commission available data showing how victims have accessed the rights set out in this Directive. Finally, the Council of Europe Recommendations concerning restorative justice in criminal matters say that restorative justice services should develop appropriate data recording systems. This chapter firstly evaluates to what extent these regulations and recommendations have been implemented throughout Europe. Therefore, the analysis compares the kind and number of data, which different European statistics on Restorative Justice collect. Secondly, the chapter explains the German Victim Offender Mediation statistics (Bundesweite Täter-Opfer-Ausgleich Statistik) as an example in more detail. And finally, the chapter analyses cases with female offender as an example for the value of a long-term ongoing statistics. The comparative learning from this chapter is helpful for the international reader who wants to take the next steps in the development of restorative justice for policy, research and practice.

Chapter 13: Contemporary structured vs. indigenous restorative justice in South Africa: Quo vadis?

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Abstract

The chapter compared structured versus indigenous restorative justice by focussing on the reasons that motivated South Africa's judiciary to implement restorative justice. The hypothesis explored in the chapter proposes that indigenous philosophies and procedures provide imputes for the inclusion of restorative justice into South Africa's criminal justice system thereby contributing to an ordered yet socially-oriented restorative approach to justice itself. Findings from this comparative case study highlighted two distinct approaches that provide imputes for the inclusion of a restorative approach in South Africa's judicial system, namely firstly, the similarities between restorative justice and *ubuntu* and the coinciding recognition of traditional justice as a parallel legal system and *ubuntu* as a constitutional value. Secondly the overt inclusion of restorative justice and indigenous philosophies and procedures in South Africa's Child Justice Act. Findings indicated that although restorative justice is appropriate for use within South Africa's criminal justice system, its application is, except for in the Child Justice Act, predominantly discretionary due

to it being viewed as an alternative sentencing option, one that stands in opposition to a more readily accepted retributive approach in adjudication. The Child Justice Act is used in the chapter as an example of how criminal justice can be more than either restorative or retributive but used parallel in criminal justice. The chapter furthermore proposes that western and African philosophies could contribute to inclusive social transformation and restoration due to the overlap between the *ubuntu* philosophy and western models of human rights.

Chapter 14: Comparison of Native Hawaiian Traditional Ho'oponopono and Modern Restorative Justice Practices

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Abstract

This paper analyses the history and components of the traditional family-based Native Hawaiian conflict resolution process ho'oponopono and modern restorative justice (RJ) practice as described by Zehr (2015). The two distinct types of group processes are compared and contrasted by applying each approach to case studies. Ho'oponopono has been practiced by Native Hawaiians for hundreds of years and is considered a traditional healing practice, while Westerns began developing modern RJ practices in the 1970s as mediation and restitution became popular justice responses. Ho'oponopono and modern RJ practices share similarities in bringing people together to discuss how they have been harmed from wrongdoing and what might repair damaged relationships. Ho'oponopono is traditionally a family practice methodology while modern RJ practices are frequently used for unrelated parties. As with all traditional Hawaiian cultural practices, ho'oponopono is grounded in spirituality. Ho'oponopono is facilitated by a "haku" who is a respected practitioner in the Hawaiian community. Modern RJ practices are democratic, include stakeholders of the incident that created the harm needing repair, are non-adversarial, and only spiritual to the extent that participants bring it to the group. Ho'oponopono participants engage in the process with other family members until harmony is restored and amends are made. Respecting indigenous healing practices means that others who are not from that indigenous group refrain from adopting and altering the practices to fit their own worldview. Examples of misappropriations of both ho'oponopono and modern restorative justice are discussed, particularly within the context of the practices being adopted in the absence of an indigenous group's core cultural values. This paper examines the similarities and differences between ho'oponopono and modern RJ.
