Stay the Hand of Justice: Whose Priorities Take Priority?

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After more than a decade of contemporary international responses to criminal justice, we are left still with questions about the validity and utility of the mechanisms that we have initiated. Debates about domestic, international and mixed tribunals, the role of punishment and forgiveness, the value and limitations of amnesties, the morality of truth commissions and the relationship of these to the social reconstruction of societies are found in the literatures of several disciplines. While we recognize that international criminal law has evolved and created new standards of accountability in the area of war crimes, crimes against humanity and genocide, we raise questions in this paper about beneficiaries, priorities, the reactionary and even parochial nature of the human rights field, and offer a challenge to those who see transitional justice as the most important step in protecting the security of those whose lives are threatened by violence and terror. Further, we suggest that part of the problem in assessing the benefits of the approaches now subsumed under the term “transitional justice” lies in an over-reaching expansion of the benefits of these mechanisms. Transitional justice is expected by scholars and practitioners to lead to reconciliation, to deter further abuses of human rights and even genocide, to lead to forgiveness, to combat impunity, to support a higher order of morality, to promote social reconstruction, and to alleviate the effects of trauma.

We suggest that the expectations of the world community for trials be limited to an agreement that retributive punishment is appropriate and sufficient in and of itself; that reconciliation processes may be of another order entirely and that the relationship
between justice and reconciliation remains unclear. While all truth commissions, trials, vetting, memorials and reparations may all play some as yet undefined role in the social reconstruction of societies, the contributions will vary depending on context and on the priorities assigned to them by those affected. Thus, attention and respect must be paid to the voices and opinions of those whose human rights have been abused.

In this paper, we review data from several countries that have confronted these questions – Bosnia-Herzegovina, Croatia, Serbia-Montenegro, Rwanda, Uganda, and Iraq with a specific focus on how those affected think about justice and what it means for their futures. Over the last decade we have gathered these data using a variety of research methods and the findings raise questions about the goals of trials, the beneficiaries of trials, motivations for justice, and the on-going tension between rich and poor countries, the North and the South. This paper views the data chronicling the range of attitudes towards justice, the types of judicial mechanisms implementing transitional justice, and what we can learn about how these attitudes may relate to the social reconstruction of countries after mass violence.