THE CONCEPTUAL FOUNDATIONS OF TRANSITIONAL JUSTICE

Many countries have attempted to transition to democracy following conflict or repression, but the basic meaning of transitional justice remains hotly contested. In this book, Colleen Murphy analyzes transitional justice—showing how it is distinguished from retributive, corrective, and distributive justice—and outlines the ethical standards that societies attempting to democratize should follow. She argues that transitional justice involves the just pursuit of societal transformation. Such transformation requires political reconciliation, which in turn has a complex set of institutional and interpersonal requirements, including the rule of law. She shows how societal transformation is also influenced by the moral claims of victims and the demands of perpetrators, and how justice processes can fail to be just by failing to foster this transformation or by not treating victims and perpetrators fairly. Her book will be accessible and enlightening for philosophers, political and social scientists, policy analysts, and legal and human rights scholars and activists.

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## Contents

**Preface and Acknowledgments**  page vii  

Introduction  1  

1 Circumstances of Transitional Justice  38  

2 The Problem of Transitional Justice  83  

3 Societal Transformation  119  

4 The Just Pursuit of Transformation  160  

Conclusion  193  

**Works Cited**  202  

**Index**  218
Preface and Acknowledgments

Dealing with past wrongdoing is a prominent and recurring issue for many societies. The United States continues to struggle with its legacy of slavery and Jim Crow–era segregation as well as ongoing tensions between the police and black heightened by recent police shootings. Canada continues to deal with the legacy of its residential schools for indigenous peoples. Discussions about how, whether, and in what way Spain should face the abuses from the Franco era, and Northern Ireland should face the legacy of The Troubles are ongoing. At the time of writing, the brutal civil war in Syria continues into its fifth year, amid calls to establish processes to deal with rights abuses committed to date. The work of the Tunisian Truth and Dignity Commission to deal with gross human rights violations during the period of repression starting in July 1, 1955, and prior to the 2011 revolution is ongoing, as is Nepal’s Truth and Reconciliation Commission and National Commission of Inquiry into Disappearances focusing on gross human rights violations committed during armed conflict from 1996 to 2006. The Supreme Court of El Salvador just invalidated a 1993 amnesty law covering atrocities committed by government forces and guerrillas during its twelve-year civil war (1980–1992). The International Criminal Court currently has ten situations under investigation, including in Georgia, the Central African Republic, Mali, and Uganda, as well as ongoing trials in the Ongwen, Banda, Ntaganda, Bemba et al., Gbagbo and Blé Goudé, and Al Mahdi cases.

The moral questions raised in these cases are similar in some morally salient respects, but not identical. One of the primary aims of this book is to clarify these similarities and differences. While past wrongs place moral demands on particular perpetrators and generate moral claims of particular victims, the appropriate satisfaction of these claims is context dependent. What it means to properly acknowledge wrongdoing depends on who is doing the acknowledgment and the particular kind of wrong being acknowledged. Moreover, the overarching moral point and purpose of
responding to past wrongs is in important respects also context dependent. In some cases, the overarching moral point is fostering societal transformation. In other contexts, societal transformation may not be necessary to pursue, and the main moral point in dealing with past wrongs may be simply to respond justly to perpetrators and victims of wrongdoing. The moral point and purpose in dealing with past wrongs in turn shapes the moral standards a response to wrongdoing must satisfy in order to qualify as just. Over the course of my book, I discuss the various moral aims that dealing with past wrongs might have and the corresponding standards of justice such aims require be satisfied.

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I also presented different parts of this book at Illinois Wesleyan University; the Midwest Political Science Association; the Department of Philosophy and the Mershon Center at The Ohio State University; Osgoode Hall Law School at York University; the Law and Philosophy Program at the University of Texas at Austin; the Comparative Politics Workshop and the College of Law at the University of Illinois at Urbana-Champaign; the S. J. Quinney College of Law and Tanner Center for Human Rights at the University of Utah; the University of Virginia’s Institute for Practical Ethics and Public Life and the Program in Political Philosophy, Policy, and Law (PPL); the Robina Institute on Criminal Law and Criminal Justice at the University of Minnesota Law School; the Department of Philosophy at Illinois State University; Queen’s University Belfast; the University of South Florida; and the Society for Applied Philosophy.
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