

IMPRS REMEP RESEARCH AGENDA ON HUMAN SECURITY

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“Retaliation, Mediation, and Punishment” has its focus on the fundamental question common to the social sciences and humanities regarding how peace, social order, and human security are negotiated, constructed, maintained, and regained.

In order to take account of the theoretical advancements and preliminary results our research has achieved during the first four years of our cooperation, the overall research profile has been fine-tuned and concretized to highlight a number of common strands and to identify epistemologically promising fields of research. During the first research phase, the idea of connecting the core question for further research to the issue of security emerged as the guiding concept, since our findings indicated that security is an object of theorizing in all contributing disciplines. In line with this change of perspective, the following overarching topics have been identified and prioritized on the research agenda: (1) the impact of global governance institutions, as for instance the International Criminal Courts (ICCs) but also of globally operating non-governmental organizations such as Human Rights Watch and Amnesty International; (2) the impact of transnational securitization politics; (3) the importance of global financial flows for the management of conflict; (4) the role of travelling technologies of ordering, new arrangements of governance, and networks of cooperation; (5) the impact of rights-based approaches and human rights; and (6) the importance of religious law and tenets of faith in the transformation of ordering practices. These issues promise to provide new insight into the overall question of normative power and the social working of the basic concepts of REMEP.

The point of departure, however, still remains the fact that the research agenda of REMEP combines the fields of anthropology of law and conflict, in the broadest sense of these terms, with criminology and (international) criminal law, legal history, and public international law. Thus a comparative perspective and/or an interdisciplinary approach are considered paramount. The focus of the analysis is directed toward dispute/conflict and settlement procedures which are informed by the basic concepts of retaliation, mediation, and punishment. It is about the question of how the types of logic inherent to the basic concepts inform the means of dealing with dispute and conflict, and in what ways they materialize in all kinds of institutional legal arrangements in their capacity to provide for peace, human security, and social order.

The relation between the concepts of human security and of retaliation is that both address the temporalities of law; the interfaces between precaution, avoidance, prohibition, and, if all deterrence has failed, the switch to the reactive subsequent action which is also inherent to the same logic of normative temporality.

In this respect, the representatives of the various disciplines contributing to REMEP are fully aware of the different disciplinary readings of the sequence and the different logics of conjunction that are seen as inherent to this sequence. It is not our aim to hide those differences; on the contrary, we consider it essential to highlight them in order to engage in a process of mutual sensitization. In order to achieve this goal we will concentrate on interactions, conjunctions, overlappings, and the blurred boundaries between the realm of formal justice and the ways conflict and dispute are addressed in the nomosphere within, beyond, and across state legal orders and institutions.

This research portfolio encompasses dispute management within or among various groups and institutions at various levels of social organisation. The conflicting parties range from the nuclear family, where the basic concepts prove to take a limited but specific effect, to transnational units and war parties: acephalous societies and semi-autonomous social fields such as kinship groups and local, diaspora, expatriate and migrant groups, gangs and other formations sharing interests and markers of identification. Constellations of conflict may occur within or among ethnic and religious communities, both within and across national borders; among states; or in transnational settings. Research topics range from conflict resolution in egalitarian societies to conflict management procedures in (post-) conflict societies. This includes ADR (Alternative Dispute Resolution) mechanisms in constellations of parallel legal registers, dispute management procedures under conditions of cultural diversity and migration, and forms of transitional or restorative justice and reconciliation processes. This framework leads to the following basic consensus among all contributing disciplines: The management of conflict and the settlement of disputes in plural legal settings undergo a partly radical reconfiguration under conditions of increasing transnational integration. The interaction of global, local, and translocal processes may thus acquire special analytical importance. Against this background, the research agenda addresses processes and consequences of trans-scale conflict management and governance of social order, containment of violence, and de-escalation politics. The central focus here is on processes of translating transnational templates of conflict intervention to be applied to various settings.

Of special interest here are conflictive constellations that are embedded in plural legal configurations composed of various juridical repertoires, such as local or customary law, state law, religious law, or transnational norms of conflict management, including actors' abilities to maneuver within or among these repertoires and under conditions of cultural diversity. Of equal importance are issues pertaining to the social construction of conflict parties and their identity patterns, which also includes strategies for inclusion and exclusion in situations of conflict.

The point of departure for the conceptualisation of the research programme is the reconsideration of the theoretical debate on the connection between procedural repertoires and the lack of enforcement capacities in conflict situations at various scales. The rationale is

called into question of the comparisons drawn between the procedural repertoires that, on the one hand, sovereign states refer to when in conflict with each other and, on the other, the repertoires' actors dispose of in social formations characterised by the absence of a central political authority. The programme proceeds on the assumption that analogies and the comparative analysis of such procedures of dispute settlement in different settings, which are characterised by the absence of central authority, still offer epistemological insights if adapted to processes of globalization and transnationalization.

The aforementioned profound processes of social, economic, and legal transformation over the last several decades demonstrate the urgent need to join research efforts and to establish a field of research in which various scientific disciplines must get involved in order to be able to provide for new analytical insights. In order to deal with the relation of local and translocal processes and to grasp the different ranges of ordering technologies, REMEP is designed as a "scaling project" that links together three interconnected scales.

1. REMEP and state perspective

The first scale and point of reference for all considerations still is the modern state with its legislation, formal judiciary, and institutional apparatus.

From a historical perspective, the arrival of the modern state and the monopolization of power have established the state penal system as the only legitimate form of criminal punishment and state organized coercion as the only legitimate form of coercion when enforcement of rules and the maintenance of social order within the framework and territory of the state are at stake. In conformity with the fundamental research frame outlined in the first paragraphs, we refer here to a concept of violence in its broadest sense that goes beyond the scope of physical violence and includes all manifestations of violence and coercion. As part of the monopoly of power, criminal sanctions can be regarded to have successfully channelled (retaliatory) violence by insisting that private forms of violent coercion are outlawed and will not be tolerated. This means that the power to punish is to be seen embodied in the modern state and its institutions that deliver and enforce punishment such as the police, prosecution services, the courts, and correctional services.

Such basic components of the concept of the national state appear to be challenged and subject to transformation under conditions of globalization and neoliberalism. Private and retaliatory violence in case of noncompliance with rules or criminal acts violating private interests have been outlawed, leaving only small niches of (legitimate) exemptions, among them for example grounds of justification such as self-defence and states of necessity. Such developments have sidelined not only private violence or the violent component of retaliation as a means of responding to crime, deviant behavior or other disturbances of social order. They have also sidelined mediation and reconciliation, the other complementary components

of the concept of retaliation, in the settlement of conflicts, and have imposed the dominance of the state in enforcing conflict regulation and conflict resolution.

Despite the effectiveness that is usually associated with the dominance of the state judiciary in conflict resolution and the outlawing of illegitimate action, new developments have contributed to the insight that the relationship between retaliation, mediation, and punishment in the attempt to establish and maintain the social order and human security is far more complex and less evident than has been suggested in conventional normative and social theory.

Moreover, while the politics of colonialization have exported the European model of the national state and its administration to virtually all corners of this world it is fair to assume that, in many world regions, a strong state in terms of a full blown monopoly of power not always persists and room is thus given to the emplacement of a variety of arrangements to deal with conflict. In some areas (e.g. Somalia or Afghanistan) societies and social orders are chiefly dominated by solidarity patterns, models of identification and forms of violence that include retaliation and feuds. Moreover, transnational actors intervene in such areas and bypass the institutional apparatus of failed or weak states, thus generating new forms of normative and institutional hybridity. The breakdown of the Iron Curtain revealed that even in Europe, in such areas as Kosovo and Albania, blood feuds and retaliation as well as mediation persist and prevail as conflict-regulating social institutions within the given statal structures.

2. REMEP on the local and translocal scale

The second and smaller scale refers to segments of society that may for various reasons be widely exempted from the rule of law approach that characterizes the general response to deviance and crime; or they enjoy a certain room for manoeuvring in the ways internal conflicts are addressed. The point of departure is thus the observation that within the nation state, with its monopolized power and judiciary, only an extremely small number of relevant cases are able to involve the state apparatus. In a wide range of arenas, ranging from milieus of illegality, such as drug markets and well established traditional subcultures, to religious communities and basic social units such as the family, the recourse to law and administration of justice-based conflict regulation is, for evident reasons, either severely restricted or even entirely prevented. The research design is therefore connected to the fundamental question of who has the interpretative prerogative to define human action as deviant, as threatening security or disturbing social order, while other actions, although also perceived as conflictive, are considered constructive and as promoting societal advancement.

The emergence of the metropolis over the last two centuries has resulted in the existence of urban environments such as ghettos, *quartiers en difficulté*, *favelas*, and townships, which tend to generate their own modes of social control which do not rely on formal justice systems and the institutions representing them but, on the contrary, avoid them. Instead, order is

maintained to a large extent by agents that are not acknowledged by the state and who have peculiar repertoires and techniques. The workings and functions of organized crime and conventional underworlds are of particular interest here. The latter also refers to the history of what is dealt with today as organized crime in an overlap with social systems that were once opposed to the imposition of governance (mafia, *yakuza*, triads). In other cases, actors opt for forum shopping, in which the state judiciary is integrated into a wide range of interacting normative regimes and institutions.

Over the last several decades, moreover, policy makers have not only encouraged conflict regulation, victim-offender conciliation, and mediation beyond the judiciary, but have also provided a statutory basis for the insertion of mediation into formal justice systems. These developments at least partially reflect the need to economize in the field of formal justice systems, while also substantiating the well founded assumption that modern criminal punishment produces unwanted side effects that can be avoided by resorting to reconciliation and mediation.

3. REMEP on the transnational scale

On the third scale, REMEP focuses on processes of globalization and transnationalization. It has mainly been the governance of human security on the transnational scale that has recently attracted increasing interest. Security requirements find expression in the production of normative templates that address a variety of issues ranging from protection from threats to public safety to any given domain relevant to livelihood security. Such processes are commonly communicated in the language of neoliberal achievements.

The politics of securitization is mainly dominated by global governance institutions such as the United Nations, with its numerous sub-organizations, the IMF, the World Bank, and the World Trade Organization. Transnational actors such as powerful INGOs, civil society organizations, epistemic communities, strategic alliances of interest groups, social and faith-based movements, and multinationals also contribute to a new legal architecture of security, containment of risk, and averting of conflict. They have been establishing legal frameworks of security in various areas of human livelihood, and thus redefining the conditions of people's legal agency. One of the major fields appears to be the governance of conflict and violence (crime prevention, gated communities, urban security, anti-terrorism legislation, and laws on torture, war, war crimes, and mass atrocities) and normative scripts for all kinds of post-conflict scenarios. In this context, control over the flow of information and informational politics also play a decisive role. In addition, health, food and resource security, economy, and finance are domains in which transnational normative securitization has become increasingly effective, as these are viewed as composing the main fields in which conflict schemes, on various scales, may turn into threats to global security.

Proceeding from the assumption that there is a coherent logic behind this wide range of normative operations, the research agenda includes the investigation of the means and ends of such politics of securitization: How are such transnational templates of security law translated

into local settings? Who are the actors behind the establishment of a transnational legal architecture of security and who are its beneficiaries? Whose security is secured and who profits from the politics of securitization? What kinds of normative processes have been launched and in what ways do they interact with complex plural legal configurations on various scales, affect the nomosphere, and impact the livelihood conditions of ordinary people? For instance, in what way do such processes appear as either strengthening or impeding factors in connection with rights-based approaches and human rights politics?

In this field, the monopoly of power and the nation state take a backseat to international and transnational forms of police, military, and intelligence cooperation, as expressed in the development of cross-border systems of collecting and exchanging information as well as in the emergence of supranational intervention and task forces.

Moreover, and following the same logic, the privatization of social control is on the increase, not only in controlling the most obvious expressions of economic and technical globalization as in the case of the self-regulation (and related hybrid co-regulation) of financial markets, multinational corporations, and the internet, but also in the use of violence within the context of counterterrorism and new wars.

Another strand that has been gaining in momentum in the research on the impact of retaliation, mediation, and punishment in the context of large-scale conflict, crime, and the exchange of violence is increasing technologization and the interactions among of law, science, and technology in dealing with those scenarios. Law and legal institutions are increasingly referring to other knowledge regimes in the development of mechanisms of intervention, in the production of evidence, in the use of informational flows and in the reference to the production of memory, the addressing of public grievances, and many other issues that are directly related to the research agenda.

Finally, on the trans-scale level, increasing human mobility, flows of migration, and the emergence of diasporas have contributed to the transformation of societies that used to cultivate an image of their own ethnical and religious homogeneity, or maintain a narrative of formal civic equality. Migrants may transport their own plural legal repertoires and concepts of order, thus creating configurations of cultural diversity and multicultural societies. Some such migrant communities may tend to remain alienated and distanced from the formal justice system as well as its agents (and the police in particular). Dissociated from access to state-based conflict regulation, immigrant communities sometimes develop their own informal ways of coping with conflict and its regulation. On the other hand, such new impetus may affect the established models of order and security and contribute to the emergence of accommodated forms of dealing with conflict in society such as referring to overarching institutions, such as religious experts, or forum shopping.

Around the globe, the character of warfare has been changing from the dominant characteristic of symmetric violent conflicts between states towards conflicts which have been

called small or private wars, wars that are chiefly asymmetric by nature and which represent what has been called economies of violence. This is paralleled by a trend towards subjecting states to international law that prohibits the use of (organized) violence as well as extreme and disproportional use of violence (crimes against humanity, torture, genocide, war crimes) along the model of ordinary criminal law. This trend is expressed most significantly in the establishment of the International Criminal Court and its predecessors in the form of ad hoc international criminal courts. It is in this field, in particular, that the relationships between retaliation, mediation, and punishment are of particular interest as the institutionalization of international criminal law appears to be taken as a laboratory for experimentation. The scope of punishment seems limited within this laboratory, as are mediation and resorting to violence. The increase of truth commissions working parallel to ICCs underlines the obvious necessity of creating a balance between punishment, on the one hand, and techniques of mediation and reconciliation, on the other.

Taken together the research agenda contributes to the analysis of emerging hybrid regimes of security control and the containment of violence on various scales and in various concrete settings.

Along the lines described above, REMEP opens up different interrelated research areas, which will provide for unique opportunities to engage in interdisciplinary and comparative research. Retaliation, mediation, and punishment are interrelated concepts which inform all attempts to generate human security, social order, and peace. Within a framework established through a scaling approach that connects the state, local, and translocal forms of groupings and organizations, as well as transnational forms of interventionism, new answers can be sought to the question of how peace, social order, and human security are negotiated, constructed, maintained, and regained.