

Restorative justice, globalization and the logic of empire

At the beginning of this century, restorative justice had come to receive a relatively high degree of acceptance in many jurisdictions. By 2002 it found its way onto the United Nations (UN) agenda, when the Economic and Social Council adopted the *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters*. Restorative justice increasingly appeared to be the answer to a range of crime control problems, ranging from local issues like juvenile offending to international crimes and human rights abuses in transitional societies. For problems as diverse as child misbehaviour at school and ethnic cleansing and genocide, restorative justice was seen to offer a viable strategy both for satisfying victim needs and for reintegrating offenders. From seemingly humble beginnings as a localized justice strategy to taking a place on the UN's agenda, restorative justice appeared as an alternative to retributive justice.

The spread of crime control strategies like restorative justice can be understood as a part of the globalized exchange of criminal justice knowledge and practice. Over the past decade, there has been considerable discussion about how ideas of crime control and specific policies and practices transfer between states. Shifts in economic and social structures and changes in cultural sensibilities are seen to explain potential convergences of crime control (Garland, 2001a). Globalization represents a growing international economic, political, legal and cultural interconnectedness through advances in technology, international law and neoliberal economics and politics (Findlay, 2008) and it is often assumed that criminal justice policies are converging worldwide. The development of restorative justice across jurisdictions can be

seen in the context of this broader convergence of criminal justice policy, particularly in the Anglophone world and parts of the European Union.

Restorative justice has also developed at a time of mass imprisonment, predominantly in Anglophone states. The development of community justice strategies, victim offender mediation and restorative justice occurred at a time when imprisonment rates were progressively reaching historic highs. From the mid-1970s to the early years of the 21st century US imprisonment numbers increased by more than 500 per cent, with over 2.3 million people incarcerated (Barker, 2009, p. 3; Garland, 2001b). The rise of restorative justice has also occurred concurrent with research increasingly identifying that higher imprisonment rates are associated with societies that have higher levels of inequality (Wilkinson & Pickett, 2009) and a lesser commitment to social democratic and inclusionary values (Lacey, 2008). Among Western-style democracies it is those who have most strongly adopted neoliberalism that have the highest imprisonment rates (particularly the US, Australia, New Zealand, the United Kingdom [UK] and South Africa), while social democracies with coordinated market economies have the lowest (Sweden, Norway, Finland and Denmark) (Lacey, 2008). It has also tended to be neoliberal states that have been the main exporters of restorative justice ideas, and this connection is not accidental.

This chapter aims to address a number of objectives. The first is to explore more fully the relationship between restorative justice and what is here termed the 'logic of empire', by examining the role of restorative justice in neoliberal crime control strategies and the broader role played by these strategies in reproducing a particular cultural logic or hegemonic norm about the nature of offending and victimization. Second, this chapter will consider the role of restorative justice in the global exchange of crime control strategies, with particular attention

paid to the place of restorative justice in achieving justice in transitional societies.

Underpinning this is the paradox of restorative justice: that it promises a more socially responsive and emancipatory approach to criminal justice and penalty, yet it is an approach that fits with at least some of the values that predominate within more punitive law-and-order politics.

Restorative justice and the cultural logic of neoliberalism

Restorative justice is consonant with and reproduces some of the key cultural values that underpin a neoliberal approach to crime control: it calls into being and reproduces a particular vision of crime, the offender and the victim. In his discussion of bourgeois legal categories, Pashukanis (1978) analysed the way in which law seeks to materialize and universalize legal subjects with certain attributes. In the case of restorative justice these attributes can be seen as free will, responsibility, accountability and a narrowly defined, individualized sense of civic obligation. Furthermore, the regulatory framework called into being by restorative justice continues to privilege particular forms of knowledge about offenders and victims, and reproduces the role of law and the processes of criminalization. As I have argued more fully elsewhere, restorative justice is not without or outside the law (Cunneen & Hoyle, 2010).

As stated above, the rise of restorative justice has coincided with the development of neoliberalism. Changes in the late modern state have seen a decline in welfarism and the rise of neoliberal governance. The realignment of values and approaches primarily within Anglophone justice systems that began in the late 1970s emphasized deeds over needs – a change that was probably most pronounced in the area of juvenile justice but also extended to

other areas within the justice system. The focus shifted from a welfare-aligned rehabilitative approach to a justice-oriented approach with an emphasis on deterrence and retribution. Individual responsibility and accountability increasingly became the focus of the justice system's approach to offenders. In this context, seemingly contradictory processes have been at play including, for example, restorative justice and incapacitation, and which combine neo-conservative approaches with neoliberalism (O'Malley, 1999). The privatization of institutions and services, widening social and economic inequality, and new or renewed fears around crime, terrorism, 'illegal' immigrants and racial, religious and ethnic minorities all impact on the way criminal justice systems operate. All of these developments have fuelled demands for authoritarian law-and-order strategies, a focus on pre-crime as much as actual crime (Zedner, 2007), and a push for 'what works' responses to crime and disorder (Muncie, 2005).

These changes have also led to less of a focus on the social context of crime and greater emphasis on the individual, the family and the narrowly conceived community in terms of responsibility and accountability for crime (Garland, 2001a). This approach has been referred to as a preference for 'governing at a distance', whereby government seeks to act more through local associations. Further, the 'death of the social' has seen both new forms of governance and a move away from social benefits and social welfare which are said to create dependency. In place of universal entitlement to social welfare is now 'mutual obligation': a demand for autonomous individuals who are not dependent on the state and a demand that any state assistance should only be provided alongside a range of enforceable obligations.

The emphasis on individual and community responsibility and accountability has been referred to as 'responsibilization'. According to Garland (1996), the process of responsibilization relates to the partial transference of state crime control to community-based and non-state individuals and organizations. Government still seeks to act upon crime but does so more indirectly, through local bodies, community organizations and individuals. By 'governing at a distance', responsibility is pushed down into local authorities (such as schools) and partnerships between criminal justice agencies and the public (for example, neighbourhood watch programmes). Responsibilization places requirements on individuals to be engaged in self-help and to be active citizens. It is not about the state offloading its functions, but rather represents a new mode of exercising power and of governing crime, with its own forms of knowledge, objectives, techniques and apparatuses.

The state does not diminish or become merely a nightwatchman. On the contrary it retains all its traditional functions – the state agencies have actually increased their size and output during the same period – and, in addition, takes on a new set of coordinating and activating roles. (Garland, 1996, p. 454)

Restorative justice can be understood as distinctly compatible with the political and social requirements of responsibilization. It establishes its own processes of governance which rely upon specific conceptualizations of the individual, their attributes and their social connectedness. It allows for 'government at a distance' through apparent community involvement in securing individual responsibility for criminal offending and does so in a way that stresses social solidarity. Responsibilization extends beyond the offender. In restorative justice matters involving young people, the parents are brought in to assume responsibility for their child's behaviour. In matters involving adults, members of the adult offender's family and/or social networks are assigned the task of reforming the individual. The victim also becomes a 'responsibilized' partner in the crime control process. As in programmes like

neighbourhood watch, the victim is required to play an active role in reducing crime – in this case by assisting in the reformation of the offender.

Restorative justice is consonant with a general move in criminal justice systems over the past three decades which can be explained by reference to neoliberal politics. Although presented by its advocates as a reforming alternative, restorative justice fits with broader processes of governance at a distance which function to responsabilize individuals and communities in the task of crime control. Rather than challenging state power it allows for new modes of governance (Pavlich, 2005). Restorative justice tends to support the values of neoliberalism for two reasons: first, it promotes individualism and indeed requires individual responsibility (in both the victim and the offender) for crime and its aftermath; second, it downplays the need for social and structural responses to crime, such as reducing unemployment rates, improving educational outcomes, increasing wages, ensuring proper welfare support, or improving housing and urban conditions (Brown, 2009). Overall, restorative justice favours the individualized free market values of neoliberalism over more social democratic responses aimed at social integration. To the extent that restorative justice values reintegration, it is focused on the actions of the individual offender, rather than broader social and economic policies. It appeals to those who long for greater communitarian approaches, while at the same time reflecting a strongly moralistic framework for dealing with offenders.

The appeal to a universal and moral standpoint

One of the major theoretical claims underpinning restorative justice is the assertion of universalism. Restorative justice is said to deliver a universal good: an untenable claim in

practice, but one that establishes a particular type of ethical superiority and privileges particular forms of power and knowledge. This universalism purportedly extends to the very notions of ‘offender’ and ‘victim’, which are seen as essentialist categories devoid of specific social characteristics and identities. As postcolonial writers have often stated, the claim to universalism is one that usually privileges particular Eurocentric visions of humanity (Loomba, 1998). Restorative justice asserts its universalism through the claim that it represents a vision of justice that precedes the modern state and is drawn from Indigenous societies. The claim that restorative justice predates state forms of punishment reinforces the dichotomy of state versus community-based forms of punishment – with restorative justice placing itself outside the state. Furthermore, if restorative justice can legitimately claim that it is beyond the context of time and place, it can also claim both historical continuity and authenticity. These claims of authenticity and universalism support the commonsense appeal of restorative justice. The truth claim underpinning this common sense is that restorative justice is *naturally* superior to legal-bureaucratic forms of justice and is a universal process available to all people (for further discussion of this see Cunneen & Hoyle, 2010, pp. 109–17). It thus presents itself as the quintessential ‘borderless’ approach to crime control.

Restorative justice asserts a particular epistemological claim to establish a superior truth to that provided by traditional court processes. As described above, it is also based on an assumption of the universal attributes of all offenders and victims – that is, all victims and offenders can experience the restorative process in a straightforward and uncomplicated manner. Not only do these universalist claims determine the commonsense appeal and legitimacy of restorative justice, but they also underpin particular neoliberal understandings of the offender and victim: who they are, how they behave and how they can be held responsible. For example, the ‘truth’ claim of restorative justice – that truth can be arrived at

through a conferencing or ‘truth commission’ process between offender and victim – would appear to make rules of evidence in criminal trials completely unnecessary. Legal protections for offenders and victims (and the lawyers who might uphold them) appear at best obstructionist to the real task of getting the offender and victim together to determine responsibility and to undertake reparation.

One element of neoliberal approaches to punishment that has been identified by many writers is the harking back to conservative or pre-modern values including public shaming, the abandonment of proportionality, the emphasis on conservative family values, and so forth (Pratt et al., 2005; O’Malley, 1999). Restorative justice constructs individuals as moral subjects who share common moral understandings and imposes on them certain expectations about appropriate behaviour – offenders are addressed unambiguously as moral subjects who must restore or repair the harm they have caused (Boutellier, 2002). Victims are equally presented with an essentially moral obligation to meet with the offender and to forgive. Thus, the civic duty of victims to engage is simultaneously a moral duty. Restorative justice also reflects a yearning for greater community involvement in responses to crime that take an unambiguously moral position on crime (for the appeal to *gemeinschaft* see Bottoms, 2003). The strongly moralistic flavour of restorative justice sits well with both communitarian approaches that stress the role of community in reintegrating the wrongdoing offender and the wronged victim, and the views of those conservatives who wish to emphasize individual responsibility and moral culpability.

The cultural logic of neoliberal penalty operating here is one that valorizes community engagement through state-sponsored and -controlled processes (governing at a distance),

while unambiguously providing for a definitive moral response to crime which demands greater individual responsibility and accountability.

Restorative justice, law and the state

Restorative justice appears to make both the law and the state assume a largely diminished role, if not completely disappear. The rhetoric of restorative justice is often *opposed* to the law (such as the claim that the procedural rules of evidence are oppressive) and the state (evidenced in the view that the state does not represent the interests of the victim, the state is only interested in retribution, and the state 'steals' community conflicts). It is therefore reasonable to ask: where is the law and where is the state in restorative justice? Restorative justice is regulated by law; and while it presents itself outside the state, it is dependent upon state institutions, including the police, the courts and juvenile and adult correctional facilities, for its legal subjects and the legitimation of its processes. However, restorative justice can also be seen as a dispersal of power away from more formal legal institutions and towards state-constructed processes that facilitate greater levels of citizen or community participation. This power is also constitutive, positively forming and moulding social practice. Despite the location of restorative justice practices in the community, the law still confers power on the various participants, from the police officers in a youth justice conference, to the legal powers of a truth and justice commission to provide amnesty or order reparations. The law maintains state authority to define and determine criminal behaviour, while, through restorative justice, it potentially achieves more direct penetration and greater dispersal into civil society. Restorative justice thus assists in legitimizing particular state institutions by naturalizing their presence in a community setting.

Restorative justice perpetuates the broader hegemony of law and power: the state is not distant or irrelevant. The law is involved in defining what is an offence and state actors within the criminal justice system continue to determine how the laws are applied, to whom, and under what circumstances (Coker, 2002, pp. 137). Restorative justice legitimates state power ‘through reinforcing behavioural norms reflected in the laws and through naturalizing the justice practices that bring the offender to the attention of the restorative process’ (Coker, 2002, p. 138). It can be argued that restorative justice secures the hegemony of law by making the harsher aspects of the criminal justice systems of neoliberal societies more palatable, particularly the racialized, gendered and class-based effects of criminalization, and the significant growth in human warehousing in overcrowded prisons witnessed over the past several decades. Indeed, restorative justice enables little recognition of the shift in recent decades from a social state to a more repressive state which has accompanied the ascendancy of neoliberal politics. The withdrawal from responsibility in areas of health, education and welfare, and the shift towards modes of governance through privatization, and individual and community responsabilization, have all had a profound effect on the role of the state in crime control. Similarly, the class-based impact of unemployment and marginalization, particularly among young people, poses very real problems for restorative justice practice – especially if that practice is built on a presumption of individualized responsibility for crime and restoration. The various ‘hidden injuries’ of class, including alienation from school and work, homelessness, drug abuse and marginalization, appear largely absent from the restorative justice framework, which instead focuses on individualized offenders and victims.

Risk, punishment and restorative justice

Restorative justice programmes have been introduced within a framework that places a greater emphasis on individual responsibility, deterrence and incapacitation. There has been a

significant intensification of punishment in neoliberal states, at the same time as restorative justice practices have been introduced. Thus, elements of restorative justice, retribution, just desserts, rehabilitation and incapacitation may all be operating within a particular jurisdiction at any one time. Indeed, in states in which restorative justice has been introduced through legislation, it is not unusual to find politicians contextualizing these changes as part of a move away from ‘leniency’ towards increased accountability and more severe penalties for offenders.

Neoliberal penal regimes have come to rely increasingly on techniques for identifying, classifying and managing groups sorted by their alleged dangerousness (Feeley & Simon, 1994, p. 173). The emphasis on actuarialism (the prediction of risk) and policies of incapacitation are not contradictory to the development of restorative justice practices; rather, the two can be seen as complementary strategies within neoliberal penal regimes. Risk assessment becomes a fundamental technique in dividing populations between those who benefit from restorative justice practices and those who are channelled into more punitive processes of incapacitation. Risk is increasingly assessed using a variety of ‘weak’ and ‘strong’ risk-predictive mechanisms, from the recognition of a prior criminal record through to the application of specifically designed risk assessment tools. Risk assessment technologies also form the core of zero tolerance policing approaches through the identification of ‘hot spots’, the statistical profiling of particular crimes and criminals, and so on. Weaker forms of risk assessment may permeate and influence other levels of decision-making: for example, decisions around access to bail or to diversionary options on the basis of prior offending history, and failure to comply with previous court orders (for further discussion see Cunneen & Hoyle, 2010, pp. 169–74). Individual ‘risk’ factors are decontextualized from wider social and economic conditions and constraints – the most marginalized groups within society

reappear as those who present the greatest risk to security and are the least likely to respond to the opportunities offered by restorative justice. A neoliberal focus on the individual and his or her responsibility ensures that the class, race and gendered dynamics of criminalization are erased. The 'borderless' appeal of restorative justice means that other techniques such as risk assessment are also seen as part of the broader package of crime control.

Not all of us can be treated as moral subjects. Not all of us have the capacity to be restored. Restorative justice practices have emerged in bifurcated criminal justice systems, which, as noted above, regulate access to restorative justice programmes on the basis of recidivism and risk. To the extent that Garland's (2001a) concepts of criminologies of the 'self' and 'other' apply in this context, it is the 'self' (offenders who are rational actors like 'us') who receive the benefits of restorative justice, while the 'other' (offenders who are racialized, marginalized and demonized) is incarcerated for long periods of time. Further, this increasingly bifurcated approach does not result in the state relinquishing control of crime. Indeed, through more punitive approaches to policing and sentencing, serious offenders and repeat offenders are treated more harshly than ever. Restorative justice can be understood only within the broader framework of criminal justice policies that favour mass imprisonment and incapacitation. It is not surprising in these circumstances that we have seen, for example, significant rises in the incarceration rates of young people precisely at the same time as youth offending rates have stabilized or begun to fall, and precisely in those nations, like the US, Australia, Canada, the UK and New Zealand, where restorative justice programmes have been developed and promoted. Restorative justice programmes have been established within broader public policy frameworks that have emphasized individual responsibility and accountability, public denunciation of offenders, deterrence and incapacitation.

It is important to acknowledge that bifurcation processes in the criminal justice system are asymmetrical. In this regard, restorative justice is very much the junior partner in the changes that have unfolded, and the more punitive aspects of neoliberal penalty have dominated. Further, these processes of asymmetrical bifurcation have been intensifying over the past decade or so, particularly with changes in bail and sentencing legislation. The overall effect of penal policy has been a substantial increase in more punitive outcomes (Pratt et al., 2005). In this context, restorative justice is reduced to a penal strategy reserved for those who are deserving, while the ‘undeserving’ (the homeless, the marginalized, the poor and non-white populations) receive what they have always received – gaol. Restorative justice is thus part of the wide-ranging politics of a new period of ‘mass imprisonment’ (Garland, 2001b). This change represents a reversal of earlier trends, which saw prison rates remaining relatively stable or increasing only slowly during most of the 20th century. According to many commentators, the rise of mass imprisonment is consistent with the broader political agenda of the neoliberal state in relation to crime – to move away from rehabilitative aims towards an increased reliance on risk assessment. This transformation in penalty has seen changes in the ideas, practices and sensibilities surrounding punishment and a revalorization of the prison.

The international expansion of restorative justice

Contemporary approaches to penalty appear to offer a broad spectrum of possibilities. However, a framework of crime control strategies has emerged which includes restorative justice, and which is held together broadly by a focus on risk, managerialism and responsabilization. The transfer of restorative justice across international boundaries can be understood at least partially in the context of the growth of a criminal justice policy movement based on neoliberal principles, particularly between North America, Australasia,

the UK and parts of Europe. Jones and Newburn (2004, 2006) have discussed different *types* of criminal justice policy convergence, particularly between the US and the UK, including the direct transfer of specific policies (for example, the policy agenda of prison privatization). Other types of policy transfers discussed by Jones and Newburn include the convergence of policy styles and symbolic politics through the transfer of ideas and ideologies (such as zero tolerance policing) rather than specific practices and policies. Finally, there may be more limited transfer and convergence, for example, where political rhetoric may be similar, but the actual measures developed may be quite different (for example common political rhetoric across states on the need to be tough on sex offenders, but the development of quite different actual policy despite common rhetoric). With restorative justice there are examples of the direct transfer of policy and practice such as the use of ‘conferencing’ for dealing with young offenders in the UK, Australia and New Zealand, as well as models of restorative justice developed for transitional societies (see below), in addition to the transfer of the ideas and ideology of restorative justice.

While the broad structural developments in neoliberalism point to particular forms of crime control, including restorative justice, the nature of actual developments in specific jurisdictions are dependent on a range of factors. Karstedt (2004) has referred to the importance of path-dependency and diverse trajectories in the way crime policies are developed across jurisdictions: crime policies are changed or developed in different ways as they travel across nations, affected by a range of historical, cultural, social and political factors. In many respects the policy transfer among Anglophone countries has tended to follow the more punitive lead of the US, exemplified by zero tolerance policing, boot camps, curfews, electronic monitoring, mandatory minimum sentences, shaming offenders and (in the case of juveniles) punishing parents. Furthermore, North American discourses on

rehabilitation and risk management have been pervasive, particularly in relation to identifying risk factors and employing cognitive behavioural programmes. Although restorative justice does not easily fit within the cognitive behavioural therapy programmes that dominate the ‘what works’ suite of responses to offenders, it has been able, on the basis of numerous evaluations, to surmount the scientific threshold as a best practice model. Coupling the best practice status with the communitarian and moral appeal of restorative justice outlined previously, we can begin to see why there has been such a momentum for its international transfer.

A globalized restorative justice?

As a process, globalization has the effect of imparting preferred models of capitalist development, modernization and urbanization (Findlay, 1999). In this context, globalization increasingly demands particular forms of capital accumulation, as well as associated social and legal relations, both within and between nation-states. Findlay has argued that ‘the dominant Western political ideology which accompanies the new phase of globalisation is neo-liberalism’ (2008, p. 14). As argued throughout this chapter, restorative justice is consonant with the values of neoliberalism, particularly given its appeal to individualized responsibility and to community. Discussions around globalization should also alert us to the need to situate the growing interest in restorative justice in the context of the shifting boundaries of relations within and between the First World and the Third World.

Restorative justice often presents itself as an alternative narrative on justice, as something outside the justice paradigms of retribution, deterrence and rehabilitation, and as a form of

resolving disputes that is 'non-Western'. Yet little attention has been paid to whether restorative justice is as much a part of a globalized justice as are other, more traditional Western legal forms. The potential of restorative justice to overwhelm local custom and law is as real as it is with other models built on retributivism or rehabilitation. The risk is that restricted and particularized notions of restorative justice will become part of a globalizing tendency to restrict local justice mechanisms in areas where there is a demand to 'modernize' (Findlay, 1999). Localized customary and non-state practices for resolving disputes and harms may be replaced by what the West understands to be restorative justice – we can see examples of this in Australia where Aboriginal customary processes are seen as less legitimate than state-organised and -sanctioned forms of restorative justice (Blagg, 2008). Alternatively, traditional forms of localized justice may be forced to respond to crimes they were never designed to address in the interests of broader appeals to restorative justice, as the example below of the *gacaca* courts in Rwanda demonstrates.

A globalized restorative justice has developed an important profile at the international level: as part of international criminal justice, as part of transitional justice arrangements and as part of the UN's crime control agenda. Forms of restorative justice can be seen within the institutions of international criminal justice, such as the International Criminal Court, which allows victims to present their views to the court, and has the power to order reparations (Findlay, 2008). As noted previously, an important feature of globalizing restorative justice has been its acceptance onto the UN agenda. In 2002, the UN Economic and Social Council adopted the *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters* (the Basic Principles). As Van Ness noted at the UN in 2005, 'in only 25 years, restorative justice has become a worldwide criminal justice reform dynamic. Well over 80 countries use some form of restorative practice in addressing crime' (cited in Porter, 2005). At the 11th UN

Congress on Crime Prevention and Criminal Justice in 2005, one of the six official congress workshops was on restorative justice.

Restorative justice has been actively promoted at a global level. The adoption in 2002 of the Basic Principles was largely due to the Working Party on Restorative Justice. The Working Party was formed by the Alliance of Non-Governmental Organizations (NGOs) on Crime Prevention and Criminal Justice, which is a US-based group. The majority of members of the Working Group were from the US, alongside two each from Australia and Europe and one member from India. The composition of the group reflects the fact that the *internationalization* of restorative justice is largely being driven by the US, with some assistance from Europe and Australia. The danger is that the globalized processes of restorative justice are being developed, defined and driven from within the specific neoliberal criminal justice context of a few First World nations – those nations with the most punitive criminal justice systems in the West.

Restorative justice as transitional justice

Simultaneous to the developments of restorative justice in domestic Western criminal justice systems has been the development and promotion of large-scale restorative justice processes for post-conflict transitional societies. Advocates of restorative justice have sought to give it an expanded role in the search for responses to mass violations of human rights and other state- and civil-based conflicts. This endeavour has been in part driven by the growing importance globally of seeking reparations for historical injustices and of the potential links between reparations and restorative justice (Findlay & Henham, 2005; Cunneen, 2006).

Internationally there has been increasing acceptance that governments should acknowledge and make reparations to the victims of human rights abuses, and adopt the principle of reparations. The South African Truth and Reconciliation Commission (TRC) clearly articulated the link between reparations and the goals of restorative justice. The institutionalization of restorative justice within the processes adopted to respond to state violations of human rights can be seen in the work of organizations like the International Centre for Transitional Justice (ICTJ) in New York. The ICTJ provides advice and models for the establishment of truth and reconciliation commissions. Yet the evidence regarding the success of this approach has been mixed. Part of the problem is that the values underpinning Western understandings of restorative justice may be imposed and processes implemented in the interests of the West, to resolve conflict in a particular way and without local or organic links to the culture of the particular society upon which the system is being imposed.

The *gacaca* courts in post-genocide Rwanda highlight some of the problems related to the role played by restorative justice in transitional justice. While there may be some cross-over between 'local justice' mechanisms and the principles of restorative justice, there has been a tendency to ignore the extent to which traditional processes may be invented traditions, and to romanticize local justice processes by downplaying the coercive aspects or domination by political elites. The Rwandan Government was faced with an enormous number of detainees as a result of the genocide and a criminal justice system incapable of responding to the enormity of the problem. However, the local *gacaca* process were never intended to deal with severe crimes related to genocide, nor to meet the complex political and historical conditions arising from such a conflict. In post-genocide Rwanda, *gacaca* courts were redefined with the

purpose of reducing the numbers of people incarcerated. In the past, *gacaca* was a system in which community elders (older men) adjudicated family and inter-family disputes over property, inheritance, personal injury or marital relations. They did not deal with serious crimes and relied on community-based forms of restitution. Punishment was not individualized. In 1999, the government modernized *gacaca*, and the 2001 *Gacaca* Law legislated for the operation of the courts. *Gacaca* courts were thus reinvented as part of the state criminal justice system applying codified law, judging serious crime, using elected members and adopting a range of penalties. In his analysis of *gacaca*, Waldorf concludes that the process in its current form is not 'participative justice'. Many people were coerced into either confessing or remaining silent (Waldorf, 2006, p. 79). *Gacaca* was imposed by a centralized and authoritarian regime onto local communities, and tended to work in favour of the Tutsi and against the Hutu. The state used coercion in operating the system, and people feared sanctions and retaliation if they did not participate (Waldorf, 2006, p. 84).

Similarly, truth commissions have been presented as a restorative justice process that captures the ideals of reconciliation, communitarianism and the establishment of truth. Yet a number of commentators have suggested that the 'international community' has found it convenient to develop a restorative justice mythology around the effectiveness of truth commissions and their connection to customary forms of justice. The South African TRC, for example, was an instrument devised as part of a political settlement, not an example of African dispute resolution or traditional restorative justice. It became overlaid with religious and restorative justice vocabulary because of the involvement of Desmond Tutu, and it was his leadership that transformed the TRC into a showcase for restorative justice. It was Tutu who claimed that the TRC was a triumph of African restorative justice over Western retributive justice. However, these binary categories are simplistic, and as Waldorf has noted,

‘claims that particular cultural traditions promote harmony are not merely essentialist, they often serve modern political interests’ (Waldorf, 2006, p. 19; see also Lin, 2006). In the South African case, those political interests related to achieving a broad post-apartheid political settlement. The TRC was not connected to local community justice and reflected state interests in reducing legal pluralism and achieving greater centralization.

Restorative justice and truth commissions are part of the global institutional environment which impacts on the choices made by members of transitional societies. The TRC model has developed an apparently universal authority and legitimacy, and states are following the TRC format despite the fact that it may be ineffective or inappropriate. There is now a dominant script for TRCs, largely developed by the ICTJ and which is being transported globally. The outcomes of this script have not always been positive – particularly where it restricts the inclusion of grassroots practices (Cavallaro & Albuja, 2008). Countries in transition are being encouraged to develop a TRC because of their need for international support and aid, irrespective of whether it may be ill-suited to local needs (Lin, 2006). The ‘one size fits all’ approach to TRCs underpinned by the claims of the universalism of restorative justice may be undermining participatory democracy rather than encouraging it (Lundy & McGovern, 2008, p. 102), particularly when TRCs are being conducted largely in the interests of a neoliberal world order.

Conclusion

The contemporary ‘logic of empire’ is a globalized world order based on the social, moral and political principles of neoliberalism. As Findlay (2008, p. 15) has succinctly summarized

in his discussion of international criminal justice, those principles include the individualization of rights and responsibilities; the valorization of individual autonomy, family and community-centred regulation; a belief in free and rational choice which underpins criminal liability and penalty; a denial of welfare as central state policy; the valorization of the free market model and profit motivation as core social values; and the denial of cultural values that stand outside, or in opposition to, a market model of social relations. In the main, restorative justice as it has been conceptualized in the West reproduces these principles and values.

Restorative justice is part of the globalization of crime control strategies. In Western neoliberal states it has been primarily an add-on to existing and increasingly punitive criminal justice policies. It has not been a counterweight to increased punitiveness, nor has it grown in isolation from these broader trends in penalty. Indeed, there has been an increased bifurcation between low-risk, community-based options, like restorative justice, and more punitive trends such as mass imprisonment. In the Global South, restorative justice has been imposed from the top down process in transitional societies, where its use is being increasingly demanded by international agencies and the 'international community'. The transfer of restorative justice via the UN agenda represents a particular form of state control, characterized by governing at a distance through individual responsabilization and apparent appeals to community.

The transfer of criminal justice policies as part of the logic of empire is not new. For at least the past two centuries we have seen the movement of criminal justice processes, policies, practices and law across various parts of empire: exemplary are the transfers of crime control

strategies across British colonies, and the corresponding bifurcated penalty that developed along lines of race. However, while we may see examples in the past, what we have at present is a historically specific globalization of crime control strategies that are built around principles of neoliberalism and which include restorative justice. A globalized world order operating in the interests of globalized capital and neoliberal states privileges particular types of criminal justice system, and dominant Western conceptions of restorative justice fall within these systems.

The appeal of restorative justice can be understood within the context of a particular common sense about the need for social connectedness and moral certainty (Cunneen & Hoyle, 2010). On the face of it, restorative justice promises a new way of dealing with offenders and victims which seemingly allows for greater community involvement and an unambiguous process of determining right and wrong, moral blameworthiness, accountability and finally forgiveness. However, as argued throughout this chapter, the universal good that restorative justice promises is firmly captured within a very particular set of processes which can be understood more generally as neoliberal approaches to crime control. The developments in crime control examined in this chapter have sat alongside neoliberal approaches to governing marginalized populations more generally – an area where social policy itself has become more punitive (Beckett & Western, 2001). To the extent that neoliberalism dominates a new globalized world order, restorative justice takes its place without any significant challenge to the values that underpin the new order.

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