

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

1

Introduction: Transitional Justice and the “Gray Zone”

A torturer informs a prisoner that no matter how loud she screams no one will ever hear her cries. Perceived enemies of the state are “disappeared,” buried in mass graves, and forgotten. Episodes of repression, atrocity, and political violence are customarily downplayed or avoided in the history lessons that are taught to schoolchildren. Hannah Arendt characterized such strategies as efforts to establish “holes of oblivion into which all deeds, good and evil, would disappear.”¹ She added that these efforts would never be entirely successful because “one person will always be left alive to tell the story.”

In recent decades, institutions designed to recover such stories, and to challenge efforts to consign evidence of past atrocities to “holes of oblivion,” have proliferated to numerous countries around the world. International war crimes tribunals have hired forensic scientists to reconstruct the stories that are told by the bones found in the mass graves of Bosnia-Herzegovina and Rwanda. An International Criminal Court has been developed to hold individuals accountable for egregious violations of human rights and humanitarian law. Truth commissions have been created in more than thirty-five countries to investigate patterns of political violence and abuses. These institutions have sent teams of investigators to the remote regions of Peru, the townships of South Africa, and the villages of East Timor and Sierra Leone to take testimony from survivors of political violence. They have compelled people who are responsible for torture, mass rape, “ethnic cleansing,” and genocide to come forward with evidence and confessions. A growing number of leaders are facing pressure to address past wrongs through apologies, reparations, and reform.

In contemporary theoretical and policy debates, efforts to reckon with past political violence as part of a process of political change are now widely referred

¹ Hannah Arendt, *Eichmann in Jerusalem* (New York: Penguin, 1965), 232.

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

to as forms of “transitional justice.”² This term was first used by Ruti Teitel as a way to characterize legal mechanisms for addressing wrongs committed under a prior regime in the context of liberalizing regime change. In the early 1990s, the term was generally associated with strategies adopted by successor regimes in Latin America, Eastern Europe, and Africa to address past human rights abuses while advancing democratization. Over time, transitional justice scholarship and policy have come to encompass extralegal responses to past abuses, along with an expansive conception of “transition” that includes many forms of political change and conflict resolution.

Following the end of the Cold War, international organizations became increasingly involved in developing transitional justice institutions in the context of ongoing conflicts or as part of negotiated settlements. At the same time, transitional justice became increasingly identified with the aspirations of the human rights movement and with the development of human rights institutions, especially war crimes tribunals and truth commissions. Transitional justice is championed as a critical and transformative response to political violence, which aims to expose previously hidden abuses, challenge denial, establish accountability, and advance political reform. The expansion of transitional justice institutions and practices is widely viewed as a victory in the struggle for justice and memory as against the powerful forces of denial and forgetting.

Yet the expansion of transitional justice has also been fraught with ambiguities and perplexities. What sets transitional justice apart from “ordinary” justice has less to do with the context of *transition* than with the political nature of the wrongs that these institutions seek to address. Transitional justice is often referred to as a response to “atrocities” or “past abuses,” yet the meaning of these terms is contested and varies tremendously in different contexts. The atrocity of the Rwandan genocide, for example, is something quite different than the institutionalized racism, political exclusion, and entrenched

² Ruti Teitel, *Transitional Justice* (Oxford and New York: Oxford University Press, 2000); Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004); James A. McAdams, ed., *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press, 1997); Naomi Roht-Arriaza and Javier Maríecruzana, eds., *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (New York: Cambridge University Press, 2006); Chandra Sriram, *Confronting Past Human Rights Violations* (London and New York: Frank Cass, 2004); Chandra Sriram, “Transitional Justice Comes of Age: Enduring Lessons and Challenges,” *Berkeley Journal of International Law* 23, no. 2 (2005): 101–18; Jonathan Van Antwerpen, “Moral Globalization and Discursive Struggle: Reconciliation, Transitional Justice, and Cosmopolitan Discourse,” in *Globalization, Philanthropy, and Civil Society*, ed. David Hammack and Steven Heydemann (Bloomington, IN: Indiana University Press, 2009); Bronwyn Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30, no. 1 (2008): 95–118.

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

Introduction

3

repression of South Africa's apartheid regime. What they have in common is their *systemic* character. Both cases involved injustices and killings that were authorized and ordered by political authorities, and both involved the widespread participation, complicity, and acquiescence of a large component of the population.

Mass complicity is a defining feature of systematic political violence and takes many forms. It may be the active, enthusiastic participation of the zealot or the quiet acquiescence of the timid bystander. Complicity may be secured by force or subtle coercion. Auschwitz survivor Primo Levi described the use of "Special Squads" comprised of Jewish concentration camp victims to participate in the gassing of other Jews as an attempt to shift the burden of guilt back onto victims, "so that they were deprived even of the solace of their innocence."³ Children and teens have been forced to participate in atrocities against their own communities in a number of conflicts from Central America to Sierra Leone. The first defendant to face charges before the International Criminal Tribunal for the former Yugoslavia, Drazen Erdemovic, claimed that he too was a victim of forced complicity. In his testimony before the court, Erdemovic insisted that he had attempted to refuse his orders to shoot the unarmed men. "[A]t first I resisted," he stated, "and Brano Gojkovic told me if I was sorry for those people that I should line up with them; and I knew that this was not just a mere threat but that it could happen."⁴ Complicity is not always coerced, however, and frequently takes the form of passive or unquestioning acceptance.

Levi referred to these various forms of complicity as "the gray zone," a space between victims and perpetrators, peopled with "gray, ambiguous persons" that exist in every society, but may become available as "vectors and instruments" for a criminal system.⁵ The "gray zone" poses practical challenges to official efforts to judge and remember past abuse. Those who were complicit or acquiescent in past atrocities may still retain military or political power. They may continue to cherish the ideologies or mythologies that were invoked to justify past brutalities. They may be heavily invested in denying that such abuses ever occurred, or they may simultaneously justify and deny past abuses.⁶

The "gray zone" complicates and challenges basic assumptions about what judgment and remembrance ought to entail in the aftermath of politically

³ Primo Levi, *Survival in Auschwitz*, trans. Stuart Woolf (New York: Collier, 1993), 53.

⁴ *Prosecutor v. Drazen Erdemovic, Sentencing Judgment* (March 5, 1998).

⁵ Levi, *Survival in Auschwitz*, 49.

⁶ For an analysis of the various denials employed by those engaged in massive atrocity, see Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Cambridge: Polity Press, 2001).

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

authorized abuses and killings. Transitional justice institutions do not simply apply a set of commonly accepted legal standards to the task of judging past violence. Rather, they are engaged in a process of redefining what constitutes justice and injustice, one that challenges previously accepted or officially mandated views.⁷ Transitional justice institutions cannot simply rely on a set of commonly accepted norms for guidance. Instead, they are engaged in a process of reimagining the very basis of political community. These dimensions of transitional justice raise a difficult set of questions that are relevant not only in the context of regime change or negotiated settlement, but that also apply more generally to various policies or programs designed to judge, investigate, and commemorate systematic political violence. Who is guilty when ordinary people commit extraordinary acts of brutality? What is the basis for judging atrocities that were authorized or compelled by political authorities? What is the relationship between the commitment to remember past abuses and the goal of advancing political reform to ensure their prevention in the future?

This book offers a new way to think about the legacies of two institutions that have profoundly influenced contemporary responses to these questions: the International Military Tribunal at Nuremberg and the South African Truth and Reconciliation Commission. Whereas the Nuremberg Trials inspired the development of legalistic responses to politically authorized atrocities, South Africa's Truth and Reconciliation Commission has served as a major influence for restorative approaches to transitional justice that aim to "heal the wounds of the past" through dialogue, testimony, or ritual. Human rights legalism and restorative justice present distinctive, even conflicting theoretical approaches to defining the terms of justice and memory in the aftermath of atrocities. However, the two frameworks share a common problem. Both are premised on the view that crime constitutes a discrete deviation from the shared norms or standards of a political community. Therefore, human rights legalism and restorative justice have judged and commemorated political violence in relation to the experiences of individual victims and perpetrators, while avoiding and obfuscating the "gray zone."

The individualistic focus of these frameworks has been a strategy for depoliticizing transitional justice in contexts characterized by persistent, volatile, conflict over the very terms of judgment and memory. Depoliticization is embraced as a way to establish the legitimacy of transitional justice institutions, the integrity of their investigations, and their contributions to political reconciliation. However, depoliticization has also undermined the critical role of transitional justice as a challenge to denial, as a basis for exposing the systemic dimension of past wrongs, and as a basis for advancing an ongoing process of change.

⁷ Teitel, *Transitional Justice*, 6.

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

Returning to theoretical debates on judgment and memory in the aftermath of Nazism and apartheid, this book locates and develops an alternative approach to transitional justice that moves beyond this victim-perpetrator framework to develop strategies for investigating complicity in, as well as *resistance to*, past injustices. In order to develop such strategies, I contend, it will be important to counter the prevailing logic of depoliticization associated with contemporary transitional justice by acknowledging, affirming, and critically evaluating the role of political judgment in our moral responses to political violence.

A GREAT LEGALISTIC ACT

In the aftermath of the Second World War, one of the problems confronted by the Allied countries was the question of what to do with surviving leaders of the Nazi regime. President Roosevelt's cabinet was divided over the issue. Secretary of the Treasury, Henry Morgenthau Jr., proposed summary execution for those listed as "archcriminals." Secretary of War, Henry Stimson, lobbied against this plan with a proposal for the United States to participate in an international tribunal for chief Nazi officials. Eventually, Stimson would prevail with a proposal to put leaders of the Nazi regime on trial in a court of law.⁸

The International Military Tribunal at Nuremberg would be the first international criminal court and the first to try leaders for "crimes against humanity." Of course, the Allied powers that occupied Germany were responsible for their own wartime atrocities. In filmed interviews with Erol Morris, former Defense Secretary Robert McNamara recites figures on the staggering loss of human life that resulted from the firebombing of Japanese cities, which he had helped plan while working under General Curtis LeMay. McNamara acknowledges that if the Allies had lost the war, he and his colleagues would justifiably have been tried as war criminals.⁹ Nevertheless, the Nuremberg Trials were championed as a spectacle of restraint and evidence of the law's power to "stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of law."¹⁰ The trials were also seen as a basis for challenging denial regarding the extent of Nazi atrocities. Chief Prosecutor, Justice

⁸ Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York: Knopf, 1992), 32–4.

⁹ *The Fog of War: Eleven Lessons from the Life of Robert S. McNamara*. Directed by Erol Morris (Sony Pictures Classics, 2004).

¹⁰ Justice Robert Jackson, "Opening Statement to the International Military Tribunal," *Trial of the Major War Criminals before the International Military Tribunal. Volume II. Proceedings: 11/14/1945–11/30/1945* (Nuremberg: IMT, 1947), 98–102.

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

Robert Jackson, famously announced that the trials would provide “undeniable proofs of incredible events.”¹¹

While the historical importance of the Nuremberg Tribunal is unquestionable, it is reasonable to wonder whether Nuremberg remains relevant for contemporary transitional justice debates. The International Military Tribunal at Nuremberg was developed under conditions of total occupation and unconditional surrender. In contrast, contemporary transitional justice institutions are generally established in contexts where the outgoing regime retains a significant degree of power or control. Yet the Nuremberg Tribunal continues to inform contemporary *ideas* regarding the meaning and role of justice in the aftermath of political violence. As Judith Shklar put it, establishing the Nuremberg Tribunal was a “great legalistic act.”¹² “For those who believe in human rights,” adds Gary Jonathan Bass, “Nuremberg remains legalism’s greatest moment of glory.”¹³ The International Military Tribunal at Nuremberg was established under conditions that were historically unique and unlikely to be repeated, yet it continues to inspire the prominent view that a *just* response to political violence is a *legalistic* one.

In her classic work on the theme, Judith Shklar characterized legalism as the “ethical attitude that holds moral conduct to be a matter of rule following and moral relationships to consist of duties and rights determined by rules.”¹⁴ Shklar saw legalism as an ethos, as well as an ideology. As an ethos, legalism holds that the court and the trial epitomize moral perfection, and that a bright line must be established between law and politics. From the vantage point of the legalist, the distinction between law and politics is a basis for constraining abuses of power by transcending ideology altogether. Shklar countered this view by arguing that legalism must also be understood as an ideology with distinct political preferences.

A particular variant of legalism, which I refer to as “human rights legalism,” has been at the center of evolving debates on transitional and global justice. With Nuremberg as a major source of inspiration, human rights legalism not only insists upon the promotion of *law* and courts in general, but on the centrality of *criminal* law in the aftermath of atrocities and political violence.¹⁵

¹¹ Jackson, “Opening Statement.”

¹² Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, MA: Harvard University Press, 1964), 1.

¹³ Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ: Princeton University Press, 2001), 203.

¹⁴ Shklar, *Legalism*, 1.

¹⁵ Mark Drumbl, *Atrocity, Punishment, and International Law* (New York: Cambridge University Press, 2007).

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

Introduction

7

“Nuremberg stands for the proposition that the most appropriate form of judgment is the trial,” writes Ruti Teitel, “and the most appropriate forum of judgment is the International Military Tribunal.”¹⁶ Human rights legalism holds that formal standards of international criminal law provide the basis for judging political violence, whether criminal trials occur at the domestic or international level. Criminal trials focus narrowly on the task of establishing individual guilt and must provide due process guarantees to defendants. In this view, international law provides a basis for transcending the conflicts and divisions associated with judging “the gray zone.” By prosecuting individuals in accordance with due process guarantees, human rights legalism aspires to challenge the demonization of groups based on attributions of collective criminality and to channel the desire for revenge into support for measured punishment bounded by fair procedures.

This set of ideas has had a powerful influence on the development of contemporary transitional justice institutions. In the post–Cold War era, legalism has animated the development of ad hoc international criminal tribunals to oversee prosecution for atrocities committed in the former Yugoslavia and Rwanda, as well as the development of the International Criminal Court.¹⁷ Hybrid courts, which combine international and domestic oversight, have been developed in Sierra Leone, East Timor, and Cambodia. International organizations and powerful states have tended to criticize or condemn transitional justice practices that are not compatible with legalism.¹⁸ Human rights organizations have been critical of administrative purges and lustration processes, for example, because these responses to political violence generally involve significant punishment without due process guarantees. For the same reason, human rights groups have been concerned about Rwanda’s decision to use quasi-traditional *gacaca* courts as a way to process complaints against some 100,000 alleged *genocidaires* that had been awaiting trial in detention for more than a decade.¹⁹ Proponents of human rights legalism also tend to oppose the use of amnesties or political pardons as strategies for negotiating an end to civil wars. It is a specifically legalistic definition of justice that is at the center of ongoing debates that pit the pursuit of peace against the goal of justice. Less obviously, human rights legalism has narrowed the scope of

¹⁶ Ruti Teitel, “Nuremberg and Its Legacy: 50 Years Later,” in *War Crimes: The Legacy of Nuremberg*, ed. Belinda Cooper (New York: TV Books, 1999), 44.

¹⁷ Bass, *Stay the Hand of Vengeance*; Drumbl, *Atrocity, Punishment, and International Law*.

¹⁸ Drumbl, *Atrocity, Punishment, and International Law*.

¹⁹ See for example, Amnesty International, *Rwanda: A Question of Justice* (London: Amnesty International Secretariat, 2002), or more recently, Kenneth Roth, “The Power of Horror in Rwanda,” *Los Angeles Times*, April 9, 2009, Opinion Section.

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

inquiry associated with transitional justice policy and practice. These institutions have tended to focus on violations of civil and political rights, which are amenable to a legalistic response, while avoiding economic and social injustices, which are held to require broader political solutions.²⁰

Critics of human rights legalism have argued that the demand for criminal trials clashes with pragmatic responses to conflict that might serve to minimize backlash from nationalists and apologists.²¹ Others contend that legalism defines justice narrowly in accordance with an idealized Western approach to criminal prosecution, superseding social and economic justice, as well as alternative approaches to criminal justice.²² Such scholars have opened an important debate about the limitations and problematic implications of human rights legalism. However, they have generally focused on legalistic institutions and policies, with less attention to the network of ideas associated with legalism. South Africa's Truth and Reconciliation Commission became significant in transitional justice debates because it developed a critique of human rights legalism and offered an alternative way to think about the basis of judgment and the role of official remembrance in the aftermath of political violence.

A DIFFERENT KIND OF JUSTICE

It is often observed that the UN's adoption of the 1948 *Universal Declaration of Human Rights* became possible only as a result of global outrage in response to Nazism.²³ Yet the human rights movement was also profoundly influenced by global outrage in response to the racism, dispossession, exploitation, and violent repression that was institutionalized by South Africa's apartheid system.

²⁰ Kenneth Roth, "Defending Economic, Social, and Cultural Rights: Practical Issues Faced by an International Human Rights Organization," *Human Rights Quarterly* 26, no. 1 (2004): 63–73; Zinaida Miller, "Effects of Invisibility: In Search of the Economic in Transitional Justice," *International Journal of Transitional Justice* 2, no. 3 (2008): 266–291. For a discussion of the way in which human rights activists are developing new strategies for addressing private harms and social injustices, see Alison Brysk, *Human Rights and Private Wrongs: Constructing Global Civil Society* (New York: Routledge, 2005).

²¹ Jack Snyder and Leslie Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice," *International Security* 28 (2003/4): 5–44.

²² Kieran McEvoy, "Beyond Legalism: Toward a Thicker Understanding of Transitional Justice," *Journal of Law and Society* 34, no. 4 (2007): 411–440; Drumbl, *Atrocity, Punishment and International Law*; Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002); Brad Roth, "Peaceful Transition and Retrospective Justice: Some Reservations. A Response to Juan Méndez," *Ethics & International Affairs* 15 (2001): 45–50.

²³ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999).

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

Introduction

9

Apartheid was legally entrenched with the victory of the National Party in 1948, shortly after the signing of the UDHR. South Africa was seen as a “test case” for those who sought to use human rights in the struggle against racism and colonialism.²⁴ The African National Congress incorporated human rights language into the text of the historic Freedom Charter in 1955. The transnational network that developed to oppose the South African regime is widely viewed as a model for contemporary human rights activism and evidence of its success.²⁵

In 1994, the black majority of South Africa finally achieved full political equality. In South Africa’s first democratic elections, the African National Congress was transformed from a guerilla movement into the ruling political party. South Africa’s relatively peaceful transition to majority democratic rule was widely viewed as a “small miracle.” Among the compromises that facilitated this transition was a decision to grant amnesties to those responsible for past human rights abuses on the grounds that they would agree to provide public confessions outlining the details of their acts. Inserted into South Africa’s interim constitution was a statement intended to set the tone for the transition: “there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* [“humaneness”] but not for victimization.” In the immediate aftermath of the transition, South Africa’s parliament passed legislation to establish a Truth and Reconciliation Commission (hereafter TRC) that would oversee the process of dealing with apartheid-era violence.

Truth commissions are temporary institutions designed to investigate patterns of political violence and abuse.²⁶ In contrast with commissions of inquiry, truth commissions are generally established in the immediate aftermath of a regime change or as part of a negotiated settlement to end a civil war. Truth commissions are usually defined as public institutions, established either by

²⁴ Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 1998), 213.

²⁵ See Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca, NY: Cornell University Press, 1995); William Korey, *NGOs and the Universal Declaration of Human Rights: “A Curious Grapevine”* (New York: St. Martin’s Press, 1998); Lynn Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?* (Boulder, CO: Lynne Rienner, 2002).

²⁶ Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York and London: Routledge, 2001). For a more recent comparative analysis of truth commission procedures, see Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge: Cambridge University Press, 2006). See also Eric Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy* (New York: Routledge, 2009); Ernesto Verdeja, *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence* (Philadelphia: Temple University Press, 2009).

Cambridge University Press

978-0-521-16977-6 - Judging State-Sponsored Violence, Imagining Political Change

Bronwyn Leebaw

Excerpt

[More information](#)

domestic authorities or by the United Nations. However, in Brazil, Guatemala, and other countries, private organizations have launched investigations similar to those undertaken by truth commissions.²⁷ Truth commission investigations encompass not only the causes, but also the consequences and legacies of political violence. Their approaches to investigation vary significantly, but they nearly always involve a process of taking statements and testimony from victims.²⁸ Truth commissions do not have the power to prosecute alleged perpetrators of abuse. However, many truth commissions, including South Africa's TRC, are designed to give information to prosecuting authorities.²⁹ Upon completing their investigations, truth commissions develop reports and issue recommendations for reparation, institutional reform, prosecution, or commemoration.

Human rights advocates once saw truth commissions as a pragmatic alternative in contexts where prosecuting those responsible for past injustices would be preferable, but limited, impractical, or unfeasible. South Africa's TRC challenged this view with the claim that it was not merely a next best alternative to trials, but rather a basis for advancing a "different kind of justice": *restorative justice*.³⁰ South African leaders associated with the TRC were not opposed to international criminal justice. In fact, many went on to become staunch supporters of the International Criminal Court.³¹ However, they challenged the basic theoretical assumptions animating human rights legalism and offered restorative justice as an alternative.³²

²⁷ On the *Nunca Mais* project in Brazil, see Lawrence Wechsler, *A Miracle, A Universe: Settling Accounts with Torturers* (Chicago: University of Chicago Press, 1990); On unofficial truth projects, see Louis Bickford, "Unofficial Truth Projects," *Human Rights Quarterly* 29, no. 4 (2007).

²⁸ See Audrey Chapman and Patrick Ball, "The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala," *Human Rights Quarterly* 23 (2001).

²⁹ See Naomi Roht-Arriaza, "The New Landscape of Transitional Justice," in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, ed. Naomi Roht-Arriaza and Javier Marriecurrena (Cambridge: Cambridge University Press, 2006), 1–16.

³⁰ Charles Villa-Vicencio, "A Different Kind of Justice: The South African Truth and Reconciliation Commission," *Contemporary Justice Review* 1 (1999): 407–28.

³¹ Statement by Civil Society Organizations and concerned individuals in South Africa on the decision made by the AU to refuse cooperation with the ICC (July 13, 2009).

³² See Charles Villa-Vicencio, "Restorative Justice: Dealing with the Past Differently," in *The Provocations of Amnesty: Memory, Justice, and Impunity*, ed. Charles Villa-Vicencio and Erik Doxtader (Claremont: David Philip Publishers, 2003) and Johnny de Lange, "The Historical Context, Legal Origins and Philosophical Foundation of the South African Truth and Reconciliation Commission," in *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, ed. Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town: University of Cape Town Press, 2000); Desmond Mpilo Tutu, *No Future without Forgiveness* (New York: Doubleday, 1999), 54–5; 155–7; Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (Oxford: Oxford University Press, 2000), 278–99; 387–400.