

## JUSTICE FRAMED

Why are certain responses to past human rights violations considered instances of transitional justice while others are disregarded? This study interrogates the history of the discourse and practice of the field to answer that question. Zunino argues that a number of characteristics inherited as transitional justice emerged as a discourse in the 1980s and 1990s have shaped which practices of the present and the past are now regarded as valid responses to past human rights violations. He traces these influential characteristics from Argentina's transition to democracy in 1983, the end of communism in Eastern Europe, the development of international criminal justice and the South African truth commission of 1995. Through an analysis of the post-World War II period, the decolonisation process and the Cold War, he identifies a series of episodes and mechanisms omitted from the history of transitional justice because they did not conform to its accepted characteristics.

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# Justice Framed

A GENEALOGY OF TRANSITIONAL JUSTICE

MARCOS ZUNINO

British Institute of International and Comparative Law



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This book is dedicated to Elena, with hope of a kinder world for her to grow up in.

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## Preface

This book is essentially about origins and the stories we tell about them. The genesis of this book, in a certain way, is rooted in my own origins. I was born in Argentina during the last dictatorship of 1976–1983. The day I was born, Argentina won the football World Cup while people were being tortured and disappeared. The children of those who disappeared, the same age as I was, were taken from them and given to people aligned with the regime. I grew up alongside the young democracy that replaced the dictatorship and that struggled to come to terms with a dark past, facing military uprising for trying to bring those responsible to justice. I studied law under the shadow of an impunity that seemed irreversible. I was working in the Argentine judiciary when the tide changed and prosecutions for the crimes of the dictatorship became the norm. Therefore, when I first heard of the term ‘transitional justice’ while I was in my master’s program at the University of Queensland in 2008, I felt, paraphrasing Monsieur Jourdain in Molière’s *Le Bourgeois Gentilhomme*, that I had been doing transitional justice all my life without knowing. From then on, I became interested in the systematic study of situations like that of my own country – which was trying to respond to its legacy of widespread violence – and eventually decided to carry out a doctoral project on transitional justice. This book is the ultimate result of that project that I undertook at the University of Cambridge and, in a way, the result of the larger personal project I have been embarked on since 1978. While this book is on the global discourse of transitional justice, I want to acknowledge here its genealogical roots in the history of my country and my personal relationship with it.

The history of transitional justice was initially meant to be merely a section of a chapter of my doctoral dissertation. As often happens, this part ended up swallowing the whole project. Early discussions with my supervisor convinced me that the history of the discourse of transitional justice was a topic that

deserved a doctoral dissertation and possibly a book. The next few years were devoted to trying to bring that project to fruition.

I received help from more people than I can acknowledge here. First and foremost, I would like to thank my doctoral supervisor Dr Sarah Nouwen for her tireless advice, support and encouragement. Her insightful comments and suggestions certainly helped me to refine the project and strengthen the final product. She was able to see the book at the end of the tunnel when I was still grappling with the foundations. I am also indebted to my doctoral examiners Professor Eyal Benvenisti and Professor Kieran McEvoy for carefully reading my dissertation and providing excellent feedback that proved invaluable for turning it into a book. This book has also benefitted from the input of the participants in the different venues where I presented my work: the University of Cambridge, the University of Oxford, the University of Essex, the University of East London, New York University, the University of Glasgow and the International Studies Association.

This book would not have been possible without the generous support of the Cambridge Trust, whose funding enabled me to carry out my research. Thanks are due to the fellows and staff of the University of Cambridge, the Faculty of Law and Queens' College for the various important ways in which they helped me, allowing me to concentrate on my research. I am thankful for the year I spent as a scholar in residence at the Center for Human Rights and Global Justice of New York University's School of Law. The Center provided me with a stimulating environment where I benefitted from conversations with Pablo de Greiff, Philip Alston and other scholars. Discussions with many colleagues at the Extraordinary Chambers in the Courts of Cambodia also contributed to this book. I would like to thank Jaime Malamud Goti for kindly agreeing to be interviewed. I am indebted to Oxford University Press for permission to use parts of an article published in the *International Journal of Transitional Justice*. Thanks are due to Finola O'Sullivan and Tom Randall of Cambridge University Press for all their help during book production.

I would not have finished this book without my friends and family. Friends from Argentina and further afield were a constant source of support and encouragement, fortunately too many to be individually named. My family has been with me always. My siblings Inés, Hernán, Lucía and Paula always believed in me even more than I believed in myself. I am indebted to my parents Laura and Jorge for encouraging my curiosity and love of knowledge. I want to dedicate this book to my daughter Elena, who brightened the last stages of its writing. Lastly, my deepest debt of gratitude is to my wife Rose, who unfalteringly supported me in each step of the process.

## Abbreviations

ANC	African National Congress
CONADEP	National Commission on the Disappearance of People (Spanish Acronym)
CSCE	Conference on the Security and Co-operation in Europe
CVSR	Centre for the Study of Violence and Reconciliation
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Court of Human Rights
FRELIMO	Mozambique Liberation Front (Portuguese Acronym)
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IJTJ	International Journal of Transitional Justice
ILC	International Law Commission
IMT	International Military Tribunal
MFA	Armed Forces Movement (Portuguese Acronym)
NGO	non-governmental organisation
NMT	Nuremberg Military Tribunal
OHCHR	United Nations Office of the High Commissioner for Human Rights
PIDE	Portuguese Political Police (Portuguese Acronym)
SATRC	Truth and Reconciliation Commission of South Africa

UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNTAET	United Nations Transitional Authority in East Timor
USIP	United States Institute of Peace

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