

Central and Local Approaches to Transitional Justice

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ABSTRACT

This paper aims to examine the relationship between central and local approaches to transitional justice in post-conflict situations. It is found that these two levels are not as 'neat' as some may suggest, and actors from both levels behave in ways more commonly attributed to the other level. By thinking of them in dynamic and behavioral rather than static and spatial terms, the (inter)relationship might be better understood. This is important as transitional justice is increasingly employed and local approaches (sometimes uncritically) are sought after.

Keywords

Transitional justice, post-conflict transition, central, local.

INTRODUCTION

'Local' methods to moving out of conflict and promoting reconciliation (in contrast to centrally-organized methods) have been of particular interest to scholars in transitional justice. (Hughes et al 2015) They have been critical of their discipline and the directions in which it may be going, and thus as the 'local' receives more mention (and praise), its relationship with the central level must also be examined in order to better understand each approach and how they interact.

This paper seeks to examine how central and local approaches to transitional justice might be employed in post-conflict situations. The paper briefly sets an overview of the goals of transitional justice as a foundation. It then turns to its main question and defines the terms 'central' and 'local'. This is more complicated than it seems, as the lines between the different levels are often confused and each is often defined in relation to the other. Once the terms have been elucidated upon, a description of how these approaches work can be given, including their benefits and drawbacks. After an examination of police reform in post-conflict Northern Ireland, conclusions are drawn about their relationship. It is unfortunately not within the scope of this paper to discuss the international level, but this paper does acknowledge its increasing importance in transitional justice, especially in the globalized era. (Rhot-Arriaza 2010; Sharp 2014; Teitel 2002)

1. GOALS OF TRANSITIONAL JUSTICE

When occurring in a transition from armed conflict, the goals of transitional justice are both to find some kind of truth behind crimes committed during armed conflict, and

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to restore a lasting peace. Eisikovits calls this the "central and definitive tension" at stake in transitional contexts. (Eisikovits 2014) Peace here does not mean merely the significant reduction of violence, but also reconciliation. For this to emerge, it is often argued that the underlying sources of the conflict must be addressed. Calls for justice in such contexts thus also tend to come with calls for establishing a comprehensive truth that details "what happened, how, why, and what the sources of responsibility are." (Bassiouni 2002)

Bassiouni outlines the two outlooks of transitional justice. On the one side, it looks to the past by reflecting on and illuminating the nature of the violations that took place, and holding to account the individuals responsible for those violations. On the other side, it looks to the future by rebuilding the systems that failed to protect many citizens during the period of extensive violence, and more generally by creating a stable peace in those societies marked by conflict. (Bassiouni 2002) Transitional justice mechanisms could be seen as obstacles to reconciliation, because they were charged with investigating violent and divisive histories which might "interfer[e] with a forward-looking political change." (Leebaw 2008) It is also possible, however, that reconciliation will not happen if there is no accountability for massive human rights abuses, thus hampering the likelihood of a lasting peace. This tension is especially difficult in some transitional societies in which "the traditions and institutions so important for navigating these questions are not yet present," the way they are in contexts where ordinary justice is being employed. Simply trying to create or rebuild these institutions in turn "creates situations where peace and justice must clash." (Eisikovits 2014)

With this foundational understanding of the goals of transitional justice we can begin to examine the local and central approaches to fulfilling these goals.

2. THE 'LOCAL'

In the past 15 years, 'the local' in post conflict discourse has become more fashionable with both theorists and practitioners. (Hughes et al 2015, MacGinty 2015) The state is no longer the primary viewpoint to understand conflict, as it was in most of the 20th century; instead of state institutions, social forces are being recognized as a key component in conflict analysis and peacebuilding. (MacGinty 2015) Originally, discussions about transitional justice were based on a state-centric approach to promoting accountability, truth seeking, or other means of addressing the serious violations of human rights committed by an authoritarian regime. The state or the new regime was thus seen as the main authority in making transitional justice decisions. (Obel Hansen 2014, Teitel, 2002) From the 1990s onwards, however, transitional justice methods have also been applied in more diverse contexts. The field has thus become associated with statebuilding and peacebuilding, in addition to democratization, reform, and the rule of law. (Teitel 2002) Civil society and international actors have more input and relevance in transitional justice decision-making, both in theory and practice; the state is now only one of the actors who have a stake in shaping transitional policy. (Obel Hansen 2014)

It is generally understood that the transitional justice ‘toolkit’ cannot be applied in the same way in different legal and political cultures, and its mechanisms cannot work without participation and ‘ownership’ by the inhabitants of the country concerned. (Waldorf 2016) MacGinty outlines some of the benefits of the ‘local approach’ for development and peacebuilding practitioners, the most important being access to and legitimacy with the people with whom they are working. (MacGinty 2015) In addition, when enabling local ownership, transitional justice is said to be more responsive to the needs of both victims and the larger society, and can take their values, institutions, and practices more seriously. Overall, this would help (re-)establish norms of what is acceptable and unacceptable behavior in the society, based on a broad participation in the process of clarifying those norms. (Clamp and Doak 2012) This may also yield an increased understanding of the harms committed, and more broadly of the different parties to the conflict. Furthermore, Orentlicher explains that the participation of victims and other citizens in the process of designing as well as implementing transitional justice programs “helps ensure that policies for combating impunity effectively respond to victims’ actual needs and, in itself, ‘can help reconstitute the full civic membership of those who were denied the protection of the law in the past,’” which is key to fulfilling the needs of victims and societal reconciliation. (Orentlicher 2007) This also might give the transitional justice mechanisms employed a greater legitimacy than if they had only been coordinated centrally. (Waldorf 2016)

3. THE ‘CENTRAL’

That being said, relying too much on a local approach is ineffective and could undermine the goals of transitional justice. Local leaders may have an interest in covering up the crimes for which they are responsible, ignoring the needs of victims, or using methods that are in conflict with international human rights norms. (Sharp 2014) As they have an interest in maintaining their position, there is also a concern that local elites will abuse the rhetoric of local ownership to reinforce oppressive power structures. (Lundy 2011, Orentlicher 2007) A heavy reliance on the local approach may thus lead to recreating the same exclusive and discriminatory structures that fueled the conflict in the first place. Furthermore, local participation does not automatically give legitimacy to the transitional justice mechanisms being employed. A central-level approach can allow actors to use their greater resources and expand the transitional process over time. (Thoms et al 2010)

Certain reforms are already situated at the central level, such as prisons, police, or the judiciary, as well as ending exclusionary formal practices affecting marginalized and resentful groups. The central level will have an especially important role if the state was the source of violence or human rights abuses; they will have a particular responsibility in establishing the line between the old and new regime. (Rhot-Arriaza 2010) Additionally, central approaches might be more likely to have the resources and access to take a larger, more holistic, multi-mechanism approach. Conflicts which are divisive, also in territorial terms, will require justice which involves the meeting of people from different regions who were pitted against each other during the conflict. They will need to hear each other’s stories, so as to reduce power of their collective identities and build bridges across divisions.

Aiken 2014) As Thoms, Ron, and Paris—citing Long and Brecke—explain, “‘extensive truth telling is the critical starting point for successful peace settlements... Successful reconciliation, the authors find, is a protracted and complex process that includes truth telling, identity redefinition and ‘partial justice short of revenge.’” (Thoms et al 2010) This is more feasible on a larger, country-level scale, as the resources for such mechanisms may be more readily available and combinations of mechanisms can be better monitored. Studies by Call, by Snyder and Vinjamuri, and by Lie et al. also note that in countries which already have (or are on their way toward having) a democracy, the central level already has a great deal of credibility and will be able to legitimately implement transitional justice policy by allowing parliament to vote on bills by and facilitating country-wide consultations. (Thoms et al 2010)

A state might also have a better ability to oversee how the different mechanisms work together, and in this sense make decisions about which are appropriate or necessary for the overall process. (Thoms et al 2010) Having a central approach can help provide an overview of what efforts are being made in a country, which makes it easier to coordinate, organize, and monitor various local efforts. Actors at different levels have different and varied experiences with designing and implementing transitional justice policies, and will have unique insights to offer. Different actors can also make up for each others’ faults, for example local elites may be unable to cover up crimes if civil society organizations are there to vouch for accountability. (Obel Hansen 2014, Fletcher and Weinstein 2002) Fletcher and Weinstein also note the importance of an organized overall strategy, arguing that, “‘piecemeal approaches that involve separate agencies attempting to change different components of a system are doomed to failure’” if they are not coordinated. (Fletcher and Weinstein 2002) Thus, a central strategy can be useful for overseeing how different local operations interact, and make adjustments as needed. (Rhot-Arriaza 2010)

4. ROMANTICIZING THE LOCAL

The popularity or fashionableness of the ‘local turn’ in literature seems to have allowed scholars to rely on oversimplified definitions of ‘the local’. Furthermore, it can tend to make them under-critical of such an approach, or at least overlook some of the benefits of a central-approach. (MacGinty 2015) The literature sometimes defines the local as involving “‘that which is at the ‘bottom’, ‘on the ground’, or works from the ‘bottom-up’”; it works on a smaller scale and is often associated with the ‘traditional’, ‘indigenous’, or ‘customary’.” (Hirblinger and Simons 2015) This could set it up for marginalization; external actors have a tendency to assign “‘benign, but shallow characteristics to local communities.” (MacGinty 2015) This removes the agency from these communities and compacts what might be a complex or contradictory identity. Even worse, there is a danger that these communities can be used and even ‘commodified’ by these actors to legitimize their own agenda. MacGinty explains that as a result of this shift, discontinuities have arisen: the local is seen as problematic by being ‘underdeveloped’ and the source of conflicting identities, but also as a solution to its own problems through its ‘traditional wisdom’. This shows how the concept of ‘the local’ is “‘malleable and capable of being made and remade.” (MacGinty 2015)

Thus, it seems it would be prudent for transitional justice actors to keep in mind the dangers of over-simplifying their understandings of the 'local', lest they romanticize and, in turn, abuse it.

5. SITUATING LOCAL AND CENTRAL

Now that we have come to a greater and more nuanced understanding of the local and central levels, we can try to situate each level in order to help us understand their relationship with transitional justice.

While government is often considered to be the main actor at the central level, an actor's 'embeddedness' in government does not necessarily exclude them from being a part of the local, particularly if they were legitimately elected. (Thoms et al 2010) So-called 'local' leaders, in a conflict or early post-war situation; are said to "understand intimately the fear and suffering with which much of the population must live; they also have an expert knowledge of local politics and know on a face-to-face basis the local leaders of the government and its adversaries." (Lederach 1997) Thus, it is possible that they can provide a unique input in regards to the needs of the greater society, particularly people who may otherwise be overlooked, such as victims, women, children, or minority groups. (Orentlicher 2007) That being said, local leaders can also be highly embedded in the conflict and thus be partial, which may in turn make them likely to favor 'their' group over another. (Hirblinger and Simons 2015) While they may be generally considered as a part (or representation) of the local level, they may also perform tasks normally associated with the central level, for example creating governance structures or joining negotiations regarding the content peace agreements. (Arjona et al 2015) Thus, it is clear that the lines between the two are blurry, and actors' behavior may be more telling than simply their title or the 'space' in which they are thought to be situated.

6. CASE STUDY: NORTHERN IRELAND

The police reforms in post-conflict Northern Ireland illustrate the tensions between the central and the local.

The conflict in Northern Ireland was defined by conflicting identities and organized fighting between military and paramilitary organizations. To put it simply (recognizing the lack of nuance in this brief explanation), one side could be said to have been those in support of remaining a part of the UK (the Protestants/loyalists/unionists), while the other side supported joining with the rest of the Republic of Ireland (the Catholics/republicans/nationalists). (Ruane and Todd 1996) The latter perceived themselves to be victims of English colonization: robbed of their wealth and heritage. The former perceived themselves as constantly under threat of dispossession and loss of political control by the 'native' population. (Cochrane 2013) This all culminated from 1969 until the mid-1990s in a period of violence known as the Troubles, in which Northern Ireland found itself in a protracted conflict, plagued by continued segregation and a cycle of sectarian violence. (Knox 2002)

As neither 'side' fully trusted the police force, paramilitaries took over policing with 'vigilante justice' in both crime control as well as social control; maintaining 'community values', and in turn, segregation between communities. (Steenkamp 2008) Thus it seems that while they may be seen as 'locally-based',

paramilitary organizations during the Troubles assumed a kind of sub-central level by taking on the behaviors normally associated with the state, such as providing stability and protection, although in a way that seemed to have more local legitimacy than the 'higher' central level—the British government. This legitimacy stemmed from group identification and was maintained through the paramilitaries' methods of social control, as well as the services they provided for the communities they 'governed'. In addition to the perception problems already discussed, the police force was charged with allegations of human rights abuses and cooperation with loyalist paramilitary groups. In the transition, this led to a further lack of trust and acceptance of the police in the Catholic community, especially because the police seemed unable to address their past. (Lundy 2011) Thus, police reform was a major component of the 1998 Belfast Agreement, in the hope that increasing the legitimacy of the new police force would reduce the need for paramilitary policing. (Kempa et al 2002) The operational and command structure was changed, and its 'image' was altered through a change in name, uniforms, and ethos. Importantly, a successful quota-based recruitment system ensured that the police would be more representative of both communities. (Rolston 2013) Before the peace process, the police were seen as an 'arm' of the central level, aside from their alleged collusion with paramilitary organizations. After the Agreement, however, it seems that they began to become more legitimate and accountable to the communities in which they worked, shifting them closer to the 'local' level.

During the conflict, the police force (working on the central level), was seen as illegitimate, allowing paramilitary organizations (made up of local-level actors) to take on policing roles (a behavior associated with the central level) while working within the local level. After the agreement, the reformed police force had to move into this in-between space in order to have legitimacy among the people but also be able to perform its duties. This illustrates how a binary understanding of the central and local levels is insufficient to understand how a certain actor operates during—and after—conflict. A romanticization of the local in this case might have perpetuated the exclusive and vigilante nature of the paramilitaries, and thus perpetuated the conflict.

6. CONCLUSION

This paper aimed to gain insight on the local and central levels, showing the difficulty in defining them and explaining the benefits and drawbacks that exist at each level. It also problematized the literature's seemingly under-nuanced understanding of the local, and raised questions as to which actors might be considered to be local or central. It was found that these levels are much less distinct than some may expect, and that rather than conceiving of them spatially and statically, basing an understanding of them upon their actions will result in a more dynamic and nuanced awareness of these levels. When this is understood, transitional justice policies can be balanced and implemented more efficiently and in ways that will better serve the needs of perpetrators, victims, and the rest of the society.

These conclusions are rather important due to the increasing employment of transitional justice theory and 'tools' in post-conflict situations. As stated, the local level is increasingly prevalent in transitional justice literature,

to a point where it has become romanticized. Without a nuanced and critical understanding of the local level—which actors are included, what their needs are, and how they may be engaged—it might be abused. Consequently, the roots of the conflict will not be addressed and neither peace nor justice will be attained.

ROLE OF THE STUDENT

Julianne Subia did this research as part of her bachelor's thesis under the supervision of Dr. Ingrid Samset. With guidance from her supervisor, she developed the research question for this paper, conducted her own research, and wrote the paper.

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