

Cambridge University Press
 978-1-107-04017-5 - *Jus Post Bellum and Transitional Justice*
 Edited by Larry May and Elizabeth Edenberg
 Excerpt
[More information](#)

Introduction

Larry May and Elizabeth Edenberg

Transitional justice concerns the moral and legal considerations that apply to situations where a new, normally more democratic, regime is being formed after mass atrocity or oppression. *Jus post bellum* concerns the moral and legal considerations that apply to situations where a war or armed conflict has come to an end. In both cases, justice pertains to situations where peace is being established. It is not merely peace that is at issue, but a just peace, where mutual respect and the rule of law are key considerations. The chapters in this book will take as their point of departure the securing of a just peace.

Despite having much in common, the literatures on *jus post bellum* and transitional justice seem to be moving in different directions. The *jus post bellum* literature focuses, as one might expect, on the achieving of peace. The transitional justice literature focuses on making the world a more democratic place as a means toward a just social order. But many of the most prominent theorists to write about transitional justice speak quite positively of the use of armed conflict to bring about the ends they seek.¹ While *jus post bellum* theorists want a just peace, not merely any peaceful settlement of hostilities, they focus on the stopping of hostilities; transitional justice theorists may urge a continuation, or initiation, of hostilities aimed at overthrowing of an oppressive regime in order to replace it with a government that is more democratic. The different ways to think about the relationship between justice and peace in these two literatures is at least one major reason to try to bring them together in dialogue with each other, as we attempt to do in this volume.

Transitional justice and *jus post bellum* share in common many concepts that will be explored in these chapters. In both transitional justice and *jus post bellum*, retribution is crucial. In some contexts, criminal trials will need to be

¹ See several of the essays in *Jus Post Bellum: Mapping the Normative Terrain*, edited by Carsten Stahn and Jennifer Easterly, forthcoming from Oxford University Press.

Cambridge University Press

978-1-107-04017-5 - Jus Post Bellum and Transitional Justice

Edited by Larry May and Elizabeth Edenberg

Excerpt

[More information](#)

held, and in others truth commissions and other hybrid trials will be considered more appropriate means for securing some form of retribution. In the literatures that are emerging on transitional justice and *jus post bellum*, the victims of war and atrocity are front and center. But, of course, the victims are not the only ones who need to be satisfied for the securing of a just peace. The bystanders as well as the perpetrators will also have to be satisfied to a certain extent if the peace is to hold because reconciliation of former adversaries is essential to securing a just and lasting peace in both domestic transitional periods and in post-conflict rebuilding.²

The issues that are addressed in this book are ones that have been addressed for thousands of years, and yet the literature on which the authors draw is some of the most current and timely, such as very recent case law from the ad hoc tribunals as well as the International Criminal Court (ICC). The idea of holding truth commissions is very recent indeed, especially those forms that are modeled on the South African Truth and Reconciliation Commission that was founded in the aftermath of the end of apartheid. Yet, the idea of granting amnesty rather than taking revenge after war's end is at least as old as written history, with important amnesties occurring in Classical Greece and earlier. Indeed, in reading Homer and Hesiod one comes away with the belief that in Ancient Greece wars ended in only one of two ways: in amnesties or in mass slaughter of the losers by the victors. Luckily today there are intermediate positions at the end of war or mass atrocity.

In this introductory chapter, we outline the major concepts in play in the literatures on *jus post bellum* (Section I) and transitional justice (Section II). We then discuss the import of bringing these two separate literatures together (Section III). Given the overlapping aim of securing a just and lasting peace, as well as the overlapping concepts that figure in each theory, we believe theorists of *jus post bellum* and transitional justice will find it useful to see the main concepts in each of these literatures contrasted with each other. Lastly (Section IV), we outline the arguments in each chapter of the volume and suggest connections between the different chapters and the key principles in dispute in both *jus post bellum* and transitional justice.

1.1. JUS POST BELLUM PRINCIPLES

Jus post bellum principles all are aimed at securing a just and lasting peace at the end of war or armed conflict. Discussion of these principles has been

² See Colleen Murphy and Linda Radzik's contribution to this volume for a discussion of *jus post bellum* and political reconciliation.

Cambridge University Press

978-1-107-04017-5 - Jus Post Bellum and Transitional Justice

Edited by Larry May and Elizabeth Edenberg

Excerpt

[More information](#)

Introduction

3

standard fare in the Just War tradition for several thousand years, even if *jus post bellum* principles are not usually given the status afforded to *jus ad bellum* and *jus in bello* principles. Historically, the most significant discussions of *jus post bellum* principles occurred in the writings of Francisco Vitoria, a Dominican theologian in the sixteenth century, and Hugo Grotius, a lawyer and diplomat in the seventeenth century. We use the writings of these two very different theorists to explain how best to understand what we believe to be the most significant *jus post bellum* principles: retribution, reconciliation, rebuilding, restitution, reparations, and proportionality.

After war is over, one of the most important and most difficult conditions to satisfy is that of retribution – bringing those to account who committed wrongs either by initiating an unjust war or by waging war unjustly. This is especially problematic because holding criminal trials and then punishing often-popular state leaders sometimes makes another condition of *jus post bellum*, reconciliation, very difficult also to satisfy. But it is hard to comprehend what *post bellum* justice would involve if it did not have some accounting for the wrongdoers during the war or armed conflict that has now ended. Closure is hard to achieve if there is not a public reckoning for those who used the war as an occasion to commit wrongs, or who chose to conduct war in a wrongful way. At the end of war there needs to be a just peace.

The major theorists of the Just War tradition rarely talked about criminal trials but certainly were focused on punishment of some kind for the wrongdoers after war ends. In the sixteenth century Francisco Vitoria argued that wrongs committed during war should be punished “proportionate to fault,”³ linking retribution with *jus post bellum* proportionality. And Vitoria argued that determining whether retribution “be for the public good”⁴ is the ultimate guide for whether or not to seek retribution. Grotius talked about some kind of tribunal in this respect, as when he says that “in some cases war is lawfully waged . . . in order that they [the criminals] may be brought to trial.”⁵ Today, we hold international criminal trials in order to seek retribution for prominent offenders after a war. The first of these international tribunals convened to seek retribution for war crimes was held following World War II.⁶ More

³ Francisco Vitoria, *De Indus et de Ivre Belli Reflectiones* (Reflections on Indians and on the Laws of War) (1557), translated by John Pawley Bate, Washington, DC: Carnegie Institution, 1917, sec. 56, p. 185.

⁴ Vitoria, *De Indus et de Ivre Belli Reflectiones*, section 47, p. 182.

⁵ Hugo Grotius, *De Jure Belli ac Pacis* (On the Law of War and Peace) (1625), translated by Francis W. Kelsey, Oxford: Clarendon Press, 1925, bk. I, ch. 3, sec. 13, p. 69.

⁶ See the discussion of the “Nuremberg Precedent” in Larry May, *Aggression and Crimes against Peace*, New York: Cambridge University Press, 2008, ch. 7.

Cambridge University Press

978-1-107-04017-5 - Jus Post Bellum and Transitional Justice

Edited by Larry May and Elizabeth Edenberg

Excerpt

[More information](#)

recently, the International Criminal Court has been established as a permanent international judicial institution that prosecutes war crimes, crimes against humanity, and genocide. Several of the chapters in this collection focus on the International Criminal Court and the retributive aims of *jus post bellum* and transitional justice.

The second condition of *jus post bellum* is reconciliation. After war or armed conflict is over, a key consideration of *post bellum* justice is that the parties come to a lasting peace where mutual respect for rights is the hallmark. Vitoria was concerned with the effects of punishing those who have done wrong during war and argues that punishment must be mitigated by “moderation and Christian humility” so as best to achieve a secure and just peace.⁷ Grotius also recognized the need for reconciliation between warring parties at the conclusion of a war. As part of this aim, he discussed the conditions under which clemency rather than punishment should be meted out⁸ and also claimed that there are certain duties that must be performed even toward one’s enemies.⁹ As we will see, Grotius believed that a different form of justice was needed in such cases, something he called *meionexia*. Today, reconciliation is again taking center stage in *jus post bellum* debates with the idea of a return to the rule of law as one of the major normative categories related to reconciliation. A just form of reconciliation requires a system of laws where all parties are recognized as equal before the law.¹⁰

The third condition of *jus post bellum* is rebuilding. Rebuilding is the condition that calls upon all those who participated in devastation during war to rebuild as a means to achieve a just peace. Grotius said that “all the soldiers that have participated in some common act, as the burning of a city, are responsible for the total damage.”¹¹ Being responsible for damage caused leads readily to the idea of responsibility for rebuilding. One of the most difficult issues in the *post bellum* debates over the centuries is whether both the just and unjust sides of a war have obligations to rebuild. Vitoria addressed this issue straightforwardly when he said that “injured states can obtain satisfaction” even if they are those who have done wrong because “fault is to be laid at the door of their princes” not with those people who acted in good faith in following the dictates of these princes.¹² While some in the Just War tradition called for the

⁷ Vitoria, *De Indus et de Ivre Belli Reflectiones*, section 60, p. 187.

⁸ Grotius, *De Jure Belli ac Pacis*, bk. III, ch. 11, sec. III, p. 725.

⁹ Grotius, *De Jure Belli ac Pacis*, bk. III, ch. 9, sec. I, p. 722.

¹⁰ See Colleen Murphy, *A Moral Theory of Political Reconciliation*, New York: Cambridge University Press, 2010. See also Colleen Murphy and Linda Radzik’s chapter in this volume.

¹¹ Grotius, *De Jure Belli ac Pacis*, bk. III, ch. 10, sec. IV, p. 719.

¹² Vitoria, *De Indus et de Ivre Belli Reflectiones*, sec. 60, p. 187.

Cambridge University Press

978-1-107-04017-5 - Jus Post Bellum and Transitional Justice

Edited by Larry May and Elizabeth Edenberg

Excerpt

[More information](#)

Introduction

5

wrongful vanquished state to be severely treated, others were concerned that restitution along with rebuilding for a vanquished state was necessary for a just and lasting peace.¹³ This was also true of how the Allies responded to winning World War II, namely, by funding the rebuilding of Axis cities in Germany and Japan, a topic to which we will return.

The fourth condition of *jus post bellum* is restitution, returning the goods or their equivalent that have been taken. Vitoria addressed this condition when he urged that we distinguish between “immovables,” such as land, and “movables” in determining what the victor can legitimately demand.¹⁴ Vitoria believed that restitution was due only in certain situations because he generally thought that the victors get to keep “movables” insofar as they are necessary for paying compensation for what the war has cost. In this regard, Vitoria said that “he who fights a just cause is not bound to give back his booty.”¹⁵ Grotius also argued strongly for this view in his book *De Jure Praedae*, where he supported the right of the Dutch to keep the booty they had seized from pirates, who had stolen the goods from the Spanish.¹⁶

However, when it comes to land that has been seized, most theorists believe that these lands should be returned as a matter of restitution after war ends, as long as it is not necessary “as a deterrent.”¹⁷ This position on restitution is sometimes also held today, although it is becoming more common to think that restitution of land is normally owed at war’s end not as deterrent but as required simply by restitution. There are exceptions, such as Israel’s refusal to give back the West Bank and Golan Heights after its Six Day War with Egypt and Syria. Israel claimed that these lands were needed to be able to deter future aggression. Here Israel seemingly followed Vitoria’s understanding of restitution in linking restitution to deterrence.

The fifth condition of *jus post bellum* is reparations, which concern the repair or remedy for goods that have been damaged or for injuries received. Suarez, a Jesuit theologian writing at the beginning of the seventeenth century, said that “in order that reparation of the losses suffered should be made to the injured party” war may be declared.¹⁸ But reparations are more typically discussed as due after a war is over. Indeed, Grotius said that “there are certain

¹³ See the chapter by Gabriella Blum and Natalie J. Lockwood in this volume.

¹⁴ Vitoria, *De Indus et de Ivre Belli Reflectiones*, sec. 50, p. 184.

¹⁵ Vitoria, *De Indus et de Ivre Belli Reflectiones*, sec. 51, p. 184.

¹⁶ See Hugo Grotius, *De Jure Praedae* (On the Law of Prize and Booty) (1605), translated by Gladys L. Williams, Oxford: Clarendon Press, 1950.

¹⁷ Vitoria, *De Indus et de Ivre Belli Reflectiones*, sec. 52, p. 184.

¹⁸ Francisco Suarez, “On War” (*Disputation XIII, De Triplici Virtute Theologica: Charitate*) (c. 1610), in *Selections from Three Works*, translated by Gladys L. Williams, Ammi Brown, and John Waldron, Oxford: Clarendon Press, 1944, Disputation XIII, sec. IV.4, p. 817.

Cambridge University Press

978-1-107-04017-5 - Jus Post Bellum and Transitional Justice

Edited by Larry May and Elizabeth Edenberg

Excerpt

[More information](#)

duties that must be performed toward those from whom you have received an injury.”¹⁹ This remark is mainly addressed at prohibiting cruelty²⁰ but it can easily also be seen as a way to view reparations for injuries, where even the just victor may have duties of reparation to the unjust vanquished. Reparations are often crucial for reestablishing trust among the parties after war’s end.

The sixth *jus post bellum* condition is proportionality. One way to understand *post bellum* proportionality is as applying to each of the other five conditions. Whatever is required by the application of the other five normative principles of *jus post bellum* must not impose more harm on the population of a party to a war than the harm that is alleviated by the application of these postwar principles. In one sense, we can view *jus post bellum* principles as desiderata, to use Lon Fuller’s term,²¹ rather than necessary or sufficient conditions. Desiderata differ from necessary or sufficient conditions in that they need not be satisfied, at least not to their fullest extent, for a war to be justly ended. But each of the desiderata must at least be partially satisfied nonetheless. This is where the proportionality principle comes into play. The proportionality principle calls for a determination of how much each of the other *jus post bellum* principles should be applied in light of the context.

Jus post bellum proportionality is perhaps closer to a meta-principle than the other two Just War proportionality principles, *ad bellum* and *in bello* proportionality. As with the other proportionality principles, *post bellum* proportionality is about weighing relative costs and benefits as well as determining what is appropriate in a given context. Yet, unlike *ad bellum* and *in bello* proportionality, *post bellum* proportionality focuses on the other *post bellum* conditions. One of the reasons for this is that at war’s end military operations have ceased, and so the actions that proportionality will concern are some of the very components of the larger *jus post bellum*, such as reparations and retribution. We are asked to consider how best to balance the *post bellum* principles in a way that can most effectively secure a just and lasting peace. A just peace is one where demands are not disproportionate on either side.

The principles of restitution and reparation are often seen as a key to post-war justice and important dimensions in achieving reconciliation. But if the losing side of a war is already devastated and cannot easily repay the winning side what it would normally be thought to owe, then there is reason to think that demanding that full reparation be made is in some sense disproportionate.

¹⁹ Grotius, *De Jure Belli ac Pacis*, bk. III, ch. 11, sec. 1, p. 722.

²⁰ For more on the Grotian account of cruelty and laws of war, see Larry May, *War Crimes and Just War*, New York: Cambridge University Press, 2007, chs. 2 and 3.

²¹ For Fuller, the components of the rule of law are desiderata. See Lon Fuller, *The Morality of Law*, New Haven, CT: Yale University Press, 1964.

Cambridge University Press

978-1-107-04017-5 - Jus Post Bellum and Transitional Justice

Edited by Larry May and Elizabeth Edenberg

Excerpt

[More information](#)

Introduction

7

The question is in what sense is it disproportionate to demand reparation payments from those who are already devastated by the effects of a long war. One answer is that demanding full reparation might pose a greater burden on the losing side than it will benefit the winning side, and it may also jeopardize the overall aim of securing long-term peace. Indeed, for this and related reasons Grotius proposed that *meionexia*, demanding less, should be seen as a principle of *post bellum* justice. For demanding less than what is one's due can be crucial for avoiding disproportionate settlements at the end of a war or armed conflict. *Jus post bellum* proportionality is the condition, or desiderata, that is aimed at aiding in the avoidance of overly severe terms of a peace settlement.

Grotius is the great defender of the principle of *meionexia* as the conceptual underpinning of *jus post bellum* in the early modern period. Grotius distinguishes an external and an internal permissibility.²² External obligations are those imposed by explicit law whereas internal obligations are moral obligations.²³ It seems that the internal obligations that Grotius here addresses, which he also calls considerations of honor or humanity, are similar to what Hobbes, just a few years later, would call judgments “*in foro interno*” or judgments according to conscience.²⁴ *Meionexia* is appropriately seen here by Grotius as part of the internal obligations of conscience, not part of what can be said to obligate as a matter of civil law. Grotius made this fairly explicit when he addressed restitution and reparations.

Even if one side fights a just war, it may not be entitled to the spoils of war, argued Grotius. Restitution, as a matter of internal justice or obligation, is something that may be owed even on the part of the just and victorious nation. And the reason for this is that justice can sometimes be a matter of not demanding what one has otherwise an external right to demand. Indeed, Grotius is one of the first to recognize that things that are permissible are of two kinds – a narrow permissibility in terms of what strict external right demands and a wider notion that takes into account humanitarian considerations of the sort that *jus post bellum* involves. For Grotius, justice is grounded in “the common good.”²⁵

In Grotius's view, justice is seen as a matter of moderation, where there are limits to what can be done “even in a lawful war.”²⁶ Grotius built on the Ancient Greek conceptions that saw justice as a form of moderation where

²² Grotius, *De Jure Belli ac Pacis*, bk. III, ch. 10, sec. III, p. 717.

²³ Grotius, *De Jure Belli ac Pacis*, bk. III, ch. 10, sec. V, p. 720.

²⁴ See Thomas Hobbes, *Leviathan* (1651), ch. 15. Also see Larry May, *Limiting Leviathan: Hobbes on Law and International Affairs*, Oxford: Oxford University Press, 2013.

²⁵ Grotius, *De Jure Belli ac Pacis*, bk. I, ch. 1, sec. VIII, p. 36.

²⁶ Grotius, *De Jure Belli ac Pacis*, bk. III, ch. 11, sec. I, p. 722.

Cambridge University Press

978-1-107-04017-5 - Jus Post Bellum and Transitional Justice

Edited by Larry May and Elizabeth Edenberg

Excerpt

[More information](#)

justice was best understood in terms of the context of the situation that one faced. And in this respect justice should not be seen as a strict notion that fails to take account of the suffering that may result from demands that were permissible in one sense but not permissible in terms of values like compassion. Indeed, the idea that justice should encompass compassion is a central idea in what we regard to be the very best understanding of justice in a *jus post bellum* context. We next turn to some of the central ideas in the transitional justice literature, which, as we said, somewhat overlaps with the older *jus post bellum* literature.

1.2. TRANSITIONAL JUSTICE

Transitional justice principles are not nearly as well worked out as are those in the literature of *jus post bellum*.²⁷ There is some historical discussion of transitional justice principles but most of the literature is quite recent. Nonetheless, we will try to provide a beginning account of what appear to us to be some of the main principles of transitional justice, as well as of the conception of justice that is at play. The main principles concern the rule of law, democracy, truth, forgiveness, and punishment. Often these principles work in tandem to provide a grounding for transitional justice. But as we will see, sometimes these principles can work at cross purposes to one another.

The rule of law is one of the most often discussed transitional justice principles. In transitional contexts, the reestablishment, or establishment, of the rule of law involves the movement away from a regime where there was widespread abuse of civil rights and political corruption in oppressive regimes. The principle of the rule of law puts a priority on guaranteeing formal legal rights in a society. In the transition from a totalitarian to a democratic regime, for example, one strategy is to reaffirm, or affirm, that no one is above the law, and that the law applies equally to all citizens, regardless of what the law dictates. The rule of law principle can thus be understood as the principle that the laws are to be applied equally.

Yet, in some circumstances equal application of the laws is not sufficient for the rule of law. Another central component of the transitional justice principle of the rule of law is the fair application of laws. People are not all in the same

²⁷ Several scholars have recently attempted to articulate the goals of transitional justice. See, for example, Pablo de Greiff, "Theorizing Transitional Justice," in *Transitional Justice*, edited by Melissa S. Williams, Rosemary Nagy, and Jon Elster, New York: New York University Press, 2012, pp. 31–77, and Jon Elster, "Justice, Truth, Peace," in *Transitional Justice*, edited by Melissa S. Williams, Rosemary Nagy, and Jon Elster, New York: New York University Press, 2012, pp. 78–97.

Cambridge University Press

978-1-107-04017-5 - *Jus Post Bellum and Transitional Justice*

Edited by Larry May and Elizabeth Edenberg

Excerpt

[More information](#)*Introduction*

9

position (some may be wrongdoers and some not) and so the mechanical equal application of the laws may cause injustice if those special circumstances are not taken into account. In a similar vein, nonretroactivity is also crucial since it is often unfair to hold people to the same laws even though the law was not on the books when certain acts occurred. Once again differences in circumstance matter in a more nuanced understanding of due process. And a return to the rule of law is premised on having judicial institutions that are given a fair amount of independence from political forces within the government.²⁸

Closely related to the rule of law principle, with its emphasis on independent judicial institutions, is the principle of democracy that calls for the transition from repressive regimes to less repressive, democratic governments. Democracy also can be defended in a procedural way, although some defenses stress substantive benefits of democracy as well, such as that peace is made more lasting. The standard defense of the principle of democracy in transitional justice concerns the way democratic institutions make oppression less likely, by supporting citizens' civil and political rights.²⁹

One of the problems with the focus on democratization in the transitional justice literature is that it sometimes leads people to advocate highly violent means to achieve the more democratic order even if it is not what the people want. The recent push toward regime change to achieve democratization is worrying because it seemingly takes no account of what a given society is ready for or even what the society would choose for itself. Recently, this has seemingly resulted in large-scale violence and civil war in many areas affected by the so-called Arab Spring. Here we can see how the value of autonomy, normally thought to be at the center of the principle of democracy, can sometimes be opposed to democratization – leading to very troubling tradeoffs.

Truth is the subject of a major transitional justice principle as well. In transitioning from a repressive regime, a lot of headway toward ending oppression can be made simply by exposing the old regime's acts of oppression to the public. Making the actions of a repressive regime transparent is thought to be the first and one of the most important steps to overcoming and changing the repressive regime. When such regimes can operate in secret, without public oversight or even knowledge of what is occurring, it is harder to mount a counterassault on the regime by those who wish to change it. The transition to a less repressive regime is hampered by the lack of transparency and publicity.³⁰

²⁸ See Larry May and Paul Morrow, eds., *Procedural Justice*, Burlington, VT: Ashgate Press, 2012.

²⁹ See James Bohman's chapter in this collection. Also see Robert Talisse's chapter in *Morality, Jus Post Bellum, and International Law*, edited by Larry May and Andrew Forcehimes, New York: Cambridge University Press, 2012.

³⁰ See Larry May, *Global Justice and Due Process*, Cambridge: Cambridge University Press, 2011.

Cambridge University Press

978-1-107-04017-5 - *Jus Post Bellum and Transitional Justice*

Edited by Larry May and Elizabeth Edenberg

Excerpt

[More information](#)

As such, transitional justice calls for exposing the truth of past human rights violations to pave the way toward the establishment of a more legitimate government in the future.

In many societies that are transitioning from repressive to more democratic regimes, the institution of truth commissions is seen to be vitally important. In South Africa's transition from apartheid, often seen as the paradigmatic example of transitional justice, the Truth and Reconciliation Commission played a major role in the transition to democracy. Here the truth commission effectively replaced the judicial system in dealing with the perpetrators of apartheid. This ultimately caused complaints from the victims of apartheid, who claimed that the perpetrators got off too lightly. But the defenders of the truth commission thought that the granting of limited amnesty from criminal prosecution for the leaders of the apartheid government was necessary for the successful transitional process. Here formal forgiveness through amnesty collided with calls for punishment.

Forgiveness plays a major, and highly controversial, role in the literature on transitional justice. In order to be able to move to a less repressive regime, it often happens that the current political leaders need to be removed. But a major impediment is that these leaders will cling to power if they think they may face criminal prosecution after a new more democratic regime is in place. The most controversial component of some conceptions of forgiveness concerns the idea of amnesty for the main perpetrators of oppression and atrocities when the successor regimes are established. Forgiving the political leaders who were responsible for oppression, and whose resignation is crucial for the transition, seems to be needed. Yet, the use of the institution of amnesty is also highly divisive, especially from the perspective of the victims of the old regime.

Of course forgiveness can play a large role in transitional justice without resulting in amnesty provisions for high-profile human rights abusers. Partial forgiveness can occur, or even full forgiveness that is moral instead of legal, does not require the kind of amnesties that have resulted in the opposition from victims' groups. And amnesties can be defended, as in the case of South Africa, on prudential rather than forgiveness grounds. The architects of anti-apartheid strategies were not generally driven by forgiveness (although Desmond Tutu claimed to be), but only driven by a desire to bring an end to apartheid so the country could heal and move toward flourishing for all people in that society.

As in discussions of *jus post bellum*, strongly retributive punishment is also highly controversial in transitional justice. Instead, the principle of punishment in transitional justice is not merely retributive. Indeed, the idea of retributive