

On coming to terms with the past: Which justice to come for a post-criminal state society?

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Abstract.

In coming to an answer how a society can come to terms with a past where human rights violations were inherently part of the state system, this research suggests that a comprehensive transitional justice approach with different mechanisms to address wrongdoing is imperative and should include a differentiated notion of guilt and a differentiated profile of the protagonists involved by commission, omission, or submission. This research focuses on the complex reality entailed by a 'criminal state'. The latter is characterised by different agents embodied by individual as well as collective units. Coming to terms with a past entailing these agents, requires a short- and long-term strategy to address the wide range of agents entailed in different degrees of responsibility. In an abstract sense this research states that an action induced by a complex reality necessitates an equally differentiated reaction. As a consequence this research is contributed to the appeal made by Laurel Fletcher to contemplate the impact and/or (in)effectiveness of post-conflict mechanisms to address past wrongs. An analysis of a 'criminal state' is followed by a critical assessment of the mechanisms of transitional justice as they are conceptualised today. The research is concluded with the analysis of two test cases exemplifying system guilt, viz. post-Nazi West-Germany and post-apartheid South Africa.

Abbreviations.

ANC: African National Congress.

HRVC: Human Rights Violations Committee.

ICC: International Criminal Court.

NP: National party.

‘The Act’: *Preamble of the Promotion of National Unity and Reconciliation Act*, no. 34 of 1995.

TRC FR: Truth and Reconciliation Commission Final Report.

SAAF: South African Air Force.

Sapa: South African Press Association.

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