

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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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 blacks 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 guerillas 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.

This book has taken seven years to write, and over the course of that period of time many individuals and audiences provided invaluable feedback. I am particularly grateful to the Princeton University Center for Human Values (UCHV) for the time and support provided through my Laurance S. Rockefeller Visiting Faculty Fellowship during the 2010–2011 academic year. My project on transitional justice was in its very early stages, and conversations and presentations throughout the year were critical in shaping the direction it ultimately took. I am especially grateful to Chuck Beitz, Corey Brettschneider, Tom Christiano, Alex Guerrero, Liz Harman, Adrienne Martin, Alan Patton, Jon Quong, Kim Lane Scheppele, and Peter Singer for the feedback they provided. Chuck also deserves special mention not only for his intellectual feedback but also for the support he provided in his capacity as director of the UCHV. My first son was born in January of the year I spent at the UCHV, and I was able to remain engaged with the center because of the way in which Chuck encouraged and welcomed me to bring my son with me to my office as well as UCHV talks and events.

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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I thank Hilary Gaskin for her superb editorial guidance throughout. Parts of different chapters have been published in other venues. The introduction was published as “Transitional Justice: A Conceptual Map,” in *Theorizing Justice: Novel Insights and Future Directions*, ed. Krushil Watene and Jay Drydyk (Rowman and Littlefield, 2016). Excerpts of Chapter 2 are taken from my chapter “Transitional Justice, Retributive Justice and Accountability for Wrongdoing,” in *Theorizing Transitional Justice*, ed. Claudio Corradetti, Nir Eisikovits, and Jack Rotondi (Ashgate Publishing, 2015). Parts of Chapter 3 are taken from my “Reply to Critics,” in *Criminal Law and Philosophy* 10.

I dedicate this book to Paolo, Peter, and Patrick, the rocks in my life who make all else possible.