The Implementation and Impact of Restorative Justice Programmes in Albania and Cuba

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Abstract

In this master’s thesis I seek to explore the concept of restorative justice, an ideological approach to justice which aims to repair the harm caused by crime through means of communication, cooperation, participation and restoration. By involving all parties affected by crime, restorative justice seeks to address crime through empowering victims, increasing community cohesion and making offenders take responsibility through restorative measures. This tradition for conflict resolution has been pre-dominant through most of mankind’s history but disappeared for a while. In recent years, however, this ideology has emerged again and is now becoming increasingly popular.

In this paper I will explore the implementation processes of restorative justice in Albania and Cuba, both aided by the Norwegian Mediation Services. Shortly after the fall of communism, Albania started developing programmes of a restorative nature in order to respond to the social chaos that emerged after its transition. Currently, Cuba faces similar problems as it prepares for their transition that may affect millions of Cuban citizens. In 2015, a pilot project started in Cuba with the aim of implementing restorative justice as an alternative within its judicial structure. It is my hope that by comparing the projects of Albania and Cuba it will be possible to identify pitfalls and issue areas that may emerge in transitional countries. Similarly, strengths and successes will be identified for furthering the development of restorative justice.

This study was performed by applying a twofold methodological framework. Firstly, I conducted an extensive literature review, analysing numerous previous research studies. Secondly I conducted two interviews and observed participants over the course of one week, transcribing the data. The theoretical framework applied is also twofold. In order to explain social control, norms and values as well as the co-existence of customary law with state law, theories of legal pluralism and Ehrlich’s living law were applied. In order to explain effects of normlessness and social disintegration following transitional reforms, Durkheim’s theory of anomie was applied. The findings were interesting; if Cuba’s current situation is compared to the Albanian experience, issues could emerge. Cuba possesses widespread participatory mechanisms and strong community cohesion which reinforce social norms and social control. Market reforms and increased individuality could lead to a breakdown in those social fields, increasing crime and abnormal behaviour. For that reason, the necessity of a well implemented restorative justice structure is obvious. It may serve as a foundation for norm-clarifications and conflict resolution in the years ahead.
List of Abbreviations

AFCR – The Albanian Foundation for Conflict Resolution and Reconciliation of Disputes
CC – Community Conferencing
CDRs – Committees for the Defence of the Revolution
GC – Group Conferencing
NMS – The Norwegian Mediation Services
RJ – Restorative Justice
VOM – Victim-Offender Mediation
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1. Introduction

Has the state stolen conflicts from their rightful owners? The renowned criminologist Nils Christie raised that question in his 1977 article *Conflicts as Property*. He came to the conclusion that conflicts had, in fact, been taken away from parties involved and transformed into the property of the state. Full participation is replaced with representation that is offender- and punishment oriented. The victim is removed from the conflict and replaced by the state, its role reduced to that of a nonentity (Christie, 1977). The victim becomes powerless in the process as the power that was taken away by an offender is not reinstated. Instead the criminal justice process denies victims full engagement in their own conflict (Zehr, 1985). The offender’s participation is also limited; instead of engaging in discussions on how to make things right, his/her status is reduced to that of a listener. Professionals handle discussions on how much pain the offender should receive without any input from the parties directly involved (Christie, 1977). Offenders are not held accountable for their actions as they do not receive the chance to understand the real human consequences of their actions and are not required to take full responsibility by making things right (Zehr, 1985). In fact, punishment may be counterproductive as it may encourage offenders to focus more on themselves and less on those who have been harmed, in addition to weakening the offender’s pre-existing social bonds (Bazemore, 1998, p.791).

In order to seek new ways to address crime, a movement emerged in the 1970s. Its aim was to promote and develop the ideology of *restorative justice* as an alternative to the retributive paradigm (Braithwaite, 1999, 2-3). According to the restorative paradigm, crime should be perceived mainly as causing harm to individuals and communities, it emerges as a result of a breakdown in social bonds. If crime causes harm then justice cannot be reached by solely relying on punishing or treating offenders; justice responses need to bring together affected parties central to the process and involve the wider community for healing those damaged relationships (Bazemore, 1998, pp.769-773). What we, as a society, need to understand is that conflicts are not a given thing but scarce and valuable. They provide us with a possibility for norm-clarification, for participation and for action (Christie, 1977). Owners of conflicts need to take them back even though the state will resist, fearing that it will lose control and more importantly, its symbolic power (Christie, 2010, p.119). The reclamation of conflicts will be challenging but they may provide us with possibilities for uncovering and discussing prevailing moral values and norms within society (Christie, 1981, p.43). The question at hand, is how do we do this? Restorative justice might provide the answer.
1.1. Aim
In this thesis, the aim is to delve into the concept of *restorative justice* (hereinafter abbreviated RJ) and its feasibility as an alternative to traditional justice procedures. By exploring retributive justice from a RJ perspective it is my hope that the findings can serve as a basis for identifying the conditions in place for an implementation of RJ. More specifically, I seek to examine how RJ was implemented within the judicial structures of Albania in order to draw out the successes and failures of that process. I will then use those findings as a base for my examination of Cuba´s proposed plans involving implementing RJ into its judicial system. Albania´s and Cuba´s use of customary/community law will serve as a foundation for drawing out similarities in these countries.

It is my hope that this study may be of use to those professionals responsible for implementing RJ in Cuba in order to avoid possible pitfalls in the future as it is a major project which could have a profound impact on Cuban society. The ideology and execution of contemporary RJ is still in constant development, but this alternative solution to crime and social problems is growing stronger with each passing day and the use of customary law in various nations of the world could very well be the essential element which brings about the best of this concept. There is a great need for further studies within this field and this thesis may add to existing knowledge.

1.2. Background: Why Albania/Cuba/Norwegian Mediation Services?
The Norwegian Mediation Services (NMS) is a public institution which operates under the auspices of the Norwegian Ministry of Justice. It is responsible for the administration of mediation measures in penal and civil cases (Paus, 2010, p.29). The implementation process in Albania was greatly aided by the NMS which offered advice, assistance and funding for the project. The implementation process in Cuba is now in its starting phase and it will also receive similar assistance from the NMS.

The reason for selecting Albania as a comparison to the Cuban project is threefold. Firstly, the implementation process of RJ in both countries is aided by the NMS. Secondly, both nations have been under communist regimes, which Albania has transitioned fully away from and there are some signs that Cuba may well be transitioning slowly toward a more open market economy. Thirdly, both countries have some experience with plural legal systems. Albania through the customary Kanun laws and practices whilst Cuba has experience from the operation of community based popular tribunals and through widespread civil participatory mechanisms. In both cases these customary/community practices co-existed with state law.
1.3. Relevance and Research Questions
The subject of this thesis has much relevance to the field of Sociology of Law as I seek to explore how the ideology of RJ may fit into our contemporary judicial system. By focussing on reparative measures for harm through dialogue and moral values we are in small part moving away from the closed, formalist courtroom toward a more humane, victim-oriented and open-ended approach. The traditional criminal justice process relies greatly upon punishment as an answer to crime but does it produce the desired effects? As Bazemore (1998, pp.768-769) explains, the retributive approach has prevailed in most societies not because of the efficiency of punishment but because of its symbolic capability. The ideology behind punitive sanctions is based on presumptions that it serves to confirm community disapproval of abnormal behaviour, condemn crime and make offenders pay for their actions. According to the idea, punishment such as incarceration reinforces moral values within society by removing those who do not abide to said values. And even though officials and the public in general believe that incarceration has a deterrent effect for offenders, no clear empirical data has been provided that supports fully that claim. Incarceration does not repair the social bond between offenders and victims nor does it efficiently address the harm that occurred (Bazemore & Stinchcomb, 2004, p.16). Instead the criminal justice process moves both conflicting parties to the periphery of society, stigmatising the offender and removing the victim from the process. What we as a society lose from this process are opportunities. Not only opportunities for participation and discussion, but also opportunities for norm-clarifications and harm reparations (Christie, 1977). As many modern societies put less emphasis on community cohesion and instead give rise to individualism, cultural norms and values have become increasingly differentiated. This has led to an increased responsibility been placed on the legal system for value- and norm-clarifications, a responsibility that the law has not always been able to uphold fully (Deflem, 2008). Norms are crucial for the organisation of society by regulating actions which underlines their importance within the field of sociology of law. Further studies are needed on the relations between social and legal norms and how social norms are fundamental for the production of legal norms (Baier, 2013). The framework underlying RJ offers researchers a unique opportunity for studying the effects of norms as it as a social policy provides certain necessary elements for norm-clarifications within societies. By giving victims a voice and a more prominent role in the criminal justice process, RJ seeks to bring into light the key principles that moral relativism and moral pluralism are built on (Bottoms, 2003, p.103).
In order to further the development of RJ and its processes it is necessary to study its implementation in different cultures and political spheres. Previous research has not focussed greatly on its implementation and effects in post-communist countries but rather on its suitability for open market and democratic nations (Fellegi, 2005, p.6). The Albanian and Cuban projects offer an excellent chance to further study the effects of this type of justice through dialogue and civic participation on post-communist nations as well as on states with strong traditions of customary law. Will Cuba experience a breakdown in its strong community cohesion and will its institutional framework handle the impending changes? Will its efficient and widespread informal system of social control survive the transition? Will the mass participatory organisations, the social adhesive of Cuban society disintegrate? Even though this paper does not provide concrete answers to these questions, they are nonetheless important to raise for avoiding pitfalls and social chaos that may affect millions of Cubans in the future. Therefore, in order to draw out discussion and answers on the subject, the following research questions will guide this paper:

**Main Question:**

- Can the implementation of restorative justice create a viable alternative to retributive justice systems for countries in economic and political transition, such as Albania and Cuba?

**Sub-questions:**

- Can retributive justice systems serve as a basis for exploring conditions in place for the implementation of restorative justice?
- Can similarities between legal cultures and practices in Albania and Cuba be identified, making it possible for Cuba to build on Albania’s experience with restorative justice?
- Can unofficial laws and participatory mechanisms have a role in the implementation of restorative justice in Albania and Cuba and if so how could they support the process?
2. Research Background

This chapter covers relevant literature on different approaches to justice, focusing especially on RJ, its processes, stakeholders, limitations and expectations. Articles, books and studies were examined for the purpose of clarifying what RJ entails and what advantages it may offer to traditional approaches of justice such as retributive justice. In addition, relevant stakeholders of the process and various programmes that RJ has to offer are explained further. The literature on the subject is composed of a vast array of leading RJ scholars from all over the world. Selection of articles was based on the criteria of suitability for the subject at hand and by the scholars’ recognition within the field of RJ.

2.1. Two Approaches to Justice

What should be the ultimate goal of justice? Should it mainly be to punish offenders for their crimes or to restore relevant parties to the states they were in before the crime occurred (Gromet & Darley, 2009, p.51)? It is likely that contrasting opinions on the justice process will always be debated, but in recent years there has been some change. Even though the retributive approach has been the dominant model of justice in Western societies for quite some time now, the philosophy and practice of RJ is a long standing tradition of justice that has been applied by various communities throughout history (Bazemore, 2007, p.655).

According to the RJ ideology, the key to crime prevention is not to focus mainly on the offender’s punishment but to repair the harm that has manifested itself in relationships between those that have been affected by crime. Due to this breakdown in social bonds, RJ aims to create ways for healing individuals through, e.g., civic participation, democratic involvement and the strengthening of social bonds leading to stronger social ties between individuals, (Bazemore & Stinchcomb, 2007, pp.15-16) which some would say is lacking in our modern, fast-paced and globalised world.

According to Bazemore (2007), Americans that have been asked to define the meaning of justice, however, mentioned key words such as fairness, equal treatment, no discrimination, equal opportunity and due process. When asked to define the meaning of the sentence to bring someone to justice, those asked thought of punishment, often harsh punishment. These two definitions may very well be what divide people’s perspectives on the approach to justice, as the answers point to an ideal justice process where equality should guide the way but the outcome should make offenders pay their debt through punishment. This may very well be the biggest misconception of RJ, sometimes perceived as being too lenient toward offenders, as
its method focusses greatly on the outcome and on forward-looking measures, i.e. punishment through acknowledging the harm done, taking responsibility and finding ways to limit reoffending (Bazemore, 2007, pp.652-653).

Retributive Justice from a Restorative Justice Perspective

Retributive justice is a theory of justice that is based on an approach which considers punishment to be the appropriate response to crime. An offender is sentenced by a court to take responsibility for his/hers actions by means of punishment through suffering or humiliation. Once a punitive sanction is imposed on the offender, justice is perceived as being fulfilled (Wenzel, Okimoto, Feather & Platow, 2008, p.375). The key element of this approach is the notion that violations against rules and laws will not go unpunished. Those who offend will have to answer for their crimes and take responsibility through punishment that matches the severity of the offence (Pratt, 2008, p.379). This idea of just deserts puts the focus mainly on the offender’s deserved unfavourable outcomes that signal a moral message by reducing the status of the offender or ascribing negative values to him/her (Wenzel, Okimoto & Cameron, 2012, p.27). The offender-focussed administration of punishment is not primarily concerned with bringing about good consequences for society or repairing the harm done but is mainly concerned with punishing because the offender has done something that is wrong (Allais, 2008, p.129). These punitive measures are imposed on offenders through a unilateral process of justice (Gromet & Darley, 2009, p.50) and the offender is not required to show any regret for his actions or even agree to the inflicted punishment. Even though some would argue that an offender’s remorse may lead to a more lenient punishment, this is not fundamental to the retributive approach (Wenzel, et al., 2008, p.378).

In contrast to the restorative approach to justice, the state takes over the conflict and responds to crime via its criminal justice system on behalf of the victim (Pratt, 2008, p.379). Thus, through a standard criminal proceeding, a conflict is transformed from being between the affected parties into one that is between the state and the accused party. The state becomes the victim’s representative and hands over the case to legal professionals. This process often pushes the victim to the periphery, where he/she has little say in what happens and is denied rights to full participation in the process that follows (Christie, 1977, p.3). Consequently, this process forms an obstruction for both victims and offenders to assess and respond to the human aspect of the justice process. For RJ, this paternalistic behaviour on behalf of the state is one of its greatest obstacles. The domination it holds over justice processes and responses
makes it very difficult for alternative methods to stake their claim and become widely approved (Fellegi, 2005, p.67). According to Christie (1977, p.8), the state’s “theft” of conflicts hinders opportunities for norm-clarification within the society and it takes away rights and opportunities for individuals to develop as human beings and learn through their conflicts. It makes it difficult for those involved to ask questions and get answers, to express feelings, to hear the other’s side of the story or to apologise and forgive (Wenzel, et al., 2008, p.377). Further, as Christie (1977, pp.8-9) puts it, in a way victims become as non-persons in a Kafka play whilst offenders lose the chance to explain themselves and participate in a discussion on how to amends. In fact, alienating punishments and shaming forced by the state onto offenders may influence them negatively (Marshall, 1999, p.30).

According to Bazemore & Stinchcomb (2004, pp.14-16), traditional justice systems in some countries create a vast array of institutional barriers to offenders’ re-entry into society. E.g. the removal of voting rights, family rights, limited employment opportunities or various other restrictions reinforce and sustain the stigma and stereotyping that offenders have to live with. Individuals’ identities are largely interconnected to our rights, relationships and ties to social institutions and, if damaged, it may lead to loss of opportunities for full participation in society. Thus, when re-entering society, offenders may again turn to crime as the only clear path available for survival and fitting in with others. Even if many perceive punishment as a just way of paying back a debt to society, it often does nothing to address the damaged relationship between offenders, victims and communities. The punishment serves as a way to impose shared community values on the offender, which in turn may increase his/her resistance to those values. Thus, when punishment is applied without repairing the damaged relations, one party, the offender, may disagree with the consensus. He/she often does not acknowledge the harm done, which may result in obscure personal identities that damage relations further and cause a threat to society’s shared values (Wenzel, et al., p.382).

**Status & Power Concerns**

Ousting the offender from a group of the community might create an identity of an outsider with different values, competing over status and power. According to Wenzel et al. (2012, p.27) studies have shown that this influences public opinion when it comes to punishments. People tend to endorse retributive solutions and be more satisfied with inflicting punishment if an offender’s identity is in opposition to their own values. Outsiders are seen as a threat to the shared group’s stability and to the power and status of victims. Therefore, due to this shift
in balance, the key element of justice for the group is the punishment that is unilaterally imposed upon the offender as it resets the power and status balance between the offender and victim. In contrast, if the offender shares a group membership, people are more likely to be satisfied with a justice process that is restorative. (Gromet & Darley, 2009, p.53).

From a symbolic perspective, crime disempowers and demeans victims along with the community as whole. Through this process, offenders take control of the power and status in place which might suggest that subsequent responses build on its removal from the offender and reinstating it to the victim and community. Retributive justice places punitive sanction upon offenders in accordance to what they deserve, restoring moral values through affirmation against the offender. Restorative justice on the other hand, aims to restore values through consensus with the offender, emphasising on taking responsibility and making things right. This in turn affirms the offender’s social validation of moral values (Wenzel, et. al, 2008, pp.380-382).

**Restorative Justice**

RJ is a theory of justice based on an approach that considers justice should heal the harm that crime causes (Braithwaite, 2004, p.28). Even though RJ is comprised of various methods, programmes and practices, its foundation rests on a certain philosophy and set of principles. It presents people with a different framework for thinking about crime and wrongdoing (Zehr, 2002, p.5) and provides possibilities to repair severed relations within communities as well as bringing about a chance for the restoration of individuals affected by crime. The following definition by Marshall (1999, p.5) sums up the key aspects of RJ: “Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.”

Its ideology derives from a blend of traditions from ancient civilisations and from the teachings of age-old philosophical traditions such as Taoism and Buddhism which promote restorative values such as forgiveness, apology and compensation (Braithwaite, 2002, p.5; Walgrave, 2008, p.617). In fact, RJ has been applied as an approach to justice for much of mankind’s history. It was not until the end of the dark ages when, in order to enforce the monarchy’s domination over its people, crime was transformed from being one between people to a felony against the king (Braithwaite, 2002, p.5). That in itself is an irony of sorts if one were to compare it to the aforementioned argument of Christie (1977) stating that once a
conflict enters the current justice system it will be taken away from the parties directly involved and become a property of other people, namely the state.

Even though RJ was a commonly used method in ancient times it did not re-emerge until the 1970s in the Western world (Walgrave, 2008, p.617). It was seen as a response to the prevailing Western ideology of justice and as an alternative to retribution for dealing with offences through a process built on communication and constructive solutions. In contrast to the retributive approach where the state takes a central role, RJ focuses on the inclusion and involvement of victims, offenders and members of the community in the justice process (Wenzel, Okimoto & Cameron, 2012, p.25). Crime is perceived as a breach in relationships or as causing a harm to the community, rather than as a violation against the state (Bergseth & Bouffars, 2012, p.1056). Further, the RJ perspective sees crime as a representation of damaged relationships. These human relations, in turn, are both the cause and effect of crime and they should be central in the criminal justice process, not pushed to the periphery as the justice system tends to do (Zehr, 2002, p.20; Zehr, 1985). Even though offenders’ debt to victims or communities is acknowledged, it cannot be paid solely by imposing harm on offenders. Instead, the focus should be put on the harm of the crime and how damaged relations can be repaired through a process of healing (Bazemore, 2007, p.655). Instead of focusing solely on the past and how debt to society can be paid through punishment it is necessary to take up a forward looking aspect. Whilst an offender certainly takes responsibility for his past actions, the RJ approach focuses mainly on the future, i.e. on forgiveness, problem solving and obligations created by an offence. The outcome from the process outweighs the process itself (Zehr, 1985).

Even though punishment and censure are not crucial to the RJ process it however must be noted that they can be part of the RJ process. The main difference from the retributive approach is that they are never central to the process. In addition, punishments that are imposed on offenders in an RJ context are of a constructive and meaningful nature, e.g. they can require that the offender does something for the victim, takes part in an educational program or provides community service (Wenzel, et al., 2008, p.376). Unlike the retributive approach, where the justice process is unilateral, the reparative sanctions are imposed on offenders through a bilateral process (Gromet & Darley, 2009, p.50).
**Value Concerns**

Offenders’ shared group identity influences people’s opinions greatly when choosing an appropriate response to an offence. In contrast to the aforementioned status/power concerns of an offence committed by an outsider, value concerns are key elements for people dealing with offenders that share the group’s identity. If an insider commits an offence, the group is less likely to support a retributive approach but more likely to opt for a restorative response in order to establish a value consensus between those involved (Gromet & Darley, 2009, p.53).

However, it must be mentioned that the severity of the crime may alter people’s opinion to an appropriate response. If offenders who share a group identity with others commit serious offenses such as murder or rape, it can lead to their ouster from the group as people attempt to distance themselves from the offenders. Consequently, the group’s opinion of an appropriate response would be one of a retributive nature making it possible to remove the offender from the community. The restorative response cannot accomplish this distancing as its concept is built on repairing the harm done by including the offender in the process and working on the re-inclusion of him/her into the group (Gromet & Darley, 2009, p.55).

**Commonalities and differences**

In spite of these differing approaches to justice it is important to perceive them not as stark opposites, but as collaborative with shared similarities. Firstly, both practices recognise that due to an act of crime, the balance between offender and victim has been shifted and there is a need to address the harm it caused. The offender has his/her obligations and the victim is entitled to something (Zehr, 2002, p.59). Secondly, both approaches seek vindication through mutual interactions and the response to crime should in some way be proportional to the severity of the offence. The question that is left unanswered is: How do we address the crime in order to make things right again? (Umbreit, et al., 2005, p.257)

As mentioned before, the main difference behind both ideologies lies in the actions that lead to restoring the balance and fulfilling obligations (Zehr, 2002, p.59). Even though both approaches call for censure their scope is somewhat different. Whilst the retributive approach assumes that the offender’s censure is one-sided and imposed through punishment, the restorative approach assumes that censure is a collective effort imposed through the offender’s self-censure by taking responsibility for the harm done and showing regret (Wenzel, et. al, 2008, pp.379-380).
2.2. Stakeholders

Victims
As Gromet & Darley (2009, p.51) explain, people often desire a fitting punishment when they experience a violation of their rights, it is their initial and intuitive response to offences. When violations of rules and laws occur, society tends to confront it by putting a greater focus on the offender rather than the victim. Consequently, in some cases, victims feel that their needs are not met, they feel left out, neglected or even abused by the justice system (Zehr, 2002, p.14). They get pushed aside and are told that they do not have to worry as the offender will be punished accordingly. What will their perception of the offender come to? It is likely that victims will never get the chance to know the offender and find out about his/her intentions in cases where the offender is a stranger. Victims need a better understanding of the causes and intentions but are instead often left in the dark, perhaps angry, confused and misinformed. In order to seek explanations, then, these victims need to rely on stereotyping, subjecting their image of an offender to that of a non-human (Christie, 1977, p.8), a soulless thing that lacks any real human feelings and can’t be forgiven. This, is in turn, may only serve to exacerbate the feelings of anger, alienation, fear and victimhood.

It has been shown that victims are generally more satisfied with RJ programmes’ outcomes compared to traditional justice processes involving court. Victims’ satisfaction often derives from their involvement and participation in the case rather than the outcome itself (Wenzel, et. al, 2008, p.377). Even in cases where the material restitution is insufficient, the symbolic reparation often makes up for it. A sincere apology for the harm done, a gesture that may often seem so small in relation to an offence, is in some cases the most important outcome for victims. To be able to ask the offender why he violated another person’s rights may be more valuable than a material compensation (Braithwaite, 2002, p.52). RJ gives victims the opportunity to perceive offenders differently, as human beings that also need help. When possible, victims are encouraged to try to forgive the offender and respect him as a person that is able to turn the page and make a moral change (Wenzel, et al., 2008, p.378).

Offenders
From a retributive perspective, in addition to the process of shifting the victim’s role from a participant to an observer, offenders have little say in their own matters. The traditional approach to justice does very little to help offenders realise the real human and symbolic cost of their actions (Allais, 2008, p.130). That is not to say that the criminal justice system does not value offender accountability, but the manner in which it holds offenders accountable is
through punishment decided to be equal to the severity of the crime. This process makes it difficult for offenders to empathise with victims or fully comprehend the human cost or consequences of their actions. It actually encourages them to renounce responsibility and to look out only for themselves in order to minimise punitive sanctions (Zehr, 2002, p.16). RJ, on the other hand, makes the offender understand the real consequences of the harm that was done whilst making him/her repair it through character-building measures. This process makes it easier for the offender to make amends for his/her actions and reintegrate into society rather than become alienated from it (Allais, 2008, pp.130-131). Bazemore (2007, p.654) argues that retributive justice is itself illogical as it does not stay true to its very ideology. If, for instance, an offender serves punishment through incarceration, has his/her debt to society not been fully paid upon release? As mentioned before, in many cases his/her reintegration into society becomes very difficult as many restrictions may be imposed upon the offender through, e.g., stigma and the withdrawal of citizen rights. The situation that convicted felons face after incarceration could in some cases be thought of in terms of an additional punishment, one which was not officially enforced by the judicial system. This underscores that support for all affected parties of crime is crucial for repairing relations and reintegrating individuals back into society. Opposed to the retributive model where criminal cases are prepared by the state in a way that makes it possible to inflict maximum damage to the offender, RJ seeks to provide maximum support for all those involved (Braithwaite, 2004, p.28).

In order to make restoration possible it is crucial that the justice system makes it possible for offenders to take responsibility in a way that empowers them through active participation in the process (Sawin & Zehr, 2007, p.50). It is necessary to explore the harms that the offender has experienced and address those issues through dialogue and some sympathy. It has been argued that the root of criminal behaviour lies in the offender’s perception of his/her own harm or victimisation in the social arena. In that sense, an offence is a perverse way of undoing injustice and the offender’s own feeling of victimisation. RJ has the ability to address these issues and acknowledge the offender’s victimisation. In some cases human empathy and understanding may be all that is needed for his/her inner satisfaction (Zehr, 2002, pp.30-31).

Community

From an RJ perspective, the definition of a community is twofold. It can be thought of as being geographical, i.e. the location or neighbourhood where a crime took place, or it can be thought of as being a social community (Schiff, 2007, p.235), i.e. a network of relationships
which are not geographically defined. When crimes occur it can affect the community as a whole, and in some cases it becomes a secondary victim. This accentuates the importance of community members’ response when addressing crime and their responsibilities to victims, offenders and themselves. For RJ it is crucial that the community examines and considers what members of said community care about an offence and the people affected. From there, a way needs to be found that makes it possible for them to be involved in the process (Zehr, 2002, p.17). Studies have shown that, like victims and offenders, community members that are participants in an RJ approach are highly satisfied with the process and final outcomes (Braithwaite, 1999, p.36).

State

The issue we face in the current criminal justice system is that conflicts are not between the parties directly involved, they have been transformed into something that is between the state and the offender. Professionals such as lawyers and judges become the owners of conflicts and act on the state’s authority. In the process, the victim becomes in a symbolic sense a non-existent thing whilst the offender becomes a thing. This approach to justice starts to revolve around the manipulation and control of the offender (Christie, 1977, p.5). In a wider perspective, criminal justice is a form of social control. It is a tool for the state to express symbolic disapproval for behaviour it considers abnormal. In that way, citizens’ actions or social identity can be criminalised or declared illegal on the grounds that they do not comply with state law. A good example is the ban on gay marriages or the exclusion of groups from certain institutions (Eskridge, 1999, p.270) such as has been the case during periods of racial segregation.

Many scholars in the RJ field would agree that the state is responsible for the alienation of offenders and victims from each other as well as failing to meet the needs of both parties after a crime has been committed. Yet many believe that it plays some role within the RJ context. If empowered through an RJ perspective, the state can use its resources to facilitate the needs of all relevant parties that are beyond the community’s reach. The state can, e.g. provide housing, treatment programmes, social security and employment opportunities as well as speak on behalf of society, i.e. provide certain norm-clarifications (Sawin & Zehr, 2007, p.52). The state will ultimately benefit as it has been shown that RJ brings about positive consequences, as victims are generally more satisfied with the process and offenders’ recidivism is lower compared to traditional justice measures (Allais, 2008, p.130). Also, for
RJ the state may operate as a safeguard or backup to the restorative process, ensuring that those who commit crime are initially brought to justice (Sawin & Zehr, 2007, p.53).

Limitations
As with other responses to crime, RJ has its limitations. One of its greatest problems is the balancing of everybody’s needs. As RJ programmes grow bigger, more actors are involved and it is troublesome to make every stakeholder happy with the process and outcomes. This can be overcome by continuing the development of RJ principles and processes. Constant training of facilitators is necessary and there is a great need for interdisciplinary cooperation and public awareness. Police officers and legal professionals need to be introduced to the ideology of RJ, and legal safeguards need to be in place for RJ to be successful. E.g. judges need to be aware that even though some cases are to be mandatorily referred to mediation, the decision ultimately has to lie with the participants themselves (Umbreit, et al., 2005). The foundation of RJ is built on volunteer participation and, even though it has been a topic of debate, coerced participation should be minimised.

2.3. Restorative Justice Programmes
According to the UN Economic and Social Council (2002, p.56), RJ programmes are those programmes that use processes of a restorative nature in order to achieve restorative outcomes. Further, these restorative processes can be defined as any process where a victim and an offender, along with other relevant community members, meet and collaborate with the aid of a facilitator in resolving issues related to the offence. The outcomes of these processes are also of a restorative nature and aim to reintegrate the offender and victim through agreements that meet the individual and collective needs whilst holding those responsible accountable. RJ programmes are in constant development and are increasingly being applied throughout the world. As Umbreit et al. (2005) show in their meta-analysis, RJ programmes are consistently performing better than their counterparts on various measures such as participant satisfaction, completion of agreements and lower recidivism. In addition, RJ measures tend to be faster and less expensive in contrast to traditional justice responses.

In order to start the restorative process it is crucial that all parties involved be there voluntarily. The offender needs to take responsibility for his/her actions as RJ programmes require that he/she acknowledges and discusses the offence that took place (Zehr, 2002, p.9). The requirement of voluntary participation in the process has, however, been much debated. Even though most agree that victims’ participation should be strictly on a voluntary basis,
there has been much disagreement about offenders’ participation. The issue at hand is whether the RJ justice approach should be able to force offenders to participate (Sawin & Zehr, 2007, p.50). The question we need to ask ourselves is whether offenders would be taking part in an RJ process if there were no minimal coercion or reward in agreeing to it? If they had not been caught or if they had not been offered this solution instead of an official trial would they really be willing to participate? It is hard to state that the RJ approach is absolutely free of offender coercion, as in most cases there are some reasons that compel offenders to participate. The issue at hand is then not to avoid coercion completely, but to avoid the intensification of it (Braithwaite, 2002, p.34).

RJ programmes may be offered at any phase of the criminal justice system if it complies with national law (UN Economic and Social Council, p.57). For example, the NMS offers RJ measures for offenders on probation and within prisons. Prisoners get the opportunity to participate in discussion groups, undergo courses in conflict management or receive mediation services. Mediation between victims and prisoners is important as it provides victims with a chance to understand why a crime occurred and it gives them assurance that they will not be harmed again when the offender is released into the community (Paus, 2010, p.36).

Generally, there are three main processes for reconciliation within RJ. Those are victim-offender mediation/dialogue (VOM), group conferencing (GC) and circles:

**Victim-Offender Mediation/Dialogue**

VOM is the most frequently applied programme within the RJ framework (Kurki, 2003, p.294). It brings victims and offenders together in a joint discussion that is generally assumed to be both safe and structured under the guidance of a trained mediator. Before VOM takes place, both parties attend pre-meetings with facilitators where the mediation process is explained, it is determined if those involved are fully prepared for it (Schiff, 2003, p.318) and expectations for the meeting are discussed. The ultimate aim of this process is to come up with a plan that leads to a reparation of the harm that occurred through the fulfilment of an accepted agreement. It is important to note, however, that most victims believe that the possibility of speaking in depth to the offender and expressing their feelings is the most essential feature of the process, often more important than the completion of an agreement. In a similar manner, offenders think that the chance of explaining their actions is the key aspect of the VOM process (Kurki, 2003, p.295).
Even though family members of both parties may take part in the VOM process, their role is secondary and mainly for support. Representatives from the community may also serve as facilitators or programme supervisors but do not normally participate in the mediation meetings (Zehr, 2002, p.47).

**Sub-programme - Shuttle Diplomacy**

As mentioned above, if VOM is to take place it is important that all parties agree to participate in the process. In some cases it can be extremely difficult for victims to come face-to-face with the offender, and without the victim participating the mediation cannot take place. Due to this reason, it is often possible to facilitate indirect dialogue between the parties involved in which the mediator takes on the role of communicator (Dignan, 2007, p.316). In Europe and the US, many variations on the typical VOM process have surfaced in recent years and some programmes have developed a method for this indirect mediation called shuttle diplomacy. The parties involved never meet face-to-face and the mediator acts as a go-between, delivering information between parties. In addition, communication can occur digitally, via video or audio channels, phone and email or through internet discussions (Raye & Roberts, 2007, p.212).

Even though shuttle diplomacy within the RJ process is fairly common, it has been criticised for not providing adequate symbolic reparation for victims, which is usually the desired outcome. It usually focuses more on material reparation rather than symbolic reparation which in turn may lead to decreasing victim satisfaction with the process and final outcomes (Braithwaite, 1999, p.82).

**Group Conferencing**

The method behind group conferencing (GC) originally derives from ancient traditions and practices of the Maori people of New Zealand. In order to empower the families of the aboriginal Maori people and provide them with tools for settling their own conflicts according to customary rules, New Zealand implemented a GC programme in 1989. Due to its success, GC has since spread all over the world and is considered an important programme within the RJ paradigm (Raye & Roberts, 2007). Conferences usually involve family members or close friends of the parties that care about the people involved, but in some cases they are larger as participants from the community can be brought in. Discussion is usually controlled via a written script but in some cases it is open ended, giving participants the opportunity to share whatever is on their mind. Once an offence is acknowledged, the victim and offender are
asked to nominate those people which they would like to attend the conference. From there, participants engage in a dialogue about the harm that was done and how it affected everyone in the room. The offender takes responsibility for his actions, shows remorse and often offers an apology or practical help to the victim. Then participants discuss what needs to be done and how the harm might be repaired through restorative measures in addition to finding ways for the prevention of reoffending. Finally, once an agreement is reached, a plan of action is set into motion and its requirements are signed by the offender, and often also by the victim or a police officer (Braithwaite, 1999, p.39; Braithwaite, 2002, p.26; Umbreit, et al., 2005, p.269).

Even though conferences usually involve participants that share close relationships with the parties involved, their scope can be widened to include basically any actor that has been affected by the conflict, e.g. neighbours, co-workers or classmates (Paus, 2010, p.35). This, however, may not always help. As Umbreit et al. (2005, p.275) point out, one study shows that parents’ negative attitudes, for instance, can harm the process in juvenile cases.

**Sub-programme - Community Conferencing**

Community conferencing (CC) is similar to GC. The main difference lies in the recognition of the community as the victim of crime, and this model seeks to enable citizens in determining what measures to take as a response to crime. The focal point revolves around forming and sustaining community cooperation that plays a role in determining the outcomes of crime within said communities. Offences to which CC may be an effective response include e.g. vandalism, graffiti damages or prostitution, if classified as an offence (Schiff, 2003, p.320).

**Circles**

The methods behind circle programmes originate from the practices of North American aboriginal peoples for dispute resolution (Raye & Roberts, 2007, p.215). Circles bear a resemblance to conferences as both programmes involve friends and family, but circles tend to involve the community more as well as having more facilitators. As circles are often applied as a measure for an offence that was aimed against the community itself, the number of participants is usually greater, including a broader selection of community participants, than in conferences or mediation. They tend to work towards community cohesion and give participants a chance to build new relationships with individuals they did not know beforehand (Roche, 2003, pp.66-67; Umbreit, et al., 2005, pp.270-277).

There are some differences between circle programmes and conference programmes. The former offer multiple meetings with offenders rather than just at one occasion. They tend to
rely on rituals such as an opening/ending prayer and objects that are passed between participants, giving the holder an uninterrupted right to speak his mind (Roche, 2003, pp.66-67). Circles can be hard to sustain in many urban settings, as their method is built on the presumption that its participants are members of a dense and active community. In addition, circles may demand a lot of time from the participants as the process can be lengthy and require many meetings (Walgrave, 2008, p.631).

**Restorative Sanctions and Agreements**

When one thinks about punishment it is necessary to address two types of moral questions. As Dignan (2003, p.138) explains, we need to ask ourselves first; what is it that justifies the infliction of pain on a person and how do we decide what persons we are entitled to punish? Secondly, what type of punishment are we entitled to inflict on a person and to what extent? This raises a further question; does RJ bring about outcomes that deliver punishment to some extent? It is necessary to note that when thinking about the processes and sanctions of RJ, they are not to be perceived as an alternative to punishment, but rather as alternative punishments (Daly, 1999, p.3). RJ does not by any means deliver “soft” outcomes for those offenders who participate in the process, but outcomes of a different nature.

It might be stated that RJ, in contrast to retributive justice, is more forward-looking. Whilst retributive justice focuses on the past, the offence itself and how the offender must pay his/her debt through suffering, RJ focuses on how the offender can change his/her future behaviour whilst censuring his/her past behaviour. Sanctions should be proportionate and they should make things right (Daly, 1999, p.4), focused on repairing the damaged relations. It is worth noting that a number of studies have shown that agreements between victims and offenders are usually fulfilled and compliance with restorative agreements are considerably higher than with those issued by court order (Braithwaite, 2002, pp.51-52). According to Bazemore (2001, p.213) there are five fundamental dimensions of repair:

- **Compensation** to harmed parties through e.g. restitution or offered services.
- **Stakeholder satisfaction** with the RJ process and outcomes.
- **Norm affirmation** through disapproval of offender’s behaviour and prior acts.
- **Relationship building** by building up respect between the parties involved and strengthening their community relations.
- **Crime prevention** by minimising recidivism and strengthening the community’s ability to prevent further crime.
3. Methodology

In this chapter I will discuss the methodology applied for this study. By performing a literature review and conducting interviews I was able to highlight key strengths and issue areas of the Albanian project. By using that information, I was able to identify possible issues that could emerge in Cuba’s proposed project and provide possible solutions.

Keywords that the data brought into light include; social and community cohesion, social spheres and community sub-groups, customary law, state law and plural legal orders, participatory mechanisms, social disintegration and formal/informal social control. These areas of interest will be discussed in the following chapters.

3.1. Research Methodology and Data Collection

The methodological framework for this paper consists of two separate methods. Firstly, I conducted an extensive literature review by gathering and analysing numerous articles, books and previous research on the topic. The selection criteria were based on relevance and importance for the study and research questions at hand. Secondly, two recorded interviews were conducted with people working on the RJ projects in Albania and Cuba. Informal discussions that these participants had were additionally observed and transcribed in the span of one week. The interview data and field notes were analysed and used for raising questions on this paper’s subject and for obtaining participants’ perspectives and expectations for the Albanian and Cuban projects. During this study I continuously examined, compared and analysed previous research in relation to findings from the interviews.

Qualitative Approach

The main strength of interviews lies in their ability to provide information on people’s opinions, perspectives, memories, feelings, understandings and so on. Interviews provide a unique possibility for exploring both individuals’ understandings and beliefs as well as society’s broader cultural consensus. Our inner beliefs and feelings are not objective things but human constructs shaped by the society and culture we live in. Therefore, people within certain sub-cultures share many similar understandings of common matters which can be interpreted on a society-wide basis. Even though each individual brings his/her own personal elements toward various matters, people tend to perceive matters such as social or legal norms on a similar basis (Arksey & Knight, 1999).
During one week in February, a Cuban delegation visited Oslo in order to gain further insight into the functions of the Norwegian justice system and, more specifically, how the NMS operates. The visit was arranged by the NMS as they will assist with the implementation process of RJ in Cuba. During this week, seminars were held and the various institutions were visited for the purpose of explaining the concept of RJ, criminal justice and their institutional support role. The institutions that were visited included the NMS central offices in Oslo, the Mediation Service of Østfold County, Oslo Prison, Oslo’s probation office and the department of criminology and sociology of law at Oslo University. During that time, seminars were held and included amongst other things discussions on RJ in general and its processes, penal law in Norway, probation and the use of electronic surveillance as well as the responsibilities and functions of correctional facilities.

During this week I conducted two semi-structured interviews, one with a single person and one with a group, as well as transcribing comments during seminar, activities and ongoing informal discussions. The group interview consisted of participants from the Cuban delegation; two former judges and a former lawyer who now serve as professors of law at the University of Havana and a psychologist who functioned as a translator and works also as a professor at the university, teaching RJ. In this interview we discussed amongst other things the possibilities that RJ may bring to Cuba, it’s preferred setting and target groups, it’s role within the justice system and the approach to justice currently in place in Cuba. The second interview was with Karen Kristin Paus, a senior advisor for the NMS. She helped establish and served as an advisor for the Albanian RJ project and will take on a similar role for the proposed Cuban project. This interview consisted mainly on discussions on the Albanian project, the application of customary law and issues that arose during its implementation process as well as if those issues could emerge in Cuba’s project.

It needs to be clarified that the interview participants are not to be perceived as representatives for RJ or state/non-state law, but rather as advisors who have an active role in Cuba’s implementation process. The Cuban delegation consists of professionals with background in law and psychology. They offer unique perspectives, not only as professionals but also as Cuban citizens who have experienced firsthand how life in Cuba is regulated through community cohesion, participatory mechanisms and accepted norms (personal communication, 2015). Paus on the other hand is a professional within the field of RJ and an advisor for both projects. She possesses extensive knowledge on RJ and provided insight into the application of customary laws in Albania in relation to RJ.
**Literature Review**

For this paper I conducted an extensive literature review based on peer-reviewed articles and research on topics related to the subject of this paper. In short, a literature review could be described as a critical analysis of existing literature about a specific research topic. Individual findings from that analysis are then gathered and synthesised in a general conclusion. It is commonly used for research preparations and introduction. However, it can also be applied as a research foundation, guiding the work, answering questions and serving as an aid for interpretations (Gomm, 2009, p.192; Schwandt, 2015, pp.274-275). Types of literature reviews vary and for this paper I chose to apply a mix of a systematic review and a narrative review. When conducting a systematic literature review one seeks to locate and combine all applicable research on the topic being studied whilst linking together a series of related hypotheses that arise from the literature. A narrative review on the other hand seeks to synthesise and evaluate the primary research into a single and descriptive narrative (Ebeling & Gibbs, 2008, pp.66-68). My aim was to let findings from the literature reviewed serve as a foundation for this paper whilst incorporating findings from the interviews into the text guided by the extant literature. The interviews provided new data that could not be found in the literature and aided in identifying issue areas, linking together possible hypotheses and raising questions.

**Analysis**

After the interviews were conducted the audio data were fully transcribed and field notes were gathered and organised. Thereafter the data were sorted and categorised through coding. When coding, one continuously compares and contrasts segments of data whilst simultaneously organising them through codes or categories (Schwandt, 2015, pp.30-31). Listening to the audio data whilst reading the transcription and field notes, I took note of words and sentences that were emphasised, stuck out or were otherwise relevant to this study. By doing this, I was able to create various categories into which elements from both interviews could be incorporated. This made it easier to retrieve the data for comparison with the literature and subsequently raise discussions on the topic and come to conclusions. The importance of coding is to draw out segments from the data for deciding what is relevant and important and what is irrelevant and unimportant (Fielding, 2008, pp.334-335).

There are some ethical considerations to have in mind for this study. As it involved qualitative interviews, questions were formulated to be as neutral and inoffensive as possible to the Cuban professionals. Due to the highly political and sensitive nature of this paper’s topic, all
data and interpretations are likewise approached in as neutral and unbiased way as possible. It is also unclear at this stage if the answers were in any way affected by these issues. Before the interviews were conducted, I received consent from all participants and provided them with an information sheet that provided details on the study and information on confidentiality. In this paper, the Cuban professionals I interviewed are not named. Paus’s interview will, however, not be anonymous due to her official and key role in the Albanian and Cuban projects as well as her senior advisory role within the NMS.

3.2. Methodological Strengths and Limitations
This study presents some limitations. Firstly the interview sample size was quite small, and only two interviews were conducted. Secondly, many studies on the Cuban justice system used for this paper were outdated due to a lack of available sources. Thirdly, as the Cuban RJ project is currently only in the preparatory phase there are no data available for measuring its experience.

Despite these limitations, there are some definite strengths. Even though the interview sample is small it brings about feelings and expectations toward RJ from professionals that are key figures in the implementation process. Also, Paus provided a first-hand account on how the implementation process was experienced in Albania. Even though the interviews were relatively open-ended and not based on cold hard facts they represent participants’ personal opinions, a strength given the methodological framework of this paper. The main advantage of these qualitative interviews, however, is that the data is not available anywhere else. Additionally, the fieldwork performed during the time of the visit provides essential information from an informal setting, making it possible to compare that data to the formal interviews. These qualitative approaches bring about important first-hand perspectives from people who are very much involved in the RJ projects discussed in this paper. Their experiences, expectations and thoughts on the topic provide unique perspectives on the challenges ahead.
4. Theoretical Background

The theoretical framework of this paper is twofold. Firstly, I look at how legal pluralism exists in both Albania and Cuba as citizens have adapted to foreign rule and totalitarian rule through building their own code of customary law and practices. I relate this to the legal pluralism concept of Ehrlich’s *living law*, i.e. the law that dominates within societies. Secondly, I look at Durkheim’s concept of anomie and how societies become anomic when shocks occur, such as when states transition from communist rule as is the case for the both nations discussed in this paper.

4.1. Legal Pluralism and Ehrlich’s Living Law

Legal pluralism challenges the concept of legal centralism which declares that law derives from and is executed only by the state in a uniform and absolute manner. According to legal centralism, state law dominates and subjugates its various actors who are subordinate to the law in a hierarchical ordering (Griffiths, 1986, p.3). Legal pluralism, however, counters that view, stating that multiple partially autonomous social fields produce law through self-regulation. Legal pluralism occurs if more than one source of law exists in a group’s social actions in any social field. Social groups conform to these laws in order to adjust to situations where, e.g., an existing law conflicts with people’s traditional practices (Dupret, 2007, p.10, 16, 19). As Moore (1972, pp.719-723, 743) explains, even though law if often perceived as uniform and dominant, controlling the social context, it can be argued that it is in fact society which controls law. Even though formal law has a profound effect on society through its monopoly of force, we as individuals all belong to various sub-groups of social fields. These social fields in turn, all possess their own customs, norms and rules, generated through means of coercion or by inducing compliance. Within them, norms generate, are changed or develop through internal agreements or external factors, such as technology advancements or legislations. However, if legislation attempts to change social fields in a way that goes against their social agreements, it often leads to failure as the social fields’ arrangements are often more effective than law. Within the social fields there are a myriad of factors at play which affect, e.g., the decisions we make, the relationships we form and the actions we take, in which state law is but one factor. For that reason, in order to understand law in relation to social change, it is necessary to study it at the social level, within the framework of social life.

Legal pluralism can be found all around us in. Be it municipal law, state law or international law it is evident that they all co-exist and shape our societies (Tamanaha, 2008, p.375). What
is especially interesting, given the topic of this paper, is the interplay between customary law and state law. How do these two conflicting legal paradigms coexist and more specifically, how does living law prevail?

The concept of living law, coined by Eugen Ehrlich, concerns the law that dominates life itself even if it has not been codified or put into a legal context (Banakar, 2002, pp.33-34). Ehrlich’s contribution is critical for understanding legal pluralism, as he saw the living law as an answer to the idea that there exists only one law, i.e. state law. His theory contains many fundamental elements of legal pluralism, important for further developing and exploring theories of plural legal orders (Griffiths, 1986, p.26). He states that societies are based upon parallel legal orders in which the concept of law does not have to derive from the state. Instead, law emerges from the norms of social conduct that people create through human interactions and associations. Thus, normativity produces law (Dupret, 2007, p.3), and there is a distinction between rules for decision and rules of conduct. Rules for decision imply that law is defined as a rule which state officials must oblige for making judicial decisions as they have to do it. Rules of conduct, however, refers to what ought to be done in accordance with social facts, human association, shared norms and values (Griffiths, 1986, pp.23-24, 26).

According to Ehrlich’s theory, values, norms and customary rules formed over time within the social system supersede state laws (Nafstad 2015, p.5), creating a system of living laws. Societies are based on human associations that have reciprocal relations with one another. These associations can vary, ranging from genetic, political and, economic through religious groups, of which many possess an inner social order (Littlefield, 1967). These inner orders are the original and basic form of law (Griffiths, 1986, p.25). Inner orders materialize in established legal systems, but also have the characteristics of law before the formations or developments of law in the positivist sense. In order to explain the workings of the inner orders, Ehrlich identified four social facts that control them. These are usage, domination, possession and the usage of will. In his opinion, these social facts have a much greater impact on the social framework and the organisation of society than state law (Littlefield, 1967). As Nafstad (2015, p.5) explains, if state laws are to gain legitimacy in society they need to adapt to predominant living laws in order to be effective. Therefore, the development of law derives not mainly from actions of the state but is instead centred on society’s activities and, consequently, it must be explored at that level (Teubner, 1997, p.4).
4.2. Anomie and Strain Theory

Émile Durkheim (1897) created the concept of anomie from his categorization of social organizations, mechanical solidarity and organic solidarity. Durkheim was worried about traditional ways of life and morality in modern society. In contrast to scholars who saw society consisting of self-centred individuals, he saw it made up by socially constructed people formed by society. Individuals’ morality and personalities are guided by social conditioning and regulations, and modern society has frequently failed to supply a stable set of norms for individuals to live with. Consequently, individuals may feel a sense of normlessness and purposelessness in their lives, a state which Durkheim calls anomie (Farganis, 2011). When people experience crises or shocks within societies or in their personal lives, this state of normlessness often emerges, bringing about a lack of guidance and norms for their conduct. Thus when there are temporary or long-term strains on society’s social system, anomie occurs which in turn may produce deviance within society (Paternoster & Bachmann, 2001, pp.142-143). In order to uphold social control, the state uses punishment as a measure against crimes. Punishing an offender, however, mainly serves to confirm and augment the existing negative relationship, greatly ignoring the reinforcement of the offender’s moral values. As a court imposes punishment on an offender there is a chance that he/she does not accept that decision and, hence, the moral message goes undelivered, further reinforcing the anomic situation of that individual. On the other hand, RJ seeks to impose and strengthen these shared moral values without harsh punishments. By bringing victims and offenders together in a shared dialogue for the purpose of repairing broken relationships, it makes it clear what effect and moral impact the offence had on the victim, its family and the community. This method facilitates the re-strengthening of society’s shared moral values and principles, resulting in the restoration of community cohesion and breakdown of anomie situations (Fellegi, 2005, pp.109-110). The repair of relationships is the first step in identifying common norms and values whilst increasing reciprocal trust and establishing informal social control (Bazemore & Stinchcomb, 2004, p.20).

As Messner and Rosenfeld (2001, pp.153-155) explain, anomic crimes are produced in capitalist societies where the economy dictates the institutional structures. Opposed to centrally planned economies, capitalism brings about a deregulation of the goals which people aspire to achieve and deregulation of the measures they take to reach them. These goals revolve more or less around profit and loss. Instead of community cohesion and cooperation,
individuality and competition dominates life. The quest for profit then leads to moral deregulation as the line blurs between what is right and what is wrong.

**Discussion**

By combining these two theoretical approaches it provides one with analytical tools for exploring both the past and future in relation to the topic of this paper. Even though legal pluralism and living law are separate theories, I seek to combine them into a one theoretical framework. I seek to explain the plural legal orders in pð through the application of living law. Firstly, by examining the application of customary law and the existence of legal pluralism one may delve into the concept in a way that explores prevailing informal norms in contrast to formal legal norms from an historical perspective. Secondly, by scrutinising the concept through an anomic lens, it makes it possible to examine the effects of a state´s radical economic/political transition. It provides possibilities for exploring how these transitions may lead to social disintegration and a state of normlessness as community cohesion decreases and new norm/value structures are introduced. By comparing the completed transition in Albania to Cuba´s future plans, it provides a framework for generating hypothetical assumptions.
5. The cases of Albania and Cuba

In this chapter I will discuss the RJ projects of Albania and Cuba and put them into context by discussing firstly Albania’s use of prevailing customary laws for resolving conflicts and enforcing norms. Secondly, I will discuss Cuba’s experience of lay courts as well as its use of participatory mechanisms for social control. It is my believe that the experience from the Albanian project may serve as a guide for the proposed Cuban project due to the states’ similarities in the application of customary/community laws as well as their experience with communist regimes.

This chapter will however start with a brief explanation of the NMS, its role in Norway and its aid in implementing RJ in foreign nations.

5.1. Norwegian Mediation Services

In Norway, mediation has been administered for settling conflicts since the 1980s, but in 1991 the mediation service law was passed regulating its use. The Norwegian government has decreed that the NMS is the primary institution for administrating mediation and that their long-term goal is to increase criminal cases referred to mediation, particularly juvenile cases (Riksadvokaten, 2008, p.1). The NMS possesses 22 offices responsible for providing mediation services which in turn are performed by local volunteer mediators. The offices also collaborate and maintain relations with relevant partners such as official institutions and local communities (Paus, 2010, p.30). Mediation in Norway is mainly performed by volunteers who undergo intensive training and are evaluated afterwards. If mediators are needed, vacancies are advertised in newspapers and applicants usually outnumber the available positions. When selecting applicants, the NMS tries to seek applicants of different backgrounds in order to have access to a network of mediators consisting of different groups of age, ethnicity, gender etc. (Fellegi, 2005, p.96).

As Paus (2010, p.32) explains, Norway’s experience has shown that RJ measures may also be suitable for handling cases of a violent nature. The NMS aims to increase the number of violent conflicts that go through RJ programmes, but have met with some opposition from various professionals who are doubtful that violent cases between individuals in close relationships are suitable for mediation. The NMS, however, feels that nearly all criminal cases can be suitable for RJ measures given that preparatory work is sufficient and that the process is correctly fitted to the needs of each case.
Since 1998, Norway has collaborated with the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR) in implementing and maintaining RJ in Albania. This project has had a positive influence on the implementation process whilst bringing about ideas and new methods for the administration of RJ. The aim of this project is twofold. Firstly, to exchange information on RJ practices for its development in both countries. Secondly, to build an institutional framework for RJ practices based on customary practices and by incorporating it with some aspects of the Norwegian model (Fellegi, 2005, p.129). The collaboration between the NMS and foreign countries in implementing RJ may serve as an example for other nations, as it greatly aids the development of RJ practices and increases our understanding of the concepts of justice and social control. As Fellegi (2005, p.117) notes, the partnership between the NMS and the AFCR in the past has shown the importance of information and cultural exchange between countries. There is much to gain if countries look to other societies and learn about how conflicts are dealt with in other cultures and through different traditions. These different practices may very well enhance our knowledge and bring about solutions to social issues within one’s own countries. The NMS will now take on a new role, as an advisory institution for the implementation of RJ in Cuba. By building on the successes of the Albanian experience and perhaps encouraging participation between relevant professionals and organisations in Albania and Cuba, it might aid the development of RJ in both nations as well as in the world.

5.2. Albania

Mediation has a long history in Albania as people have traditionally sought reconciliation through, e.g., covenants and conventions (Prifti & Prifti, 2013, p.104) for settling various disputes and conflicts. The mediation process has long been guided by customary laws which have had strong influence on Albanian society, especially in the northern parts of the country. These sets of laws are called the Kanun, and emerged as a result of different foreign occupations of Albania by the Ottoman Empire and Turkey. As these powers implemented their own bodies of law, Albanians responded by creating their own system of values, rules, interactions and customs which guided their daily lives. As the Kanun became clearer and more recognised, a pluralistic system of law emerged in which state law and community law co-existed (Sadiku, 2014, pp.79-80).

The Kanun Laws

The Kanun could be described as an assortment of social norms and unwritten rules based on various moral factors such as loyalty, honour and trust (Celik, Shkreli, 2010, p.886). These
intricate bodies of codified customary laws have been passed down verbally throughout time, and are in the northern part of the country thought to be an indistinguishable part of daily life (Mustafa & Young, 2008, pp.88-89). Nearly every region in Albania has its own set of Kanun laws but the most common and thorough version is the Kanun of Lekë Dukagjini (UK Home Office, 2014, p.90; Sadiku, 2014, p.83). Even though state laws have been enforced by Albania’s various rulers, such as by the Ottomans or the communist regime, customary laws have always survived and coexisted with other bodies of law (Sadiku, 2014, p.80, 87).

As Mustafa & Young (2008, p.88) explain, Kanun laws govern every aspect of life such as marriage, behaviour or hospitality, and in some cases, just retaliation for, e.g., adultery or murder whilst acknowledging that these actions conflict with state law. The laws also define the rights of retaliatory killings in order to restore lost honour. Even though the use of Kanun laws is an age old tradition, essential to Albanian society, its exercise reduced drastically during the communist regime of Enver Hoxha who forbade any customary practices in order to strengthen state law. Severe punishment, such as long prison sentences or death penalties awaited those who were involved in blood feuds (Celik, Shkreli, 2010, pp.886, 893). The regime saw the use of customary laws as a great obstacle to the creation of a unified communist state and, in addition to punishment for its use, the educational system was overhauled and propaganda tactics against the Kanun laws were implemented (Sadiku, 2014, p.90). In contemporary Albania, the state has taken measures to increase security and strengthen institutions which has resulted in a decrease in the use of customary laws. The lack of security and social control in rural areas such as in northern Albania, however, has led to the continuous use of Kanun laws, overcoming state laws (UK Home Office, 2014, p.35).

**Blood Feuds**
According to Mustafa & Young (2008) a blood feud, or a gjakmarra as it is named in Albanian, is seen as a way for individuals or families to restore their lost honour with blood following a conflict. In short, blood feuds could be described as sanctioned revenge killings based upon moralistic values that regulate vengeance as a means for settling disputes. They are not seen as murder and, due to the honour at stake, people often do not request state or police assistance. In order to regulate blood feuds, the Kanun possesses a comprehensive legal code for honour killings and for the reconciliation of those killings. In short, if a man is greatly offended by another individual, he and his family have the right to kill the instigator in order to restore honour. By doing this, the aforementioned man’s family will be subject to revenge as it is the duty of the nearest male relative to seek vengeance. Thus, these actions
result in a conflict that is passed down generations, creating a cycle of revenge killings. Or as the **Kanun** states **“blood is never lost”**. However, those involved in a blood feud have the right to bring in a mediator who seeks to obtain a **besa**, i.e. a symbolic truce for the disputing parties (UK Home Office, 2014, p.10). However, as Mustafa and Young (2008, p.104) point out, a **besa** is often not enough as it is only a promise given that the feud has ended, it does not involve a contractual agreement between the disputing parties.

Even though there exists a systematic process for those involved in blood feuds, the rules are interpreted in various ways as there are numerous regionally diverse **Kanun** laws in place (Mustafa & Young, 2008, p.97). Interestingly, in post-communist Albania some people have tended to apply the **Kanun** laws for new circumstances, applying its rules for justifying murder, e.g., in gang wars. These so-called honour killings bear little resemblance to traditional blood feuds as core principles of the **Kanun** are often ignored, e.g., by taking more than one life, killing women or children (Immigration & Refugee Board of Canada, 2008, p.7; UK Home Office, 2014, p.15).

The Albanian police is a great supporter of mediation measures for cases of traditional blood feuds as they themselves cannot do much in resolving blood feuds as their intervention often results in aggravating the situation (Committee of Nationwide Reconciliation, 2006). Mediation in blood feuds often tends to be a complex, long-drawn process as it is not only an issue between a victim and an offender but also a matter of restoring the status and honour of the families involved (Celik & Shkrelli, 2010, p.890). According to Gjoka & Paus (2006), the mediators are in most cases reputable men over 50 years old who are greatly respected by the community. In contrast to traditional procedures where a third party (e.g. police/prosecutor) or the parties involved in conflict initiate the mediation process, mediators in blood feuds are more proactive and commence the reconciliation themselves. If they become aware of a conflict escalating in their community they take it upon themselves to contact the disputing parties in order to start the mediation process. The primary aim of a mediation process in blood feuds is to draw out all facts and reasons that instigated the feud and using them to reach a negotiated agreement. If both parties agree, a **besa** declaration of truce is signed, ensuring that the honour of all those involved is restored and that there will be no further retribution (UK Home Office, 2014, p.20). Violation of honour is the most influential factor instigating blood feuds; an individual’s or family’s honour is greatly valued in Albanian society and if violated it needs to be reclaimed through vengeance lest they become ridiculed by their local community. However, the concept of honour in Albania is ill-defined and
includes elements which many others would take lightly (Immigration & Refugee Board of Canada, 2008, p.5).

As mentioned above, during the communist reign, the use of Kanun laws was forbidden. This resulted in the near elimination of cases of blood feuds by the 1960s (Sadiku, 2014, p.92). Following the fall of communism in the early 1990s, Albania experienced a rapid rise in cases of blood feuds, which to this day are fairly common in the northern part of Albania (Celik, Shkreli, 2010, p.885). E.g. in 1997, 73% of all murders in Albania were categorised as revenge killings. Problems that led up to this solution were in many cases issues related to the post-communist transition such as water rights and geographical boundaries (Mustafa & Young, 2008, pp.88, 90). According to Celik & Shkreli (2010), in 2010 there were several thousand Albanians involved in blood feuds whilst around 800 children were confined to their homes in order to keep them safe from acts of revenge.

**Transition from Communism**

During Hoxha’s authoritarian regime when blood feuds were banned and criminalised, their numbers dropped significantly but they did not disappear completely (Mustafa & Young, 2008, p.88). Following Albania’s transition away from communism the state lost control in many parts of the country. This caused people to increasingly turn to customary practices again for settling disputes, increasing the number of blood feuds (Celik & Shkreli, 2010, p.893). For Albania, this was a time of crisis due to considerable increase in conflicts and disputes stemming from, e.g., land or property issues, water rights and the demographic expatriation of people. The de-collectivisation of land was especially a problem in northern Albania as available and suitable lands were scarce. This led to the revival of many old family feuds (Elezi, n.d., p.1; Mustafa and Young, 2008, p.99). Moreover, the resulting depression, labour strikes and mass emigration put the country into a turmoil that furthered the application of Kanun laws and practices, especially in the rural areas (Celik & Shkreli, 2010, pp.886, 893). As Lawson and Saltmarshe (2000, pp.133,137) explain, a dramatic increase in crime, the complete loss of state control, poorly functioning institutions along with the economic collapse resulted in security provisions being inadequate or absent during most of the 90s. The government even classified crime statistics as state secrets so political opponents could not use it against them. When another depression hit Albania in the spring of 1997, citizens revolted and took to arms which resulted in the deaths of around 3000 people. In post-communist Albania, many attempts have been made to settle blood feuds by ways of changing people’s approach to revenge by promoting forgiveness instead. An understanding
needs to be in place with great emphasis on restoring honour through negotiation, empathy and forgiveness, not through blood (Mustafa & Young, 2008, p.102).

**The Implementation and Impact of RJ programmes**

According to Paus (personal communication, 2015), the Albanian government started cooperating with Norwegian professionals in 1996 when a delegation visited the NMS. Their aim was to develop alternative measures for the administration of justice. The initial contact came through Danish professionals who had initiated a project in Albania in 1995 named “Danita.” The aim of this project was to support the reconstruction of the Albanian justice system. From an early stage, it was decided to include mediation into the Danita project, building on Albania’s experience with customary laws and dispute reconciliation. In order to implement mediation programmes throughout the country, Albanian professionals were referred to the NMS, signalling the start of their co-operation. At the time, citizens harboured a deep distrust toward the justice system and would in many cases of disputes turn to lay mediators rather than to the authorities. Since then, cases referred to mediation have increased steadily and laws on mediation have been passed, which will be discussed below. One reason for the increase in cases referred to mediation is corruption within the administrative sector. Various justice officials benefit financially by extorting and putting pressure on the offender or his/her family to obtain favourable results (Cerekja, 2014, p.272). In addition, the economic transition that Albania has gone through since the fall of communism has resulted in surges of disputes emerging amongst and between private and commercial actors (Grossman, 2010, p.49) who are perhaps opting for the fast and efficient solutions that mediation has to offer.

Since the 2011 law on mediation was passed, which is discussed below, Albania has continued to develop alternative measure for crime control. This includes, e.g., establishing centres for handling blood feuds in areas where they are rampant, putting an emphasis on crime prevention through education and moral values and strengthening relations and increasing cooperation between state institutions and NGOs that deal with conflict resolution (UK Home Office, 2014, p.17). With aid from the NMS, Albania has also worked toward increasing the referral of juvenile penal cases for mediation. Interestingly, when this project started, a problem emerged. Even though the 2003 Albanian law on mediation made it possible for specific penal cases to be referred to restorative measures, the code of penal procedure was a hindrance. The code of penal procedure did not define what conditions needed to be in place for this referral, making it difficult for legal professionals and/or law
enforcement agencies to decide which cases were suitable for mediation (Tafani, 2010, p.60). To make matters more complicated, the code of civil procedures states that the court is obliged to make an attempt to reconcile disputing parties (Spahiu, 2013, p.146). As the law did not make referral for mediation mandatory, legal professionals’ personal opinions ended up being the deciding factor (Elezi, n.d., p.3).

**The Development of the Law on Mediation**
The first state law on mediation that came into effect in Albania was passed in 1999. It cleared the path for further development of the mediation process in addition to establishing the foundations for RJ (Prifti & Prifti, 2013, p.104). The law institutionalised and regulated mediation on a legal basis, improving relations between the RJ field and various other official sectors, such as state bodies, courts and prosecutorial offices (Cerekja, 2014, p.273). Since then, the law has been amended in 2003 and 2011 (Prifti & Prifti, 2013, p.107). However, even though law on mediation exists, many mediators still choose to settle family conflicts by following the guidelines of Kanun laws (Celik & Shkreli, 2010, p.886).

The development and regulation attempts of mediation measures in Albania can be observed through the legislative amendments. The 1999 law’s main objective was to introduce this alternative measure to citizens as well as providing reconciliatory education for disputing parties. Under this law, mediation cases were relatively few. The 2003 law marked a stepping stone as it provided a concrete regulatory framework for mediation practices and expanded their operations, based on experiences from the previous law. In addition, it made it possible to compensate professional mediators and provided an option for disputing parties to choose the mediation procedure that they deemed suitable. Even though the 2003 law was an important contribution to mediation in Albania, it had many flaws and did not meet EU requirements sufficiently. For that reason, and due to pressure from the international community, a new law was drafted in 2011 that replaced the previous law (Bushati & Spaho, 2013, pp.56-57). According to that law, which is currently in place, mediation is defined as an independent out-of-court measure that deals with diverse areas of conflict such as family, civil, labour and commercial, and in some cases of a criminal nature. In addition, the law states that key principles of mediation such as equality, flexibility, confidentiality, impartiality and transparency are to be promoted at all times (Spahiu, 2013, p.152).

**Albanian Mediation Services – An example**
The Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR) was founded in 1995 and focuses on mediation and conflict resolution, especially in cases of blood
feuds (Immigration & Refugee Board of Canada, 2008, p.13). The foundation actively cooperates with legislators in drafting and developing the law on mediation in Albania (Cerekja, 2014, p.273). According to Paus (personal communication, 2015), the AFCR consists of engaged individuals with diverse academic backgrounds such as lawyers, journalists and anthropologists. From the start, the aim of the AFCR has been to develop the old tradition of mediation in Albania, making it more modern and transparent. This has been done in part by collaborating with foreign professionals and exchanging information. In 1999 a co-operative project between the AFCR and the NMS was launched. Its goal was to aid the process of implementing RJ practices, especially VOM. In addition, the project has served as a venue for sharing experiences and knowledge on mediation between those involved (Gjoka & Paus, 2006, p.39). As Paus (personal communication, 2015) mentions, the collaborative project especially emphasised mutual information exchange. In other words, the NMS never took on the role of a teacher, proclaiming that certain things are done in a certain way; rather, the participating professionals exchanged ideas and experiences on a respectful and mutual basis. The NMS, for instance, provided information on how they dealt with petty crimes such as vandalism or shoplifting whilst the AFCR shared their experiences of dealing with blood feuds and how they are able to prevent a vendetta.

**Experience through Legal Pluralism**

Even though laws on mediation exist in Albania, many mediators have been settling conflicts guided by customary law (Celik & Shkreli, 2010, p.886). It is a necessary measure as the Albanian state has not been able to protect its citizens properly. In cases of blood feuds, the state has been inefficient in handling the problem, leaving victims unsafe and vulnerable. Albanian legislators themselves admit that there is an absence of rule of law within the country (Immigration & Refugee Board of Canada, 2008, p.5). These concerns underline the importance of customary law and practices co-existing with state law in Albanian society. The Kanun laws do not only offer rules on the process of conflicts/disputes, but they also instruct how feuding parties can settle disputes through mediation and conflict resolution. Reconciliation can be reached through exchanges of, e.g., money, food, tools and/or clothes and mediation options include family mediation and mediation performed by religious leaders as well as clan mediation processes. Even though the Kanun laws state that anybody fit for it can serve as mediator, the role is most often taken on by reputable elders (Mustafa & Young, 2008, pp.100-101). According to the current law on mediation in Albania, anyone over 25 years old with no criminal record can serve as mediator. It is preferred that the mediator
possesses life maturity and experience along with traits such as wisdom or candidness. The mediator also needs to be a trusted member of the community (Cerekja, 2014, p.275). As Celik and Shkreli (2010) explain, the methods these mediators employ in the mediation process possess all the required attributes that the academic literature emphasise as important for the purposes of mediation as well as having a main goal of reconciliation between the parties involved.

Discussion - Albania
In this chapter I discussed Albania’s experience with customary law in relation to blood feuds and mediation. The fall of communism had a profound effect on Albania, leading to a great rise in crime as well as an increase in conflicts and disputes. For a time, the country was in turmoil due to a fragile institutional framework which resulted in lack of political and social control. Paus (personal communication, 2015) explains that the justice system as a whole was especially weak and ineffective in managing conflicts. Even though drastic reforms took place within the justice system they were met with distrust and opposition as citizens had lost confidence in it due to the heavily punitive system in place during Hoxha’s reign. These problems accentuated the importance of developing alternative ways of handling conflicts and paved the way for the formal implementation of RJ.

Even though RJ measures in Albania are still in a developing phase, they have proven to be a viable alternative to traditional measures, reducing the caseload within the traditional justice sector. However, much still needs to be done for RJ to grow in Albania. Funding and infrastructure is lacking whilst social services are generally ineffective, resulting in a greater workload on mediation services. If these services are provided with adequate support in the future, it could result in more cases being refereed to mediation. As Cerekja (2014, p.273) explains, in Albania a special emphasis needs to be put on civic education and on teaching the key principles of mediation, especially on coexistence and cooperation within society. Further, Cerekja suggests that these educational programmes should start when a person enters kindergarten and continue at least until his/her mandatory education is completed. By introducing citizens to the concept of RJ at an early age it could benefit society as a whole later on. As Paus mentions (personal communication, 2015), it is crucial to reach victims better in order to inform them of the benefits associated with RJ and for them to take the initiative to start the process. In addition, various official sectors such as police and healthcare need to be fully aware of RJ in order to inform victims of this option. By informing officials and citizens on the benefits that RJ has to offer whilst simultaneously studying and building
confidence in the method, it could grow to be a commonly used and viable alternative to punitive measures.

5.3. Cuba

On January 1st 1959, after years of fighting, the movement of the 26th of July, led by Fidel Castro, entered Havana and successfully overthrew the regime of general Batista. In the first years after the revolution, there were no drastic changes made to the judiciary structure. Instead, the focus was mainly on other and more urgent issues, such as developing the economy, organising Cuba’s defence and establishing a political consensus, one which favoured the revolution and the new regime (van der Plas, 1987). In order to reach that consensus, a social reformation was necessary. A fundamental objective of Cuba’s social revolution was the creation of the new man, which necessitated the total reformation of traditional social values and human consciousness in line with Marxist ideology (Salas, 1983a, p.599). The new regime believed that capitalist systems instilled people with individualistic characteristics such as selfishness, greed and desire for personal profit. It was necessary to adopt a new stance, emphasizing moral values, social justice and community collectiveness (Kruger, 2007, p.105). Citizens were to be committed, selfless and cooperative members of society. For this to happen, a total restructuring of the judiciary system was put into motion in 1963 that required courts to discard their traditional methods and focus primarily on citizens’ revolutionary re-education through changing social norms, behaviours and attitudes (Salas, 1983a, p.599). Additionally, these goals were to be reached through social mobilisation, voluntary work, educational reforms and moral incentives (van der Plas, 1987, p.78).

By the end of 1962, it was clear that a change was needed in order to move forward and implement a socialist legality. Conflicts between liberals and communists were escalating, international relations had suffered severe setbacks (van der Plas, 1987, p.37) and much of the country’s lawyers had left which resulted in understaffed and erratic courts. Additionally, the new government harboured mistrust against pre-revolutionary institutions and those lawyers who remained in the country (Salas, 1983b, p.47). In order to address these urgent issues, the restructuring of the judicial system was initiated by establishing popular courts of law, (van der Plas, 1987, p.37) courts that were controlled by the people, for the people.
**Cuba’s Popular Tribunals 1963-1973**

**Purpose**
The Cuban popular tribunals began operating in 1963 and were largely based on the structure of the Soviet Comrades’ Courts, (Salas, 1983a, p.588) but had more structured, formal and regular assemblies (Fisher, 1975, p.1279). Between 1963 and 1966, the courts were in an experimental phase and operated only in rural areas, but in 1966 they were brought into urban settings such as Havana and officially became part of the justice system. During the experimental phase, the tribunals operated wholly outside the existing judicial system (van der Plas, 1987, pp.37, 52). From then on they continued to grow rapidly, and by 1968 there were 2 221 popular courts operating in Cuba, overseen by around 8 000 lay judges (Salas, 1983b, p.48). As explained above, they came about due to severe social problems that emerged from the revolution and official statements classified them as mediation tribunals that had the primary role of settling civil disputes (Salas, 1983a, pp.590, 592). However, as Berman (1969, pp.1318-1319) explained, an underlying goal of these courts was to introduce to the public new laws that came into place after the revolution. In addition, the tribunals served as a way of establishing new informal social norms by instilling people with a revolutionary mentality whilst discouraging antisocial behaviour. As Castro himself stated, the main goal of these tribunals was to “recognise and resolve social problems, not with sanctions, as in the traditional style, but rather with measures that would have a profound educational spirit” (Salas, 1983b, p.48).

**Development**
Fidel Castro first proposed in late 1962 that a new type of popular justice was to be implemented in Cuba. He instructed students and staff in the faculty of law at the University of Havana to commence experiments and research in the most remote parts of the country where the administration of justice was lacking. Their goal was to develop methods of justice for dealing with minor offences and disputes that were frequent in those areas. In addition, these courts were to serve as a way to bring justice into rural settings (van der Plas, 1987, pp.45, 52).

**Process**
Trials usually took place in the evenings within especially assigned storefronts or in storefronts belonging to the *Committees for the defence of the revolution* (CDRs), a mass participatory movement that operates in Cuba and will be discussed below. In high-profile cases, trials took place outdoors as thousands of spectators could be expected to show up (Berman, 1969, p.1343). Cases that were brought before the courts could be initiated by
civilians, the CDRs, police or by the court itself (Salas, 1983a, p.590), and the offence did not necessarily have to be of a criminal nature. Those who were seen as breaching socialist norms or displaying anti-socialist behaviour could also be brought before the courts (Salas, 1983b, p.50). At first, the popular tribunals took on cases that consisted more of social problems rather than penal problems. Their sanctions were usually mild and rehabilitative, not punitive. In some instances, however, the tribunals oversaw misdemeanour offences and juvenile offences (Fisher, 1975, p.1278). Cases that came before the courts were heard by a panel of three lay judges and community participation was highly encouraged. The aim of these trials was not only to establish guilt or innocence, but also to rehabilitate offenders through means of embarrassment and peer pressure. All participants present could express their opinions freely during the court sessions (Salas, 1983a, p.588). The lay judges that served in the popular tribunals had to fulfil certain criteria: They had to be at least 21 years old, having undergone at least six years of secondary school, be respected in the local community, possess good work ethics and support the revolutionary process (van der Plas, 1987, p.53). There was no requirement for a legal education, and, in fact, such was seen more as an obstacle than an advantage for those wanting to serve (Salas, 1983b, p.49). The judges served part-time and were chosen from the community through nominations by neighbourhood assemblies. Their suitability for the role was then evaluated by local organisations in order to verify their moral fitness and devotion to the revolution. After the evaluation process, those chosen as judges participated in a 45 days study programme before taking office (Salas, 1983a, p.590). After taking office, they continued working their daily jobs, serving as judges in the evenings. In difficult cases, the lay judges could ask for assistance from a professional legal adviser. The advisers observed the tribunals regularly and were mainly responsible for making sure that they operated correctly (van der Plas, 1987, p.54).

Sanctions
Sanctions administered by the popular courts were in most cases personalised penalties that made offenders come directly into contact with the community rather than correctional institutions (Salas, 1983a, p.605). The most common sanctions were public admonitions carried out in the court or at the offender’s place of work. These sanctions were often administered alongside other punishments (Berman, 1969, p.1329). After the shaming had been administered, offenders usually had to attend study circles where they discussed their behaviour with their neighbours (Salas, 1983a, p.591). Other sanctions included the deprivation of rights and banishment from a specific place. In the aforementioned sanction,
the offender lost his right to participate in an activity he abused; e.g. if he/she was drunk and disorderly he/she would lose the right to drink for a certain time. With the latter sanction, the offender was forbidden to visit the place in which he/she had repeatedly committed an offence. In addition to those, the tribunals administered more severe sanctions such as unpaid community work or captivity for up to 180 days (Berman, 1969, pp.1330-1331).

Decline
The drastic economic and social changes that came about during the revolutionary process had profound effects on Cuban society. Furthering gender equality, the eradication of racial discrimination and simplifying the process of marriage and divorce were among the changes that went against deep-rooted cultural values. In response, the government held mass meetings throughout the country where issue areas were pinpointed and possible solutions were considered. During those meetings, criticism was mainly directed at the judicial system, especially the popular courts. Issue areas included e.g. inefficiency of the courts due to duplicate jurisdictions, inconsistent sanctions applied, informality of the court proceedings and inadequate control over the different judicial branches (Salas, 1983b, pp.50-51). Shortly after, in 1966, a judge’s manual was introduced stating how courts should operate and what their duties were. The introduction of this manual was the start of the court’s decline as it limited their flexibility and innovative freedom and it was the first step in their formalising and institutionalising process (Salas, 1983a, p.590). In 1969, legal commissions were formed which had the responsibility of reorganising the judicial system. In 1973, new legislation was passed transforming the judicial structure by unifying it in a hierarchical order, integrating it into the political structure and bringing in professional judges to serve in all courts along with 2 lay judges (Salas, 1983b, p.52). That year, the popular courts changed drastically from their original, informal setting. Instead of issuing innovative, mild and rehabilitative sanctions, sentences were more consistent and traditional, comprising mainly incarceration, fines and public reprimands (Salas, 1983a, p.591).

Committees for the Defence of the Revolution (CDRs)
Participation in Cuban mass organisations is a big part of citizens’ daily lives. Among these, the most omnipresent are the CDRs, a national organisation in which a majority of the population participates (Kruger, 2007, p.107). During the first years of the revolution the CDRs were not as large as they were to become. Due to economic and social problems, 1968 was a turbulent time in Cuba as the population suffered from shortages resulting in a great rise in crime rates. Offenders were mainly youths who showed antisocial behaviour and did not
follow the moral guidelines of the new Cuban society. As these problems grew, the CDRs were mobilised all over the country and started patrolling neighbourhoods to prevent further crime. Also that year, the popular tribunals were introduced in all neighbourhoods and cities (van der Plas, 1987, p.83). Consequently, the importance and influence of organisations such as the CDRs grew as they became the main instrument for creating and maintaining collective behaviour and encouraging public participation (Aguirre, 1984, p.548).

The CDRs are present in almost every neighbourhood in Cuba, and are, as Kruger explains (2007, pp.107, 109) an important organisation working to maintain community cohesion and is concerned with most social issues, including crime control. The CDRs mainly focus on crime prevention by, e.g., organising neighbourhood watches, educating youth, reintegrating offenders into society or preventing drug use. Members of the CDRs then work with each individual to provide relevant help and guidance in order to minimise recidivism. Even though the influence of the CDRs declined drastically during Cuba´s great depression of the 1990s they are still one of the most effective organisations in contemporary Cuba for dealing with various social issues (Leogrande, 2015, p.380). In fact, many Cuban citizens choose to turn to the CDRs for resolving disputes rather than taking legal action. It is evident that participatory organisations are crucial to Cuban society as they provide the necessary mechanisms for social control by reinforcing community cohesion and establishing preventive measures for crimes whilst having an influence on how crime-related activities should be responded to (Weissman & Weissman, 2010, p.321).

**Legal Pluralism in Cuba**

Cuba was under foreign rule for hundreds of years, abiding by Spanish laws. During that time, Cuban citizens developed their own moral values based on virtue, nationalism and personal transformation. This particular Cuban identity only grew stronger after the nation gained independence from Spain and the revolutionary ideology was largely based on these values. Those who fought against Batista´s regime desired a moral republic, deeply rooted in values of honour, civility and respect. These values were to be implemented in Cuban society through popular participation and community cohesion (Weissman & Weissman, 2010, p.317-319). In the first years after the revolution, the popular courts took over the responsibility of upholding moral values and social norms. As Salas (1983a, p.603) explains, the popular tribunals put the public in a leadership role. The boundaries between these courts and ordinary courts were unclear, which makes the Cuban case all the more peculiar as it is rare to find a totalitarian state encouraging competition between, and the coexistence of, a
dual judicial apparatus. Cuba’s experience with popular courts and participatory mechanisms shows that legal pluralism does exist within the society.

**Cuba’s Transition through Reforms**

In comparison to other Latin American countries, crime rates in Cuba are extremely low. Even though there was some surge in the crime rate following the fall of the Soviet Union and the resulting economic collapse of Cuba, it is still one of the safest countries in Latin America (Kruger, 2007, p.101). However, Cuba is now going through a transitional phase in which the state is moving away from a centrally planned economy to a market socialist economy by partially opening the market to foreign investments and facilitating the development of a large non-state sector. In 2010 Raúl Castro announced that 1 million people would be laid off from the state sector by 2015, i.e. 20% of the labour force, putting a great pressure on the non-state sector for creating enough jobs and securing investments and resources. It is estimated that by 2016, 40% of the Cuban workforce will be employed by the non-state sector, a tremendous rise from 2011 when it was around 15%. The state has also recently relaxed its tight grip on social control, resulting in greater freedom for its citizens. In addition, Castro has announced that he will step down as president in 2018, adding to the uncertainty that Cuba faces in the near future as his successors might be politically vulnerable (Leogrande, 2015, pp.378-379; Varela, 2014, pp.227,230).

The great economic and social change that occurs when a nation transitions from a totalitarian, communist state to a more democratic and market friendly one can have profound impact on its citizens. This may pose a problem as modernisation and capitalism may require faster and more efficient solutions to the many problems that may surface. Mediation as a tool for conflict resolution may provide the necessary means for these problems (Bushati & Spaho, 2013, p.54). For instance, as Valera (2014) notes, it is likely that many exiles will return to Cuba over the next few years, trying to claim restitution of their previously owned properties. There is a great housing shortage in Cuba today and reclamation of properties will without a doubt add to the problem, putting a greater pressure on the authorities to develop sufficient measures for conflict resolution. As mentioned above, Albania faced similar problems following the fall of communism when a number of land and property related issues surfaced. The future for Cuba is rather uncertain, and as it moves towards a more open market economy new social problems could emerge. E.g. the state has recently replaced its ration card, which had provided all citizens with basic goods, with income support for the poor instead. Salaries
will now be paid in accordance to workers’ productivity, resulting in a gap between people’s standard of living. Vulnerable and peripheral groups of Cuban citizens are at risk due to the economic reforms and it will be difficult for the regime to uphold the revolutionary values of social justice that have been the foundation of Cuba’s socialist ideology (Leogrande, 2014, pp.391, 394-395). These changes might lead to social disparity among Cuba’s citizens, an inequality unknown in the communist model. Only time will tell if social issues and crime rates will rise but it is evident that there is an urgent need for developing efficient alternative judicial measures for conflict resolution. As Kruger (2007, p.103) explains, in Cuba crime prevention on the community level is an important tool for fighting delinquency, disorder and social problems. Mass organisations and community groups play a vital role and actively work with law enforcement agencies in addressing crime related issues and increasing community cohesion through citizen participation. Therefore, the community and mass organisations might play a vital role for the implementation process of RJ.

The implementation and expectations of proposed RJ programmes
According to the Cuban professionals (personal communication, 2015) that were interviewed for this paper, in order for RJ to succeed in Cuba, it needs to possess appropriate characteristics for crime prevention, especially for youths. It is crucial to dig into the roots of criminality, and for that to happen RJ professionals need to create strong networks of relations between people and institutions. These relations between, e.g., parents, families, police and neighbourhoods will facilitate the exchange of information as well as pinpointing specific social issues that need to be addressed and providing possible solutions. The ideology of RJ is very fitting to the stance that many Cuban criminologists have taken. According to these, crime should be dealt with in a sensible and humanitarian manner, encouraging community interventions rather than punitive responses. It is necessary to identify particular social conditions which give rise to criminal behaviour and improve them through, e.g., increased resource/service distribution, collective aid and community mediation (Weissman & Weissman, 2010, pp.324-325).

According to Fernández Ríos (2014) the Cuban government has expressed its desire to increase popular participation at all levels of society for the transition to succeed. Cuba has the means to increase public participation in, e.g., local governance, community initiatives or in local and national projects. The presence of mass organisations in which most Cubans are involved makes public participation more effective and visible. If maintained and used correctly, public participation can be used as a tool for the assessment of social policies and
have an influence on government decisions. As Weissman and Weissman (2010, pp.322-323) explain, crime in Cuba is thought by the authorities to derive from specific social conditions which can be corrected by improving the human condition through popular participation and community guidance. According to the Cuban approach, it is necessary to build up and nurture moral as well as human values in all individuals. Offenders are seen as lacking in those values but can be helped with proper guidance and become more productive citizens. Salas (1983b, p.63) points out that even though the Cuban judicial system became more formal, political and traditional in its operation during the 1970s, it nevertheless held on to one of its distinguishing features, i.e. its educational role which is achieved by re-educating offenders that are brought to trial and by raising public knowledge and interest in legal matters. Mass organisations and assemblies play a large part in educating the public by promoting open discussions through, e.g., conferences and roundtables. For RJ to succeed in Cuba, it might be important to build on this communicative feature, i.e. bringing citizens into discussions about RJ in general, what it entails and how it could best be adjusted to the Cuban legal and social spheres. By involving citizens in the process and building the framework with a bottom-up approach it both reinforces popular participation and brings the conflicts back to their owners, i.e. the citizens. In addition, it is important for RJ services to build ongoing relations with relevant institutions and organisations for expanding their reach. In Cuba, a collaboration with the Catholic Church might be a good starting point. Following Cuba’s recent reforms, the government has somewhat relaxed its tight political control and improved its relations to the Catholic Church, working with them on matters of human rights. In 2010, for instance, Raúl Castro ordered the release of 127 political prisoners due to pressure from the Church (Leogrande, 2015, p.397). This cooperative agreement between the church and the government might imply that it would be beneficial for the implementation of RJ to involve the church in the process, who could provide guidance for the project´s staff and information about RJ to its parishioners.

According to Fellegi (2005, pp.160-162), the AGIS project between 2003 and 2005 focused on issues that arose when VOM was introduced in Central and Eastern Europe. The project had the aim to further develop RJ policies, practices and services in Europe. The project´s final report concluded by identifying nine issue areas that need to be addressed for the successful implementation of RJ. It might be beneficial for Cuban authorities to address the following issues whilst implementing RJ:
Legislative measures: If not in place, legislations need to amend for the allowing of cases to be referred to RJ measures. Policymakers need to be aware of what RJ entails and facilitate for future development of the field.

Institutions: RJ services need to possess satisfactory infrastructure and manpower.

Pilot projects: Small scale projects are important for identifying local needs. Results can be used for the structuring of nationwide regulations, protocols and methods.

Resources: Implementation of RJ will require financial resources, professional advice and unhindered access to relevant information.

Information: Information exchange needs to be in place between those responsible for the implementation process and state institutions as well as with foreign experts, international institutions and NGOs.

Standards: Legal safeguards and protocols have to be in place and undergo regular revisions ensuring that standards are met.

Training: Intensive and continuous training of mediators and RJ professionals. In addition, other relevant professionals such as lawyers or policemen need to receive basic training in RJ.

Research: Research within the field should be encouraged. Cooperation with other local/foreign researchers and exchange of research findings could enhance existing knowledge of RJ.

Promotion: It is important to raise public awareness of RJ. Cooperation with the media and publishing positive results will aid in that matter.

Professionals or Laymen?
For RJ to succeed in Cuba it is necessary to decide early on whether it will operate mainly under the guidance of professionals or laymen. As Fellegi (2005, pp.79, 80) mentions, the professionalization of RJ may undermine its greater goal, i.e. bringing the conflicts back to their owners. If RJ becomes increasingly more institutionalised and is mainly handled by legal professionals its development might be hindered and transform the concept to resemble the traditional justice system more. In order to uphold its core values and principles, RJ may not be locked within the legal sphere as it needs to look at other institutional frameworks and take up an interdisciplinary approach for developing further. E.g. much can be learned from educational institutions or from the community itself. As happened with the gradual professionalization of the popular courts which lead to their demise, RJ services need to be aware that formalism, strict regulations and no lay involvement may transform the very
ideology and core principles of RJ. Professionalization of fields often brings about opposition to the idea that lay counterparts can carry out the same functions (Salas, 1983a, p.608). However, it is also important that RJ programmes and processes are regulated according to legal frameworks and that necessary protocols are in place. It needs to be clear to judicial professionals what cases should be referred to RJ measures and how that referral is done. Also, legal safeguards need to be in place in order to uphold principles of equality, transparency, predictability and proportionality (Fellegi, 2005, pp.74-77).

Discussion - Cuba
In this chapter I discussed Cuba’s experience with the operation of popular courts and mass participatory organisations. Shortly after the revolution there was a need to uphold social control through informal measures as formal measures were insufficient due to the institutional framework having been weakened in order to implement a new and revolutionary ideology. In contemporary Cuba, similar problems might emerge as the nation transitions further away from its longstanding centrally planned economy. These changes could lead to increases in conflicts and disputes as well as in the crime rate, a situation similar to what Albania experienced after the fall of communism. As described above, an anomic situation might emerge, creating a sense of normlessness and lack of moral guidance, resulting in increasing deviance. Therefore, it is important for Cuban officials to implement alternative measures for justice in order to be capable of managing the possible surge of conflicts. By building on their experience with formal/informal social norms, i.e. the living law, and participatory mechanisms, lay courts as well as strong social cohesion, Cuba could establish an RJ framework that is able to handle conflicts whilst minimising punitive measures.

In recent years, Cuban lawyers and criminologists have been seeking ways of reducing the use of penal law in criminal cases as well as developing alternative measures for punishment that are less hurtful and less focused on personal damage. For this reason, there has been an interest in implementing measures of a rehabilitative and restorative nature (personal communication, 2015). According to the Cuban legal professionals I interviewed, mediation programmes possess traits that present a “win-win” situation, i.e. they give an opportunity to reduce the use of penal law as well as minimise hurtful punishment. It is not only the participants that have something to win, but society as a whole. The RJ project that is currently underway in Cuba can introduce new ways for administering justice that focus on healing, forgiveness and repairing damaged social bonds. Initial positive results will be crucial as the justice system, police and institutions tend to be distrusted, in part due to
corruption and misuse of power. Therefore, it is important that RJ programmes will be clearly separated from traditional justice institutions and deliver constructive results for building up the community trust needed. However, even though the professionals interviewed recommend that RJ programmes should be separated from the justice sector it is of utmost importance that communicative relations between these two separate spheres be unhindered. Good communication will be essential for co-operation, information exchange, referral of cases to mediation and the maintenance of legal safeguards (personal communication, 2015).

But what needs to be done to address issues of crime and punishment in Cuba? The Cuban professionals interviewed possess diverse opinions but they agree on the importance of prevention. Youth crime is a problem in Cuba and prevention needs to start at an early age. Programmes of a restorative and preventive nature need to be implemented in schools and communities and citizens should be introduced to the core principles of RJ, i.e. repairing damaged social bonds between individuals and teaching forgiveness. Also, the police needs to take up a different approach when it comes to youth, focussing less on punishment and more on prevention. These concerns are very much in line with Paus´ (personal communication, 2015) and Cerekja´s (2014) discussions above on what needs to be done in Albania in order for RJ to grow. Cuba could learn a lot by building on Albania´s experience with implementing RJ, focusing on issues that arose in the process as well as looking to areas of success. As mentioned above, for a successful implementation it is important to build up a wide network between relevant institutions and organisations promoting communication and co-operation. The public also needs to be aware of this alternative measure and as Paus (personal communication, 2015) mentions, it is crucial that victims are reached and informed. By introducing programmes of restorative nature at a persons’ early age (e.g. in kindergarten, schools or within youth activities) it could offer multiple benefits. It introduces key values of RJ to youths, preparing them for adult life, enhancing co-operation and communication skills as well as offering measures of preventive nature. It could serve in part as a social adhesive, reinforcing community cohesion and affirming accepted norms through means of communication whilst avoiding anomic situations. This may be crucial for Cuba as it takes it first steps towards an open-market and democratic transition.

Discussion – Albania and Cuba
When a country makes its transition from a totalitarian state to a democratic one, many problems may emerge. Often the state loses its former control, resulting in increasing crime, ineffective rule of law and weak institutions. In those cases, people may try to take control
themselves through civil actions and customary laws (Lawson & Saltmarshe, 2000, p.137). These customary laws exist parallel to official laws, creating a condition of legal pluralism in which both types of law complement and conflict with each other. (Zehr, 1985, p.9). This entanglement of different types of law is especially noteworthy in states that have transitioned from a totalitarian rule. The problems that emerge weaken institutional frameworks as well as state control and in the absence of effective rule of law, customary laws that were in place prior to communism resurface. The customary laws play an important part as they substitute the (weak) state’s role in providing security as well as regulating society and the economy (Celik & Shkreli, 2010, p.907-908). In relation to the subject of this paper, the application of customary laws are especially common in postcolonial states and in societies that have transitioned from conflicts stemming from, e.g., political changes (Nafstad, 2015, p.9). As will be discussed below, this situation fits both Albania and Cuba. Albania transitioned from a totalitarian communist rule which resulted in a period of disorganisation and predominating customary law, still quite common in rural areas of the country. Cuba is both a postcolonial state and one that is now in a transitional phase as the political and economic structures are changing from centrally planned socialism in a more market-friendly and democratic direction. In the 1990s, many Albanians turned back to the ancient Kanun laws but it is uncertain, however, what the future has in store for Cuba if its recent reforms continue.

The cases of Albania and Cuba are also interesting in regards to the concept of anomie. Albania experienced a drastic rise in crime and social conflicts following its economic transition. Cuba is in its beginning phase of transition but what will happen is still unknown. The political, cultural and economic shocks that states experience during a transition away from a centrally planned communist model often result in a breakdown of community cohesion. Implementing and instilling a new moral- and shared value system requires a long and strenuous process (Fellegi, 2005, p.71). During that time, a sense of anomie will emerge within society as people find it difficult to identify and relate to new norms and values. How much effect this will have on Cuba is uncertain, but looking at it from an institutional-anomic viewpoint one may expect crime rates to increase if a market-oriented model is taken up. Looking at another example, Russia’s transition away from communism created a type of “dog-eat-dog” capitalism, lacking any moral values and producing crime (Messner & Rosenfeld, 2001, p.155).
6. Conclusion

Nations that are in economic and political transitions may face serious societal challenges during and after the process. Transitioning from a centrally planned economy towards a more open market based economy is no easy task. Increased capitalism and democracy offers many benefits but can also result in e.g. community disintegration as well as increased differentiation and breakdown in norms and values (Deflem, 2008, p.198). Conflicts of a different, and more market-oriented nature may arise similar to what happened in Albania. Crime rates increased, largely due to the privatisation of land and resulting property disputes. Property disputes were a significant underlying factor behind the resurfacing of blood feuds. E.g. in 2006 around 80 % of blood feuds and 40-50 % of all conflicts in Albania were due to property disputes (Elezi, n.d., p.3; Immigration & Refugee Board of Canada, 2008, p.9).

According to the UK Home Office (2014, pp.17-18), the Albanian judicial system is still weak, defective and its reformation process has been slow. There are serious issues of inefficiency and corruption within the system which has resulted in widespread distrust and criticism from citizens.

Cuba’s transition away from centrally planned socialism may have profound effects on its society, and, even though it is unknown what will happen when the reforms become more intensive, it would be wise to look to the situation that surfaced in Albania and much of Central/Eastern Europe when the Soviet Union fell. Not only did crime rates increase drastically but institutions also weakened whilst economic, cultural and social chaos affected the countries. Political and legal systems became very fragile and security measures were ineffective, resulting in weak protections for citizens. Inequality grew and community cohesion became weaker creating a condition of anomie and breeding grounds for social tension and conflicts amongst people (Fellegi, 2005, p.5, 65). This was the result of the strong informal social control that communist states rely on. The culture that this type of governance breeds gets deeply woven into the social fabric of society as it becomes a part of people’s daily lives and may in some cases be abused by the state or officials. As these nations transition toward a more democratic and market-friendly model, institutions become less centralised and the judicial system may take up a more pluralistic approach to the administration of justice. This often creates a sense of distrust of formal procedures or extrajudicial measures amongst citizens (Fellegi, 2005, p.68). E.g. during Cuba’s depression in the 1990s, so-called “shadow institutions” emerged due to the failures of official institutions. They emerged out of necessity, providing institutional spaces where needed and
socialising people into a forbidden subculture. Black markets are an example in which people participated in a collective deviant subculture for securing basic goods. Even though its practices were forbidden by law and those involved were at risk, these subcultures obtained meaning and were justified by the people due to economic hardships and institutional failures (Aguirre, 2002, p.85).

In addition, for Cuba’s revolutionary regime, the management and manipulation of collective behaviour through mass organisations and moral values plays a central role in upholding social control. Mass behaviour has been used as a tool for controlling individual behaviour, making it advantageous for people to follow the dominant moral values (Aguirre, 1984, p.563). These values are deeply ingrained in Cuban society and reinforced by participatory mechanisms in which people become devoted to collective interactions and obligations for the good of the nation. Those mechanisms maintain people’s relationships and neighbourliness resulting in a coherent society. It is within these participatory networks where social trust manifests itself and where social control is sustained (Weissman & Weissman, 2010, p.320).

Therefore it may cause some worry if these mechanisms were to disappear following Cuba’s transitional reforms. A transitional shock could cause social disorder within Cuban society. Community cohesion could weaken greatly and a competitive atmosphere could replace one of common interest and cooperation. This happened to many communist states after the fall of the Soviet Union, resulting in a quick rise in social inequalities and social problems as well as a drastic rise in crime rates whilst the institutional framework was ill-prepared to deal with those issues (Fellegi, 2005, p.75).

As Braithwaite (2004, p.29) states, criminal justice systems that possess strong mechanisms for civic participation usually work better than professionalised punitive systems. Victims and offenders seem generally more pleased with the former systems as they are seen as fairer, less discriminatory and better at addressing emotional issues and victims’ fears. A meta-analysis where the effectiveness of 35 RJ programmes were analysed in comparison to traditional justice measures delivered good results. Among other things, RJ shows higher victim/offender satisfaction and a better ratio for the completion of reparation agreements whilst showing signs of lower recidivism rates. In addition, RJ is usually more cost-effective than punitive measures (Fellegi, 2005, p.3). RJ brings about solutions for crime in a way that promotes community cohesion and control, important for states in political and economic transition. Communities and individuals get a chance to take back their conflicts from the state. There is less focus on the professionalization of justice, and, instead of maximising penalties for crime,
RJ seeks to repair relationships by focusing on the strengths that offenders, victims and communities possess. The government has a responsibility to maintain order but communities have a responsibility to establish peace according to Bazemore (2001, pp.206, 210). If RJ is to flourish, it is important that the field stays relatively autonomous from traditional judicial systems as its popularity within the legal sphere grows. The field needs to continue developing its unique identity whilst avoiding being absorbed into other, more rooted institutions (Paus, 2010, p.37). It is also crucial that public awareness of RJ is raised, as public opinion becomes more positive once people become acquainted with the processes and ideology of RJ programmes (Fellegi, 2005, p.4). All in all it this author’s opinion that RJ provides nations with a viable alternative to retributive justice. By bringing justice closer to the community, promoting reconciliation through forgiveness, responsibility and communication it might aid us in developing as individuals and reinforcing cohesion within communities. It is especially important for transitional nations to adopt this approach for avoiding anomic situation and social disintegration. Many social problems may surface when a nation takes these important steps towards economic and political freedom which could in part be avoided and solved through means of restorative communication and co-operation.

As Prifti and Prifti (2013) explain, it is important that nations enhance cooperation with one another and international institutions whilst trying to adopt successful methods from other countries. For this to happen, information exchange is crucial. In addition, for RJ to be successful, they highlight the importance of raising public awareness of RJ, what it entails and what it can offer that traditional justice measures cannot. Paus (2010, p.38) points out that each and every country needs to develop its own ways of implementing RJ within society. It is crucial that matters of culture, traditions and countries’ unique identities are taken into account for it to succeed. No single model is better than others but with increased research, co-operation and information exchange between nations this alternative solution to crime and social disorder may strengthen and prosper. In order to further the development of RJ, it is crucial to continue studying its possibilities and effects as well as its suitability within social and cultural paradigms. By focusing on formal/informal social norms and social control it provides researchers with a possibility to learn how cultures and social fields create meanings and understandings and find ways for incorporating those aspects within the criminal justice system. It might very well lead us to think differently about crime and justice. It might bring back the conflicts to their owners, to us, the citizens.
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