

Chapter 16

Retaliation in Transitional Justice Scenarios: The Experiences of Argentina and Colombia

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ABSTRACT

This chapter discusses the role of retaliation in the Transitional Justice Scenarios of Argentina and Colombia, drawing attention to the continuation of state violence and human rights violations in these two South American countries following the implementation of legal and non- legal mechanisms of TJ. Subsequently, it attempts to demonstrate how the implementation of TJ mechanisms may fall short in preventing cycles of violence that allow powerful actors, linked to the interests of the state, to continue performing the retaliatory practices that historically caused major 'social harm' in the transitional societies . The rationale of this article consists of two central questions: How can transitional societies deal with both the legacy and reconfiguration of state violence? Moreover, to what extent do orthodox understandings of law and TJ serve as a means for the recreation of the retaliatory practices that shaped the conflicts that TJ measures are supposed to address?

INTRODUCTION

Transitional justice (hereafter TJ) has become a buzzword in the jargon of both policy makers and scholars. Broadly understood as the type of justice mechanisms implemented after periods of harsh political confrontation, mass atrocity and gross human rights violations, the configuration of the idea of TJ has been significantly influenced by the political experiences of Latin American societies

(Teitel 2000). Reference to the transitional scenarios of the Southern Cone, and most recently to the implementation of TJ mechanisms in the ongoing-armed conflict of Colombia, constitutes a common component of the ample but diffuse literature on the subject (Bell 2009; Uprimny & Saffon 2007).

This chapter discusses the role of retaliation in the TJ scenarios¹ of Argentina and Colombia, drawing attention to the continuation of state

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violence and human rights violations in these two South American countries following the implementation of legal and non-legal mechanisms of TJ. Subsequently, it attempts to demonstrate how the implementation of TJ mechanisms may fall short in preventing cycles of violence that allow power groups, linked to the interests of the state, to continue performing the retaliatory practices that historically caused major 'social harm' in the so called transitional societies².

The rationale of the chapter consists of two central questions: How can transitional societies deal with both the legacy and reconfiguration of state violence? Moreover, to what extent the understandings of law that inform TJ processes facilitate the continuation retaliatory practices that serve the interests of major power groups, who benefited from the violence of both the conflict and the transitional period?

In order to address these two questions, this chapter uses elements of critical criminology such as Cohen's concept of 'states of denial' (2004) and draws attention to the performance of TJ. In particular, the chapter examines the role of the state as both a regulator and generator of crime before and after TJ processes (Chamblis 2010). In so doing, the chapter uses insights of anthropological accounts (Gugliemucci 2007; Castillejo 2007) on TJ and highlights the importance of thinking about transitional justice from a critical perspective. The article argues that retaliation can also be present in TJS and shows that the discourse on rights surrounding the notion of TJ is imbued with multiple meanings, shaped by political, legal and social actors³. In this vein, concepts from the work of P. Bourdieu, such as social capital and legal field, also inform the theoretical framework of the chapter.

The chapter is structured in three sections. Firstly, I provide an overview of the transitional scenario of Argentina, outlining the historical assemblage of state terror in Argentina and two commemorations on March 24th - the National

day of Memory in Argentina. Secondly, I trace a depiction of the TJ scenario of Colombia, based on an analysis of the legal framework of the transition and its political configuration. Finally, in the third section, I draw some conclusions by reflecting on the role and intensity of retaliation in the two cases.⁴ Throughout the article, the relationship between law and state violence is evinced. In highlighting this relationship, my intention is to underscore that that law can be instrumentalized in TJ processes and leave aside the idea of "justice" from an ethical perspective.

Despite there being no single definition of TJ, for the purpose of this article I will take Joanna's Quinn definition of the notion as an analytical tool. For Quinn, 'TJ is the process by which societies move either from war to peace or from a repressive regime to democracy while dealing with resulting questions of justice and what to do with social, political, and economic institutions' (Quinn 2009). Quinn's definition is illustrative of the models of TJ mechanisms implemented in Colombia and Argentina.

Notwithstanding state violence having constituted the most harmful form of retaliation in Latin American societies, the phenomenon of persistent state criminality and its surrounding social, political and economic forces remain largely unaddressed in TJ research. This contribution aims to draw attention to this phenomenon and the role of the state as a retaliatory actor in contexts where the historically asymmetric relationships of power remain – largely intact, even after the implementation of TJ mechanisms.

ARGENTINA: AN ARCHIVE OF STATE CRIME

Authoritarianism and state violence have been characteristic features of Argentinean history (Aguila 2010), with violence having played a fundamental role in the foundation of the state,

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