Active justice:
Restorative justice processes as fertile ground
for exercising citizenship

Justiça ativa:
Processos de justiça restaurativa como campo fértil
para o exercício da cidadania

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JUSTIÇA RESTAURATIVA

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Abstract

This paper focuses mainly on the relation of the concept of citizenship with restorative justice, especially as viewed and enacted in the four intercultural settings of the ALTERNATIVE project. The paper is structured in four main parts. Part one focuses on the concept of participatory citizenship in relation to crime and conflict. Part two explicates and makes clear the claim of the discourse of restorative justice to the concept of participatory citizenship and democracy. Part three mentions some of the challenges in the restorative justice discourse that complicate its relationship to participatory citizenship. Part four states some of the ways the ALTERNATIVE project tries to tackle some of these challenges. The paper argues that if we view restorative processes as being essentially about talking together and acting together, the essential element of active participation makes restorative justice clearly a manifestation of political action. Nevertheless, restorative justice must not only be limited to being discursive and reflective, but must forge alliances with the governmental and non-governmental agencies, and create webs of accountability that lead to concrete social and political actions which fight injustices of all kinds.

Keywords: Active citizenship. Restorative justice. Democracy. Social justice.

Resumo

Este artigo foca-se principalmente na relação entre o conceito de cidadania e o de justiça restaurativa, especialmente como vista e representada nas quatro configurações interculturais do projeto ALTERNATIVA. A primeira parte foca-se no conceito de cidadania participativa relacionada ao crime e ao conflito. A segunda parte explica e deixa clara a demanda por um discurso da justiça restaurativa por parte do conceito de cidadania participativa e de democracia. A parte três menciona alguns dos desafios presentes no discurso da justiça restaurativa que complicam a sua relação com a cidadania participativa. A parte quatro apresenta alguns dos meios pelos quais o projeto ALTERNATIVA tenta cuidar desses desafios. O artigo argumenta que se vermos o processo restaurativo como sendo essencialmente sobre conversar e agir juntos, o elemento essencial da participação ativa faz da justiça restaurativa claramente uma manifestação de ação política. No entanto, a justiça restaurativa deve ser não somente limitada a ser discursiva e reflexiva, mas deve forjar alianças com agências governamentais e não governamentais, e criar redes de responsabilização que levem a ações sociais e políticas concretas que combatam as injustiças de todos os tipos.

Palavras-chave: Cidadania ativa. Justiça restaurativa. Democracia. Justiça Social.

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Introduction

The reflections in this paper are based on the conceptual work undertaken during the first year of ALTERNATIVE[1], a project coordinated by KU Leuven. The overall objective of the project is to provide an alternative and deepened understanding of justice and security based on empirical evidence of how to handle conflicts within intercultural contexts, mainly through the active participation of citizens. The project focuses conceptually on four main intertwined relationships, one is the relationship of discourses of justice and security, second is the relationship of restorative justice and interculturality, third is the relationship of action research and theory, and fourth is the relationship of restorative justice and active participation, citizenship and democracy.

This paper will focus mainly on the relation of the concept of citizenship with restorative justice, especially as viewed and enacted in the four intercultural settings of the ALTERNATIVE project[2]. The paper is structured in four main parts. In part one I will focus on the concept of participatory citizenship in relation to crime and conflict. In part two I will explicate and make clear the claim of the discourse of restorative justice to the concept of participatory citizenship and democracy. In part three I will mention some of the challenges in the restorative justice discourse that complicate its relationship to participatory citizenship. In part four I will state some of the ways the ALTERNATIVE project tries to tackle some of these challenges. Finally I will conclude the paper with some overarching remarks on the subject.

On participatory citizenship

The concept of citizenship is reminiscent of a state-based definition whereby citizenship means the formal membership of a political unit, prevailingly the nation state. Considered in such lines, citizenship becomes a concept with discriminating qualities, drawing a line between those who belong and those who do not. Holston (2008) challenges this definition of citizenship by linking it with the experience of citizens. From this point of view, citizenship is not only about the legal status of being a member, but also about the individual's sense of belonging to the society. At the same time citizenship is not only about the right to participate in politics, but also about the right to participate in other realms of social life. While active and participatory citizenship is highly valued in the European context and is a rich concept in social theory, as explored through studies on deliberative democracy (Dryzek, 2010; Elster, 1998), nodal governance (Froestad and Shearing, 2007; Shearing and Wood, 2003), dominion (Braithwaite and Pettit, 1992), and civil society (Giddens, 1998), the concept has not been linked substantially to existing everyday practices important to the lives of people. In this regard, social life spheres where people feel affected personally from crime and conflict offer fertile soil for understanding.

It remains unclear to what extent and through which interactive processes European citizens are able to practice their rights and take up their responsibilities when it comes to dealing with crime and conflict. Crime clearly represents a field of tension between the role of the state in developing top-down crime policies, and the role of citizens and civil society in practicing bottom-up participatory citizenship (Braithwaite and Parker, 1999). When people rely heavily and exclusively on the state authorities to solve economic and social problems

and state authorities are perceived as the sole responsible institutions for economic and social well-being, the result is the passivity of the civil society in which people accept the status of a subordinate or bystander rather than that of an active citizen. Therefore, it becomes challenging to find ways to stimulate people to play a more direct role in handling conflicts, to motivate them to become more conscious about social problems around them, and to encourage them to get engaged in public issues.

Current trends in sociological and political science theory point to a global emphasis on democratic participation, on the inclusion of citizens in decision-making processes, on the reliance on dialogue in conflict-resolution, and on the development of social capital. While most of the Western European countries rely on and value state institutions in general, and more specifically the professionalism and legitimacy of the criminal justice system, there is at the same time a recent trend in line with global developments, towards citizens' inclusion in public policies and of closing the gap between state and citizens. Shapland (2008, 26) argues that "the future will see the development of new forms of accommodation around communication, partnership, and plural means of dealing with crime" between civil society organisations, criminal justice system, communities and citizens.

Restorative justice as participatory justice

Against this background, restorative justice approaches can be an important building stone and a socio-educational tool within the wider movement for participatory citizenship in the European context. Restorative justice is a reflective discourse of justice that emphasises repairing the harm caused by crime, whereby crime is viewed more comprehensively than simply law breaking. Acknowledging that crime causes (material, social, psychological, and relational) harm to people and communities, restorative justice insists that justice repair those harms and that the parties be permitted to participate in that process – often in face to face meetings with the support of a mediator or facilitator. Restorative justice programmes, therefore, enable the victim, the offender and affected members of the community to be directly involved in responding to the crime.

The demand for active participation of the people, more specifically of those affected by conflict or crime, has been projected in restorative justice as the vision of a society where alienation can be overcome. Christie's ground-breaking article *Conflicts as property* (1977) outlined a participatory approach of restorative justice which would provide a remedy for segregation and the loss of social cohesion and offer opportunities for norm clarification. Christie argued that the active participation in the handling of conflicts and their aftermath offers benefits for victim, offender and society, and as such conflicts represent a potential for activity and participation. The wider political implications of active participation of those concerned is expected to both promote democratic values and serve as an exercise ground for democratic practice. For example, in *Civic implications of restorative justice theory: Citizen participation and criminal justice policy* (2003) Dzur aimed at the propagation of a wider and more ambitious goal for restorative justice, namely influencing, and transforming criminal policy and, even more generally, promoting deliberative democracy in society. Similarly, Braithwaite in his seminal book *Restorative justice and responsive regulation* (2002) locates restorative justice approaches within various social formations in globalisation, linking top-down strategies of conflict regulation to bottom-up initiatives, enhancing thus their capacity to find adequate responses to social conflict.

Restorative justice scholars view RJ practices as 'small experiments of deliberative democracy' (Braithwaite, 2000; Christie, 1977; Dzur and Olson, 2004). They argue that these micro-experiences of democracy can teach us to how to become active citizens. In Braithwaite's words while "disputing over daily injustices is where we learn to become democratic citizens" (1999, 78). Participation can also contribute to create democratic habits and a greater understanding of democratic possibilities, including the recognition of the role of civil society on governance (Gordon, 2006).

Restorative justice calls for a shift in the "essential role of the citizen from service recipient to decision maker with a stake in what services are provided and how they are delivered," (Bazemore 1998, 334), by giving the community "a forum through which it can exercise its responsibility for its members rather than suffer crime passively and depend entirely upon the coercive power of the state for protection and order" (Schweigert 1999, 33). As such RJ should be pursued as a countermovement that deals with repercussions of the rise of the modern state and of bureaucratic government (like criminal justice system), especially with a kind of alienation that is the effect of institutionalisation and bureaucratisation, by creating democratic procedures and dialogue practices that overcome those effects of criminal law which work in the direction of exclusion and alienation.

This way of considering participation leads to the understanding that RJ helps to enact and enhance what Hanah Arendt in 'The Human condition' (1958) calls our 'place in the world', a position that allows people to hold the ground that gives them the freedom to become active members of a body politic. Coming together and acting 'politically' are, according to her, the very essence and the highest expression of our human condition. If we view restorative processes as being essentially about talking together and acting together, the essential element of active participation makes restorative justice clearly a manifestation of political action (Pali and Pelikan, 2010).

Current limitations of the RJ discourse for the participatory vision

Currently, the field of restorative justice in Europe is well described, analysed, and theorised, and its potentials are recognised by practitioners, scholars and policy makers both at the national and supranational levels. Nevertheless the field of restorative justice in Europe, both in terms of practice and theory, is confronted with important limitations. Two main limitations in restorative justice literature are the inadequate and static use of the concept of 'community', and the other is the failure of restorative justice to make a concrete link and analysis between macro and micro domains, remaining thus an individualising discourse of crime and justice.

Against the concept of 'community' in restorative justice

In restorative justice literature the absolute existence of 'community' is assumed, a 'community' which is depicted as a homogeneous, unified, functioning, harmonious, cohesive, empowered, democratic, accommodating, inclusive, connected, and consensual whole (Pavlich, 2005). For example, discussion about offenders' reintegration into their 'communities' involves two assumptions: the existence of a pro-social 'community' into which offenders can be integrated and that people will be able to forgive the offender (Walgrave, 2002). There is in this ideal and utopic depiction no acknowledgment of diversity and conflict, hierarchical formations and differential power relations (Pavlich, 2005). Restorative justice assumes that different perspectives can be reconciled, that 'community' members share values and beliefs, and that we are similar to our others (Hudson, 2003). Moreover, not all 'communities' share the same access to resources nor can they feasibly restore victims or reintegrate offenders in the same ways or to the same extent. 'Communities' are marked by different capacities to mobilise internally on the basis of mutual trust combined with a willingness to intervene on behalf of the common good, as well as differential relations that connect local institutions to sources of power and resources in the wider civil society in which they are located (Crawford, 1997; Cunneen and Hoyle, 2010).

The other myth of a communitarian restorative justice (see Etzioni, 1997) is about the strong emphasis of social control and reconstituting (rebuilding) 'community'. Essentially, such a view perpetuates the idea that the more organic a 'community' is the less crime we will see in such 'communities'. This idea is at the same

time attractive but also quite nostalgic and unnecessary. There are many cases when the organic 'community' has supported crime and that conversely there are areas without a hint of organic 'community', which often have low crime rates (Young, 2000a). Crawford has argued that restorative justice often fails to acknowledge the dark side of organic social capital (Crawford, 1997; Crawford, 2010). According to him, strong ties and social networks do not equate with conformity, on the opposite, strong social ties can produce anti-social capital, where Crawford draws our attention to organised crime and gang cultures. In other words, deviant social networks can sustain forms of anti-social behaviour, while transmitting values, skills and knowledge that constitute 'criminal capital' (Crawford, 2010). This calls, according to Crawford, to attention the need for a normative dimension of social capital and 'community' values.

The utopic vision of the 'community' as a paradise lost (Walgrave, 2002) is closely related to the concept of restoration, which is associated with values like wholeness, harmony, peace, healing, health, reparation, restitution, reintegration. Zehr argues that if crime causes harm, (restorative) justice has to be about healing and restoration. According to him crime 'upsets two fundamental assumptions on which we base our lives: our belief that the world is an orderly, meaningful place, and our belief in personal autonomy. Both assumptions are essential for wholeness' (Zehr, 1990: 24). The main objective of restorative justice is thus to restore 'community's fabric by dealing effectively with victims' needs, successfully reintegrating offenders, and building 'community' strength by requiring 'communities' to deal with the criminal event through restorative processes (Pavlich, 2005). The discourse of healing and 'healthy equilibrium' presumes 'the presence of a communally ordered, healthy, relational state' (Pavlich, 2005:36) which leads restorative justice to search for restoring such order and restoring those 'ideal conditions', a futile search which limits the way in which justice can be conceived.

In light of these criticisms, restorative justice has to be mindful, as Pavlich notes, that the appeal to 'community' is always an ethical matter that demands a continuously open-ended, changing, and future-directed aspiration of how to be with others, and as such 'community' must be viewed as an on-going and open-ended activity rather than a finished work to be preserved or restored (Pavlich, 2005. Young, 2000b; Agamben, 1993). Both according to Pavlich and Crawford, challenging and disrupting established 'community' order, its assumptions and power relations may be a more fundamental aspect of a progressive restorative justice programme. In this regard, transforming 'communities' may be a more appropriate – albeit much more challenging – goal than restoring 'communities' (Pavlich, 2005; Crawford, 1997, 2010).

Restorative justice has to go social

Another main challenge for restorative justice is the lack of connection between micro and macro domains. In terms of its practices, appeals to 'community' within restorative justice often fail to address the relations that connect the individual victim and offender to the wider civil society and political economy. Most critics have argued that restorative justice only responds to the immediacy of the conflict or harm without situating it in a broader framework addressing social and structural issues[3]. Restorative justice in general has failed to address societal concerns about social justice and has remained thus a limited discourse focusing on and individualising crime and proposing justice exclusively as an alternative to punishment, without engaging systemically with the complex political meaning of justice. Being a field that deals mainly with crime, and using legally defined categories of crime and criminal justice responses, has limited the development of

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[3]   Pavlich, G. (1996). *Justice Fragmented: Mediating Community Disputes Under Postmodern Conditions.*New York:Routledge; Pavlich, G. (2005). *Governing Paradoxes of Restorative Justice.* London: GlassHouse Press; Arrigo, B., Milovanovic, D. and Schehr, R. (2005). *The French Connection in Criminology*. New York: State University of New York Press.

interdisciplinary scholarship in the field (Aertsen and Lauwaert, 2001). It becomes important thus to theorise restorative justice in the same line as the theoretical developments taking place in social sciences which relate more to social and participatory justice than to penal justice.

At the same time, the fact that restorative justice individualises crime and prioritises individual and community responsibility instead of the state, leads to what has been called 'governing at a distance'. Despite being an alternative discourse, restorative justice can also be seen as a discourse which is consonant with neo-liberalism to the extent that it focuses on the 'active' responsibility of individual subjects. Neo-marxist and governmentality critiques identify current tendencies towards responsibilisation of families, individuals, and communities, as 'governing at a distance'. These critics argue that the state should heal social wounds before the 'community' can participate in inclusive policies of crime control (Young, 2000b). By individualizing crime, thus restorative justice fails to recognize how factors beyond the scope or control of the offender impact human behaviour, and therefore fails to address the socio-economic roots of crime (Price, 2004). Restorative justice does not offer a strategy to eliminate the causes of crime, like deprivation and inequality, and thus individualises criminal activity both in terms of allocating responsibility and recommending remedies. Local restorative justice initiatives are unlikely to be capable of reversing deep structural inequalities that both divide societies and foster crime (LaPrairie, 1995; Braithwaite, 1999). Finally, feminist and post-colonial critiques have reminded us that giving more room to the 'community' in restorative justice might reinforce existing power structures, where 'community' remains either essentially patriarchal or colonial (Gaarder and Presser, 2008; Cunneen, 2008).

Restorative justice's promise about 'community' building and 'community' transformation through participation of citizens remains limited in the context of participation of 'communities of care'. One of the main challenges, as Polk (1994) argues in particular in relation to the conferencing model, of the reintegrative premises of reintegrative shaming theory, or other offender's reintegration approaches in restorative justice theory, is that the primary focus is on the offender and his/her family, where community representation is mainly ensured through 'community of care', and not on institutional interventions, such as work, school, housing, health, etc. This individualisation of the problem of crime and micro-focus leaves little room for real re-integration, and is considered to be a major handicap of these models and of restorative justice in general. This critique goes hand in hand with challenges to the notion of restorative justice as inadequately dealing with social and structural inequalities that are seen as causal factors in the incidence of crime.

To face up to these arguments, restorative justice must not be limited to being discursive and reflective, but must forge alliances with the governmental and non-governmental agencies, and create webs of accountability that lead to concrete social and political actions which fight injustice. As a response to this problem, some have argued that the cumulative effect oriented to produce social change is a task that restorative justice cannot achieve alone but rather requires the help of other grass roots-based practices or other social movements (Braithwaite, 1999; Pranis, 2001). Social change and social justice is an enormous task that needs the collaboration of different sectors and actors of civil society and state.

The alternatives of the ALTERNATIVE project

In light of the identified limitations and potentials of participatory citizenship in a European context and restorative justice approaches in bridging the gap between citizenship and justice, one of the objectives of ALTERNATIVE is to promote the concept of *active justice*, by exploring and strengthening the relationship between the concept of active citizenship and justice in Europe, investigated through their intersection in restorative justice processes by use of action research.

It is considered very important in the ALTERNATIVE project to explore and analyse theories and practices that deal with the strands of societal developments pointing in the direction of *active participation of citizens* in the handling of their own conflicts, which link top-down strategies of conflict regulation to bottom-up initiatives through open participatory processes. This implies on the one hand, understanding the historical, socio-economic, political and cultural differences in Europe related to the concepts of community, civil society and active citizenship, especially related to conflict regulation, and on the other hand, identifying the tensions involved in the field of criminal justice policies, which point to both an enhancement of active citizenship and an impeding or restricting of such active citizenship through stressing the formal welfare state approach to crime. At the same time, it is considered important to identify and analyse existing justice mechanisms and plural meanings of justice as they are enacted and constructed in a few intercultural European settings and confront these attitudes against the background of concrete actions which increase participation of citizens through restorative justice approaches, and their influence on such attitudes.

ALTERNATIVE, by targeting the *intercultural field*, aims to explore the potential of mediation services and restorative justice models to engage with macro societal conflicts that are not referred to these services by the criminal justice system, and on the other hand expand the way some of the crimes referred by the criminal justice system are handled by the mediation services alternatively by fostering alliances with various civil society organisations, for example intercultural organisations or welfare services.

Our project employs *'action research'* methodology, mainly because neither the topic of active participation, nor a complex understanding of (restorative) justice can be approached solely through conventional research methods, such as desk research or (public opinion) surveys, but require research settings where people are invited to participate in and contribute to the process themselves. This type of research is thought to impact at the same time practice, theory, and society. It is basically a period of inquiry, which describes, interprets and explains social situations while executing an action aimed at improvement and involvement, characterised by cooperation between researchers, practitioners, and participants, all of whom are involved in the societal impact process. The participatory process involves a dynamic approach in which conceptualisation, problem identification, planning, action and evaluation are interlinked in a cyclical process (Stringer, 1999).

In the project we will argue that the concept and framework of '*nodal governance'* as developed by Shearing and Wood (2003) can serve to support participatory modes of conflict regulation. They contend that governance today is characterised by a plurality of actors forming more or less interconnected governance networks, by a plurality of mechanisms and by rapid adaptive change. The concept of 'nodal governance' and network theories in general have not been used by restorative justice scholars, who continue using the rather outdated and nostalgic concept of community, especially as influenced by communitarianism.

Furthermore, the community literature in RJ is predominantly Anglo-American and based on the theory of 'community justice'. In our project, we argue that, contrary to such theory, in the European context, restorative justice services are linked very closely with the state through the criminal justice system and the legislation. That is why European countries have always from the beginning attempted to include restorative justice in a judicial framework, and create models that locate restorative schemes under state-guaranteed supervision (or in NGO like structures that work in close cooperation with 'the state'), rather than into the community (Willemsens and Walgrave, 2007). *Citizenship* thus, instead of community is proposed as a better-embedded and theoretically richer concept to be used and explored.

In criminal justice, 'justice' is generally equated with penal law, and therefore with the concept of punishment (Blumstein and Cohen, 1973; Feely and Simon, 1992; Garland, 1985, 1990). Operating very closely to the borders of criminal justice, it is natural, and somehow unfortunate, that in restorative justice, justice is

very often understood in the narrow sense of criminal justice. As a result, restorative justice is conceptualised and discussed generally against the background mentioned above as an alternative to punishment or even by some as alternative punishment (see Duff, 2001). Restorative justice in general has failed to address societal concerns about social justice and democratic or participatory justice and has remained thus a limited discourse focusing on and individualising crime and proposing justice exclusively as an alternative to punishment, without engaging systemically with the complex political meaning of justice in current Europe. It becomes important thus to theorise restorative justice in the same line as the theoretical developments taking place in social sciences which relate more to *social and participatory justice* than to penal justice, in order to enlarge and enrich the concept of justice and to take a radical distance from the conceptualisation of justice as punishment. We create in ALTERNATIVE interactive settings, which allow for spaces between informal and formal justice, and between justice mechanisms at the individual and at the societal level (Aertsen, 2001, 2008).

Moreover, the restricted and unclear reference to community related concepts is reflected in the way restorative justice practices have been studied so far in Europe. Research has mostly focused on VOM (Aertsen et al., 2004; Vanfraechem et al., 2010) and, to a lesser extent, on conferencing (Zinsstag et al., 2011; Zinsstag and Vanfraechem, 2012), while peace making circles, social mediation and other alternative models of conflict regulation which seem to offer great potential when dealing with crimes and conflicts that affect the broader society, such as conflicts in current culturally, ethnically, religiously and structurally pluralistic societies, have been largely ignored. If restorative justice is to become an active tool to reinvent social capital and local, practical knowledge in societies, other broader models and creative ways of conceiving society should be explored (CEPEJ, 2007; Pali and Pelikan, 2010). Restorative justice has to promote broader models of restorative justice which are able to address social and systemic crimes and conflicts, and which will help the theory and practice of RJ to move beyond the individualisation of crime and its remedies, as we do in the ALTERNATIVE project.

Conclusions

One of the main challenges of the restorative justice discourse is that 'community' representation is mainly ensured through 'community of care', and not on institutional interventions, such as work, school, housing, health systems, etc, interventions which reflect the problem of crime back to macro social structures. By individualizing (or at most 'familializing') the problem of crime, restorative justice is unable to deal with social and structural inequalities. The link between the individual and the 'community' impact remains unclear. Likewise, the link between state and 'community' remains naïve in restorative justice, whereby, as Pavlich (2005) notes, the 'community' of restorative justice is essentially constituted by the state, which design, creates, funds, and staffs services. For writers like Melucci, a central prerequisite for the redefinition of democracy by new social movements is the creation and maintenance of public spaces independent of the institutions of government, the party system, and the state structures (Melucci, 1989). Restorative justice has always been in practice a movement dependent on the state, as its activity has been defined in a close relation to the criminal justice system, and legislation, especially in continental Europe. This paradoxical relation to both state and 'community' makes restorative justice a potentially powerful discourse but at the same time dangerously uncritical of both.

Restorative justice must come to terms with critical reflections on two grounds. First, it has to give up the naïve use of 'community'. While we do not oppose the utopic use of the term, we insist on imbuing it with its due complexity. In other words there is no ideal and static community to restore, but there are very complex and dynamic social aggregates with different power, hierarchical structures, and resources, that relate

differentially to macro structures like economy, politics, to be transformed. It is useful to remember the reminder of Pavlich that 'community' is always an ethical matter that demands a continuously open-ended, changing, and future-directed aspiration of how to be with others (2005). This 'coming community' (Agamben, 1993) is thus an on-going activity rather than a finished work to be preserved and restored, an activity which must constantly disrupt and transform established community order, its assumptions and power relations.

Secondly, while restorative justice cannot be a panacea for social justice, it nevertheless should not fall into the same trap it aims to avoid, by isolating and individualizing crime and responses to it. In other words, crime should be considered more than harm, but rather a social problem, closely related to other social conditions, for which not only one individual but the whole society is responsible. Restorative practices such as conferencing or circles are on the right track here, because they have the potential to work on structural problems (Gaarder and Presser, 2008; Braithwaite, 2000). Processes that allow community members to discuss and reflect upon possible connections between crime and social conditions raise awareness and may begin the information of strategies to address the problem (Pranis, 2001). Nevertheless, restorative justice must not only be limited to being discursive and reflective, but must forge alliances with the governmental and non-governmental agencies, and create webs of accountability that lead to concrete social and political actions which fight injustices of all kinds.

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