

A stylized map of Lebanon composed of a grid of grey dots, with several dots highlighted in red to indicate specific locations or regions.

Never Too Late: Reparative Justice in (Post-)Conflict Societies

Opportunities for Reconciliation, Justice and Peace in Lebanon

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- Reconciliation has never seriously been attempted in Lebanon. The question of the civil war has been avoided in public debate in the Cedar state. This guaranteed short-term peace and avoided further violence between the confessional groups. Yet, ignoring reconciliation and justice led to the absence of a long-term and sustainable peace. Even the absence of violence seems uncertain.
- It is nearly impossible to distinguish victims from offenders during civil wars. According to the concept of reparative justice, everyone should be seen as a survivor. But instead of focussing on the survival of the Lebanese community, the underlying causes for the war such as political, social and confessional cleavages were ignored. Unfortunately, every confessional community went back to their pre-war position which is defined by the respective confession.
- Reparative justice can address the assumed contradiction between justice, peace and reconciliation. Elements of reparative justice such as a national Truth and Reconciliation Commission following the South-African model and local reconciliation groups could be an appropriate mechanism for this reconciliation and justice process after the civil war and the Hariri assassination. After all, Lebanon can be a regional role model and demonstrate how reconciliation, justice and peace can be united in the unstable Middle East.

Why Lebanon Needs Justice

Lebanon has a long history of conflicts caused inter alia by the differences between its 18 different confessional communities and its neighbours, who have always had special interests in the Cedar state. The civil war lasted for 15 years and was settled by the Ta'if agreement in 1989. Whilst the agreement dealt with major disputes regarding national representation and regional autonomy between Christians, Sunnite Muslims and Shi'ite Muslims, it was still partly shaped by foreign powers such as Syria.

Although it brought the civil war to an end, it did not deal with questions of justice and reconciliation. An amnesty law pardoning all political crimes prior to its enactment was passed in 1991. This prevented further violence, but created the widespread sense of injustice in Lebanon. Until today, one can easily distinguish the confession of Lebanese people based on the district they live in for example. Mixed districts are rare. Beirut is a divided city and symbolizes the internal Lebanese division in a nutshell. About 23 years after the end of the civil war, its consequences are still visible in Lebanon. Confessional affiliation is linked to political power since the National Pact of 1943 at the latest. This creates a weak state which is in no position to lead a reconciliation process. A fear of minorities for their existence, foreign interference and a powerful opposition from religious authorities to a civil state transcend all levels of social and political life. In the last years, further political cleavages penetrated the traditional confessional lines and added another level of conflict. All in all, true reconciliation of past events must also discuss the current different visions of the Lebanese state.

No Justice. No Peace.

Since 1989 violence remained a political instrument in Lebanon as the recent clashes between pro-Assad and contra-Assad troops in Beirut and Tripoli in May 2012 demonstrate. Changing demography in favour of the Shi'ite and remaining disputes about the size of electoral districts have given rise to more violence in the last years. After the assassination of Rafic Hariri in 2005, protesters flooded all over the country and the following parliamentary elections were won by a secular Sunni-led alliance. This led to several violent demonstrations, sit-ins

and blockades followed by an occupation of key parts of the Sunni-dominated West Beirut by Hezbollah. In 2009, Hariri's son managed to form a national unity government which included Hezbollah. After disputes over co-operation with the Special Tribunal for Lebanon (STL), the *party of god* left the coalition in January 2011 and a Hezbollah-dominated government was formed in June 2011.

The current uprising in Syria is already affecting Lebanon. Traditionally, Lebanese politics are a playfield for Syrian interference. The major success of the Cedar Revolution in 2005 was the retreat of Syrian troops from Lebanese territory. However, Syria remains economically, militarily and politically influential. The *dissociation policy* from Syria, which culminated in the Cedar Revolution, had its ups and downs. Recently, the turmoil in Syria changed the situation once again. Walid Jumblatt, leader of the Progressive Socialist Party (PSP) which is a decisive member of Hezbollah's coalition, publicly decried Lebanon's position in the Arab League. He asked Nasrallah, Hezbollah's leader, to stop backing Assad and support the Syrian people instead. The danger of Lebanon being drawn into the Syrian turmoil is imminent. This is partly caused by the fact that reconciliation has never seriously been attempted throughout the last decades. Two examples demonstrate this assessment.

First, instead of repairing the damage caused by the civil war, the former has been ignored. The civil war is not taught in Lebanese schools. Pupils are taken to the memorials and are asked to commemorate the victims, but causes, crimes and the war itself are not topics included within the education about the civil war. In the absence of a common curriculum on Lebanese history, different versions of the civil war are taught, thereby reinforcing existing cleavages. How history of a certain time period could be explored sufficiently is demonstrated through the agency of the German Federal Commissioner for the Stasi records or the several political education authorities of the federal states in Germany for example. Whilst the first institution investigates the files of the Stasi, puts them into context and provides former victims with information, the political education authorities were created to educate about German history and politics for example.

A second example is the UN backed Special Tribunal for Lebanon (STL). The string of assassinations, the omnipresent Syrian influence and the popular call by the

Lebanese people for justice explain the creation of the tribunal at that time. The Hariri assassination was the last straw. At the same time, the tribunal could not deliver the necessary justice yet.

It is widely perceived by the Lebanese as an imposed investigation by foreigners, which deals with identifying the perpetrators of the attack on the former Prime Minister. However, the STL is not inclusive and works on a punitive basis. Warrants have been issued and witnesses have been heard. Nevertheless, Hezbollah and its allies are boycotting the tribunal because they fear the political implications. Currently, the process has reached a deadlock. Alternatives for justice and reconciliation in the case of Hariri are needed now more than ever.

The Concept of Reparative Justice

Justice, peace and reconciliation can contradict each other since these terms are mutually linked. Reparative justice might address this assumed contradiction. Whilst the pure absence of direct violence is often called negative peace, the absence of structural violence – defined by destroyed relationships or the lack of social institutions – leads to positive peace (cf. Galtung 1969: 183). Reconciliation refers thereby to positive peace and can be »defined as mutual acceptance by groups of each other« (Staub 2006: 868). This acceptance builds on a high degree of participation across a broad spectrum of the population (cf. Lederach 1998: 242). Therefore, reconciliation needs inclusiveness by definition.

However, participation is often nothing inherent in modern justice, which is built on the elements of deterrent justice with punitive elements such as state-sponsored court systems, imprisonment or even the death penalty. Yet, in post-conflict societies, it often appears as a selective winners' justice such as for example in former Yugoslavia for the Serbs or currently in Liberia for one part of the Liberian society. If it divides and does not offer truth, justice might disturb reconciliation (cf. Clark 2008: 333) by leaving core actors out of the process and thereby allowing them to veto future developments.

The experiences of conflict often lead to traumata on an individual and societal level. Whilst the former can be dealt with by psychologists on an individual basis, repairing the societal traumas appears as a different

challenge. However, as long as the healing of wounds is not ensured, reconciliation cannot take place and continuing injustice could lead to renewed conflicts (cf. Mani 2005a: 27). Reparative justice offers mechanisms to help healing wounds in the aftermath of a conflict. In this context, it might help to see the reconciliation process in a society as a big therapy. What sounds abstract is actually based very much on human history. As a concept, it dates back to Babylonian and Roman times (cf. Turpin 1999: 60). Reparative justice has been repressed by the emergence of modern rule-of-law systems and the state's monopoly on the use of force which led to the modern state-sponsored punitive and deterrent justice. Reparative justice is inclusive, sensitive and it »(...) encompasses both the legal and the psychological harm suffered during conflict (...) and responds to the need to address both these dimensions (...)« (Mani 2005b: 522). Those components distinguish it particularly from punitive justice and make it more suitable for the special needs of post-conflict societies. Reparative justice recognizes injustice not only as a consequence of conflict, but also as a symptom and cause of conflict.

Survivors' Justice rather than Victors' Justice

Reparative justice views all community members as survivors of conflict instead of some as victims and others as offenders. In comparison to measures of transitional justice, it does not deepen divisions within society because it recognizes the difficulty to distinguish between offenders and victims in post-conflict societies. Punitive justice creates a dilemma between the need for short-term and long-term peace. Justice must be achieved to guarantee positive peace in the long-run although it can threaten negative peace in the short-term by provoking the old elites. It provides direct accountability of the offender to the victims and the community whilst in state-sponsored courts, victims are merely heard as witnesses and the punishment of the offense is done by the state without consideration of the victim's need for answers. Nevertheless, reparative justice does not exclude punishment, even though the application of punishment is more specific and is more oriented on the special needs of the community.

Furthermore, reparative justice allows victims to be part of the process in order to restore justice on a personal level and to improve rehabilitation (cf. Turpin

1999: 60). Because it is inclusive and therefore creates a widespread legitimization, it increases compliance with the outcome, decreases recidivism and develops a sense of moral responsibility (cf. Menkel-Meadow 2007: 172).

Reparative justice is built on the following elements (cf. Id.: 164):

- Active participation of offender and victim with active listening and story-telling;
- Narrative element of what the offense consisted of;
- Exploration of motives and root causes by offender and victim together;
- Acceptance of the fault for the committed act by the offender with recognition of the caused harm;
- Consideration of appropriate outcomes for restitution by offender, victim and community;
- Reintegration of the offender through apology, restitution and social services;
- Reconciliation of wronged and wrongdoer;
- Orientation to the future with new commitment to shared values.

Reparative justice has been used in practice in a variety of cases, mostly on the level of group disputes. Reparative elements of justice such as victim-offender mediation have been implemented in over fifteen countries on a national level, mostly in Latin America but also in the USA and Canada (cf. Tierney 2006: 84). Although they still have a low profile on an international level, reparative elements could be the pillar of an *ius post bellum*. The first steps have already been taken with the implementation of questions of reparation in the Hague convention IV (cf. Id., 85) in 1907. In recent years, hot spots like Afghanistan or Iraq demonstrated that an international concept of *ius post bellum* is very much needed whilst *ius ad bellum* and *ius in bello* are already present on the international level.

Reparative Justice in Lebanon

Punitive justice on one side and truth and reconciliation commissions on the other side are often perceived as contradictory by scholars. Truth and punitive justice seem to be a trade-off in post-conflict societies. Discovering the truth can often only be done by pardoning key actors thereby creating the feeling of injustice

throughout society. Furthermore, such a process is often done behind the doors to protect the witnesses and is therefore not inclusive whilst this criterion is the key to a lasting reconciliation.

Pursuing justice might not actually lead to an inclusive process of reconciliation since certain actors will be punished whilst others remain free. However, as the wars in former Yugoslavia or recently in Libya show, the main problem of implementing punitive measures is founded on the difficult distinction between offender and victim after a civil war. Therefore, traditional tribunal systems such as the one in former Yugoslavia would not be appropriate in Lebanon because it would foster the existing cleavages instead of overcoming them.

Surprisingly enough, Lebanese officials ignored both justice and reconciliation. Justice was never achieved in Lebanon due to the amnesty law and the taboo on the civil war topic. Offenders remained free and often in powerful positions. Two examples are Michel Aoun, a former chief of staff and prime minister during the civil war who is one of the most powerful men in the current government and Nabih Berri, the leader of the Amal movement during the civil war and speaker of parliament today. But not only was justice ignored, truth and reconciliation were also not pursued. The amnesty law from 1991 would have offered the chance of reconciliation.

Whilst punitive instruments such as special tribunals or ordinary courts were not used, reconciliatory institutions were not established either. A national foundation – based on scientists like in reunited Germany for example – could have done research about the war and thus could have contributed to the framing of the war in public debate a posteriori. However, such a concept would not have been inclusive for all parts of society since it is an academic institution and does not include former offenders. Parliamentary commissions could have been another traditional way to pursue truth-finding and reconciliation. These instruments would have helped Lebanon to a certain degree but it is doubtful whether or not they could have balanced the special need for justice and reconciliation in a deeply divided society. Reparative justice could offer different, more promising mechanisms for a country which is in both a post-conflict situation and continuously on the edge of new conflicts.

Truth and Reconciliation Commission

A Truth and Reconciliation Commission based on the South-African model (cf. Goodman 1999: 180f.) could be a chance to discover the truth of the civil war and explore war crimes whilst simultaneously keeping the fragile peace. However, in South-Africa, the state set up the commission after a more or less peaceful regime change. It offered amnesty to those who confessed their crimes and offered a space for narration and exploration of root causes.

Because of the unstable Lebanese situation, such a commission could be created whilst adhering to a balance of the different confessions. It could be established on the national level by the Lebanese state but the actual commission would consist of representatives of the civil society and the state. In theory, every Lebanese – maybe even foreigners from Syria for example – could confess and tell their story in front of the commission. To guarantee inclusiveness, it must be open to everyone and be based on a concept of equality between offender and victim, despite the difference in guilt.

Because the commission would offer amnesty for all those who confess their offenses, it could provide the Lebanese with a lot of insights for the reasons of the civil war and on the perpetrated acts on an individual level which might be difficult to achieve otherwise.

On one hand, the commission would explore the reasons leading to civil war on an abstract level, the war and its crimes itself based on documents, testimonies of witnesses and scientific analysis. On the other hand, it would be a platform for all Lebanese to tell their story, to meet their offender or victim and to reconcile under the guidance of legitimate mediators from the civil society. On a technical level, the commission could create a database which will eventually be used for educational purposes.

Furthermore and although they lack the experience of the civil war, the young generation must play a role. Whilst they might not be able to be an active part in the truth-finding and story-telling phase of the commission, young Lebanese must be included for the reparative process and the creation of a framework for the future of Lebanon. If wanted by the Lebanese, the investigation of the Hariri murder could also be part of such a com-

mission in order to perceive this event as a consequence of the civil war. The unstable situation in the aftermath of the assassination calls for a sensitive and less punitive answer. This case demonstrates how important particularly inclusiveness is for a balance of long-term and short-term peace in order to achieve a lasting reconciliation. Civil society actors could help the relevant actors to set up the commission, but it is crucially important to leave the process itself up to the Lebanese people. Facilitators should not take sides but rather help framing the process and thereby contribute to its success.

Local Reconciliation Groups

Furthermore, the regional differences inside of Lebanon and the importance of local actors in the Lebanese society offer an opportunity for reconciliation on the small scale which differs from the national commission. Such a process could be initiated by providing the framework for such local groups and bringing the different confessions together with the help of actors of the civil society. Similar groups already exist in the Shouf region and have led to a rapprochement between the Christian and Druze communities from the area. Building on this regional experience, local reconciliation groups should be extended to the whole of Lebanon.

The Lebanese society is still very much built on the seniority principle. Therefore, traditional legitimization of actors must be taken into consideration. At the same time, democratic legitimization should be encouraged to strengthen progressive forces and democratic developments. In such a context, traditional actors like the elders of each local community or the heads of certain families and democratically legitimized politicians would be brought together and talk in a moderated process about the civil war. The emphasis would be put on narration and active listening. The moderator, such as a civil society actor for example, as a crucial element of such a process, should be neutral and help to explore the root causes of certain actions and focus on the reparation of the act for the community itself. However, the community and not a state-sponsored judge would be responsible for the distribution of guilt and the decision of an appropriate outcome for the offender and the victim. The state should in fact stay away of these affairs as much as possible and leave the process up to the local communities.

Punishment such as imprisonment should not be focused upon. The process would rather be guided by the objective for reparation of the committed wrongdoing, the reintegration of the offenders through mechanisms like apology, financial restitution or social services. A pure punitive act might deepen the cleavages and hinder the reparation of the community. For example, in former Yugoslavia, it seemed a moral obligation to turn in Slobodan Milošević and other war criminals. At the same time, singling out certain offenders and convicting them in front of an international tribunal increased the Serbian sense for injustice and hindered further reconciliation between the different ethnical groups.

The best scenario for a local process would be the reconciliation of the wronged and the wrongdoer, but in fact any form of story-telling, questioning and listening would help to come to terms with the past. Furthermore, it is important to concentrate on the local groups and the individuals and to avoid any attempt to solely blame certain people or communities. This method is about individual pain committed by other individuals and should be repaired by individuals. Only then can those individuals commit to a common future in their local community.

Conclusion

Reparative justice permits to achieve a lasting reconciliation by bringing offender and victim literally together in the same room and then letting them tell their story. Instead of a judge-centred process with a passive audience, both commission and local groups would create justice and reconciliation with and inside of the community. This happens with equal members and not from outside with actors of an asymmetric power distribution.

Elements of reparative justice can address the special needs of Lebanon and should slowly be implemented by actors of the civil society. Nevertheless, post-conflict peace building is very complex and simple conclusions

should not be drawn. Reparative elements of justice alone cannot achieve a lasting reconciliation, but they can help.

At the same time, this concept does not fit in the common modern belief of justice in European societies. This belief is shaped by a long history of punitive justice done by the state, in which the community or the victim are often not a constitutive part of the process but witnesses at most. Whilst reparative elements of justice existed in European countries throughout history, their importance decreased with the emergence of the modern states. This is less the case in Lebanon, although the Cedar State is certainly influenced by those perceptions of justice because of its colonial history.

But methods such as story-telling and reparation of a wrongdoing would not be anything new in Lebanon. They would be implemented in a society which is familiar with such methods, contrary to European societies for example.

For this reason, reparative justice has a high chance to succeed in Lebanon because it will not have to deal with the same resentments, which are present in Europe and North America. Considering the failure of other methods, a sustainable, inclusive and progressive approach such as reparative justice might be able to allow the Lebanese people to start walking the thin line between short-term and long-term peace. A lasting reconciliation and justice can be achieved only if this succeeds.

Lebanon is one of the most influential Arab countries due to its historic importance as a gatekeeper to the Middle East, its early democratic steps and its leading role in the culture and media of the Arab world. A progressive and successful reconciliation process might encourage other Arab countries to follow the Lebanese path in a time of turmoil, where new concepts for justice and reconciliation are needed to rebuild societies. In fact, Lebanon can be a role model for the whole Middle East and demonstrate how reconciliation, justice and peace can be done altogether.



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