

The Theory and Practice of Restorative Justice in Transitional Contexts: Lessons from Colombia and Other Experiences

Thursday, 3 of November 2022

About the Conference

Accountability for gross human rights violations and international crimes, such as war crimes, crimes against humanity and genocide, tend to be promoted at the international level as a retributive model of legal justice. For example, the International Criminal Court (ICC) is usually called on to intervene in numerous situations where a conflict took or is taking place. As the only permanent international court, the ICC is mandated to investigate, prosecute, and punish the perpetrators of international crimes to end impunity and prevent the commission of future crimes. However, scholars and practitioners from different fields have noted the limitations of prosecutions in achieving such goals in transitional contexts. Where there are large numbers of perpetrators, victims, and affected communities who must live together after mass violence, the goals of regaining trust, transforming relationships, recognizing and participating victims, and reintegrating offenders become critical. Therefore, in recent years, restorative justice has gained attention as an alternative, complementary, or more suitable way of addressing mass violence.

Colombia is a recent example of a transitional society where a restorative justice approach has been adopted. In 2016, the Colombian government and the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP) signed a comprehensive Final Peace Agreement where different non-judicial and judicial mechanisms were established, including a Truth Commission, a Special Unit for the Search for Persons, and a Special Jurisdiction for Peace, an independent judicial mechanism with a mixed restorative and retributive nature. The international community has supported the Colombian Final Peace Agreement and considered it "an inspiration for all those striving to end deadly conflict around the world through negotiations". However, several questions remain regarding the theory and practice of restorative justice in transitional contexts, including in the case of Colombia.

This one-day conference brings together scholars and practitioners to discuss the theory and practice of restorative justice in transitional contexts and the lessons and challenges from Colombia and other experiences. It aims to shed light and discuss the following questions: What are the possibilities and limitations of restorative justice in transitional contexts? To what extent and how can restorative justice adequately address the harms caused by mass atrocities in different contexts? Should restorative measures be applied to the most responsible perpetrators? Can victims participate meaningfully in restorative and transitional mechanisms? Is it possible to reconcile retributive and restorative justice approaches? What are the perceptions of various stakeholders at the national and international levels concerning the mechanisms designed based on this approach? Are the transitional justice mechanisms in Colombia too ambitious?

The conference is organized by [the Centre for International Criminal Justice \(CICJ\)](#), [VU University Amsterdam](#), [the Netherlands Institute for the Study of Crime and Law Enforcement \(NSCR\)](#) and is supported by the research grant number 406-15-255 from The Netherlands Organization for Scientific Research (NWO).

Location & Time

10:00 – 17:15 Amsterdam Time

VU University Amsterdam (Building OZW)
Room Alma 1/2 and online. Zoom link will be provided upon registration.

Registration

Please register at: [CICJ Conference](#)

For doubts about the conference, please send an email to Beatriz Mayans Hermida:
bmayans@nscr.nl

10:00- 10:30

Registration & Coffee

10:30- 10:45

Introduction

Beatriz Mayans Hermida (PhD Candidate at VU Amsterdam and NSCR) & Barbora Holá (Associate Professor at VU Amsterdam and Senior Researcher at NSCR)

10:45- 12:15

Panel I- Lessons from Different Transitional Justice Contexts

Chair: Barbora Holá (VU Amsterdam/NSCR)

- Restoring Justice in Bosnia and Serbia: Results from a Population-based Survey- Stephan Parmentier, Professor of Sociology of Crime, Law and Human Rights at KU Leuven
- Victim Participation in Transitional Justice in Guatemala: A Potential Space for Restorative Outcomes?- Gretel Mejía Bonifazi, PhD Candidate at Ghent University
- Armed Groups, Reparations and Restorative Justice- Luke Moffett, Reader at Queen's University Belfast

12:15- 13:15

Lunch break

13:15- 14:45

Panel II- The Colombian Case

Chair: Joris van Wijk (VU Amsterdam)

- The Special Jurisdiction for Peace and its Mixed Nature: Insights from the Bench- Lily Rueda Guzmán, Judge at the Special Jurisdiction for Peace, Colombia
- Between Impunity and Justice? Exploring Stakeholders' Perceptions of Colombia's Alternative Sanctions for International Crimes- Beatriz Mayans Hermida, PhD Candidate at VU Amsterdam and NSCR
- To be determined- Clara Sandoval, Director of programmes at the Global Survivors Fund and Professor of Human Rights Law at the University of Essex
- Restorative Justice in the Colombian Transitional Justice Process: Achievements and Challenges- María Camila Moreno, ICTJ Head of Office for Colombia

14:45- 15:15

Coffee Break

15:15- 16:45

Panel III- Theoretical Considerations

Chair: Maartje Weerdesteijn (VU Amsterdam)

- Countering Injustice: Insights Inspired by Hannah Arendt- Antony Pemberton, Professor of Restorative Justice at KU Leuven and Senior Researcher at NSCR
- Theoretical Considerations on Criminal Justice, Punishment and Restorative Justice- Elena Maculan, Professor of Criminal Law at UNED, Madrid
- Contempt, Political Divisions, and Transitional Justice- Colleen Murphy, Roger and Stephany Joslin Professor of Law at Illinois College of Law

16:45- 17:15

Closing Commentary

Mark Drumbl, Class of 1975 Alumni Professor of Law at Washington and Lee University

17:30- 19:00

Drinks

Panel I- Lessons from Different Transitional Justice Contexts

- Restoring Justice in Bosnia and Serbia: Results from a Population-based Survey

Abstract

Transitional contexts are characterized by the importance of focusing on the accountability of perpetrators and the reparation of the harm inflicted upon victims. Most frequently, these two aspects are regarded as separate political and legal processes. Applying restorative justice principles and practices in the aftermath of violent conflict could contribute to bridging this divide and involving perpetrators and victims in a comprehensive process. For this purpose, it is essential to provide a thorough understanding of the building blocks of restorative justice and their applicability to societies and situations of transition. Moreover, it is important to collect empirical data in and about situations of transition and gauge the levels of interest from the relevant stakeholders in applying restorative justice. This presentation will focus on the situation in Bosnia and Serbia as surveyed in the period 2006-07 by a team from the University of Leuven. The most important findings of these quantitative surveys will be highlighted and the implications for restorative justice in transitional contexts in general will be sketched.

Prof. Stephan Parmentier is a Professor of Sociology of Crime, Law and Human Rights at the Faculty of Law and Criminology of KU Leuven and serves as the Head of its Department of Criminal Law and Criminology. He has been a visiting professor at the International Institute for Sociology of Law (Oñati, Spain), the University for Peace (San José, Costa Rica), and the University of New South Wales (Sydney, Australia), and a visiting scholar at the universities of Stellenbosch (South Africa), Oxford (United Kingdom), and New South Wales (Sydney, Australia). He was the editor-in-chief of the Flemish Yearbook on Human Rights since 1998 and currently serves as the co-general editor of the international book Series on Transitional Justice (Intersentia Publishers, Antwerp). His research interests include political crimes, transitional justice and human rights, and the administration of criminal justice.

- Victim Participation in Transitional Justice in Guatemala: A Potential Space for Restorative Outcomes?

Abstract

The Guatemalan peace process is widely regarded as a participatory space where civil society played a crucial role to shape the content of the peace agreements with the goal of addressing the structural causes of the internal armed conflict, in particular racism against indigenous peoples, poverty and unequal land distribution. In addition, the peace accords also provided the opportunity for the creation of official transitional justice initiatives, namely a United Nations sponsored truth commission and a comprehensive administrative reparations programme for the victims.

Unlike recent cases, such as Colombia, neither the peace process nor subsequent institutional transitional justice mechanisms officially incorporated restorative justice principles in their design or implementation in terms of crafting genuine spaces for dialogue between victims, perpetrators and the community. Despite the lack of a restorative approach, victims have managed to participate in different grassroots and institutional spaces to seek redress and recognition for the human rights violations they suffered during the armed conflict. Participation, a guiding principle of both transitional and restorative justice has unfolded in several ways and follows a trajectory that spans decades. Victims have testified in official and civil-society-led truth commissions, taken part in emblematic criminal trials as witnesses and civil parties (*querellantes adhesivos*) and mobilized to demand reparations from the state. At the grassroots level, they have spearheaded exhumations, local truth-telling and memory initiatives.

In these spaces, victims are supported by local, national and international actors who provide legal, psychosocial, and political accompaniment. However, despite decades of wide-reaching participation, the state is unwilling to meet victims demands, to the extent of stigmatizing them when they engage in justice efforts. The majority of victims still experience the root causes of the conflict. This especially true for indigenous Maya victims, who continue to live in poverty and endure racism and marginalization in daily life.

Drawing on qualitative research that examines victim participation in Guatemala, I argue that in the face of state inaction, both victims and civil society organizations have managed to incorporate restorative practices in community and institutional initiatives that have led to different forms of redress, such as social recognition of the harm, the dignification of the memory of the victims and the incorporation of transformative and forward-looking reparations in landmark court cases. While these outcomes have been case specific and are not without shortcomings, they can help rethink existing local spaces to integrate restorative justice principles that could have the potential of rebuilding the social fabric, particularly in contexts where polarization about the past is deeply entrenched.

Gretel Mejía Bonifazi is a PhD candidate at the Human Rights Centre at the Faculty of Law and Criminology at Ghent University. She is a Guatemalan lawyer specialized in human rights. She holds an MA in Human Rights from Friedrich-Alexander University Erlangen-Nürnberg (2017) and a law degree from San Carlos University in Guatemala (2015). Before joining the Human Rights Centre, she worked as a research assistant at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg.

- **Armed Groups, Reparations and Restorative Justice**

Abstract

Contemporary armed conflicts are predominately non-international armed conflicts involving a myriad of armed groups (over 600). Despite the violence such armed groups can be responsible for, engaging them on reparations during and post-conflict is both contentious and dangerous for victims. Although at the end of hostilities ex-fighters can be important community and political leaders, they often deny or resist acknowledging their responsibility for past wrongdoing, which can cause further suffering to victims. For victims, armed groups can be the only source of certain reparations or requires the authority of ex-fighters and leaders to unpick some of the ideology and disinformation that they used to justify such violations and deny victims' suffering. While the responsibility of armed groups and their obligations to make reparations remains a nascent area of international law, restorative justice offers a practical and ideologically seductive way to broach the engagement of such armed actors in redressing the harm they cause.

This paper discusses the place of restorative justice in armed groups' buy-in to reparations, drawing upon Northern Ireland as a practice to shift paramilitaries away from using violence in their own community. Such practice reflects the basic tenets of restorative justice in encouraging those involved in violence to take active responsibility and ownership of their actions by recognizing their victims and making good the harm they have caused. Part of this process involves the humanization of both the perpetrator and the victim, by moving beyond condemnation or denial to trend a middle path of reintegrative shaming. This paper reflects on the theoretical, comparative and practical lessons learned from armed groups' engagement with reparations.

Dr Luke Moffett is a Reader at the School of Law, Queen's University Belfast and Principal Investigator of the Arts and Humanities Research Council project 'Reparations, Responsibility and Victimhood in Transitional Societies'. He is the author over two dozen articles and chapters on transitional justice, reparations, victims' rights and international criminal justice, and his forthcoming book 'Reparations and War' will be published in December 2022 with Oxford University Press.

- [The Special Jurisdiction for Peace and its Mixed Nature: Insights from the Bench](#)

Abstract

In pursuing accountability for conflict-related international crimes, the Colombian Special Jurisdiction for Peace (SJP) comprises elements from both restorative and (international) criminal justice models. This mixed nature represents a milestone for negotiated transitional justice contexts. It is, however, full of challenges and tensions, which must be resolved in practice, by the judges operating the system. Through a “dialogic process”, perpetrators are expected to provide comprehensive truth for the gravest crimes and to recognize their individual criminal responsibility. In exchange, they will receive special, restorative sanctions, designed by the tribunal, using inputs from the defendants and in consultation with victims. After almost five years of implementation, the Court has opened ten macro-cases and has not meted out any sentence. Nevertheless, in public hearings, both former members of the FARC-EP guerrilla and of the military forces have recognized their criminal responsibility and have presented restorative sanctions proposals for the Chamber’s consideration. Although these steps have been historical for the country and a reason for hope in the system, whether the SJP will be able to fulfil the expectations of society at large and become a new paradigm of justice depends on multiple factors at play, which are analyzed in this presentation.

Lily Rueda Guzmán is currently a Judge at the Special Jurisdiction for Peace in Colombia. She is also pursuing a PhD at VU Amsterdam and holds an LLM in Human Rights and International Criminal Law from Utrecht University (cum laude) and is Magister in Criminal Law from the Universidad Nacional de Colombia. Previously, she worked at the International Center for Transitional Justice, the International Criminal Tribunal for the former Yugoslavia, the United Nations Office of the High Commissioner for Human Rights and, more recently, the Ministry of Justice of Colombia.

- [Between Impunity and Justice? Exploring Stakeholders’ Perceptions of Colombia’s Alternative Sanctions for International Crimes](#)

Abstract

The 2016 Final Peace Agreement signed between the Colombian government and the guerrilla group FARC-EP has been promoted by some commentators and practitioners as a “paradigm-changing in the field of conflict resolution”. Among other reasons, due to its innovative sanctioning regime that, based on a restorative approach, offers non-custodial sanctions as a less punitive form of punishment for international crimes, promoting offenders’ disarmament, demobilization, and involvement in repairing the harm done and restoring the social tissue affected by the conflict. However, given their leniency, these sanctions have caused much controversy and currently remain very much at the centre of the public debate. Based on qualitative interviewees, this study explores the perceptions of different stakeholders, such as victims, NGOs, ex-FARC-EP and army members, concerning various issues related to the special sanctions’ nature, goals, processes, (envisioned) outcomes, and challenges. Our findings reveal that most participants perceive the special sanctions as a tool that can modestly help repair the damage done, reintegrate (certain) offenders back into society, and promote coexistence. Only a limited number of respondents saw these sanctions as a form of punishment. For several participants, the special sanctions can be an alternative accountability measure to prison. However, this seems to depend on the type of crime and the rank and affiliation of the offender.

Beatriz Mayans Hermida is a PhD candidate at the Faculty of Law at VU Amsterdam and the NSCR. She is a Mexican lawyer specialized in international human rights law and international criminal law and holds an LLM in International Legal Studies from NYU School of Law. Before her PhD, Beatriz litigated a wide range of human rights cases in Mexico and previously worked as a monitor of immigration issues at the Mexican National Commission for Human Rights. She has also done traineeships in international organizations and tribunals, such as the International Criminal Court, the International Bar Association, and the European Center for Constitutional and Human Rights (ECCHR).

- **Restorative Justice in the Colombian Transitional Justice Process: Achievements and Challenges**

Abstract

In contexts where a society is transitioning from a period characterized by mass atrocities such as Colombia, restorative justice offers approaches for rebuilding a society's social fabric at both the individual and communal level. It can bring people together to respond to the needs of victims while also encouraging accountability for those who caused the harm in ways that ordinary justice mechanisms, with their limited resources, usually cannot. Hand in hand with transitional justice mechanisms, restorative justice works to redress grave human rights violations, while promoting healing and creating space for the dialogue around structural and institutional reforms. Restorative justice is not a new form of justice in Colombia. The Code of Criminal Procedure of 2006 introduced a chapter on restorative justice which includes the creation of restorative programs in which criminal offenders and victims can participate. In 2005, the Justice and Peace Law (Law 975 of 2005) introduced a restorative justice approach, as well as a criminal procedure for the investigation and judgment of serious human rights violations, crimes against humanity and war crimes committed by paramilitary groups. This also constitutes the first transitional justice mechanism in Colombia.

In general, the restorative justice approach and its focus on encounters between victims and perpetrators and on the contribution to truth and acknowledgment of responsibility have been maintained in the design of subsequent judicial and extrajudicial mechanisms of transitional justice that are part of the Comprehensive System of Truth, Justice, Reparations and Guarantees of Non-Recurrence agreed between the Colombian government and the FARC guerrilla in 2016. The implementation of this approach and the restorative justice mechanisms in the Truth Commission and the Special Jurisdiction for Peace –both mechanisms of the Comprehensive System of Truth, Justice, Reparations and Guarantees of Non-Recurrence– offer perpetrators, victims and the community an alternative path towards justice from a humanist perspective.

Maria Camila Moreno is the Head of Office of the International Center for Transitional Justice (ICTJ) in Colombia since July 2011. She is a Colombian anthropologist specialized in land use planning at the University of Havana. Since 1999, she has worked on formulating, implementing, and evaluating human rights public policies with an emphasis on vulnerable populations. She has done this in different public institutions, such as the Presidency, the Ombudsman Office and the General Prosecutor Office in Colombia and international agencies such as IIDH, the Swedish International Development Agency, UNHCR and UNDP. Additionally, she has researched a wide range of human rights issues, such as internal displacement and public policy, DDR (disarmament, demobilization and reintegration), human rights and prisons, access to justice in Colombia and political participation of indigenous people.

- To be determined

Abstract

Prof. Clara Sandoval is currently the Director of programmes at the Global Survivors Fund. She is a qualified lawyer and a leading expert on reparations, human rights and transitional justice. She is also a Professor of Human Rights Law at the University of Essex and Human Rights Centre (currently on leave) and teaches at the Geneva Academy. She was acting Director of the Human Rights Centre at the University of Essex and co-founded and directed the Essex Transitional Justice Network. Additionally, she has conducted extensive research and practical work on her areas of expertise, including before international tribunals such as the Inter-American Court of Human Rights or the International Criminal Court.

Panel III- Theoretical Considerations

- Countering Injustice: Insights Inspired by Hannah Arendt

Abstract

Our reaction to crime and atrocity is often automatically assumed to concern justice, including that of the restorative or transitional variety. But countering injustice and doing justice are not synonymous. To adequately come to terms with the experience of injustice, we need to approach it as an independent phenomenon in its own right. In this paper, I intend to flesh out what countering injustice might entail in addition or even in contradiction to doing justice by referring to different ideas and concepts from the work of Hannah Arendt. This will lead me to suggest the nature of the excess of injustice and argue an idea that I have taken to calling positive retribution, based upon her notion of natality from *The Human Condition*. In addition, I will emphasize the importance of her distinction between reflective and determinate judgment from *The Life of the Mind* and *Lectures on Kant's Political Philosophy* and her conceptions of power and politics from *On Violence* and *The Promise of Politics* in conceiving our responses to injustice.

Prof. Antony Pemberton is a Professor at the Leuven Institute of Criminology and a Senior Researcher at the NSCR. As part of the latter position, he is seconded to Tilburg University as a Professor of Victimology. He has a background in political science and criminology. His primary academic interests concern the broad topics of *Victims and Society*, in particular, cultural and narrative victimology and the ethics of victimology and *Humane Responses to Injustice*, including the study and implementation of restorative processes. He has published over 100 articles, book chapters and books on these topics.

- [Theoretical Considerations on Criminal Justice, Punishment and Restorative Justice](#)

Abstract

In the past few decades, some major changes have led to rethink the role of Criminal Justice: on the one hand, the victims' recovered active role in criminal proceedings and, on the other, the focus of mainstream human rights (HR) literature and activism in the "fight against impunity" as the main purpose when dealing with international crimes or gross HR violations. Despite their apparent convergence, the latter may run counter the victims' interests and claims, especially if the fight against impunity is deemed to be an end in itself. In my view, we should reframe the terms of this narrative, firstly, by identifying the real, ultimate rationale behind Criminal Justice as a whole and, secondly, by acknowledging its practical and intrinsic limits. Transitional and post-conflict settings offer a perfect scenario where to assess these two ideas, and where to develop a wider concept of Justice, in which Criminal Justice plays a role, but needs to be reconciled with its ultimate goal, namely, the recovery and the maintenance of social order. Furthermore, its incapability to fully comply with a complex set of competing claims has led to explore the huge possibilities of different paradigms, among which Restorative Justice has proved to be a valuable asset, at least, as a complement to the classic punitive response. The current Colombian transitional process will be used as a case study for these theoretical considerations.

Prof. Elena Maculan is a Professor of Criminal Law at UNED, Madrid. She holds a PhD in "Comparative and European Legal Studies" from the University of Trento (Italy) and in "Peace and International Security" from the UNED of Madrid (Spain) under a co-tutelage regime. She also holds the Label of "Doctor Europaeus" and the Extraordinary Prize for PhD fellows of both Universities. Her main research fields are International Criminal Law, Transitional Justice, Restorative Justice, Terrorism and Comparative Criminal Law. She is the main researcher and coordinator (together with Prof. Alicia Gil Gil) of a Research Project funded by the Spanish Ministry of Science and Innovation and titled "The execution of sanctions for terrorist offenders" (2019-2022).

- [Contempt, Political Divisions, and Transitional Justice](#)

Abstract

Emotions or what philosophers call reactive attitudes play a key role in restorative justice processes. On a number of accounts, an aim of restorative justice is providing conditions where victims can overcome anger and resentment. My talk focuses on a different emotion: contempt. Contempt is responsive not to what someone has done, but to who someone is. In contempt, we regard the object of our contempt as low in worth as a person because they fall short of some interpersonal ideal. Philosopher Michelle Mason argues that contempt, properly focused, can be morally justified. Her argument rests on an appeal to the permissibility of permanent contempt for Nazis like Stangl. I argue that Mason's analysis presumes the possibility of judging another's character in an individualized way. However, the conditions for individualized judgment are precisely what is missing in societies pursuing transitional justice. Group identity and psychocultural dramas profoundly shape and mediate interpretations of who one is from what one has done.

Prof. Colleen Murphy is the Roger and Stephany Joslin Professor of Law, Professor of Philosophy and of Political Science, and Director of the Women & Gender in Global Perspectives program at the University of Illinois at Urbana-Champaign. She is the author of *The Conceptual Foundations of Transitional Justice* (Cambridge University Press, 2017), which received the 2017 North American Society for Social Philosophy Book Award; *A Moral Theory of Political Reconciliation* (Cambridge University Press, 2010); 70 peer-review journal articles, law review articles, and anthologized book chapters on transitional justice and the ethics of risk analysis.

Prof. Mark Drumbl is the Class of 1975 Alumni Professor of Law and the Director of the Transnational Law Institute at Washington and Lee University. His research and teaching interests include public international law, global environmental governance, international criminal law, post-conflict justice, and transnational legal process. He has authored over 140 articles, book chapters, book reviews, and scholarly pieces; has delivered over 150 lectures, presentations, keynotes, and invited addresses on six continents. Additionally, his work has been relied upon by the Supreme Court of Canada, the United Kingdom High Court, United States Federal Court, and the Supreme Court of New York in recent decisions.