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Searching for Truth

Ah, now, a truth commission. Why do we need a truth commission? What did other truth commissions do – contribute to – what did they achieve? And you know I didn't know the answer to that question really. I suppose that they did achieve something. Otherwise why would so many commissions be established in the first place?

(Interview with Serbian scholar 2010)

In May 2011, a group of youths stood on the pedestrian thoroughfare in the center of Sarajevo, the capital of Bosnia and Herzegovina (BiH). They held clipboards in their hands, hoping to gather signatures on a petition to create a truth commission that would “establish facts” about the most recent war in the Balkans. Foreign donors were excited about this initiative and provided millions of dollars for the effort. Foreign consultants, including staff at the International Center for Transitional Justice, had mentored this campaign from the beginning. Watching these youths collect signatures, it was easy to see the disconnection between these foreign elites and the Bosnians they hoped to help. Dressed in purple shirts, these youths nervously asked fellow Bosnians, pedestrians hurriedly getting home from work or going out to a café, if they felt enough had been done to address war crimes during the dissolution of the former Yugoslavia. The war's violence in Bosnia left over 100,000 people dead, and 80% of the victims were Bosniaks (a postwar label for Bosnian Muslims). Few people in the Balkans would say yes to this question, and few did that afternoon in May. Despite this fact, few wanted to sign the petition. The coalition's leader, watching from the sidelines, struggled to understand why these Bosnians were so resistant to supporting their proposed commission. After all, who wouldn't want a truth commission?

On the other side of the Atlantic, also in 2011, the Colombian government was negotiating a new law on the creation of “transitional justice instruments,” specifically a truth commission, in the event of a peace accord with guerrilla groups that had fomented violence in the country for nearly six decades. This was not the first

so-called transitional justice law in Colombia, or the first bid for a truth commission. Six years before, in 2005, the government passed the Justice and Peace Law. This policy offered alternative judicial sanctions to demobilizing paramilitary groups and also created the National Commission on Reparation and Reconciliation (NCCR), which scholars referred to as a “sort of truth commission” (Laplanche and Theidon 2006). At the time, critics of the Justice and Peace Law viewed “transitional justice” as a euphemism for impunity for paramilitaries and pointed out that a truth commission could only function effectively if the violence stopped. A decade later, those same “transitional justice instruments” became the key to a peace accord with guerrilla groups. Policy makers mandated that, as one of these transitional justice instruments, a truth commission must be created in the event of an accord.

Due north of Colombia, in Washington, DC, calls for a truth commission had come and gone by 2011. In 2008, President Barack Obama was elected amid public demands to investigate and prosecute those involved in torture and unlawful detentions in the seemingly unending War on Terror. For a brief window after the election, left-leaning scholars, advocates, and even legislators were calling for a truth commission to clarify the causes and consequences of military detention under the Bush administration. Some of these actors drew on the idea of transitional justice to explain their calls for a commission, but many resisted labeling their proposed investigative bodies this way, even if they were sympathetic to concerns about torture in detention centers. For them, truth commissions were useful only in countries where there had been a definitive political transition, or where courts were unable or unwilling to address the violence.

How can we explain these concurrent calls for truth commissions in such politically disparate settings? Depending on one’s definition of “truth commission,” there have been somewhere between forty and ninety of these quasi-judicial bodies, and the number is on the rise (see Dancy et al. 2010).¹ Scholars often suggest that truth commissions are appealing because they are practically and politically palatable (Chandler and Heins 2007). Bakiner (2015), for one, suggests that truth commissions

¹ The different numbers have to do with whether or not nongovernmental commissions qualify (most scholars leave these out) and whether the commissions actually completed their work and produced a report. For the purposes of this book, I rely on one of the first definitions of truth commissions, provided by Hayner, as investigative bodies that focus on a past history of violence, not a specific outcome, exist for a defined period of time, and usually have some sort of sponsor (Hayner 1994, p. 604). When the sponsor is the government, the truth commission is considered official; when created by a nongovernmental entity, it is unofficial. This book focuses on official truth commissions. Gready (2010, p. 3) identifies the “core characteristics” of “official” truth commissions as (1) a focus on the past; (2) their origins at the point of transition away from war or authoritarian rule; (3) the investigation of patterns of abuses and specific violations committed over a period of time, rather than a single event; (4) a focus on violations of human rights, and sometimes of humanitarian norms as well; (5) a temporary, short-term life-span, usually culminating in the production of a report with recommendations; (6) official status, as commissions are sanctioned, authorized or empowered by the state (and sometimes by armed opposition groups, in the context of a peace accord); and (7) a victim-centered approach (see also Hayner 2002).

are particularly useful because they provide political opportunities for new organizations to make political demands on their leaders, even when those leaders viewed creating a truth commission as simply convenient way to address past violence. Their appeal, in theory, lies in the fact that they do not prioritize punishment for perpetrators, as punishing perpetrators through court processes, in theory, could foment divisions (Minow 1998). Rather, truth commissions focus on creating an accurate historical record of the violence, enabling survivors to share their stories, and making recommendations for social and political change.

Despite these laudable goals, when truth commissions are actually implemented, they often disappoint their proponents. In particular, they often create very narrow explanations of violence, survivors do not necessarily benefit from participating, and commissions' findings and recommendations have little impact on government policies (Wilson 2001; Brahm 2007; Olsen, Payne, and Reiter 2010).

To understand their continuing appeal and disappointing outcomes, this book takes a distinct approach to examining why truth commissions are being promoted in such different contexts. I argue that we cannot understand the proliferation of truth commissions without first examining the phrase that is so commonly used to explain and legitimate them: transitional justice. This phrase emerged in the early 1990s, when scholars, policy makers, and advocates were considering how countries moving from authoritarianism or armed conflict toward democratic regimes were using law to address human rights abuses under former regimes (Arthur 2009). After the South Africa Truth and Reconciliation Commission (TRC) and the creation of the International Center for Transitional Justice, truth commissions became a signature intervention of transitional justice (Teitel 2003; Gready 2010).

While scholars usually write about transitional justice as a field (see Bell 2009b) or a discipline (see Andrieu 2010a) or even a theory (see Dukalskis 2011), and try to explain what it means and what different interventions do, this book takes a constructivist approach and argues transitional justice is better understood as an idea – meaning a thought, a plan, or a suggestion – about how to redress mass, often state-sponsored, violence and ensure democratic social and political change. The idea encompasses an identifiable vocabulary with words such as truth and reconciliation (Turner 2013; Robins 2012) and an associated set of interventions including tribunals, truth commissions, and reparations programs (Roht-Arriaza 2006).² This book also argues that a movement has emerged around the idea, with goals of ensuring accountability, improving survivor well-being, and preventing future violence.³

² While most studies of transitional justice refer to these different bodies as mechanisms, approaches, or processes, I refer to them as interventions in order to emphasize that the default is doing nothing to redress mass violence. This is a strategy that many governments have taken, and is often called “forgetting” in the transitional justice literature (Vinjamuri and Snyder 2004). Creating new legal bodies or policies to redress mass violence is intervening in a transition.

³ Scholarly definitions of transitional justice's goals vary widely, often depending on whether the idea is being used descriptively or prescriptively (Subotić 2009). Teitel (2005, p. 838), for example,

Departing from studies on the meaning of transitional justice or the efficacy of its associated interventions, this book focuses on how transitional justice is translated into political action, which I refer to as instrumentalization. To this end, this book addresses the following three questions: (1) How do actors that mobilize around transitional justice understand their goals and strategies? (2) How do actors that mobilize around truth commissions understand their goals and strategies? (3) How do their mobilization strategies help them realize their goals? More narrowly, this inquiry provides insights into why truth commissions are being promoted around the world. More broadly, understanding the instrumentalization of transitional justice helps illustrate a broader law and society question: How, and why, do actors mobilize the law to redress mass, often state-sponsored, violence? This latter question is now largely taken for granted given the growth of international criminal law and creation of international criminal tribunals. Though law is a fundamentally limited tool to deal with the complexity of mass atrocity, many scholars, policy makers, and activists continue to promote trials and truth commissions in order to attain wide-ranging goals.

This book argues that the utility of transitional justice lies in its malleability, which includes both its aspirational qualities related to bridging social and political divides and its ambiguity with regard to the value of prosecutions to redress mass violence. The idea's malleability, which is the result of how the movement around the idea emerged and professionalized, means that transitional justice serves as a placeholder for actors to articulate their goals and strategies and to make claims against one another. Actors see truth commissions, too, as malleable, which means that actors in strikingly different political contexts see the utility of creating them. Within countries, individuals and organizations with complementary, competing, or even contradictory goals related to punishment, getting information about loved ones, and receiving financial compensation all promote truth commissions.

However, this book points out that the same quality of malleability that makes transitional justice and truth commissions appealing is also problematic. Actors interested in redressing mass violence often have contradictory goals for who should

defines the goals as “rule of law, legitimacy, liberalization, nation-building, reconciliation, and conflict resolution.” The goals usually include some notion of accountability, but specify that accountability is not necessarily judicial accountability or prosecutions of perpetrators. The other goals often revolve around survivors of violence, including socioeconomic benefits and the chance for survivors to tell their stories, which have to do with survivor well-being. Finally, the goals of changing the structural factors that led to violence, creating an accurate historical record, and bridging social divides (e.g., reconciliation) all point toward preventing future violence. Likewise, Shaw’s analysis of the Sierra Leone TRC says the goals are to establish individual accountability, foster reconciliation, and prevent a recurrence of violence (Shaw 2007, p. 185). Actors in Colombia, for example, use the phrase “truth, justice, and reparation” when describing transitional justice. “Truth, justice, and reparation” refer to a variety of claims, but one way to understand them is historical clarification of a conflict’s causes and consequences (truth), judicial accountability including sanctions for perpetrators (justice), and financial compensation for victims (reparation).

be punished and how, as well as which narrative of violence is the most accurate. While it may be easy to support a truth commission, the support may be shallow, and mobilizing around one may actually reproduce the social and political divisions that actors seeking accountability, survivor well-being, and the prevention of future violence hope to alleviate.

To explain these findings, this book focuses on how, soon after the phrase “transitional justice” was coined, a loosely structured movement emerged around the idea and professionalized in a distinct way. While most analyses of professionalization focus on standardization – and early transitional justice proponents did create a uniform characterization of what interventions fall under the banner of transitional justice – the professionalization of transitional justice contributed to malleable understandings of the idea and, by association, malleable understandings of truth commissions.

Next, by comparing efforts to promote truth commissions in BiH, Colombia, and the United States, this book illustrates transitional justice’s malleability by showing the different processes through which actors translate the idea into political action. I characterize the instrumentalization of transitional justice in the Balkans as disruptive – innovative and groundbreaking, but unmanageable. In Colombia, the process was transformative, as both understandings of the idea and policies changed as the idea was instrumentalized. In the United States, the instrumentalization was decoupled, meaning that actors used the same discourse and promoted the same interventions associated with transitional justice, but they did not want to associate their efforts with the growing movement. In each case, understandings of transitional justice and truth commissions echoed the work of the transnational actors that have promoted the idea and the intervention around the world. At the same time, these understandings differed in ways that reflected, and reinforced, the social and political dynamics in each country.

Finally, this book shows that, even where a truth commission is not created, mobilizing around transitional justice can have important social and political effects. In particular, the circulation of transitional justice into new settings created new sets of elites, fostered an idealistic discourse about what truth commissions can offer, and, perhaps counterintuitively, reaffirmed prosecutions for perpetrators as an important strategy to redress mass violence. Even where actors promoted truth commissions, they did so in ways that did not challenge the prevalent belief that retribution is important, if not necessary, to ensure accountability, improve survivor well-being, and prevent future violence.

This empirical analysis of how actors understand transitional justice and truth commissions reveals the importance of understanding *who* is promoting and appropriating transitional justice, *who* is mobilizing around truth commissions, and *why* they do so. In many places, calling for a truth commission became a default strategy – the “something” that many view as preferable to doing nothing – for redressing mass violence (see Fletcher et al. 2009). This book argues that, due to malleable

understandings of the idea and intervention, transitional justice and truth commissions will continue to circulate through the loosely structured and growing movement that promotes them. However, this same quality also means that transitional justice may ultimately become yet another movement, like rule of law, law and development, and even human rights, that leads to disillusionment about the capacity of legal interventions to redress mass violence.

TRANSITIONAL JUSTICE AS A TRANSNATIONAL MOVEMENT

Given the variety of individuals and organizations that appropriate and promote the idea and its associated interventions, particularly truth commissions, characterizing collective action related to transitional justice is a challenge. At the same time, this exercise is useful to show the variety of actors who have contributed to the emergence and professionalization of the transitional justice movement. Understanding this variety also reveals why there are diverse understandings of what transitional justice means and what its interventions should do. As Cotterrell (1998, 191) notes, an inquiry that looks at individual understandings “cannot abolish disagreement as to what justice demands in any particular situation. But it can reveal the meaning of justice claims in a broader perspective by systematically analysing the empirical conditions . . . underlying these claims.” Understandings of transitional justice are necessarily shaped by the social and political contexts where actors have promoted the idea.

My theoretical approach builds from the growing critiques of transitional justice, all of which point to the problem of seeing transitional justice as something separate from the individuals and organizations that utilize the idea. Bell, for example, explains the “battlefield” of actors that identify with and promote transitional justice, including the parties with a conflict of interest in controlling the outcomes: policy makers interested in “doing good” and academics arguing over disciplinary boundaries as they relate to human rights, conflict resolution, and international intervention (Bell 2009b, p. 29). Theidon suggests that transitional justice interventions and discourse have achieved a “global presence” and that transitional justice is now “an industry” with its own understandings of how to “do memory” (Theidon 2009, p. 1; see also Gready 2010). Taking an even more critical view, Madlingozi (2010) emphasizes the “entrepreneurs” who “produce” victims as they promote their agendas in places where violence has occurred. Vinjamuri and Snyder (2004), importantly, point to the fact that advocates have largely set the agenda for social science studies of transitional justice, which has contributed to normative assessments of the need to create transitional justice interventions rather than objective assessments about their benefits (see also Lefranc and Mouralis 2014).

Building from these disparate analyses, I refer to mobilization around the idea of transitional justice as a transnational movement in order to emphasize the distinct structural qualities of the collective action due to scholarship, policy making, and advocacy related to the idea. This characterization reveals how collective action

around transitional justice is similar to, yet distinct from, transnational advocacy networks (TANs), epistemic communities, and social movements, three other typologies of transnational collective action. Understanding the theories of TANs, epistemic communities, and social movements helps illuminate how mobilization around transitional justice is structured in different ways in different places and how the movement's distinct blend of scholarship, policy making, and advocacy keeps the idea malleable and therefore useful to a variety of actors. Furthermore, given the variety of actors that draw on transitional justice in their work, and their different goals, looking at these different forms of collective action also provides initial insights into why the malleability of transitional justice and truth commissions can also be a liability for those hoping to use the idea and intervention to bridge social and political divides.

The individuals and organizations that mobilize around transitional justice often work as TANs, defined as sets of “relevant actors working internationally on an issue who are bound together by shared values, a common discourse and dense exchanges of information and services” (Keck and Sikkink 1998). By definition, TANs are more focused groups that tend to develop around issues that are unlikely to inspire mass mobilization. However, there are examples of mass mobilization in support of transitional justice in some places, such as the Balkans and Colombia, and simply information exchanges in others, such as the United States.

Some scholars refer to transitional justice as an epistemic community, which similarly denies a populist component of efforts to create truth commissions and other transitional justice interventions (Chandler and Heins 2007). Actors within epistemic communities often work as consultants or on advisory panels, making recommendations based on a shared set of internally validated processes and principles (Haas 2013).⁴ A variety of individuals who identify with transitional justice play this consultative role and draw on standardized understandings of what transitional justice interventions are and what they offer. However, a variety of individuals who identify with transitional justice engage in claim-making in much the same way that more normative communities, such as social movements, do.

While one could analyze transitional justice as a social movement, actors who promote transitional justice often are elites, including well-resourced organizations, academics, and policy makers. While some scholars suggest that networks are less structured than social movements, the expansion, coordination and sophistication of coalitions have blurred the distinction between the two (Khagram et al. 2002; Sperling et al. 2001).⁵ The truth commission in Morocco, for example, was the result of sit-ins and demonstrations by advocacy organizations. Still, as this book will

⁴ According to Haas (2013), epistemic communities have shared principled beliefs, shared causal beliefs, common notions of validity, and a common policy enterprise related to improving human welfare.

⁵ Della Porta points out that social movements are not necessarily formed by organizations, but rather “loosely linked networks of individuals who feel part of a collective effort” (Della Porta 2007, p. 7). Government actors can also be part of social movements, depending on their interests and approaches. Tilly and Tarrow emphasize that social movements “make claims bearing on someone else’s interests,

show, the actors who promote and appropriate transitional justice around the world and in specific countries do not have the shared identity that characterizes social movements (Della Porta and Diani 2006). For example, all actors may share similar goals of accountability but view transitional justice as an idea that impedes this goal.

Looking at the limitations of these different labels, I use the broader category of a movement in order to emphasize the complex shared identity and loosely structured collective action around an idea.⁶ Referring to transitional justice as a movement emphasizes that the idea is *in movement*, meaning that it is fluid and understandings of it change depending on who has appropriated it, how, and why they have done so. As the case studies of BiH, Colombia, and the United States illustrate, this movement is not unidirectional: Understandings of transitional justice do not flow from transnational actors to domestic actors, or simply get implanted, unchanged, across national boundaries. These understandings change as they circulate within domestic settings, as they flow from one setting to another, and as they are translated back to the transnational level.

A PROFESSIONALIZED MOVEMENT

By studying transitional justice as a movement, it is easier to understand why actors around the world are promoting truth commissions. This book's second chapter, which examines the idea's origins, shows how the movement professionalized in the wake of the South Africa TRC and the subsequent creation of the International Center for Transitional Justice (ICTJ). This organization helped formalize understandings of transitional justice as a distinct set of interventions and promoted the South African truth commission model around the world (Ancelovici and Jenson 2013). The ICTJ, through helping to standardize understandings of which interventions fall under the broad banner of transitional justice, promoted the idea and the intervention as malleable enough to apply to a wide range of conflicts and for actors with a wide range of goals.

As the movement grew, other actors found themselves appropriating and promoting the idea to explain and legitimate their work. In her study of how transitional

leading to coordinated efforts on behalf of shared interests or programs, in which governments are involved as targets, or initiators of claims, or as third parties" (Tilly and Tarrow 2007, p. 4).

⁶ Della Porta (2006) similarly analyzes disparate efforts aimed at social, environmental, and economic justice as part of a definable "global justice movement" comprising individuals and organizations working against corporate globalization. Likewise, in her work on *Social Movements for Global Democracy*, Smith (2008) characterizes loosely affiliated groups of individuals working toward human rights and economic sustainability as transnational networks of social activists. Kelsall's analysis of Sierra Leone's war crimes tribunal mentions the "global social movement" to ensure that perpetrators of human rights abuses are tried for war crimes (Kelsall 2009, p. 6). As part of this movement for judicial accountability, he identifies a number of organizations, including Human Rights Watch, Amnesty International, and the International Center for Transitional Justice (ICTJ), organizations that I study as part of transnational transitional justice movement (see also Subotić 2012).

justice and truth commissions circulated around the world, Lefranc identifies the importance of activists in the global North and the global South, the academics who work with them, international bureaucracies (including international financial institutions), governments that are not always recognized for their commitment to human rights, and a host of organizations called “civil society” in post-conflict countries (Lefranc 2008, p. 67). Her point is that ideas such as transitional justice do not spread because of the emancipatory goals of their proponents, or because they are effective. Rather, they spread because different political actors are aware of their utility for a wide range of goals. Financial incentives are obviously important in the professionalization of a movement, but the relationships between individuals, organizations, and funders were a more critical resource in the transitional justice movement (see Gamson 1975).

The professionalization of the transitional justice movement is still under way, and this book reveals that its trajectory is similar to yet distinct from those of other movements predicated on law as a tool of social and political change. In the human rights movement, for example, organizations such as Human Rights Watch and Amnesty International emerged as elites that helped shape understandings of human rights around the world, as well as what the human rights movement’s strategies would be (Neier 2012). These strategies included the creation of treaties that codified human rights law, campaigns to name and shame violators of domestic and international human rights law, and courts to punish perpetrators. Proponents of human rights focused on constructing the idea as a universal good, with nonderogable standards of how states could treat their citizens. Most importantly, they advocated punishment for perpetrators of human rights violations (Neier 2012; Engle 2015).

The appeal of transitional justice, in contrast, lies not in its universality but in its malleability, particularly its ambiguity as to the value of prosecutions and its idealistic discourse about what its interventions can offer countries where mass violence has occurred. Furthermore, this book argues that the idea’s malleability reflects the ways in which scholars, policy makers, and advocates utilize the idea to describe any number of conflicts and prescribe any number of solutions (see Subotić 2009). With circular logic, proponents of transitional justice point to existing tribunals and truth commissions to explain the idea’s utility and draw on the idea to explain the need to create new interventions. At the same time, as the transitional justice movement has developed, actors with their own goals, strategies, and professional identities have developed their own understandings of the idea and utilized it in novel ways.

This book emphasizes how easy it is to appropriate and promote a malleable idea such as transitional justice, but also shows that the same malleability can be a liability. Professionalization in unstructured areas, such as international criminal law, often involves competition over which domestically located norms will prevail (Zald and McCarthy 1987; Fourcade 2006). Looking at understandings of transitional justice, both at the international and domestic levels, reveals that there is ongoing contestation of the centrality and utility of criminal prosecution in efforts to redress

mass violence, as well as of the utility of the idea more generally, given that political actors draw on it to realize contradictory goals. Examining how different actors understand transitional justice and truth commissions reveals not only why this intervention is so appealing, but also why prosecutions are still seen as an important, if not necessary, strategy for redressing mass violence.

WHY TRUTH COMMISSIONS IN THESE SETTINGS?

Returning to the original question of why actors promote truth commissions in such disparate settings, this book compares initiatives to create truth commissions in three distinct settings and, in so doing, shows how their appeal lies in the fact that proponents see truth commissions as capable of helping them realize a wide range of goals, including documenting abuses, punishing perpetrators, letting survivors tell their stories in a public forum, and getting other types of compensation from the state.

While comparative analyses of truth commissions often focus on the factors that shape whether a truth commission will be successful, these studies do not point out the goals and strategies of actors that promote them (Roper and Barria 2009; Olsen, Payne, and Reiter 2010; Dancy et al. 2010). Case studies, in contrast, provide more information on the social and political context in which a truth commission is created, but it is difficult to make generalizations from them (Chapman, Baxter, and van der Merwe 2009). Looking at the effort to create a truth commission in South Korea, for example, Kim (2012) argues that domestic demands – not international pressures – for information and accountability about government massacres created the political opportunity for a truth commission to be established. Similarly, analyzing the genesis of a truth commission in Canada, Nagy (2014) reveals the influence of transnational organizations such as the ICTJ in helping the Canadian policy makers design their commission, but emphasizes how domestic actors translated their understandings of transitional justice to meet their specific social and political goals. These case studies, among others, are useful to show the interaction between domestic and transnational proponents of truth commissions, yet they only reveal the social and political dynamics in one country.

In looking at ongoing mobilization efforts to create truth commissions in three different countries, this book provides insights into both the specificity of truth commission initiatives and some of their generalities. It similarly suggests that the demand for a truth commission is domestically driven, but domestic actors are drawing from foreign models in their mobilization campaigns. Moreover, the same transnational actors, notably the ICTJ, were present in all three cases, providing guidance on truth commission development, design, and implementation. Domestic actors mobilize around truth commissions according to their own hopes and desires about what this intervention can do for them, but their understandings reflect the work of the transnational movement.