# Introduction

What evil slavery breeds! Once conquered by violence, one must endure injustice.

- Chorus, in Hecuba1

### I Faces of Colonial Injustice

With a Union Jack draped over his coffin, the paramount chief of the Herero, Samuel Maherero, returned from exile in Bechuanaland (Botswana), to be buried alongside his ancestors in Okahandja, South West Africa (Namibia), on August 23, 1923. The Herero honor guard who met his train consisted of 150 mounted men and 1,500 infantrymen; most wore German military uniforms and ranks, and subscribed to the pan-African modernizing vision of Marcus Garvey's Universal Negro Improvement Association. Nearly two decades earlier, in 1904. Maherero had led a dispersed alliance of Herero in a war over deteriorating conditions of Imperial German colonial rule. The conflict culminated in the genocide of the Herero and, a year later, of the Nama. The defeated lost all their rights to own land or cattle, to practice their own religion, and to have their own chiefs - a set of conditions that effectively destroyed their traditional economic livelihoods, culture, and political self-determination. The survivors, mainly women and children, were subjected to mass incarceration in death-inducing forced labor "concentration camps." Within four years, up to eighty thousand members, or nearly 80 percent of the Herero community, and ten thousand Nama, about half of its members, perished.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> Euripides, *Hecuba* (or *Hekabe*), lines 332–33. Thanks to Lynn Kozak for her assistance with this translation.

<sup>&</sup>lt;sup>2</sup> General Adrian Dietrich Lothar von Trotha, the German colonial troop commander who issued the infamous genocidal edict in October 1904, was ordered by the Kaiser and Chancellor von Bülow to rescind the extermination order in December but, in January 1905, was instructed by the Chancellor to

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During World War I, fighters from Herero and Nama communities allied with British-led South African forces that invaded German South West Africa, defeating their German oppressors and effectively ending German colonialism in the territory in 1915. In the immediate aftermath, the British Parliamentary "Blue Book" that documented their mistreatment under German colonial administration, including genocide and mass incarceration, served as the basis for stripping Germany of all its colonial claims. Postwar and postgenocide justice for the Herero and Nama, however, did not translate into independence from all colonial rule, punishment of the perpetrators of genocide, cattle and land restitution, or reparations to the survivors.<sup>3</sup> Instead, in 1920, the fledgling new world order heralded by the League of Nations declared South West Africa to be a Class C mandate territory, "inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world." The League's Permanent Mandate Commission appointed the Union of South Africa, led by a white-minority government, as the "civilized" mandatory power to uphold the "sacred trust of civilisation" to administer the territory according to the "wellbeing and development" of the indigenous population.<sup>4</sup> By 1926, the

establish "concentration camps" (*Konzentrationslager*): "the surrendering Herero should be... put under guard and required to work." See David Olusoga and Casper W. Erichsen, *The Kaiser's Holocaust: Germany's Forgotten Genocide* (London: Faber and Faber, 2010), 161. On the rise and fall of Samuel Maherero, his collaborations with Imperial Germany, and the eventual formation of a united Herero identity, see Jan-Bart Gewald, *Herero Heroes: A Socio-Political History of the Herero of Namibia 1890–1923* (Oxford: James Currey, 1999). On the funeral, see also Wolfram Hartmann, "Funerary photographs: the funeral of a chief," in *The Colonizing Camera: Photographs in the Making of Namibian History*, Wolfram Hartmann, Jeremy Silvester, Patricia Hayes, eds. (Athens: Ohio University Press, 1999), 125–31.

- <sup>3</sup> Under the military administration of the Union of South Africa between 1915 and 1920, some prosecutions were mounted in a "Special Criminal Court," but "there were no detailed investigations into specific allegations contained in the Blue Book . . . and certainly no attempt to put German officers on trial for war crimes." On this point, as well as the postwar contestation of the Blue Book as a piece of English and South African war propaganda against Germany, see the introduction in Jeremy Silvester and Jan-Bart Gewald, Words Cannot Be Found: German Colonial Rule in Namibia: An Annotated Reprint of the 1918 Blue Book (Leiden: Brill, 2003), xviii. The volume contains a reprint of the Blue Book, officially named The Report on the Natives of South-West Africa and Their Treatment by Germany.
- <sup>4</sup> League of Nations, Covenant of the League of Nations, April 28, 1919, www .refworld.org/docid/3dd8b9854.html.

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solidarity forged by the doctrine of white supremacy between existing German settlers and new Afrikaner settlers from South Africa led to a political reconciliation that included an official policy to expunge the Blue Book from government records. In this way, the Herero, the Nama, and other Africans in the territory came to endure internationally supervised colonial subjection under white settler rule for another seventy-five years.<sup>5</sup>

Thus, when Samuel Maherero's son, Friedrich, who also lived in exile from Herero lands, died in 1952, the return of his remains to the same grave site as his father was initially challenged by the Okahandja municipality, which claimed that enlarging the burial ground would contaminate the village's water installations. Eventually, Friedrich's remains were permitted to be buried at the grave site, but only on the condition that no other descendants of Maherero would be buried there after Friedrich. In an official communication, the municipal authorities asked, "Why should the public interests of whites be left behind in the interests of native traditions *which will inevitably die out*?"<sup>6</sup>

Neither the Herero nor their traditions died out. Following Namibian independence, the Herero mounted a legal case in 2001 against the German state as well as German corporations for the 1904–1907 genocide.<sup>7</sup> The postcolonial Namibian state, dominated by another major social group, the Ovambo, refused to support the Herero demand for reparations until 2007, when the Namibian National Assembly resolved that "the government should be an interested party in any discussion between its nationals and the German government on the issue of reparation."<sup>8</sup> The motion stated that "reparation seeks to identify and redress those wrong doings so that the countries and people who suffered will enjoy full freedom to continue their own development on more equal terms."<sup>9</sup>

- <sup>7</sup> Deutsche Welle, "Germany urges Herero to drop lawsuit," August 5, 2004.
- <sup>8</sup> New Era, "Ovaherero, Nama weigh into government on reparation stance," February 18, 2016.

<sup>9</sup> National Assembly of Republic of Namibia, "Motion on the OvaHerero genocide," September 19, 2006, http://genocide-namibia.net/wp-content/uploads/2015/02/2006\_09\_Motion\_Genocide\_nam\_parliament-1.pdf.

<sup>&</sup>lt;sup>5</sup> See Susan Pedersen, The Guardians: The League of Nations and the Crisis of Empire (Oxford: Oxford University Press, 2015), 114–20.

<sup>&</sup>lt;sup>6</sup> Gewald, *Herero Heroes*, 283, emphasis mine. By the 1980s, Herero chiefs were buried once again at the gravesite in Okahandja.

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The hundredth anniversary of the end of German colonialism prompted a petition demanding Germany to "finally face the truth and recognise its own historical responsibility for the genocide of the Ovaherero and Nama: there should be no unequal treatment for African victims of genocide or their descendants!" The petition, "Genocide is Genocide," was delivered to the office of the German president, Joachim Gauck, by a delegation from Namibia, led by the Herero Paramount Chief and former attorney-general of Namibia, Vekuii Rukoro, on July 9, 2015. The petition called on the German president, parliament, and government to recognize "the genocide against the Ovaherero and Nama" and to declare Germany's "unconditional willingness to participate in an open dialogue with the descendants of the victims, as well as with the Namibian government concerning measures which can be taken to achieve reconciliation."<sup>10</sup> One year later, in July 2016, the German government of Angela Merkel announced that it would formally recognize the genocide and apologize to Namibia.<sup>11</sup> The interstate efforts by the Namibian and German governments, however, have been criticized by some Herero and Nama leaders and activists for excluding their representatives and leaders as well as the most affected communities in the structures the two states have set up to negotiate a joint interstate response to the 1904–1907 Herero/Nama genocide.<sup>12</sup> Dissatisfaction over the interstate process has moved representatives of the minority Herero and Nama communities to lodge a class action lawsuit against Germany, under the Alien Tort Statute, with the US District Court in Manhattan.<sup>13</sup>

- <sup>10</sup> The German President did not receive the group personally. Petition, "Genocide is genocide!," July 9, 2015, English translation available at: http://genocidenamibia.net/wp-content/uploads/2015/06/appeal-genocide-is-genocide-English.pdf.
- <sup>11</sup> J. Huggler, "Germany to recognise Herero genocide and apologise to Namibia," *The Telegraph*, July 14, 2016.
- <sup>12</sup> German Bundestag, "Press statement on reparation for the 1904–1908 genocide committed by Imperial Germany on the Herero and Nama people/ nation," February 17, 2016, English translation available at: http://genocidenamibia.net/wp-content/uploads/2015/03/PRESS-CONFERENCE-17-FEBRUARY-2016.pdf. In 2015, Namibia appointed Dr. Zed Ngavirue and Germany appointed Ruprecht Polenz as special envoys to discuss reparations. See also N. Onishi, "Germany grapples with its African genocide," New York Times, December 29, 2016.
- <sup>13</sup> The Herero today comprise 8 percent of the Namibian population, and the Nama approximately 5 percent. *BBC News*, "Herero and Nama groups sue Germany over Namibia genocide," January 6, 2017.

#### Faces of Colonial Injustice

The struggles of the Herero and the Nama for justice and reconciliation over the devastations of colonial rule are shared by many others. In June 2013, the British government concluded a "full and final settlement" of a high court action that awarded £19.9 million to 5,228 Kenyans for the torture and other mistreatment they endured during the Mau Mau uprising and ensuing state of emergency declared by the British colonial administration in its attempts to thwart an anticolonial insurgency in Kenya between 1952 and 1960.<sup>14</sup> A further legal claim has been launched against the British Foreign and Commonwealth Office (FCO) by a group of more than forty-four thousand Kenyans for physical abuse, false imprisonment, forced labor, and other deprivations suffered in the same period.<sup>15</sup> The Mau Mau reparations case has also inspired a lawsuit by the families of thirty-three people who were killed by British colonial forces while peacefully demonstrating against the detention of pro-independence activists during a state of emergency declared in the spring of 1959 in Malawi.<sup>16</sup> Meanwhile, a group of 1,104 Koreans have formed the largest class action lawsuit against seventy Japanese firms for forced labor in Japanese munitions factories during World War II, claiming 100 billion won (US\$90 million) for unpaid wages and damages.<sup>17</sup> Furthermore, in March 2014, fourteen Caribbean countries agreed on a comprehensive plan that calls upon "the former slave-owning nations of Europe – principally Britain, France, Spain, Portugal, the Netherlands, Norway, Sweden and Denmark - to engage Caribbean governments in reparatory dialogue to address the living legacies of these crimes."<sup>18</sup> In the US, scholars and social activists have called for a congressional commission to study

- <sup>15</sup> O. Bowcott, "Mau Mau rebellion victims claim parliament was misled over torture," *The Guardian*, May 23, 2016.
- <sup>16</sup> G. Mapondera, "Malawians seek compensation for Nyasaland massacre during British rule," *The Guardian*, April 20, 2015.
- <sup>17</sup> See S. Miou, ed., "100 S. Korean victims of Japan's wartime forced labor join lawsuits against Japanese firms," *Xinhuanet*, February 2, 2016. For an overview of transitional justice issues in South Korea, both international and domestic, see Hun Joon Kim, "Transitional Justice in South Korea," in *Transitional Justice in the Asia-Pacific*, Renée Jeffery and Hun Joon Kim, eds. (Cambridge: Cambridge University Press, 2014), 229–58.
- <sup>18</sup> Sir H. Beckles, "Reparations Commission press statement," the Caribbean Community (CARICOM), December 10, 2013.

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<sup>&</sup>lt;sup>14</sup> Press Association, "UK to compensate Kenya's Mau Mau torture victims," *The Guardian*, June 3, 2013.

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"reparation" proposals for African Americans, in light of slavery and its legacies.  $^{19}\,$ 

In addition, indigenous peoples in settler colonial states have pursued projects of justice and reconciliation for policies of cultural devastation, genocide, forced displacement and assimilation under settler colonial rule.<sup>20</sup> The Canadian government, for example, apologized in 2008 for the Indian residential schools system, which involved the separation, and often forced removal, of more than 150,000 indigenous children from their families and communities between the 1880s and 1980s. The rationale of the system – "to kill the Indian in the child" – amounted to a civilizing strategy based on assumptions about the inferiority of indigenous peoples and their need to be domesticated into civilization.<sup>21</sup> The 2015 Truth and Reconciliation Commission of Canada found that, instead of achieving any civilizational aims, residential schools were "part of a conscious policy of cultural genocide," exposing indigenous children to widespread physical and sexual abuse and systemic deprivations of food, housing, and clothing, resulting in

<sup>21</sup> On June 11, 2008, then Prime Minister of Canada Stephen Harper made a Statement of Apology to former students of Indian Residential Schools, on behalf of the Government of Canada. See Prime Minister Stephen Harper, "Statement of apology to former students of Indian Residential Schools," Indigenous and Northern Affairs Canada, June 11, 2008. The Indian Residential Schools Settlement Agreement, the largest class action settlement in Canadian history, provided for CAN\$1.9 billion to more than seventy-eight thousand former students of the residential schools system; CAN\$3.024 billion for settling more than thirty-five thousand claims of sexual abuse and serious physical and psychological abuse; CAN\$60 million for the Canadian Truth and Reconciliation Commission; CAN\$20 million for commemorative projects; and CAN\$125 million for the Aboriginal Healing Foundation to assist with providing mental and emotional health services to affected individuals and communities.

<sup>&</sup>lt;sup>19</sup> For moral, legal, and strategic analysis of the case for redress, as well as sources on the long history of activism on this issue, see Michael T. Martin and Marilyn Yaquinto, eds., *Redress for Historical Injustices in the United States:* On Reparations for Slavery, Jim Crow, and Their Legacies (Durham, NC: Duke University Press, 2007); Ta-Nehisi Coates, "The case for reparations," The Atlantic, June 2014.

<sup>&</sup>lt;sup>20</sup> See Penelope Edmonds, Settler Colonialism and (Re)conciliation: Frontier Violence, Affective Performances, and Imaginative Refoundings (Basingstoke: Palgrave Macmillan, 2016); Glen Sean Coulthard, Red Skin, White Masks: Rejecting the Colonial Politics of Recognition (Minneapolis: University of Minnesota Press, 2014); Elazar Barkan, The Guilt of Nations: Restitution and Negotiating Historical Injustices (New York: W. W. Norton, 2000).

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the documented deaths of more than six thousand children.<sup>22</sup> In addition to the compensation and victim assistance programs provided to survivors, the Truth and Reconciliation Commission issued ninety-four recommendations, including calls on "federal, provincial, territorial, and municipal governments to fully adopt and implement the [2007] United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation."<sup>23</sup>

### **II** Fundamental Questions

The emerging prominence of these and other cases associated with the history and practice of colonial war, oppression, and atrocity raises critical but also perplexing questions about justice and reconciliation as moral/political projects in contemporary international and transnational relations. Why has it taken more than one hundred years for the Herero and Nama genocides to be widely and publicly acknowledged?<sup>24</sup> Why are these other cases of colonial atrocity only being litigated or settled now? Are contemporary agents obliged to apologize or make any reparations for the acts of previous generations and governments? Why is the Namibian state reluctant to support the demands for justice and reconciliation launched by the Herero? Why is the pursuit of justice and reconciliation for colonial injustice limited to cases of genocide, torture, and other egregious human rights violations? What response is still required of international institutions, given that international endorsement of colonialism officially ended in 1960 with the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples? Why should struggles for justice and reconciliation by indigenous peoples in settler colonial and "postcolonial" states be considered pertinent to the study of these themes

<sup>&</sup>lt;sup>22</sup> The Final Report of the Truth and Reconciliation Commission of Canada, vol. 1, Summary (Toronto: James Lorimer, 2015).

<sup>&</sup>lt;sup>23</sup> See Calls to Action 43-44 in Truth and Reconciliation Commission of Canada, Calls to Action, 4, www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\_ to\_Action\_English2.pdf.

<sup>&</sup>lt;sup>24</sup> Despite heightened awareness in Africa and Germany, in April 2015, Pope Francis called the Armenian genocide by Ottoman Turkish forces during the First World War "the first genocide of the twentieth century." See David Olusoga, "Dear Pope Francis, Namibia was the 20th century's first genocide," *The Guardian*, April 18, 2015.

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in international relations? Such questions reveal that struggles to settle accounts for colonial injustices have not only been historically and politically contentious but also morally controversial. Answering these questions will involve a critical examination of the historical development of practices and institutions of justice and reconciliation in modern international relations and open up a challenging array of normative issues for scholars engaged with these concepts in political theory, international relations, human rights, transitional justice, legal studies, and postcolonial studies.

Whose responsibility is it to redress and address colonial injustices, given the historical legality of colonial international order? Which agents should participate in redress and reconciliation processes – individuals, states, other corporate agents, or other social groups such as indigenous peoples? How do contemporary agents incur any responsibility to redress injustices of the distant past? How is redress for colonial injustice related to theorizing and realizing contemporary global justice? Under what conditions might agents be reconciled to the social/political institutions that enabled or produced social and political injustices and that still may constitute so many of the options and limits of their lives? What implications does the pursuit of justice and reconciliation in response to colonial injustice have for the development and transformation of international and global order?

This book is a study in normative and critical political theory of how to conceptualize practices of justice and reconciliation that aim to respond to colonial and structural injustice in international and transnational contexts. The objective is to improve our normative descriptions and diagnoses of interactional and structural injustices associated with colonial rule in modern international relations, with a view toward developing more plausible and normatively constructive orientations for understanding, analyzing, and evaluating contemporary international and transnational political efforts to redress and address such injustices. In pursuing this aim, this book builds on and integrates extensive and diverse literatures in political theory, transitional justice, and international relations and history.

Political theorists have become increasingly engaged with both the global contexts of justice<sup>25</sup> and dimensions of rectificatory justice in

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<sup>&</sup>lt;sup>25</sup> See Charles Beitz, Political Theory and International Relations (Princeton, NJ: Princeton University Press, 1999 [1979]); John Rawls, The Law of Peoples

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historical and transitional contexts.<sup>26</sup> There is still work to do, however, to connect these literatures and to clarify the relationship between theories of justice that seek to redress historic and transitional contexts, and more general theories of political, social, and global justice. Some philosophical work has focused on individual moral psychology and reactive attitudes as the bases for conceptualizing justice and reconciliation in the framework of repairing interpersonal moral, civic, and sentimental relations.<sup>27</sup> A large body of theoretical work has engaged in analyses of principles and practices of rectificatory, corrective, restorative, or transitional justice, such as acknowledgment, apology, retribution, amnesty, reparation, and forgiveness,<sup>28</sup> as well as of institutions of

(Cambridge, MA: Harvard University Press, 1999); David Miller, National Responsibility and Global Justice (Oxford: Oxford University Press, 2007); Laura Valentini, Justice in a Globalized World: A Normative Framework (Oxford: Oxford University Press, 2011); Lea Ypi, Global Justice and Avant-Garde Political Agency (Oxford: Oxford University Press, 2012); Mathias Risse, On Global Justice (Princeton, NJ: Princeton University Press, 2012).

- <sup>26</sup> See Janna Thompson, Taking Responsibility for the Past: Reparation and Historical Injustice (Malden, MA: Polity Press, 2002); Jeff Spinner-Halev, Enduring Injustice (Cambridge: Cambridge University Press, 2012); Daniel Butt, Rectifying International Injustice: Principles of Compensation and Restitution between Nations (Oxford: Oxford University Press, 2009); Manfred Berg and Bernd Schaefer, eds., Historical Justice in International Perspective (Cambridge: Cambridge University Press, 2009).
- <sup>27</sup> See Jeffrie G. Murphy and Jean Hampton, Forgiveness and Mercy (Cambridge: Cambridge University Press, 1988); Jeffrie G. Murphy, Getting Even: Forgiveness and Its Limits (Oxford: Oxford University Press, 2003); Margaret Urban Walker, Moral Repair: Reconstructing Moral Relations after Wrongdoing (Cambridge: Cambridge University Press, 2006); Charles L. Griswold, Forgiveness: A Philosophical Exploration (Cambridge: Cambridge University Press, 2007); Nyla R. Branscombe and Bertjan Doosje, eds., Collective Guilt: International Perspectives (Cambridge: Cambridge University Press, 2004).
- <sup>28</sup> See Martha Minow, Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence (Boston: Beacon Press, 1998); P. E. Digeser, Political Forgiveness (Ithaca, NY: Cornell University Press, 1994); Mihaela Mihai and Mathias Thaler, eds., On the Uses and Abuses of Political Apologies (Basingstoke: Palgrave Macmillan, 2014); Melissa Nobles, The Politics of Official Apologies (New York: Cambridge University Press, 2008); Jon Miller and Rahul Kumar, eds., Reparations: Interdisciplinary Inquiries (Oxford: Oxford University Press, 2007); Anthony Duff and David Garland, eds., A Reader on Punishment (Oxford: Oxford University Press, 1994); Robert Meister, After Evil: A Politics of Human Rights (New York: Columbia University Press, 2011); Bronwyn Leebaw, Judging State-Sponsored Violence, Imagining Political Change (Cambridge: Cambridge University Press, 2011).

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accounting and accountability, such as truth commissions and criminal tribunals.<sup>29</sup> Some theoretical discussions have also contributed to conceptual clarification and theoretical innovations in understanding the meaning and value of reconciliation in contexts of political transition from authoritarian to democratic rule.<sup>30</sup> Political theorists have also extended visions of responsibility for political injustices and harms, investigating the notions of complicity, corporate and collective wrong-doing, and responsibility for structural injustice.<sup>31</sup>

In addition, contemporary strategies of redress for injustices from the colonial era have relied on practices that developed in response to atrocities committed in contexts of interstate war or in contexts of political transition after domestic repression. Such practices have been the subject of a vast interdisciplinary field of "transitional justice,"<sup>32</sup> which primarily examines principles, institutions, and practices of dealing with politically induced mass atrocities and serious human

- <sup>29</sup> Judith Shklar, *Legalism* (Cambridge, MA: Harvard University Press, 1964); Carlos Santiago Nino, *Radical Evil on Trial* (New Haven, CT: Yale University Press, 1996); Robert I. Rotberg and Dennis Thompson, *Truth v. Justice: The Morality of Truth Commissions* (Princeton, NJ: Princeton University Press, 2000); Gary Jonathan Bass, *Stay the Hand of Vengeance* (Princeton, NJ: Princeton University Press, 2000); Mark A. Drumbl, *Atrocity, Punishment, and International Law* (Cambridge: Cambridge University Press, 2007); Mark J. Osiel, *Making Sense of Mass Atrocity* (Cambridge: Cambridge University Press, 2009); Mihaela Mihai, *Negative Emotions and Transitional Justice* (New York: Columbia University Press, 2016).
- <sup>30</sup> Andrew Schaap, Political Reconciliation (New York: Routledge, 2005); Linda Radzik, Making Amends: Atonement in Morality, Law, and Politics (Oxford: Oxford University Press, 2009); Colleen Murphy, A Moral Theory of Political Reconciliation (Cambridge: Cambridge University Press, 2010); Daniel Philpott, Just and Unjust Peace: An Ethic of Political Reconciliation (Oxford: Oxford University Press, 2012).
- <sup>31</sup> Larry May, Sharing Responsibility (Chicago: University of Chicago Press, 1992); Christopher Kutz, Complicity (Cambridge: Cambridge University Press, 2000); Tracy Isaacs, Moral Responsibility in Collective Contexts (Oxford: Oxford University Press, 2011); Tracy Isaacs and Richard Vernon, eds., Accountability for Collective Wrongdoing (Cambridge: Cambridge University Press, 2011); Iris Marion Young, Responsibility for Justice (Oxford: Oxford University Press, 2011); Robert E. Goodin and Chiara Lepora, On Complicity and Compromise (Oxford: Oxford University Press, 2013).
- <sup>32</sup> On the contested and political nature of "transitional justice" as a distinct interdisciplinary field of research stemming from practice, see Christine Bell, "Transitional justice, interdisciplinarity and the state of the 'field' or 'non-field,'" *International Journal of Transitional Justice* 3, 1 (2009): 5–27. For a new theoretical treatment, see Colleen Murphy, *The Conceptual Foundations of Transitional Justice* (Cambridge: Cambridge University Press, 2017).

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