

1

Introduction

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Transitional justice is in crisis. Having emerged in the 1980s, it peaked as a form of global justice in the 1990s and 2000s. Assumptions have turned into questions,¹ and core elements of the paradigm have been subjected to sustained critique. Yet, as is often the case, while criticisms abound, there is much less commentary that goes beyond critique and the suggestion of micro-alternatives to set out an alternative approach in a comprehensive fashion.² This volume discusses one such alternative: transformative justice.

The criticisms of transitional justice are multiple and persuasive. Perhaps most tellingly, victims and local populations tend to elevate physical security and economic livelihood over traditional transitional justice goals when asked to prioritize their concerns.³ Critics have argued for an evidence-based transitional justice;⁴ for a practice more in tune with

¹ Elizabeth Jelin, “Memory and Democracy: Towards a Transformative Relationship,” in this volume.

² Exceptions include Rama Mani’s call for three dimensions of justice – legal justice or the rule of law, rectificatory justice and distributive justice – in *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002); and the ecological model of social reconstruction, Laurel E. Fletcher and Harvey M. Weinstein, “Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation,” *Human Rights Quarterly* 24, no. 3 (2002): 573–639; Eric Stover and Harvey M. Weinstein, *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004).

³ See, for example, Simon Robins, “To Live as Other Kenyans Do: A Study of the Reparative Demands of Kenyan Victims of Human Rights Violations” (New York: International Centre of Transitional Justice, 2011); Patrick Vinck and Phuong Pham, “Searching for Lasting Peace: Population-Based Survey on Perceptions and Attitudes about Peace, Security and Justice in Eastern Democratic Republic of the Congo” (Cambridge MA: Harvard Humanitarian Initiative and United Nations Development Programme, 2014); also Pamina Firchow and Roger Mac Ginty, “Indivisibility as a Way of Life: Transformation in Micro-processes of Peace in Northern Uganda,” in this volume.

⁴ E.g. Oskar Thoms, James Ron and Roland Paris, “State-level Effects of Transitional Justice: What Do We Know?” *International Journal of Transitional Justice* 4, no. 3 (2010): 1–26.

the pulse of local, everyday needs rather than global fads and priorities;⁵ for a focus on socioeconomic rights to augment the prevailing emphasis on civil-political rights;⁶ and for a more politicized engagement with power and privilege.⁷ Criticisms have, in turn, fueled adaptation within the field.

Transformative justice as an alternative, umbrella approach goes beyond the notion of adaptation and small-bore reforms. It is relevant in transitional settings, but can also be applied anywhere and at any time to address concerns, such as structural and everyday violence. By underpinning the transitional with the structural, it questions the parameters and nature of transitions – for example, how is violence against women affected by transitions from war to peace? This volume focuses largely on the potential for transformative justice during political transition.⁸ It argues that transformative justice seeks to reform radically the politics, locus, and priorities of transitional justice. Broadly in line with many of the critiques of transitional justice set out above, transformative justice was provisionally defined by Simon Robins and myself as: transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes, and the challenging of unequal and intersecting power relationships and structures of exclusion at both local and global levels.⁹ This volume revisits the definition to address

⁵ Scholarship championing the localization of transitional justice includes Kieran McEvoy and Lorna McGregor (eds), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford: Hart Publishing, 2008), and Rosalind Shaw and Lars Waldorf with Pierre Hazan (eds), *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford: Stanford University Press, 2011). Work on transitional justice and the everyday resonates in several respects with the approach taken in this introduction: see the special issue edited by Pilar Riaño Alcalá and Eric Baines, *International Journal of Transitional Justice*, 6, no. 3 (2012).

⁶ See, for example, Dustin Sharp, “Introduction: Addressing Economic Violence in Times of Transition,” in *Justice and Economic Violence in Transition*, (ed.) Dustin Sharp (Springer: Verlag New York, 2014), 1–26.

⁷ For a relatively rare engagement with power and privilege in transitional justice, see Tshupo Madlingozi, “On Transitional Justice Entrepreneurs and the Protection of Victims,” *Journal of Human Rights Practice* 2, no. 2 (2008): 208–28.

⁸ The exception being the chapter by Anna Reading, “The Restitutive Assemblage: The Art of Transformative Justice at Parramatta Girls Home, Australia,” in this volume.

⁹ Paul Gready and Simon Robins, “From Transitional to Transformative Justice: A New Agenda for Practice,” *International Journal of Transitional Justice* 8 (2014): 339–61. This article is reproduced as Chapter 1 of this edited collection. Richard Falk provides a salutary reminder that transformative change can be illiberal and/or externally imposed by occupation. An example of the former is post-revolution Iran, and of the latter post-World War 2 Germany and Japan. “Predicaments of Transformative Justice in a Neoliberal and State-centric World Order,”

some of the questions it has provoked – Should a higher priority not be given to the past and to the role of the state in providing redress for past injustices? Can transitional justice take on more when it struggles to deliver on a more modest remit? – and, to think through again what any definition might mean for the search for alternatives, both in conceptual and practical terms.

A search for alternatives in the field of transitional justice should be placed in a wider context, the more general search for alternatives in the wake of the 2008 global economic and political crisis. Arguably, advocates of social justice – and I would place human rights and transitional justice activists and academics in this category – have failed to articulate a coherent response, and have certainly failed to present a macro-level response, to the obvious shortcomings of the neo-liberal global order. Setting out the populist challenge to human rights, Philip Alston argues that “mainstream human rights advocacy addresses economic and social rights issues in a tokenistic manner at best, and the issue of inequality almost not at all.” Further, a focus on the marginal and oppressed means that “the majority in society feel that they have no stake in the human rights enterprise.”¹⁰ Identical arguments can be made with reference to transitional justice. Against a backdrop of stark inequalities and political disengagement, on the one hand established economic and political power has regrouped (the deep state, the deep international order), while on the other hand populisms and fundamentalisms, mostly from the political and religious right, have marshalled disillusionment into mobilization and action. Meanwhile the alternatives from the political left have fiddled at the margins.

Clearly, transitional justice cannot address all of these ills, which erect significant barriers in the way of progressive progress, but placing it in this wider context makes the point that it represents a case study of a wider failure of imagination and ambition in the contemporary political moment. This argument also suggests that transitional justice alternatives have to engage with the context – at a macro- as well as micro-level – in which they are embedded. For example, transitional justice alternatives that do not question liberal constitutional democracy and the market economy as the automatic endpoint of transition are likely to achieve little by way of transformation as it is defined above; while alternatives that open up a debate about and potential for different forms of democracy, and include issues such as economic self-determination and

in this volume. He also highlights the considerable structural constraints on transformative change, at national and international levels.

¹⁰ Philip Alston, “The Populist Challenge to Human Rights,” *Journal of Human Rights Practice* 9, no. 1 (2017): 6.

equality as central to democracy, have more potential to provide “a language for an emancipatory project of justice.”¹¹

The contributors to the volume have been selected to include some established transitional justice scholars, but also others from outside the field who are well placed to address the important question: How does transitional justice look to others, from the outside? Not all contributors advocate transformative justice, or articulate it in the same way as the volume’s editors. The authors also come from diverse disciplines, reflecting the fact that commentary on transitional justice now sits within a wide range of disciplines; and, further, that its study is increasingly an interdisciplinary endeavor. As such, the volume frames a debate between transitional justice scholars/practitioners and experts in other fields, between advocates for and sceptics of transformative justice, and among different disciplinary approaches.

The thinking informing this introduction, and the idea of transformative justice, is shaped by three articles co-authored by Gready and Robins. Our approach echoes the one cited by Langford in his contribution to this volume: “Criticize everything, convert critique into proposal, criticize the proposal but still do something.”¹² The first article sets out the case for a shift from transitional justice to transformative justice (see Chapter 1 of this volume). The article identifies two foundational limitations to transitional justice, its articulation is within the broader liberal peace paradigm and top-down, state-based processes. While transitional justice has adapted to critiques and evolved over time – a greater emphasis on empirical work and evaluations; more holistic definitions of transitional justice; a focus on institutions and state fragility; an increased willingness to address socioeconomic rights and continuities in post-conflict and authoritarian settings; and a turn to the local – it has not critiqued the globally dominant practices of which it is a part. Constraints on reforms and adaptations can be traced back to transitional justice’s foundational limits. It is clear that a truly transformative justice requires more. To devise a workable definition of transformative justice, we both critique contemporary transitional justice practice and look at how transformation is understood in related sectors, specifically peacebuilding, conflict transformation, human rights-based approaches to development, work on gender, and agency and actor-oriented approaches. This survey provides a striking convergence in the characterization of certain core elements of a transformative approach and,

¹¹ Hannah Franzki and Maria Carolina Olarte, “Understanding the Political Economy of Transitional Justice: A Critical Theory Perspective,” in *Transitional Justice Theories*, (eds) Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun, and Friederike Mieth (Abingdon: Routledge, 2014), 217.

¹² Peet cited in Malcolm Langford, “Rights and Transformation,” in this volume.

as such, these points of convergence are presented as a starting point for the definition, and practice, of transformative justice.

The second article advocates a reconceptualization of the relationship between civil society and transitional justice.¹³ It argues that while transitional justice has often reduced conceptions of civil society to (human rights) NGOs, recent transitions highlight that change is driven by a range of different actors, often using forms of organization and repertoires of action drawn from social movements and the nonhierarchical collective action of “new” civil society. The term “new civil society” refers to the forms of civil society associated with events such as the Arab Spring and austerity-led protests in Southern Europe, many of which explicitly reject mainstream NGOs and their ways of working. New civil society champions autonomy, independent action, and the modeling of alternatives, often not taking the state and state institutions as the main point of reference. Contemporary activism, including transitional activism, is “evolving southward,” meaning that it is the Global South and its activism that provide us with privileged insights into “world-historical processes” and as such “prefigure the future.”¹⁴ For example, economic restructuring (or structural adjustment), and resistance to it, are moving center-stage in contemporary transitions and in the Global North and Global South alike. In this context, Comaroff and Comaroff argue that:

social action centers on what Arendt ... termed ‘the condition of life itself’ ... Like similarly assertive movements elsewhere, from Cochabamba to Mumbai, Chiapas to Cairo, the South African versions seek to secure what are glossed as ‘services’ – the minima of a ‘dignified’ existence: clean water, housing, sanitation, medical care, basic income. Drawing on a diverse global archive, from Marx, Gandhi, and Fanon, through the Book of Revelations to the Zapatistas, to born-again faiths and human rights crusades, these forms of social action are enabled by novel, liberalized social media. Often setting out explicitly to develop a critical consciousness, they tend to foster new forms of mobilization ... they also decry the limited horizons of procedural democracy and politics-as-usual.¹⁵

On the back of this analysis, the article makes two core arguments. First, that rethinking civil society entails rethinking modes of organization, repertoires

¹³ Paul Gready and Simon Robins, “Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and ‘New’ Civil Society,” *International Journal of Human Rights*, 21, no. 7 (2017): 956–75.

¹⁴ Jean Comaroff and John Comaroff, “Theory from the South: Or, How Euro-America is Evolving Towards Africa,” *Anthropological Forum* 22, no. 2 (2012): 113–31.

¹⁵ Comaroff and Comaroff, “Theory from the South,” 121–122.

of action, understandings of politics, rights and justice, and transnational approaches – in short, it requires the modelling of alternatives to mainstream approaches. Some of these alternatives will be uncivil, violent, and regressive, but the need to be discerning in choosing collaborators does not alter the fact that social justice mobilizations of the future will be highly plural in nature, “drawing in a diverse global archive” of approaches and discourses. Second, rethinking civil society in this way requires a shift from transitional justice, in which both the nature of transition and the forms justice takes are rather linear and preconceived, to a focus instead on justice in transition, where both justice and transition are dynamic, diverse, and contextual. A third argument now needs to be added to those in the published article: that state responses to these developments, and the political and economic trends outlined above, have resulted in a crackdown on civil society old and new, and what is often euphemistically called “shrinking civil society space” but which is in reality a head-on assault on political freedoms and democracy.¹⁶

In contrast to the legalism of transitional justice, which is defined in terms of a relationship with the state, individual accountability, and as delivered through institutional mechanisms and approaches, justice in transition is defined more broadly. Justice in transition is “a broad social project and a condition in society,” and should be understood as an everyday verb, given meaning and made/remade in the everyday lives of people living in societies emerging from conflict.¹⁷ As such, it is a plural rather than a singular concept, continually in the process of being constructed. Justice in transition seeks to understand how individuals and communities engage with needs, rights, custom, agency, and mobilization, and how they contest continuities of injustice and seek justice in their local environment and with regard to the state. This approach would help to deliver a transitional justice that is more diverse, more accessible, more flexible, and more locally relevant – in short,

¹⁶ See the special issue of *Sur – International Journal on Human Rights*, Issue 26 (2017), available at <http://sur.conectas.org/en/>

¹⁷ Dustin Sharp, “Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition,” *International Journal of Transitional Justice* 9, no. 1 (2015): 159; Firchow and Mac Ginty “Indivisibility of Rights,” in this volume. This approach is echoed in Marina Sitrin’s discussion of justice as produced through action and practice, “HIJOS: Breaking Social Silence with Another Kind of Justice,” in this volume. Our approach also resembles the view of Weinstein and Stover, memorably summed up as: “Justice, like beauty, is in the eye of the beholder and can be interpreted in a variety of ways,” in Harvey M. Weinstein and Eric Stover, “Introduction: Conflict, Justice and Reclamation,” in *My Neighbour, My Enemy*, ed. Eric Stover and Harvey M. Weinstein, 4. Justice in transition resonates with transformative justice, but while justice in transition is a conceptual term or framework, transformative justice is conceived by the authors as a form of practice or activism – in short, the latter is a means of delivering the former.

a transitional justice that is closer to the pulse of contemporary activism and protest, and more nimble in navigating the tapestry of attacks – physical, legislative, administrative, on funding – assailing civil society across the globe.

A third article¹⁸ highlights the lack of a clear theory of change underpinning transitional justice.

There is a fundamental and existential problem with transitional justice: it does not really know what it is. In part due to a lack of what development practitioners term the ‘theory of change,’ it is very difficult to delineate what and who transitional justice is for. Both a serious cause and consequence has been the expansion of the concept to incorporate a huge range of objectives and claims, from formal prosecutions to broader development goals, without sufficient critical reflection. Transitional justice is an over-burdened and under-conceptualised idea.¹⁹

Few NGOs, intergovernmental organizations (IGO), or donors in the transitional justice field work with an explicit theory of change. A theory of change can be understood as setting out “underlying assumptions about the relationships between desired outcomes and the way proposed interventions are expected to *bring them about*.”²⁰ Transitional justice advocates make many claims that the core components of their trade – criminal prosecutions, truth-telling interventions, reparations, and institutional reform – deliver change, e.g., that truth-telling contributes to reconciliation, that justice challenges impunity and acts as a deterrent, that institutional reform can aid non-repetition of violations, and so on. These constitute versions of what Eyben and colleagues call “archetype frameworks,” where change is implicitly thought to come about through some taken for granted conventional wisdom.²¹

Theories of change in transitional justice remain largely implicit, linear, and normative, rather than explicit, multi-directional, and empirically rooted. Its discourse employs a range of broad concepts – justice, truth, reconciliation, peace, democracy – which are frequently not defined, or are defined vaguely, and conflated. Correlation is often interpreted as causation. Pathways that

¹⁸ Paul Gready and Simon Robins, “Transitional Justice and Theories of Change,” forthcoming.

¹⁹ Anna Macdonald, “Local Understandings and Experiences of Transitional Justice: A Review of the Evidence,” (Justice and Security Research Programme, London School of Economics, Paper 6, July 2013), 4.

²⁰ Alfredo Aragón and Juan Macedo, “A ‘Systemic Theories of Change’ Approach for Purposeful Capacity Development,” *IDS Bulletin* 41, no. 3 (2010): 89, italics in the original.

²¹ Rosalind Eyben, Thalia Kidder, Jo Rowlands, and Audrey Bronstein, “Thinking about Change for Development Practice: A Case Study from Oxfam UK,” *Development in Practice* 18, no. 2 (2008): 202–3.

“unpack the black box of causality”²² linking inputs, outputs, and outcomes are rarely identified. Claims about impact are almost never accompanied by counter-factual analysis – what would have been accomplished in the absence of formal transitional justice interventions? There remains a strong tendency in both transitional justice theory and practice to assume that a particular impact can be traced to particular mechanisms, ignoring the complex social and political environment. In practice, all outcomes, both positive and negative, are multi-causal. The lack of clear theories of change fuels the “expectation management problem” that invariably plagues transitional justice interventions.²³

The introduction of theories of change into practice has been driven largely by donors in specific sectors, notably development, often informed by a desire for “results,” quantifiable outcomes, and frequently simplistic causal links between activities on the one hand and outcomes on the other. Our article has a different agenda: to explore the potential for theories of change in transitional justice to become more focused, evidence-based and transformative, and both to make explicit the goals of transitional justice and ensure that these are shared by concerned communities. We seek to use theories of change as a way of conceptualizing transitional justice interventions as a process, from conception to evaluation, and as part of broader social and political contextual developments, with the aim of using such theories as a focused tool to drive accountability and bottom-up approaches. If justice in transition is to be transformative, then it must address the issues of process and context – for example, the complex politics of transitional societies, including state fragility, histories of social exclusion and poverty, and the causes of conflict – and impacts that are felt at the local, and not only national, level. We argue that using complexity theory and an actor-oriented approach allows stakeholders to drive the goals of a process and the evaluation of outcomes, representing an approach to theory building in transitional justice from below. Developing theories of change is presented as an opportunity to drive deeper processes of reflection, dialogue, and ownership among stakeholders. We argue that such an approach can enable a better understanding of the complexities of change processes in transition and navigate a route to impact through such processes.

Taken together, these three articles go beyond the suggestion of micro-alternatives and adaptation, to argue for a comprehensive overhaul of, and

²² Craig Valters, “Theories of Change: Time for a Radical Approach to Learning in Development” (Overseas Development Institute and the Asia Foundation, September 2015): 5.

²³ Ray Nickson and John Braithwaite, “Deeper, Broader, Longer Transitional Justice,” *European Journal of Criminology* 11, no. 4 (2014): 445–63.

alternative to, contemporary transitional justice. The remainder of the introduction further unpacks this alternative by addressing four questions for transformative justice itself: Given that alternatives can perform various functions, does transformative justice seek to replace or reform transitional justice? How should transformative justice engage with the state and state institutions? Is its main focus on the past, and redress for the past, or does it adopt a different temporal register? How can a complex, holistic agenda be delivered in practice?

REPLACING OR REFORMING TRANSITIONAL JUSTICE?

With reference to both human rights and transitional justice, Langford argues that different paths can be taken when responding to critique, one is minimalist and apologetic while a second is more ambitious and less apologetic.²⁴ In between these two paths is a middle way, advocated in this volume by Waldorf in his call for a “good enough” transitional justice (it “is just one among many tools – and a fairly limited one at that”), and Roht-Arriaza who advocates “stretching ... without breaking” the transitional justice agenda.²⁵ There are obvious challenges in broadening the ambition of an approach that struggles to deliver on its existing, narrower remit, e.g., truth, justice, reparations. But my argument is that “good enough” is “not good enough” if it translates into transition without transformation, treating symptoms and not causes, and short-term fixes over long-term perspectives. Further, transformative justice is as much about “doing differently” as it is about “doing more.” In this section, I address the implications of the expansionary tendency in fields of practice; the issue of what kind of transformation is desirable (transformation of what?); and, finally, the overarching question of whether transformative justice should reform or replace transitional justice.

The expansionary tendency is seemingly irresistible in social justice practice. Fields expand in response to critique and success, and due to the cross-cutting emphasis (at least at the level of rhetoric) on holistic or integrated approaches. So, transitional justice is not alone in this regard – for example, what is often termed “mission creep” in peacebuilding missions has led “not to a pragmatic winnowing of ambition, but rather to the amplification of

²⁴ Langford, “Rights and Transformation,” in this volume.

²⁵ Lars Waldorf, “Between Transition and Transformation: Legal Empowerment as Collective Reparations,” Naomi Roht-Arriaza, “Measures of Non-Repetition in Transitional Justice: The Missing Link?,” both in this volume.

activities and ambitions.”²⁶ Simultaneous expansion has led to overlaps and intersections among fields such as transitional justice, human rights, peacebuilding, state-building, development, and more. The basis for complementarity shifts from clear divisions of labor to doing similar things differently. The result can also be over-reach, duplication, and confusion.

As Sharp notes, “the horse of a more expansive notion of transitional justice may be out of the proverbial barn.”²⁷ Within transitional justice, expansion has taken various forms. For example, there is now a decade of scholarship and some practice exploring how transitional justice can address socioeconomic rights and, more broadly, development.²⁸ Transformative justice has emerged on the radical fringe of this scholarship and practice, although it is still a concept in search of a clear, agreed definition and associated agenda for practice.²⁹ Individual elements of transitional justice have also expanded. It has been argued that reparations, particularly for women, should seek transformative redress rather than restitution so that women are not returned to the conditions of structural discrimination which characterized the past.³⁰ In this volume,

²⁶ McAuliffe, “The Marginality of Transitional Justice in Liberal Peacebuilding: Causes and Consequences,” *Journal of Human Rights Practice*, 9, no. 1 (2017): 96.

²⁷ Dustin Sharp, “Emancipating Transitional Justice,” 157. For concrete examples of expansion in action, see Roht-Arriaza’s discussion in this volume of the Philippines and Colombia (“Measures of Non-Repetition in Transitional Justice”).

²⁸ Much of this work seeks to expand the remit of transitional justice via adaptation, without questioning the macro-economic and political context within which it operates. An interesting exception is Franzki and Olarte, “Understanding the Political Economy of Transitional Justice.”

²⁹ Transformative justice has been variously defined. Lambourne’s call for transitional justice to be linked to peacebuilding is at the more expansive, everything-but-the-kitchen-sink end of the definitional spectrum (Wendy Lambourne, “Transitional Justice and Peacebuilding after Mass Violence,” *International Journal of Transitional Justice* 3, no. 1 (2009): 28–48). Among more recent contributions, swisspeace provides more concrete guidance as to how approaches from conflict transformation can push beyond the narrow tools/mechanisms and short-termism of mainstream approaches to dealing with the past (Briony Jones, Elisabeth Baumgartner and Sidonia Gabriel, “A Transformative Approach to Dealing with the Past” (swisspeace: Essential, 02/2015)); while Sandoval argues for the maximization of the (modest) transformative potential of transitional justice, rather than new forms of justice, by looking at opportunities and constraints with regard to ordinary, structural and fundamental social change (Clara Sandoval, “Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition,” in *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies*, eds. Roger Duthie and Paul Seils (International Center for Transitional Justice: New York, 2017): 166–200). Finally, McAuliffe delivers a rigorous critique of transformative justice, privileging realism over norms and values, and structures of constraint over needs-based agency (Padraig McAuliffe, *Transformative Transitional Justice and the Malleability of Post-Conflict States* (Cheltenham: Edward Elgar, 2017)).

³⁰ For a discussion of opportunities and constraints, focusing mainly on courts, see Ruth Rubio-Marín and Clara Sandoval, “Engendering the Reparations Jurisprudence of the