

DISCUSSION

‘Who may now speak’? International Lawyers and Religious Actors in Transitional Justice

EVELYNE SCHMID — 20 May, 2015



A response to [Ioana Cismas](#)

Evelyne Schmid

What is and what should be the role of faith-based actors in transitional justice (TJ)? [Ioana Cismas](#) enquires whether the engagement of TJ with religious actors strengthens or rather undermines the legitimacy and effectiveness of TJ mechanisms and their ability to lead to (at least a measure of) accountability for past abuses.

Well, it depends. Ioana Cismas’s answer is nuanced and takes into account the variety not only of religious actors but also of the contextual backgrounds in which faith-based actors have played a role in TJ. As Cismas convincingly argues, there cannot be a single answer to the question whether the involvement of religious actors in TJ is generally ‘good’ or ‘bad’. In her view, based on [her extensive research on religious actors and international law](#), the ability of religious actors to lend legitimacy to TJ processes largely depends on the actors’ own accountability and the role they played in the period to be redressed.

I fully agree with Ioana Cismas’ suggestion that there is not necessarily an inconsistency between international legal concerns and the involvement of faith-based actors in TJ. In this short response, I will thus not disagree with any of her important claims. Rather, I will explore the significance of her research question and offer some broader thoughts on the role of international law(yers) in TJ undertakings. In particular, I will explore to what extent we – international lawyers – should understand Cismas’ arguments as a call to engage with religious actors when these have the potential to lend legitimacy to TJ processes.

Conceptually, the main contribution of Ioana Cismas’ blog post is her identification and sophisticated analysis of three objections that could be raised against the involvement of religious actors in TJ: the legality argument, the neutrality argument and the denial/distortion of justice argument. Usefully separating these three common objections to mixing religion and law, her analysis points to various ways in which these

(partially legitimate) concerns can be addressed in a context-sensitive way.

What I find intriguing about her contribution is the underlying normative question whether religious actors *should* be involved in TJ. The fact that international lawyers are at least implicitly raising the question is interesting in and of itself: Is this a decision for international lawyers to make? Would it even be possible to exclude faith-based actors from playing a role in TJ? I don’t believe this to be the case. Surely, those designing TJ processes will have some leeway as to the degree of state-sponsored roles religious actors will be allowed to take. For instance, those designing the mandate of a truth commission could decide to allocate seats in the commission to religious actors. A quick search through the full texts of most of the mandates of past truth commissions (available in the [USIP Truth Commission Digital Collection](#)) shows that some of the mandating legislation specifically mentions religious actors – ranging from simply permitting the commission to seek assistance from religious leaders (e.g. [Liberia](#)) to requiring, for instance, that the selection panel for the recruitment of commissioners shall include members of specific religious organisations (e.g. [Kenya](#)).

Yet, beyond those institutional decisions, the level of actual involvement of faith-based actors may sometimes escape the influence of (international and domestic) lawyers. If we define involvement broadly to mean any sort of participation, it may be unrealistic to keep religious actors out or to expect them to play a specific role. We might just have to accept that if religious actors are a significant player in a given society, they will also play a role in TJ. As Cismas convincingly argues in her conclusion, the involvement of religious actors in TJ is to continue – as advocates and agents of TJ, as spoilers, or somewhere in between.

Elsewhere, drawing inter alia on John Rawls’ and Joel Feinberg’s work, I have argued that it might be best to view TJ as both a practical and a discursive project. As [Zinaida Miller](#) has nicely put it, addressing the legacies of armed conflict and violence is ultimately a *definitional project* that explains ‘who has been silenced by delineating who may now speak’. Who may now speak is, of course, a contested question. While international lawyers tend to be represented with a relatively strong voice (often backed up by institutional power and money), they are far from the only ones who wish to use what I would call the ‘expressive capacity of TJ’. The involvement of religious actors will thus simply be unavoidable in many circumstances (and I don’t think this situation was conceptually different in what [some](#) consider the ‘early’ or ‘traditional’ transitions in Latin America.)

Where does this leave us? Instead of viewing Cismas’ blog post as a normative answer to the question whether faith-based actors *should* be involved in TJ, I suggest that we view her suggestions as a helpful way to frame the discourse about the potential legitimacy and accountability of such actors. Rather than using her arguments for a potentially futile discussion about who should be ‘allowed’ to be involved in TJ, her analysis should primarily be used to assess the legitimacy of religious actors’ role and, if appropriate, to justify their involvement vis-à-vis those who might be worried about mixing law and religion. Conversely, where the analysis reveals that a religious actor is unlikely to lend legitimacy to TJ processes, it is worth exploring whether it is possible to minimise the potentially negative impacts of such involvement. Moreover, time and energy should be spent on identifying alternative actors that might be able to contribute to the legitimacy of TJ in a specific context (e.g. artists, associations, traditional leaders, businesses?).

Combined with the necessary modesty about our power to influence who will be involved in TJ processes, Cismas’ analysis offers great potential for a nuanced, unprejudiced and

realistic engagement between TJ, international lawyers and faith-based actors. Her careful analysis of the empirical and legal realities of faith-based actors provides an unagitated outline of the real contributions religious actors can make to TJ as well as their potentially significant limitations. Put simply, for TJ to work, societies need 'all hands on deck', and where religious actors (or any other non-state actors) are lending legitimacy of TJ in a given context, Cismas is quite right to point out that their involvement should not be seen as inherently inconsistent with international legal concerns.

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