TRANSITIONAL JUSTICE AND FORCED MIGRATION

This volume brings together critical legal scholarship and theories of forced migration that draw attention to the dual role of law as it pertains to transitional justice and mass violence resulting in forced population movements. Contributors to the volume analyze how forced migration in the Global South have impacted contemporary realities. While there has been considerable focus on refugees and asylum seekers from conflict zones, there is less attention paid to the far more numerous internally displaced peoples, stateless people, warehoused refugees, nonstatus displaced, and returnees in the Global South. In this volume, a multidisciplinary group of scholars question the reasons behind the restrictive choices that lock us into area studies modalities instead of genuine interdisciplinary analysis by linking the traditional subject matter of transitional justice with the realities of forced migration in the Global South.

Nergis Canefe is Associate Professor of Politics, Public Policy, and Law at York University, Toronto, Canada. She specializes in the fields of Political Philosophy, Forced Migration Studies, and Public International Law with special focus on public accountability, state criminality, and mass political violence.
Transitional Justice and Forced Migration

CRITICAL PERSPECTIVES FROM THE GLOBAL SOUTH

Edited by
NERGIS CANEFE
York University, Toronto
This volume is dedicated to the memory of Barbara Harrell-Bond, whom we lost in body but never in soul in July 2018, a mentor, teacher, friend, and path finder for so many of us . . .
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Contributors

Howard Adelman’s last position was as a research professor at the Key Centre for Ethics, Law, Justice and Governance at Griffith University in Brisbane, Australia. Previously, he was a visiting research professor at the Woodrow Wilson School at Princeton University, and before that, from 1966 to 2003, was a professor of philosophy at York University in Toronto where he taught international ethics and Hegel. He was the founder and first Director of the Centre for Refugee Studies and Editor of Refuge until the end of 1993. He has written or coauthored 6 books and edited or coedited 20 others. He has authored 95 chapters in edited volumes, 106 articles in refereed journals, and 30 professional reports. In addition to his numerous writings on refugees, he has written articles, chapters, and books on the Middle East, humanitarian intervention, membership rights, ethics, early warning, and conflict management. Professor Adelman’s most recent book, coauthored with Elazar Barkan, is entitled No Return, No Refuge for Columbia University Press. His previous edited volume, Protracted Displacement in Asia: No Place to Call Home, was released in November 2008 by Ashgate. On January 1, 2017, he received the Order of Canada from the Governor General for his lifetime of work with and about refugees.

Galya Ben-Arieh, JD, PhD, is Professor of Instruction in Political Science, Northwestern University, USA. Her research centers on the rights and processes of refugee protection and the role of law in settlement and inclusion in host societies and comparative constitutional theory and transformation. During her twelve years at Northwestern University she has directed the International Studies Program (2008–2015), creating the IS Honors Program and the Global Café. An international expert in refugee studies, Ben-Arieh (also known as Galya Ruffer) founded and directed the Center for Forced Migration Studies (CFMS), which was housed at the Buffett Institute from 2011 to 2018. In 2015, she received funding to launch a research program on refugee resettlement. She is now continuing this work through the development of a Refugee...
Knowledge Hub, a community-based partnership providing leadership, knowledge, and support for refugees and asylees in the Chicago community. She has been awarded grants from the National Science Foundation, the Social Science Research Council, and the Kellogg Center for Dispute Resolution and is a former senior fellow at the Käte Hamburger Kolleg/Centre for Global Cooperation Research (University of Duisburg-Essen) and a consortium partner in the project Norms and Values in the European Migration and Refugee Crisis (NoVaMigra), a European Union Horizon 2020 research and innovation program. She has conducted field research in the Great Lakes region of Eastern Africa, Germany, and the United States and has published on testimony and justice, asylum law and policy, refugee protection in a digital age, human rights litigation in transnational courts, and citizenship and immigrant incorporation in the United States and Germany, with a recent book, *Adjudicating Refugee and Asylum Status: The Role of Witness, Expertise, and Testimony* (co-edited with Benjamin Lawrance), Cambridge University Press (2015). She serves on the executive committee of the International Association for the Study of Forced Migration and has worked as an immigration attorney representing political asylum claimants both as a solo practitioner and as a pro bono attorney.

**Nergis Canefe** is a scholar trained in the fields of political philosophy, forced migration studies, and international public law, with special focus on human rights. She has over twenty years of experience in carrying out in-depth qualitative research with displaced communities and teaching human rights globally. Her research experience includes working with the Muslim and Jewish Diasporas in Europe and North America and refugees and displaced peoples in Turkey, Cyprus, India, Uganda, South Africa, Bosnia, and Colombia. In the field of legal studies, she has specialized in international criminal and public law, with particular emphasis on crimes against humanity, accountability for state criminality, and critical approaches to transitional justice. Prior to joining York University in 2003, she worked at the London School of Economics, UK, and Bilgi University and Bogazici University, Turkey, as a faculty member. In the field of social and political theory, Dr. Canefe has published widely in the following areas: theories of nationalism in the Global South, organized violence, mass murder, societal amnesia, forced migration and postcolonial state formations in the Middle East, Muslim and Jewish Diasporas in the West, and minority rights in the West. She has done extensive fieldwork on the role of political violence and forced migration in postimperial nation-state formation and capital accumulation in the Middle East. Her research has been funded by international and Canadian organizations. She also regularly conducts some of her human rights, minority rights, and refugee rights–related work on a pro bono basis. Her books include *Limits of...*
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Universal Jurisdiction in the Global South (University of Wales Press, International Law Series, 2019), The Syrian Exodus in Context (Bilgi University Press, 2018), The Jewish Diaspora as a Paradigm: Politics, Religion and Belonging (edited volume, Libra Press, Jewish Studies Series, 2014), Milliyetcilik, Kimlik ve Aidiyet [Nationalism, Identity and Belonging] (Bilgi University Press, 2006), and Turkey and European Integration: Accession Prospects and Issues (edited volume in collaboration with Mehmet Ugur, Jean Monnet Professor at the University of Greenwich, Routledge, 2004). Her scholarly articles have appeared in several edited volumes and academic journals including Nations and Nationalism, Citizenship Studies, New Perspectives, Refugee Watch, South East European Studies, Peace Review, Refugee, Middle Eastern Law and Governance, and Narrative Politics.

Jessica Chandrashekar is an articling student and a PhD candidate in the Gender, Feminist, and Women’s Studies Program at York University, Toronto, Canada. She works at a legal aid clinic in the areas of immigration, employment law, housing, and social assistance. In her PhD dissertation, she uses a feminist analysis to examine peace-building programs in postwar Sri Lanka. Her work urges a re-envisioning, and thus re-strategizing, of post-2009 transitional justice and peace-building programs by making central the lived experiences, material realities, and sociopolitical analytical knowledge of Tamil women survivors in the Northern Province. She is also a co-collaborator on an academic project on Feminisms, Structural Violence, and Transitional Justice.

Nasreen Chowdhory teaches in the Department of Political Science, University of Delhi. She received her PhD in political science from McGill University, Canada. She has published several research papers in national and international peer-reviewed journals such as International Journal of Migration Studies, Refugee Watch: A South Asia Journal on Forced Migration, and Peace Prints. Some of her prominent works are Refugees, Citizenship and Belonging in South Asia: Contested Terrains (Springer, 2018) and a special issue as guest editor in the journal International Journal on Migration and Border Studies on “Displacement – a state of exception and beyond: issues and perspectives in forced migration in South Asia,” Volume 2, 2016. At the time of writing, she is engaged with two projects that will be published soon: Territorialized Identities and Transborder Movement in South Asia, coedited with Nasir Uddin (Springer, 2019), and another volume on Citizenship, Nationalism and Refugeehood of the Rohingya in Southern Asia. She is the vice president of the International Association for the Study of Forced Migration and Governing Body member in Mahanirban Calcutta Research Group, Kolkata, India.
Fabio Andrés Díaz Pabón is a Colombian political scientist. He is a research associate in the Department of Political and International Studies at Rhodes University in South Africa and a researcher at the International Institute of Social Studies in the Netherlands. He works at the intersection between theory and practice, and his research interests are related to state strength, civil war, conflict, and protests in the midst of globalization. He is currently researching the connections between armed violent conflict and mass mobilization to understand how peaceful – and less peaceful – protests coincide with civil war and other forms of armed violence. His most current publication is an edited volume titled *Truth, Justice and Reconciliation in Colombia: Transitioning from Violence*. In addition to his academic publications, his analyses have been published by *Al Jazeera, Time, The Conversation*, and *The International Peace Institute Global Observatory*, among others.

Helen Hintjens is Assistant Professor in Development and Social Justice at the International Institute of Social Studies (ISS) in The Hague, a part of Erasmus University. Before working at ISS, she taught for twenty years in the United Kingdom. She has been working on the comparative politics of asylum and refugee issue since the 1980s, including in the United Kingdom, France, and Australia. She has published on issues of asylum advocacy, refugee rights, refugees at sea, and undocumented migrants. She is also interested in post-genocide politics in Rwanda and the African Great Lakes region and has worked on issues of identity politics and the role of the arts in reconciliation.

Marisa O. Ensor (PhD, LLM) is an applied legal, political, environmental anthropologist and human rights scholar and practitioner currently based at Georgetown University – Justice and Peace Studies Program and Institute for the Study of International Migration, School of Foreign Service. Prior to joining Georgetown, she taught at several universities in the United States and abroad, including the American University in Cairo’s Center for Migration and Refugee Studies. She has worked in nineteen fragile, conflict-affected, and transitional countries of Africa, Europe, the MENA region, and Latin America. Her research considers the link between threats to peace and security and the politics of forced displacement, peacebuilding, and reconciliation with a focus on youth and gender dynamics. Her research has resulted in numerous publications, including four books and over forty book chapters and journal articles. Her most recent volume (in progress) is titled *I Am Tired of War: Youth Activists, Peacebuilding & the Politics of Reconciliation in South Sudan*.

Shamiran Mako is an assistant professor of international relations at the Pardee School of Global Studies at Boston University where she specializes in the comparative politics and international relations of the
Middle East and North Africa. Specifically, her research focuses on state formation, authoritarianism, civil wars, democratization, ethnic conflict and identity politics, governing in divided societies, and post-conflict state and peace-building. She earned her PhD in political science from the University of Edinburgh in June 2016 and was previously a visiting assistant professor of Middle East politics and Director of Undergraduate Studies at Brown University’s Middle East Studies Program. She has held research positions at Northeastern University and Harvard University’s Weatherhead Center for International Affairs. She is an editor of *State and Society in Iraq: Citizenship under Occupation, Dictatorship and Democratization* (I.B. Tauris, Winter 2017), where she is also a contributor. Her recent book project, coauthored with Valentine Moghadam, titled *The Arab Spring and Its Aftermath*, is forthcoming (Fall 2019) with Cambridge University Press. Her work has appeared in the *World Affairs Journal* and *International Journal of Minority and Group Rights*.

**Jackson Odong** is a development practitioner and a peace rebel who believes in expressing tomorrow’s reality in today’s ideas. He is based in Uganda.

**Ranabir Samaddar** is the former Director of the Calcutta Research Group and belongs to the school of critical thinking. He has pioneered several peace studies programs in South Asia. He has worked extensively on issues of justice and rights in the context of conflicts in South Asia. The much-acclaimed *The Politics of Dialogue* (2004, Ashgate) was the culmination of his work on justice, rights, and peace. His particular researches have been on migration and refugee studies, the theory and practices of dialogue, nationalism and postcolonial statehood in South Asia, and new regimes of technological restructuring and labor control. He has authored a three-volume study of Indian nationalism (*Whose Asia Is It Anyway: Religion and the Nation in South Asia, 1996*, The Marginal Nation: Transborder Migration from Bangladesh to West Bengal, 1999, and *A Biography of the Indian Nation, 1947–1997*, 2001). His recent political writings published in the form of a double-volume account, *The Materiality of Politics* (Anthem Press, 2007) and *The Emergence of the Political Subject* (Sage, 2009), have challenged some of the prevailing accounts of the birth of nationalism and the nation-state and have signaled a new turn in critical postcolonial thinking. His latest books include *The Nation Form* (Sage, 2012) and *Karl Marx and the Post-Colonial Age* (Palgrave, 2017).

**Turgut Tarhanlı** is a senior legal scholar and jurist. In 1979, he graduated from Istanbul University Faculty of Law. In 1981, he was appointed as assistant to the Department of Public Law (International Law) at the same faculty. He continued his postgraduate studies at the same faculty and at New York University School of Law. In 1996, he was awarded the title of Associate Professor for Law of States and appointed to Istanbul University Faculty of
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Law. Since 1999–2000 academic year, he has been teaching at Istanbul Bilgi University and serving as the Dean of Law School. Tarançlı was one of the founders of Human Rights Foundation of Turkey (TIHV) and the Helsinki Citizens’ Assembly, as well as the founder of Amnesty International’s Turkey chapter. He is an international member of the American Society of International Law. Turgut Tarançlı teaches international law and human rights law at Bilgi University Faculty of Law and is the head of the Human Rights Research Center.

Lami Bertan Tokuzlu was educated at the Istanbul University (Law School), Lund University (Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Sweden), and Marmara University (European Union Institute). He worked as Liaison Officer of the Ministry of Defense for the Turkish Parliament; Jean Monnet Postdoctoral Fellow at the European University Institute, RSCAS, Florence, Italy; Aziz Nesin Chair Professor at Viadrina University (Frankfurt (Oder), Germany; and Visiting Scholar at Bucerious Law School, Hamburg, Germany. Tokuzlu acted as a consultant to the committee that drafted the Turkish Law on International Protection and Migration that was adopted by the Turkish Grand National Assembly in April 2013. He is a member of the Global Academic Freedom Advocacy Team established by the Scholars at Risk Network at New York University. Tokuzlu is currently working as an assistant professor in law at Istanbul Bilgi University, Law School. His fields of expertise comprise International Protection Law, Constitutional Law, Human Rights Law, and European Union Law.

Shamna Thachampoyil is a graduate student in the Department of Political Science, University of Delhi, India. She is presently writing her PhD dissertation on “Politics of Exclusion: The Question of Citizenship of the Rohingyas.”

Hannibal Travis is Associate Professor of Law at Florida International University College of Law in Miami. A magna cum laude graduate of Harvard Law School in 1999, he has authored scores of articles on genocide and international law as well as Internet, business, copyright, and antitrust law. He is the editor of the recently published The Assyrian Genocide: Cultural and Political Legacies.
Preface

Why to write a preface? Is it not superfluous? We read a book for its content; a preface by its very nature – and unlike the articles in the edited work – supposedly offers no original content but serves the purpose of preparing the reader for what is to follow. As such, a preface often purports to lead a reader into the book or, at the very least, to serve as an appetizer to entice the reader. On the other hand, the function of an introduction is to indicate the goals of the book, its structure, and the contributions it purports to make. The preface is written after the chapters have been completed. If so, can we write a preface in lieu of an introduction? If the preface is used to critique the chapters that follow, the writer preempts the work of the reader and critic. If one offers a potpourri of assessments or, alternatively, compliments, it hardly seems worth the effort for the little added value. Should the preface suggest limitations? That is tempting, but then the preface would serve to dissuade rather than entice readers. Should the writers of a preface try to distill the various conclusions offered? If the opportunity is taken to offer a summary, the chapters merely serve to illustrate the prefatory conclusions and are inappropriate to an academic enterprise aimed at advancing the truth. For the divine is indeed in the details.

In this preface, we will undertake the double task of placing the entire volume within the larger discussion on transitional justice and displacement and summarizing the key points of entry for each of the chapters. Sometimes this is called “framing.” Framing presumes the authors of the frame have a greater and wider perspective on the material than any of the individual authors. If transitional justice is defined, as it is used normally, as the use of mechanisms of justice in the broadest terms to deny impunity, to reinforce and strengthen rights, and to reconcile conflicting segments of society for a common future, in this study there is particular emphasis on reversing the
harms of displacement. Therefore, the category under study here is essentially normative, however voluminous the empirical content. This is still truer when an author offers an even larger realm for applying the concept, such as the Global South or the postcolonial state.

The core of transitional justice measures is traditionally taken to be truth and reconciliation efforts. Whether narrow or wide, whether the conception of justice embraces distributive, restorative, and even retributive justice, and even when justice is examined from other than a dominant Western institutional perspective, the intellectual exercise is again normative insofar as the goal of the whole process is to displace violent and repressive forms of confrontation – or even arbitrary ones, as we shall see – and replace them with transparent and equitable practices rooted in both the rule of law and historical context. As dialogue displaces confrontation, justice must address injustice and impunity. On the other hand, truth-seeking has been the foremost problematic aspect of transitional justice, even when transitional justice schemes after World War II were preoccupied with the narrow dimension of criminal trials in bringing Nazi mass murderers and Japanese officers before postwar criminal courts. This is an underlying theme that runs through the entire volume.

Thus, although volume is an academic enterprise, clearly it is not disassociated from advocacy. The set of chapters shares knowledge as part of an effort to build intellectual and research expertise, as well as inform practitioners, advocates, and activists. In that sense, it is totally consistent with the kind of truth-seeking associated with genuine forms of transitional justice. On the other hand, when we read the chapters, the normative assessments we find relate less to the perpetrators of the injustices and more to the efforts of those promoting and developing systems of transitional justice, except in cases where the claim is made that transitional justice is but a front for perpetuating injustices or, at times, even for totally subverting remedial justice. In this regard, all the contributors to the volume share one premise in common: transitional justice is a work in progress, one that has achieved a number of advances, but only when undertaken in a context that allows for a historical and political understanding of mass crimes. Truth cannot be presumed as a fixed base for making judgments. Instead, here it is seen as an evolving category, which the authors are all insistent on contextualizing and grounding. In this sense, instead of fixed solutions we are offered a moving target. If we conceive of transitional justice as a series of evolutionary stages in which successive steps are expected to advance an agenda, then its previous iterations will be perceived to be inadequate or even false forms of an ideal transitional justice. Transitional justice becomes a visionary goal.
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The purpose of this preface is to mine this collection of articles for assumptions and contradictions they harbor, while trying to reconcile truth perceived as a factual foundation with truth perceived as an ideal scholarship with moral purpose. Thus, we are inviting the reader to engage in an act of inquiry. In undertaking this task, one must keep the following questions in mind:

1. What is the conception of transitional justice utilized by the different authors? What are the common points and intersections that bind the chapters together under the aegis of critical perspectives from the Global South?

2. How do the authors contribute to the normative conception of transitional justice and its investigation, as discussed by the editors? What do they reveal of the underlying social disfranchisement foregrounding transitional justice efforts, the normative challenges with respect to memories of violence, and the restoration of the rights of the displaced in the context of transitional justice efforts enacted in postcolonial/neocolonial landscapes of nationhood?

3. Of the various mechanisms of transitional justice – criminal prosecutions, truth commissions, reparations programs, and institutional reforms, to name a few – which ones do the different authors stress, and is there any particular significance attached to their choice(s)?

4. What issue does each of the authors take up with respect to mainstream transitional justice schemes, and how do they address forced and mass displacement within that context?

5. What inconsistencies or tensions between norms and practices are pointed out by the authors, both diachronically and synchronically?

Here, we will only be able to probe the first of these questions in any depth with respect to the chapters brought together in the collection. That is just as well, for the function of a preface is to raise questions about the different frames used for providing answers rather than to signal the answers offered in the volume itself.

REDEFINING TRANSITIONAL JUSTICE

The volume is divided into three parts. The first part is titled “The Past as the Memory of the Future,” where we have a powerful chapter by the Indian political theorist Ranabir Samaddar, writing against the very notion of transitional justice in its cleansed and insulated format, as well as chapters by Turkish jurist Turgut Tarhanlı and Turkish-Canadian legal scholar Nergis Canefe on how to deal with the law when it does not deliver. The second part
Preface

is “Law, Justice, and Hope,” and it includes lengthy debates by Spanish-American political scientist Marisa Ensor, Colombian academic and activist Fabio Andrés Díaz Pabón, Sri Lankan-Canadian jurist Jessica Chandrashekar, and Assyrian-Canadian political scientists Shamiran Mako and Hannibal Travis on issues pertaining to the “practices” of transitional justice as they directly affect displaced populations. The third and last part is titled “Ethics of Witnessing,” and it includes chapters by Israeli-American legal scholar Galya Ben-Arieih, Indian political scientists Nasreen Chowdhory and Shamna Thachampoyil, Turkish legal scholar Lami Bertan Tokuzlu, and South African scholars Helen Hintjens and Jackson Odong. There is an important additional debate in this last part pertaining to the silence of categories in the larger context of transitional justice and forced migration work, which ends the volume not on a high but a cautious note.

Rather than discussing the chapters in the order they are presented in the volume, let us instead begin with the two chapters on African displacement focused on the Great Lakes region in order to extract the authors’ conceptual concerns. In the existing literature, there have been at least three different streams promoting transitional justice with respect to Rwanda in particular: (1) the International Criminal Tribunal for Rwanda trials instigated by the United Nations; (2) the efforts of nations other than Rwanda in setting up third-country trials to try alleged participants in the Rwandan genocide, and, most importantly, (3) the effort of Rwandese society itself through national trials for the most important perpetrators and the use of *gacaca* courts – which are community-based local and nonprofessional quasi-judicial proceedings – to deal with the vast numbers of Rwandans accused of participating in the genocide. With reference to these three strands, Marisa Ensor, writing about displaced children during the Rwandan genocide and its aftermath, cites the position that judicial and humanitarian actions are at odds and are governed by different motives and modes of operation. Meanwhile, she entertains a vision that transitional justice measures can be reconciled with humanitarian action on behalf of displaced persons. The objectives of the measures Ensor focuses on are both restoring national identity and engaging in society-wide reconstruction. This is part of a larger effort to balance peace and security with justice and truth. The first set of measures focuses on the future, while the latter on reconciling that past with an envisioned future.

Ensor explains in detail the mechanisms of the former, which included *Ingando*, solidarity camps – or what some might define as reeducation camps – *Ivore*, leadership camps; and *Umaganda*, based on the Rwandan tradition of community service by citizens. They are all used to promote
a unified national identity intended to overcome fundamental community conflicts. Community-based *gacaca* courts, on the other hand, though also arising out of *Kinyarwanda* traditions, were founded on principles of truth and reconciliation to bring those responsible for the violence before “courts” of justice, with sentences meted out in accord with different degrees of responsibility and contrition. These were also regarded as means to reconstruct a more comprehensive national identity that eschews perceived differences between Hutu and Tutsi. In other words, for Ensor, the goals of creating a unified national identity and efforts to foster retributive and restorative justice should be viewed as complementary, especially when the mechanisms of transitional justice are calibrated according to age-appropriate adjustments. However, when they are at odds with the actual aspirations of contemporary youth, and in particular when they fail to take into account the displaced outside the country as well as international norms of meting out juvenile justice, there is a significant risk that the seeds of a revival of violence are being sown.

Furthermore, in practice there has been a chasm between this ideal and the use of intimidation and corruption in the *gacaca* courts, leading to meting out revenge and settling other scores. Hence, at least some of the mechanisms of transitional justice have been subverted from their role in promoting rehabilitation, social reintegration, and distributive justice. According to Ensor’s normative concerns, reconciliation must go far beyond individual and community efforts. It must include a general effort at national identity-building, which also reconciles the young and the mature, the citizen and the outcast/displaced, the local community and national and international mechanisms and norms. Accordingly, she purports that an enlarged vision of reconciliation is required that goes beyond traditional conceptions of transitional justice to embrace both nation-building and developing coherent sociopolitical perspectives in tandem with the desire for long-term peace. This also means that the state cannot be regarded as a reified foundation for setting out distinctive structures and functions related to governance. Rather, we must pay closer attention to a dynamic institutional process that must itself reconcile empirical reality with normative goals in service of a societal vision and an ideal. But what is the relationship between this ideal and the efforts at reconstitution and fundamental political change? How do the latter instill new and higher levels of moral consciousness?

Therein lies a paradox. At least for the liberal ideal commonly used by architects of transitional justice models, there are understood to be boundaries and limits to the role of government, which are defined in terms of the protection of individual rights and freedoms. In other words, the state itself is to be controlled and delimited. Therefore, the kind of morally charged
model of transitional justice espoused by Ensor poses a dilemma for exploring the relationship between the desires of the displaced and the politics of a regime. This is guided by Hannah Arendt’s insight that constitution-making is entailed in each and every act of transitional justice as the very means by which a people imagines a new body politic – something larger than providing a foundation for a political order, and certainly much larger than the kind of constitutionalism defined as the protection of negative liberties.

Though in the same spirit, Helen Hintjens and Jackson Odong’s chapter attacks the issue of transitional justice from a much larger geopolitical perspective. Their work on the Great Lakes region of Africa focuses on cross-border displacements rather than just returning youth, but has a far narrower concern: the mechanism of reparations as part of the toolbox of truth and reconciliation efforts, an ideal which echoes the truism that there can be no reconciliation without restitution. Yet their chapter avoids reverting to a narrower, strictly legal approach. Similar to Ensor, the authors conceive of reconciliation efforts as entailing an even larger task, that of reconciling a local, community-based, or vernacular sense of justice with conceptions of justice at both the national and international levels, as perpetrators are held responsible for their crimes and victims compensated for their suffering – for justice promoted by Western donors may be very different than what is perceived and experienced locally. They then ask pertinent but difficult questions about political power and authority – who decides about both the policies and practices of transitional justice, and in particular the mechanism for implementing reparations? They offer a critical and fundamental inquiry into the role of restitution, not simply as the restoration of what went wrong before, but as a means of transition from authoritarian rule to democracy.

While Ensor primarily dealt with gacaca courts, Hintjens and Odong focus on the International Criminal Court (ICC) in The Hague, and more specifically the Bemba case from the Central African Republic (CAR), the Lubanga Case from the Democratic Republic of the Congo (DRC), the Mau Mau claims for justice in the British courts, and the trials of perpetrators in the Lord’s Resistance Army (LRA), although not the crimes committed against the Acholi by the Ugandan forces. For them, transitional justice must be considered “first and foremost a global project,” while peace-building, with which it is in tension as it was for Ensor, is more relevant at the local level, as in the Acholi practice of mato oput, the ceremonial ritual of drinking bitter weed for forgiveness. Furthermore, as with Ensor, the displaced are identified as those outside the national systems of both reconciliation through reparations and peace-building through contemporary adaptations of local customs. The displaced are both geographically removed and unjustly treated by a system of
purported justice, one that is also patently falling short of the demands of the rule of law with respect to the running of prisons, the conduct of the police, and the injudiciousness of the courts. Similar to Ensor, these authors also warn us that these exercises of insensitivity and injudiciousness prepare the soil in which future potential violence could be planted.

Yet international law remains crucial to the enterprise of transitional justice in providing continuity, meaning, and legal certitude. That continuity is provided by overriding domestic law and by establishing a counterpoint to the corrupt norms of a previous repressive political regime as well as the violent propensities of a current one. It is essential for curtailing the emergence of new forms of repression in the name of revolutionary efforts, as well. But how is this lofty function to be reconciled with local practices without riding roughshod over them? How can such normative transcendence be achieved? Some of these questions are directly addressed in Nergis Canefe’s piece on hybrid courts in the Global South. Overall, Canefe concludes, the two perspectives of the local and the international are clearly complementary. Indeed, all of the chapters in this volume argue for a more comprehensive approach, one sensitive to both local patterns and concerns and to transnational norms. When we shift to chapters dealing with transitional justice and peace in the Middle East, for instance, in Turgut Tarhanlı’s chapter on the alternative conceptions of a system of justice in transition in Turkey concerning the Armenian question, or the long-term effects of continuing forced displacement in Iraq, we find ourselves not simply in a different geographical area but also in effect in a repetition of similar troubling scenarios being played out in the name of securing justice.

The common theme that runs through these accounts of varied regional experiences is of course mass displacement; hence the volume’s very title. All of the chapters are first and foremost about continuing displacement, rather than the failure of regimes of transitional justice to adequately address the needs of the displaced. As succinctly highlighted in the chapter written by Shamiran Mako and Hannibal Travis, “The Right of Return in Iraq: Conceptualizing Insecurity, State Fragility, and Forced Displacement,” international and domestic efforts to foster return have failed, given a highly fragmented and volatile security environment, the gravity of ethno-religious and sectarian violence, governmental participation in such violence, and the poor socioeconomic prospects of the returnees. Vernacular and international norms have totally failed not only the displaced but also the minorities throughout Iraq. Calling the Iraqi War an effort in incongruent state-building hides the enormity of this failure. These are also themes raised by Galya Ben-Arieh’s work on rape as a crime that is insufficiently codified in
both national and international jurisdiction. Ben-Arieh’s work also touches upon the ephemeral nature of how testimony is used and abused in criminal proceedings, or their absence thereof in episodes of systemic rape. Specifically, Ben-Arieh unearths forgotten histories of mass crimes through the lens of unforgivable and yet silenced crimes.

Closer in time, in today’s Syria, as various armies backed by different outside powers near the endgame while outside regional and world powers – Russia, Iran, Turkey, and the United States – compete to control the remote but rich desert region of Deir al-Zour with its enormous reserves of fossil fuel, both international law and state law become surrogates for the way power is allocated rather than means to establish a legal authority rooted in justice. All of this is complicated by the Syrian Kurdish aspirations to their own nation-state and the traditional norms protecting and reifying established national borders. The virtually inevitable result has been more war, more refugees, and the displacement of millions yet again, with ever greater difficulty of return. What was experienced in Iraq thus repeats itself in Syria. Without the prospect of justice there is no return, and without the ending of forced migration there could be no justice.

Further, the galvanization of ethnic and sectarian strife did not begin with the mess instigated by the Iraqi War initiated by President Bush in 2003. It did not begin with the way “peace” was conducted. The ethnic cleansing of Middle Eastern Christians from Iraq, the oldest Christian communities in the world, has been taking place at least since 1990. As Mako and Travis reveal, Iraqi Christians – Syriacs, Armenians, Kurds, Arabs, and Turkmens – were then at 1.4 million, constituting 8.5 percent of the population. In 2003, the percentage of these communities had dropped to just over 7 percent of the population. By 2018, they were less than 1 percent of the Iraqi population. This precipitous decline began with and followed the invasion of the country. In addition, other minorities have been and continue to be cleansed – Yazidis, Shias, Sunnis, Mandeans, Shabacks, and non-Christian Turkmen to name a few. In fact, the mandate of ethnic cleansing began almost from the beginning of the Iraqi state. The authors aptly mention the forced exodus of Iraqi Jews in the 1940s and early 1950s, which certainly cannot be traced to the 2003 Iraqi War. Thus, displacement lies at the core of the postcolonial Iraqi constitution – both in its legal and broader senses – and the construction of the very state.

This brings us to the work of Lami Bertan Tokuzlu, who has contributed the longest chapter in the collection, titled “The Principle of Legal Certainty: Impact Assessment of the Syrian Refugee Crisis on the Turkish Law on Foreigners and International Protection.” The chapter does not analyze the
ongoing displacement of minorities and consolidation of “majorities” into homogeneous enclaves, as the majority of the other chapters with case studies do. Rather, it focuses squarely on the application of the Turkish government’s effort to conform to international standards – more particularly, those set by the European Union with respect to refugee asylum and protection through the April 2013 Law No. 6458 (LIFP). In the aftermath, administrative regulatory codes have been enacted and judicial changes and case law have begun to take shape, albeit with many more changes yet to be introduced. Tokuzlu posits that in Turkey, in response to the Syrian exodus, a new normative structure bringing international protection and migration into the modern age and an organizational structure capable of implementing these principles were brought to life in a relatively short period of time. Previously, sovereign rights were at the forefront, rather than the rights of the displaced. As a result, arbitrariness tinged with a degree of ethno-nationalism favoring Turkic minorities has long dominated Turkish administrative practices, given the absence of a solid legal foundation. Tokuzlu states that issues that came to the fore included obsessive questioning of potential marriages of convenience and the definition of grounds for suspicion for launching investigations. There was also the problem of how and under what criteria risk had to be determined and presented as evidence, and the basis of assessing its reliability when state security concerns limited access to empirical data for determining risk. These and other issues common to most asylum regimes in the Global North are clearly relevant to transitional justice pertaining to the ordeal of the displaced. But we must also ask whether they have an impact on transitional justice in the country from which the individual fled. No doubt the Turkish case discussed by Tokuzlu is an example of the malleability of a concept of transitional justice, in the sense that, similar to many of the chapters in the volume dealing with displacement in the Global South, regimes of regulation of migration as well as the addressing of past wrongs cannot be discussed solely on the basis of country profiles but must entertain a regional perspective.

In another chapter – on yet another geographical area falling under the purview of debates on the Global South, that of Sri Lanka – Nasreen Chowdhry and Shamna Thachampoyil’s “Transitional Justice, Reconciliation, and Reconstruction Process: The Case of Former LTTE Female Combatants in Postwar Sri Lanka” offers an altogether different angle. In their work, the concept of transitional justice is used to highlight the absence of transitional justice in general in situations of displacement, specifically the treatment of militant female Tamils. The self-determination of approximately 75 percent of the population, the Sinhalese, has been advanced at the expense of that of 11 percent of the...
population, the Tamils, who are concentrated largely in the north and north-east of Sri Lanka, with the suggestion that those who have suffered the most have been the LTTE women. However, while solely concentrating on the Sri Lankan Tamil experience, the authors had to leave out of consideration that the Moors, who intermarried and constitute another about 9 percent of the population, concentrated largely in the south, as they are not significantly involved in efforts at self-determination. Nor are the Indian Tamils included in this discussion, who were imported to work on the tea plantations in the center of the country back in the nineteenth century. This is despite the fact that they constitute 4 percent of the population of Sri Lanka and have suffered some of the worst forms of forced displacement because they were never granted citizenship in the first place. As such, one becomes aware that the nexus of displacement and transitional justice tends to focus only on groups with strong narratives of self-determination. The absence of gender sensitivity means that these women face a double handicap, due to their gender identity in addition to their ethnic identity as Tamil nationalists. The neglect is not just confined to Tamil women in the combat zones, nor even to a narrower focus on women combatants everywhere, if only because academic focus on women combatants, let alone their displacement, resettlement, and reintegration, has been largely absent, and specifically so in terms of their inclusion in the process of transitional justice.

Tamil female ex-combatants are faced with obstacles not only to Tamil national self-determination but within Tamil society as well as in the larger context of a male patriarchal Sri Lanka. A similar debate is presented by Jessica Chandrashekar in her chapter illustrating the role state-based truth commissions have played in postwar nation-building when they are conducted during the resettlement of those who were forcibly displaced during the conflict. Chandrashekar examines the transcripts of testimonies made to the Lessons Learnt and Reconciliation Commission (LLRC) during the commission’s field visits to war-affected communities in the Northern Province and questions the role of the commission in the process of resettling those who were forcibly displaced by war by again forcibly “placing” Tamil war survivors into the postwar Sri Lankan nation-state. At the least, however, there has been an effort made by the Sri Lankan Lessons Learnt and Reconciliation Commission (LLRC). For in the end, the process of self-determination – whether of Tamil citizens of Sri Lanka as Tamil nationalists or as Sri Lankan citizens – entails enhancing agency; and that is an issue that female ex-combatants face in threefold, as females in a patriarchal society, as Tamils rebels in a movement in which women were projected as having a special role in protecting and enhancing Tamil culture, and as both combatants and ex-combatants. To the degree that such an effort fails, we find two aspirations
murdered: that of Tamil nationalism and that of female liberation when the latter can be coopted to help redefine Sri Lankan society as a whole.

Chowdhory and Thachampoyil’s as well as Chandrashekar’s chapters prove that both national self-determination and transitional justice are moving targets that continue to shift over the trajectory of the Sri Lankan conflict and afterward. As well, the treatment of Tamil women ex-combatants reverberates back into the effort of both sides in the conflict to define self-determination from the perspective of their own “ethnic” group and to achieve their own aspirations for agency. They also signify the multiple intellectual and normative frameworks utilized by scholars engaged in the analysis of transitional justice as it pertains to forced migration. In this case, the writers are unequivocal – they stand solidly behind an agenda of liberating women in pre-conflict, conflict, and especially post-conflict reintegration, a process that requires deconstructing not only militant agencies but gender identities as well. In that sense, identity transformation is being advanced as an ideal as physical displacement is being reversed.

Finally, the chapter by Fabio Andrés Díaz Pabón on the Colombian conflict is perhaps an outlier, as it strives to predict the best possible scenario that could come out of a very long and destructive conflict, with many sides involved and also benefitting from it. In his chapter, Díaz Pabón strives to demonstrate that simulation models, and in particular system dynamics models, could be used as an efficient tool for examining policies that could allow public servants and service providers to learn and evaluate the different scenarios they are facing in delivering transitional justice remedies. The particular cases chosen are reparations and restitution of land rights for the victims of forced displacement in Colombia. The chapter successfully analyzes the nature of the challenge for government institutions in tackling the results of decades-long conflict in the country. But it goes one step further and links these issues with the necessity of using managerial tools to assess public policy initiatives within the overall mandate of the Colombian transitional justice model.

In conclusion, the chapters that make up the book are clearly far-ranging in terms of the application of the concept of transitional justice when transitioning from a repressive and violent to a just order. The concept has even greater significance, albeit possessing a markedly shape-shifting nature when it is applied to transition from an arbitrary legal asylum system to one in compliance with international law with all the requisite development of the administrative law components. This is aptly illustrated in Ranabir Samaddar’s opening chapter to the volume, “Borderlands of Independent India: Transition, Violence, and Justice.” Samaddar succinctly establishes lineages
between governmentality, security, legality, and displacement in the context of postcolonial India, thereby debunking the myth that wholesale transitions are indeed possible if only one could introduce the right elements of law into the system. As he suggests, there are not simply different regimes at stake, or a repressive opposed to one based on rights and freedoms. These are ideal types that blur our vision of what the past was and what the present is, before we yearn for a very different future.

Hence our final question: could these chapters offer best practices for transitioning between two different political and legal regimes and envisage models to develop full accountability for state criminality in seeking justice? Likely not; and neither is this their intent. And yet the reason for this seeming deficit does not lie with the scholarship on offer here. Law, in its international, regional, national, and local forms, does play a crucial role in such transitions and in advancing truth where societal change is so critical. But how does law deal with the dispossessed? Transitional strategies dealing with the displaced are crucial in defining the ethos of the overall legal regime and determining the character of a post-conflict body politic. These are not the tasks of law given its priority on maintaining an existing system. This volume as a whole addresses this perturbing tension, with conviction and success. When a new or emergent political system must deal with the perpetrators of crimes committed in the old regime under the existing law, while also dealing with reparations for the victims and especially those who are displaced, the transition becomes ever more complicated. If the judiciary is given the responsibility of playing a key role in this transition but, as an institution, is still identified with the old order, the effort to promote change becomes most difficult. Since the politics and histories of the conflicts covered in this volume are so varied, it seems impossible to provide a guiding model in dealing with such a host of changes, regardless of the amount of comparative work done in this field. If we then add onto this list the situation of the displaced and the dispossessed masses, one point becomes all the more obvious. Not only is it important to understand the political and historical context of a given conflict and the stakes at play, but the intellectual and normative framework developed by scholars trying to probe the sensitive and equally difficult issue of the nexus of transitional justice and displacement is part and parcel of imagining a new future.

Howard Adelman and Nergis Canefe
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