Introduction

The Fox and the Hedgehog

The line “The fox knows many things, but the hedgehog knows one big thing” is commonly attributed to the early Greek poet Archilochus of Paros. Archilochus lived in the mid-7th century BCE and was venerated by the ancient Greeks as a poet rivalled only by Homer and Hesiod. Remarkably enough, this single line has become ‘one of the best known and most exploited antitheses in Anglophone intellectual life’. This is largely thanks to its adoption by Riga-born Oxford philosopher Isaiah Berlin (1909–1997). When Berlin, as a young Oxford don in the late 1930s, was first introduced to this mysterious sentence, he playfully adopted it to divide his friends into foxes and hedgehogs. But what started as a parlour game eventually became the central theme of a celebrated essay on the great Russian novelist Leo Tolstoy. First published in an obscure Slavic Studies journal in 1951, then republished in 1953 and re-titled as ‘The Hedgehog and the Fox: An Essay on Tolstoy’s view of History’, the essay takes Archilochus’s line as a starting point for distinguishing two fundamentally different types of thinkers, artists, or even human beings. There is a deep difference, Berlin argues, between those, on the one side, who relate everything to a single central vision, one system, less or more coherent or articulate, in terms of which they understand, think and feel – a single, universal, organising principle in terms of which all alone that they are and say has significance – and, on the other side, those who pursue many ends, often unrelated and even contradictory, connected, if at all, only in some de facto way, for some psychological or physiological cause, related to no moral or aesthetic principle. These last lead lives, perform acts and entertain ideas that are centrifugal rather than centripetal; their thought is scattered or diffused, moving on many levels, seizing upon the essence of a vast variety of experiences and objects for what they are in themselves, without, consciously or

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1 I use here the English translation of Archilochus’s line as proposed by Berlin, 1953/1998, 436. For an informative commentary on the line and its various interpretations, see Swift, 2019, 385–387.
2 Ryan, 2018, 212.
Introduction

unconsciously, seeking to fit them into, or exclude them from, any one unchanging, all-embracing, sometimes self-contradictory and incomplete, at times fanatical, unitary inner vision.

The distinction here is between two types of intellectual or artistic temperaments. On the one hand, there are ‘hedgehogs’, those who are driven by ‘one big idea’ – a system, framework, vision etc. – in terms of which they understand and approach the world. On the other hand, there are ‘fox’ types who are interested in a great variety of things for their own sake and view the social world, not as one coherent whole, but as a vast, multi-dimensional and perpetually changing landscape. While hedgehogs are inspired by ‘a single, serene vision, in which all problems are resolved, all doubts stilled’, foxes see ‘not the one, but always … with an obsessive, inescapable, incorruptible, all-penetrating lucidity which maddens [them] the many’.

Despite the apparent rigidity of this classification, Berlin never considered it to be watertight. The central hypothesis of his essay is, after all, that Tolstoy was by nature a fox but lived under the illusion of being a hedgehog. Nor did he mean his distinction to be exhaustive. Berlin readily conceded that some people may be neither foxes nor hedgehogs and that others may be both.

Even Berlin himself may not fit neatly into his own categorisation. On the one hand, he was a self-described arch-fox with an astounding range of interests and fiercely opposed to anything smacking of dogma and closed-mindedness. On the other hand, while tirelessly railing against the sins of the hedgehog, Berlin may have been something of a hedgehog himself. After all, the great bulk of his work can be understood as being animated by one single theme: namely value-pluralism, the idea that there are many genuine values which can, and frequently do, conflict, sometimes in irreconcilable ways, thus making hard choices unavoidable.

Berlin’s distinction between hedgehog and fox can, indeed, be understood as a metaphor for two contrasting approaches to morality and politics. One approach, symbolised by the hedgehog, is ethical monism, utilitarian or otherwise. This is the idea that all goods, virtues and ideals can, without loss or conflict, be fitted into one harmonious whole. Monism is built around the belief that there is a moral system, or universally valid law, from which we can derive single correct answers to any moral problem we may encounter. In this ‘hedgehog’ vision of the world, all conflicts among values can be solved and all tensions

5 Berlin, 1953/1998, 497, 491. Among the first category Berlin counts namely Plato, Dante, Hegel, Marx, Dostoevsky, Nietzsche and Proust, while he considers Aristotle, Montaigne, Shakespeare, Goethe, Herzen and Joyce to be among the foxes.
6 Berlin make this point particularly clear in his conversation with Jahanbegloo, 2011, 188–199.
7 For such an interpretation, see Gray, 2013, 36 (arguing that all of Berlin’s work is animated by value pluralism as ‘a single idea of enormous subversive force’).
ironed out once this ‘true’ system or law is known. If monism is the philosophy of the hedgehog, value pluralism is the philosophical outlook of the fox. At the heart of pluralism is the thought that human values are irreducibly plural, potentially conflicting and sometimes ‘incommensurable’ such that there is no common measure in terms of which they can be compared and ranked. On this pluralist view, there is no neat formula for resolving all moral conflicts, nor can these conflicts be translated into the terms of some overarching system. The fox thus leaves us with hard, perhaps tragic, choices to make.

While Berlin’s formula has enjoyed an enduring afterlife, less well remembered is Berlin’s warning against its overuse. In his Tolstoy essay, Berlin cautions at the outset that any such classification is over-simplifying and, if pressed too far, can easily become ‘artificial, scholastic and ultimately absurd’. And yet, while reminding us to guard against trivialising complex issues, Berlin suggests that his hedgehog/fox distinction can offer an illuminating lens through which to analyse and compare issues and, thus, provide ‘a starting point for genuine investigation’. The certain fact at any rate is that Berlin’s metaphor has inspired and continues to inspire a great deal of thinking on a multitude of topics in a variety of disciplines. There is clearly something about this metaphor that captures the imagination of many, including the present author.

Beginning with its title, this book unabashedly adopts Berlin’s dichotomy. It is guided by the assumption that his categorisation has something important to say about transitional justice, about what this field has been and what it has become. The book’s contention is that the metaphorical hedgehog, the moral monist, has come to dominate the current discourse of transitional justice, relegating the pluralist fox to the sidelines. What I shall call ‘the normal model’ reduces transitional justice to a monistic ‘anti-impunity’ framework of rights and obligations that leaves little, if any, room for the sorts of value conflicts, hard choices and dilemmas inevitably faced by societies emerging from political violence, whether in the form of authoritarianism or civil war. This book is an attempt to ‘think like a fox’ in an intellectual environment markedly shaped by the normal model’s unifying, ‘hedgehog-ish’ vision of transitional justice. By proposing an alternative pluralist reading of transitional justice, it seeks to interrogate the deeply constraining effects of this vision on our thinking about and doing transitional justice and, thus, to loosen its powerful grip on the field’s imagination. The result is a messier, more ambiguous but hopefully truer account of what is at stake in the choices that societies make in such troubling circumstances. Now that the hedgehog rules the roost, this may be a good time for the fox to reclaim its rightful place within the transitional justice

9 Berlin, 1953/1998, 437. 10 Ibid. 11 To give just a few examples, Berlin’s distinction has been applied to evaluating expert opinion (Tetlock, 2016), to modern architecture (Rowe and Koetter, 1984, 91–93), to moral and legal philosophy (Dworkin, 2013) to human rights (Sloane, 2010) and conflicts of law cases (Minow and Singer, 2010).
Introduction
discourse. This, at any rate, is what this book argues. But more than anything
this book is an invitation for entering an open, honest and multivalent conver-
sation about transitional justice as an immensely complex, eminently fallible
activity at the intersection between law and politics.

Theory and Practice

“The philosophers have only interpreted the world, in various ways; the point
is to change it.”
Karl Marx’s now-famous phrase greets the visitor at the
entrance hall of the Humboldt University in Berlin. The phrase can be read as
an injunction to turn abstract theory into transformative action. But it need
not be understood as a rejection of theorising, or intellectual work, as such.
Marx, rather, may be read as taking issue with a particular way of ‘doing’
theory, one which is inwardly contemplative, high-mindedly speculative, dis-
engaged and detached from the world. Instead of being free-floating, theory
should be practical, informed by and responsive to practical problems. But
if theory without practice is in danger of being empty and irrelevant, then
practice without theory can easily lapse into blind, unthinking activism.
Theoretical reflections alone can hardly change the social world. But as tools
for interpreting it, they may provide ‘an indispensable stimulus to judgment
and action’.

This book is meant to be an exercise in theorising. It is about trying to
understand and make sense of transitional justice as an idea and practice. Or
to borrow Marx’s phrasing again: this book is primarily about how to interpret
the world of transitional justice, and not so much about how to actually achieve
change in societies plagued by war and terror. What I have written is not meant
to offer direct guidance or advice to transitional justice ‘agents’ – whether poli-
ticians, activists or even citizens directly involved in or affected by collective
decisions in such volatile settings. Transitional justice theory, I assume, cannot
offer a blueprint for action, nor can it predict future events or new phases of
history. Only when a period of history is about to pass can it be captured in
thought – or as Hegel famously put it, referring to the Roman Goodness of

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12 This is Marx’s famous 11th Thesis on Feuerbach (in Marx and Engels, 1846/1970, 123,
emphasis in the original).
13 See Johnson, 2007, 185.
14 Allen, 1999, 318. See also Eagleton, 2018, 105 (suggesting that certain kinds of theories – he
refers to them as ‘emancipatory theories’ – ‘provide descriptions of how the world is; but in
doing so they can help change the way men and women understand it, which in turn can
play a part in changing reality’).
15 The kind of theorising pursued in this book is primarily ‘conceptual’ (i.e., concerned with
the elucidation and construction of concepts) and ‘normative’ (i.e., concerned with the
evaluation of political and legal practices), rather than ‘empirical’ (i.e., concerned with
explaining political and legal phenomena in the real world). However, the boundaries
between these domains of theorising are far from watertight and overlaps are to be expected.
See Twining, 2009, 12–13, for such a three-fold categorisation in the field of jurisprudence.
Wisdom, ‘the owl of the Minerva begins its flight only with the onset of dusk’.16

But what theorising can do is help to understand what is politically and morally at stake when societies seek to emerge from and cope with traumatic history.17

It is here that my criticism of the normal model enters the picture. I argue that this model, when uncritically adopted, has the effect of distorting understanding in at least three ways:

First, by representing transitional justice as a coherent system of mutually supporting principles, the normal model ends up suppressing the reality of value conflict. As pluralists insist, not all good things go always together – and this is particularly so, I shall argue, in circumstances of transitional justice where values often conflict and sometimes in irreconcilable ways. By assuming that the relations among these values can be made harmonious, the normal model leads us to overlook these tensions and so to neglect the need to make hard choices.

Second, because of its obsession with a handful of normative principles, the normal model fails to engage with the moral, political and practical complexities involved in effecting change in transitional settings. Framed in absolute terms abstracted from the realities of political power, this model has virtually nothing to say about the political processes by which societies torn apart by political violence might transition from where they are to where they should supposedly be.

Third, the normal model sets out a framework for how ‘to do’ transitional justice around the world, which is largely grounded in and shaped by Western legal doctrine and practice. This easily feeds into a culturally closed, uniformitarian and ultimately parochial agenda that marginalises or erases ‘other’ (non-Western) perspectives, approaches and voices in the name of ‘progress’ and ‘modernity’, in ways disturbingly reminiscent of colonialism’s ‘civilising mission’.

It is my contention in this book that a pluralist approach can provide a measure of corrective to such misinterpretations of what transitional justice involves and requires. As I shall argue, it can do so namely by taking value conflict seriously (rather than explaining it away), by adopting a politically realistic view of what ‘transition’ involves (rather than glossing over the complexities of political action in the real world), as well as by imaging transitional justice as a ‘travelling concept’ that moves back and forth between the ‘global’ and the ‘local’ (rather than imposing a ‘one-size-fits-all’ model for ‘doing’ transitional justice).18 Such a ‘pluralist reading’ of transitional justice, as I shall refer to it, involves a deep rethinking of the ways in which we typically think about transitional justice. It requires that we learn to unlearn the normal model.

17 My view here of theory’s task has much in common with John Horton’s ‘interpretative’ version of a realist political theory (Horton, 2016, 496–500).
18 I borrow the term ‘travelling concept’ from Bal, 2002 (who uses it to describe the way in which concepts, defined as ‘shorthand-theories’, ‘travel’ among humanistic disciplines thus transcending boundaries between them).
Introduction

In a field profoundly shaped by activism and social movements, some – and particularly those on the frontlines of struggles for change – might have serious reservations against, or even hostility towards, a project of theorising such as this. They may dismiss what theorists do as mere ‘armchair exercise’, as a luxury they cannot afford. Conversely, those more theoretically minded may, no less simplistically, accuse practitioners and activists of unthinking activism and anti-intellectual bias. The dividing line between theory and practice may be much more porous than such stereotypes suggest, however. Theorising, after all, is a thinking activity. Whenever we are theorising about some complex phenomenon, we are in some sense already in the process of doing something. At the same time, doing something presupposes first thinking about it in order to figure out what would be the best course of action. Practice so understood is a form of theory, just as theory is a form of practice.

By this is I do not mean to say that theory is reducible to or identical with practice. There are good reasons for maintaining a certain division of labour between theory and practice. One reason for maintaining that division is that conclusions about what should be done in a concrete situation will raise a whole range of empirical questions and require skills in practical judgments that theorists may know nothing or little about.

But there is more to be said for not collapsing the distinction between theory and practice. When subjected to the demand for immediate political action and when reduced to mere policy formulation, theory risks losing – as Wendy Brown puts it – ‘the air of independence that it must have to be of value as intellectual work for political life’. Keeping theory and practice separate is essential, on this view, to maintain theory’s critical and creative edge.

But ‘separation’ between theory and practice need not mean ‘detachment’ of the two. Instead of pitting theory against practice, their relation may be better thought of as one of ‘creative tension’. This is how Black feminist scholar Patricia Hill Collins describes the relation between inquiry and praxis in her work on intersectionality. She argues that intersectional analysis, as a tool for understanding intersecting power relations, should be grounded in both inquiry and praxis, ideas and experiences. While their relation is rarely without tension or discord, theory and praxis can in her view be brought into constructive dialogue with one another in such a way that neither is elevated above nor conflated into the other. Rather than focusing on one or the other, either praxis or theory, Collins urges us to appreciate how the two can work together.

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20 The point is well made by Theodor Adorno, who argues that ‘thinking is a form of practice; when I think, I am doing something. Even the most rarefied form of mental activity contains a form of the practical’ (in Adorno and Horkheimer, 1956/2011, 51). On Adorno’s understanding of the relation between theory and practice, see Freyenhagen, 2014. See also Leeb, 2017, 91–92.


22 See Collins, 2019, 159. See also Collins and Bilge, 2020, 38–39.
in ways that may stimulate both new ideas and new forms of practices. From this perspective, there is nothing contradictory in the notion of ‘intellectual activism’, which Colins full-heartedly endorses to describe the many ways in which ‘people place the power of their ideas in service to social justice’.23

Conceiving the relationship between theory and practice as synergistic rather than oppositional may allow to shorten the distance between what often appear to be two separate worlds – the world of academics, those whose job is to think about transitional justice, and the world of activists, directly engaged in the struggle for change and social justice. Christine Bell has written on this relationship from a deeply personal perspective.24 As someone who was first involved in human rights activism in Northern Ireland and then became a legal academic, Bell expresses concerns about the growing ‘academisation’ of transitional justice and its effects on activism. Pointing to the typically academic tendency to become absorbed by deconstruction and critique without paying heed to real-life consequences, she worries that the academy may be part of the problem rather than the solution. What if, she asks, academic critique inadvertently contributes to undermining law’s potential to offer what may be ‘one of the last bulwarks against oppressive actions’ available to those in the struggle?25

But Bell does not leave it there. She concludes her personal reflections by imaging an encounter between a human rights academic and a local activist. There are different ways, Bell suggests, in which the academic might present her position to the activist. These range from detached sympathy (‘you are fighting a good fight … but we have all our place in the struggle’) and shared activism (‘I am coming with you, even though we may end up pissing in the wind’) to critical engagement (‘Come down off the barricades, and consider how you may be doing more harm than good’) and nervous defensiveness (‘we have nothing to do with each other and there is no reason why I should talk to you’).26 But there is one position, one way of addressing the local activist, Bell leaves us with at the very end of her paper: ‘Come and talk to me a minute to see if together we can find the political space and change we both search for’.27 On this last account, the academic and the activist have different places in the struggle, but they nonetheless can join forces in trying to make their world a better place.

Theorists should know their place, and it is hardly at the barricades. I still hope that this book can speak, in some way, to Bell’s activist, perhaps along the following lines: ‘Stay where you are, yours is an important fight for social justice, and I have nothing to teach you about it. But if you have a minute, I can tell you something about how I’ve been struggling to understand the world you and others are facing; something about how I’ve come to view struggles

27 Ibid.
Introduction

for political change like yours as seldom, if ever, clear-cut and often ambiguous and conflicting; something about why I believe that decisions in such settings often entail hard choices among conflicting values and competing reasons for acting one way or the other; something about why I doubt that what you’re trying to achieve can be codified into some neat set of principles, without loss and sacrifice’.

Roadmap

This book proceeds in four chapters. As reflected in its subtitle, Transitional Justice for Foxes is built around three main themes, each of which forms a chapter of the book: conflict, pluralism and compromise. Each theme constitutes a building-block of the pluralist reading I propose as an alternative or at least supplement to mainstream transitional justice discourse. These three core chapters are preceded by an opening chapter that prepares the ground for the following discussion by offering a ‘conceptual analysis’ of transitional justice (which, in Adam Swift’s perceptive phrase, is ‘just a fancy name for the obviously important job of working out what people mean when they say things’).

The opening chapter sets the stage for the book’s main arguments. After identifying central features of transitional justice as a concept, I turn to analysing one particularly influential conception of transitional justice, which I label – borrowing from Judith Shklar – ‘the normal model of transitional justice’ (or in shorthand as ‘the normal model’). Taking cue from what I take to be a foundational document for this approach, the 2004 United Nations Secretary-General’s Report on the rule of law and transitional justice, I set out to unpack a number of assumptions and principles on which this model is based. In doing so, I give particular attention to Pablo de Greiff’s ‘normative conception of transitional justice’, which provides an important backdrop against which my pluralist reading unfolds in the subsequent chapters. But in addition to exploring the normal model as the main object of my critique, this opening chapter places the book’s argument in relation to larger ongoing critical debates within the field.

Chapter 2 discusses the place of conflict in transitional justice. Building on a range of historical real-life examples, I argue that conflict is an important rather than incidental part of many, if not all, transitional justice processes. My initial focus, here, is on value conflicts – conflicts between and among values usually associated with transitional justice such as justice, peace and truth. Later in the chapter and beyond, I however expand the discussion to conflicts of interests, conflicts over distributable resources such as political power, offices and money. Drawing on recent realist work in political theory, I consider such conflicts to be an ineliminable feature of real politics. The gist of

my argument is that, to be ‘realistic’, an approach to transitional must engage with, rather than shy away from, both forms of conflict as realities we cannot eliminate from transitional justice. Another way of putting the point is to say that it is time to give politics its due and idealisation a rest in transitional justice. This is not an argument against ideals, however. If transitional justice is about change for the better, we cannot do without them. My criticism of the normal model is rather that it is ‘idealistic’ in the wrong sense, in such a way as to suppress, erase from view, real experiences of conflict. Towards the end of the chapter, I explore recent attempts in the transitional justice literature to take conflict more seriously. I argue, in particular, that Christine Bell’s account of transitional justice as bargaining provides important insights into what it might mean for transitional justice scholarship to be more ‘realistic’, attentive to the realities of disagreement and struggles for power.

In Chapter 3, I offer a pluralist reading of transitional justice that is built around three distinct meanings of pluralism. The first and here central meaning is value pluralism – the idea, dear to Isaiah Berlin, that values are irreducibly manifold, potential conflicting and frequently ‘incommensurable’ in such a way that they cannot be ranked or weighed on any single scale. The world we inhabit is (as Polish philosopher Leszek Kołakowski puts it) fundamentally ‘inconsistent’, riddled with tensions and contradictions among values. This idea offers, I argue, a useful lens through which to view transitional justice and to critique the normal model’s underlying vision of it as a unitary, perfectly consistent system. The second meaning of pluralism relevant to this chapter is cultural pluralism. It refers to the fact that there are many different cultures, many different collective ways of life, none of which can as such claim superiority. While insisting on the possibility of a cross-cultural conversation around core values, the pluralist approach I propose rejects the normal model’s tendency to reduce transitional justice to one set of (Western) cultural forms arguing, instead, that there are multiple culturally specific ways of actualising it. The third form of pluralism I briefly consider is legal pluralism, meaning the coexistence of competing legal orders. Discussing Rwanda’s experience with the so-called gacaca courts, I suggest a pluralist understanding of the rule of law flexible enough to accommodate cultural variation while remaining committed to what I take to be its universal ‘core’ – i.e., the prevention of arbitrary power.

The chapter ends with a sort of intermediate conclusion, where I propose a pluralist method for thinking about transitional justice. As I make clear at the outset, I do not intend to offer a method for ‘doing’ transitional justice that aspires to directly guide action. In line with what said earlier about the relation between theory and practice, this is primarily an attempt to understand what transitional justice is and requires and, in doing so, to unmask distortions latent in the normal model. I link such a pluralist method to a number of commitments or attitudes, which I describe as ‘sense of reality’, ‘antimonism’, ‘situated thinking’, ‘decolonised cosmopolitanism’ and ‘fallibilistic
mentality’. Together, these commitments can serve, I argue, to counter or mitigate a number of problematic trends in contemporary transitional justice discourse and practice, which I see as connected to the normal model’s influence on the field. I identify and criticise eight such trends – including the tendency to unduly reduce transitional justice to a technical ‘box-ticking’ exercise, to impose a uniformitarian, essentially Western-centric agenda for action, to indulge in ‘success story’ narratives that have little to tell us about actual transitional justice choices, to project a vision of progress that is both unrealistically utopian and insufficiently bold to tackle most pressing social problems.

Chapter 4, finally, explores the place of compromise in transitional justice. While all-pervasive in politics, compromise is a neglected topic, almost a non-topic, within the current transitional justice literature. The chapter is an attempt to reverse this tendency and rehabilitate the notion of compromise. Like Berlin, I consider the need to compromise an integral part of value pluralism. If, as pluralists hold, we are often faced with cases of hard moral choices where, whatever we do, something of value is irreparably lost, then the best we can hope for is some kind of acceptable compromise between clashing goods.

The question about the limits of compromise thus features centrally in this chapter. How far should transitional societies go in their willingness to compromise? When is a compromise acceptable, fair, guided by principle, and when is it rotten to the core, simply illegitimate? To which extent is it acceptable to compromise deeply held values such as justice and truth for the sake of other equally important values such as, say, civil peace and democracy? Much of the following will be dedicated to addressing issues such as these and exploring the limits of compromise.

My discussion proceeds in two main parts. In first part, I explore the meaning of compromise and propose an understanding of it as a process of political negotiation, in which each party makes concessions to the other in order to reach a ‘second best’ settlement all can live with. I then ask the question of the significance and role of political compromises in transitional justice processes. In taking up this question, I identify six reasons why compromise should be given a central place in theorising and practicing transitional justice. The second part of the chapter revolves around the question of the limits of compromise. While I am doubtful that we can settle the issue once and for all, I identify a range of questions and issues that should be part of the collective conversation about when a political compromise is acceptable and when it is not. I begin my discussion, however, with a concrete historical figure, the communist leader Joe Slovo, who played a critical role in South Africa’s negotiated transition from apartheid to democracy. Slovo’s reflections on the nature and limits of compromise in the South African context serve as a central reference point for my discussion throughout this chapter.

The book ends with nine theses on transitional justice. ‘Discussions of social theory’, Judith Shklar once remarked, ‘do come to an end, but they are rarely,