1 Spotlights and shadows: revisiting the scope of transitional justice

Guy Elcheroth and Neloufer de Mel

Transitional justice at a crossroads

There are two different ways of answering the question “what is transitional justice?” The first focuses on what differentiates transitional justice, *in principle*, from other human activities meant to respond to injustice and crime. From this angle, two elements can be seen as critical to the definition of transitional justice. On the one hand, it occurs in societies that are in some way over-burdened by a past legacy of systemic injustice, generally to a degree that would impair social life and the functioning of institutions in manifold ways. On the other hand, it refers to forms of justice that can only be delivered when such societies have reached a turning point at which previously closed opportunities for dealing with a criminal or oppressive system become open, most typically after the toppling of an authoritarian regime or the end of war. In that view, transitional justice is largely defined by its historic context. The Nuremberg trials can be considered as (pioneering) examples of transitional justice not only because of the Nazi regime’s scope of atrocity, but also because Nazi Germany had been defeated when the trials took place. The South African Truth and Reconciliation Commission (TRC) is generally seen as an emblematic case of transitional justice, not only because of the horrendousness of the racist crimes institutionalized by the apartheid regime but also because it was instituted in the wake of the legal abolishment of apartheid and of democratic elections bringing to power a previously oppressed majority.

The second way of answering the definitional question focuses on what is typically done *in practice* under the banner of transitional justice. From this perspective, transitional justice is mainly defined by the particular type of mechanisms that have been implemented historically to address past injustice. At the heart of such a definition one can identify a triangle of mechanisms which foreground dealing with either perpetrators, victim-survivors or the system: prosecution, reparation and truth-seeking. These are often complemented by a second triad of mechanisms aiming to prevent reoccurrence, through changing institutions, elites or ideologies: reform, lustration and memorialization. From this view, the Nuremberg trials were transitional

justice simply because they were war crimes tribunals, and the South African TRC because it was a truth commission. Such a working definition potentially broadens the scope of transitional justice, as political transition becomes a secondary criterion – or defined circularly, as transition to a situation where there is sufficient political will to institute a given mechanism. In this view, a political decision to “belatedly” tackle a so far unaddressed legacy, such as Belgium’s recent decision to create a special commission to examine its colonial past (Ponselet 2020), or a “premature” move to address crimes in the midst of open violence – as with the creation of the International Criminal Tribunal for the former Yugoslavia in 1993, while war was still raging in Croatia and Bosnia – can also be seen as transitional justice, as long as the way of dealing with misdeeds draws on transitional justice’s cumulative toolkit.

However, a recent wave of debate in the field further complicates the picture. The crux of current discontent within an important part of the transitional justice community of scholars and practitioners lies with the recurrently observed failure of key mechanisms to trigger systemic change, to deliver on social justice or to tackle deep sources of violence, suffering and conflict rooted in economic structures (see Gready and Robins 2019). This debate is based on the understanding that “transitional justice is in crisis” (Gready 2019, p. 1) and has led some observers to wonder whether a “schism” is in the making in the field (Balasco 2018), between sceptics and enthusiasts of its transformative turn. For the latter, the quality of social change achieved *in effect* through a transitional justice process is a more central concern than the intrinsic qualities of the means mobilized. This approach appears, hence, to open the door to a third type of definition, focusing more on the grand objectives of any transitional justice process than on the type of mechanisms it institutes. What matters most in this view is the transformative ideal a society is capable of moving towards: minimally, to become more resilient and to prevent further outbursts of violence; more ambitiously, to become fairer and to overcome systems of oppression. Such a focus on “transformation” also further relativizes the importance of “transition”: sometimes this notion is even seen as being part of the problem, as it focuses on a particular historical moment, rather than on chronic, long-term patterns of oppression.

In short, the transformative current proposes a new vision of what transitional justice should aspire to be. Doing so, it may be blurring the lines – or revealing disagreement – about its *specific* contribution to a much broader field of practices that work towards greater social justice. (What else can transitional justice offer to the wider field, if not the idea that engagement with the past during political turning points can be a powerful pathway to change?) It raises the question whether transitional justice’s traditional focus on the *extraordinary* – on extraordinary circumstances following authoritarian regimes or armed conflict and on extraordinary tools such as special jurisdictions, ad hoc truth commissions or reparations for specific groups of

victims – has become both its main strength and its main weakness. What space can be given to shake “ordinary” forms of oppression or to attune “ordinary” forms of suffering within a “limited mandate” for transitional justice? Will it still be possible to reconcile the renewed focus on dismantling oppressive structures spanning from the past into the present, and the progressive values underlying this focus, with the tools that decades of transitional justice practice and research have left us with?

Societies caught in transition: when justice is postponed

The fact that transitional justice can be strong when facing the extraordinary, but weak towards the ordinary, implies that its brilliance sometimes fades with the passage of time. South Africa is certainly emblematic of these two faces of transitional justice. While the country’s experience has often been referred to as an exemplary demonstration of what a truth and reconciliation process can achieve, and while it has shaped the field’s “global norm” (Ben-Josef Hirsch 2014), today it anchors the most influential critiques of the same norm (Gready 2011; Evans 2018). Apartheid has disappeared in law, but segregation and racial inequality remain as an enduring social reality in urban landscapes and in the daily experiences of South Africans (Dixon and Durrheim 2003; Evans 2016). If the focus is on social transformation, retrospectively, the South African TRC might be seen as a weak form of transitional justice, in the sense that it has not set in motion profound changes to the social and economic structures which sustain racial inequality. In a context where change has been fought for and has been celebrated, but then never realized at the promised scale, different aspects of social life appear frozen while the past does not go away. The experience of racial inequality but also the rhetoric of struggle – reoriented against new targets (Kerr et al. 2019) – are both persistent and blurred.

To be fair, however, we don’t know what kind of society South Africa would be today had there been no truth process in the 1990s. In Palestine, where the experiment of a peace process without a truth process addressing past violence and collective expulsion was launched during the same period, a regime of *formal* segregation is in place today, with a complex web of territorial fragmentation, permit systems, separate roads, military checkpoints and the fence that Palestinians call the “apartheid wall”. Within and outside Palestine, Palestinian refugee camps display dramatic instances of the paradox of a transient situation that lasts, and of a language of struggle, of martyrs and heroes passed down over generations together with the memories of the lost places and a non-enforced right to return (Khalili 2007).

Triumph and trauma: when commemoration becomes invasive

It is more than a bitter historical irony that the state that is currently holding the reins of this institutionalized system of segregation is itself born out of

unimaginable atrocity. Klar et al. (2013) have analysed Israel's treatment of the Holocaust, from an earlier period of silence to the current reality of ever-present commemoration – in the daily news, books, classrooms, remembrance days and organized trips to Poland's death camps. While all of these commemorative activities gravitate around the moral imperative of non-reoccurrence, there is more than one way to understand the lessons of history and more than one meaning of “never again”: from never again letting catastrophe happen to the *Jewish* community, to never again accepting cruelty inflicted on *any* human community. In present-day Israel, these different voices are not equally strong, and are not equally sustained by state institutions. The Israeli case therefore illustrates that, while collective trauma can contain the seeds of its non-recurrence, eventually the lessons learned depend on what exactly is seen as needing to be avoided and hence, not least, on the nature of the state and regime that channel the commemorative energy.

Rwanda is arguably the most far-reaching contemporary experiment with transitional justice. Mechanisms unprecedented in their range and scope have been implemented in response to the horrendous tragedy of the genocide committed in 1994. These include a special international criminal tribunal and local *Gacaca* tribunals, a reorganization of the state and legislation to eradicate the institutional roots of genocide, as well as massive memorialization projects to tackle its ideological roots, and entrench the “never again” imperative. The sheer number of people involved in different roles bears no comparison, with the number of accused *génocidaires*, witnesses and even local *Gacaca* judges being counted in the hundreds of thousands (McKnight 2014), while the annual 100 days of mourning have become an inescapable commemorative routine for the country's 12 million inhabitants. As in the case of South Africa after apartheid, these massive efforts could not have been deployed without the required political will. Similarly to Nelson Mandela's African National Congress, the party and regime led by Paul Kagame is imbued with a twofold historical legitimacy in Rwanda after the genocide: as representatives of the historic victims and as leaders of an eventually victorious struggle against the previous criminal regime.

Rwanda seems, hence, an interesting place to look for how a transitional justice experiment can transform a society when it is delivered top-down by a voluntarist state power and is designed to infuse all spheres of social life. Research from different fields has revealed a range of worrisome side-effects of such collective state-enforced “treatment”. Psychologists have warned against the re-traumatizing effects on survivors and witnesses (e.g. Brounéus 2010), anthropologists against the diversion of justice to serve individual or collective agendas (e.g. Burnet 2008) and political scientists against the blurring of power relations when idealized “local” forms of justice are manipulated by overhanging state actors (Kochanski 2020). What seems to hold these apparently disparate problems together is the underlying “danger of a single story” (Jessee 2017): the narrowing down of complex stories about past violence to one pre-eminent and tightly monitored narrative. Today, it is

possible that many Rwandans are psychologically, socially or politically insecure not because of a lack of engagement with the past, but because they struggle to integrate their own experiences, concerns or aspirations with the regime's overarching call for remembrance, instituted as a moral, social and even legal imperative.

But, again, it seems unfair to judge the impact of transitional justice without looking at societies where there is no full-hearted attempt to hold perpetrators accountable or to memorialize the collective trauma. In Sri Lanka, the military victory of the government forces over the rebel forces, in 2009, not only brought to its end an almost three-decades-long civil war, but also opened a boulevard for a triumphalist, state-led narrative on the war, which left little space to mourn losses, especially among the Tamil minority which bore the highest toll during the brutal ending of the fighting. Victory monuments were built throughout the country – including near sites where countless civilians were trapped during the latter stages of the war – and Sri Lankans from the south of the country were “toured” into the war sites in the north, to be told the government's tale of war and victory against terrorism (Hyndman and Amarasingam 2014). At the same time its former opponents, the Liberation Tigers of Tamil Eelam, were wiped out in the country, through the elimination of its leaders during the final offensive, the “rehabilitation” of its surviving, lower-ranked combatants and the removal of its military cemeteries. Keeping intact sites to mourn the losses – even modest and informal – has become a risky operation within the country, and remaining attempts to preserve the memory of the struggle are sometimes displaced to the diaspora (Orjuela 2020). In this context of post-war triumphalism, an emboldened Sri Lankan government has made resistance against a “global norm” version of transitional justice a part of its heroic narrative to defend national sovereignty against both terrorism and Western interference (Parasram 2012).

Disenchantments, new expectations and the scope of transitional justice

To recap, transitional justice has become an inherently controversial project, contested on multiple grounds. On the one hand, it is opposed by those who worry when it goes too far, permeating social life with an inescapable duty to remember, and on the other hand by those who are disappointed when it does not go far enough, and provides only symbolic or exceptional justice where chronic injustice remains. Furthermore, it has become a target for those who denounce the double standards of the international community and see the global norm as a Western norm, as an ideological justification to the promotion of Western geopolitical influence.

Notwithstanding these critiques, there are concurrent calls to further expand the scope of transitional justice to the most pressing unresolved problems of our times. When African nations call for an international investigation into systemic racism in the United States on the backdrop of its

unaddressed history of slavery (Human Rights Council 2020), or when the European Union, in its current anti-racism action plan, responds to the Black Lives Matter movement by encouraging a critical re-examination of Europe's colonial history (European Commission 2020), the intellectual heritage of transitional justice is clearly discernible. More creatively, some scholars are mobilizing a transitional justice lens to fight against global warming and its consequences, by addressing the historical roots of current obstacles to climate justice (Klinsky and Brankovic 2018), or by designing a framework for reparative justice for climate refugees (Buxton 2019).

All in all, it seems that transitional justice has become a site of both recurrent disenchantments and new hopes. With this book, we aim to take both seriously, recognizing the good reasons underlying disenchantments *and* hopes. But the book is also rooted in something more. Something that runs through the history of transitional justice as a red thread, underlies its bright and dark sides, and helps to make sense of the formidable – sometimes excessive and unrealistic – expectations placed on transitional justice as well as of dreams that turn sour: our collective intuition of the world-making force of remembrance.

Memories can be our prisons, but sometimes they pave the ways out of them. Transitional justice processes are typically high-stakes events, which crystalize strong advocacy *and* resistance, not only because they can send to jail high-profile leaders, or better the living circumstances of those recognized as victims of criminal systems, but also because a society that accepts to revisit its past potentially remixes the cards for what becomes possible (or impossible) in the present. Forced after World War II to look deeply into its own moral abysses, German society had symbolically closed doors to certain forms of political and military organization for its post-war generation, and cleared the way to a new constitutional democracy. This process created winners and losers, but it was able to draw on a then consensual set of values and worldviews. But to what extent does remembering our collective pasts affect how we organize and act together, and why does it often result in entrenching the social status quo, while at other times turning it upside-down?

Can remembrance change societies?

If we want engagement with the past to be a lever for change, then what we remember from the past needs to be more than what the powerful and the victorious retain and celebrate. To be clear about that point, it is helpful to disentangle notions that are sometimes used in a loosely overlapping way, such as remembrance, commemoration or celebration of the past. Commemoration can be thought of as a socially instituted form of remembrance – often orchestrated by nation-states – while celebration stands for a triumphalist form of commemoration, which foregrounds victory, virtue and vindication. The examples alluded to in the previous section call to mind what can happen when remembrance is *reduced* to commemoration, or when

commemoration is *reduced* to celebration. But they should not lead us to overlook the fact that commemoration can also be more than celebration, and remembrance more than commemoration. It is therefore important (and, indeed, a primary motivation for this book) to clarify why non-celebrative forms of commemoration are essential for reimagining social life during periods of transition, and how non-commemorative forms of remembrance provide the creative building blocks for such an undertaking.

Selective silences: worlds built on oblivion

When opening their monograph dedicated to formal commemorations of the 1974 Portuguese Revolution, Billig and Marinho (2017, pp. 3–4) warn readers about what they do *not* aim to do:

Works about collective memory often examine texts and speeches in order to extract and then reconstruct a group's shared, or contested, collective representations of its past. We could have done this. It would have been possible to pore over the ceremonial speeches, extracting hints about the memory of 25 April and then collecting these hints together to form a pattern that we then claim to be 'the Portuguese collective memory or memories' of the revolution. If we did this, we would be acting like the police inspector who overlooks the obvious absence. In our desire to find the shared memory, we would run the risk of failing to notice how little direct remembering is going on in these ceremonial speeches.

Instead of searching for "the memories" in the solemn words and phrases pronounced by leaders during commemorative speeches, or in their grand symbolic gestures, Billig and Marinho set out to "look for absences" and, this way, were able to highlight some notable patterns of meaningful silence. Across the political spectrum, parliamentary speakers have commemorated the events of 25 April 1974 "forgetting" to mention what concretely happened on that date – past its mythicized dawn, when the captains were joined by the people in the streets of Lisbon – or what General Spínola, who became the new republic's first president, did during the day. Despite the solemnly displayed national unity, they would also systematically "forget" to applaud the words of their political opponents. Most conservative politicians would, moreover, "forget" to decorate their buttonholes with a red carnation – not only the commemorative symbol of the popular revolt, but also a reminder of its socialist inspiration.

To literary scholars, Billig and Marinho's approach might ring a bell. Pierre Machery, in his classic *Theory of Literary Production*, wrote:

The speech of the book comes from a certain *silence*, a matter which it endows with form, a ground on which it traces a figure. Thus, the book

is not self-sufficient; it is necessarily accompanied by a certain *absence*, without which it would not exist.

(p. 85, emphasis added)

But making sense out of silence might prove enlightening well beyond the realm of books, scripted texts or solemn commemorative speeches. The social worlds surrounding us – if we dare to use the oxymoron – are filled with absences, which can prove heavily meaningful when set in their relevant context. Selective forgetting happens when families talk or don't talk about their country's colonial past (Licata and Klein 2010), when archivists decide which documents to conserve in a national archive (Millar 2006) or when we share our most memorable life events with other people (Pasupathi et al. 2009). It filters what we retain from intimate experiences and from social crises, and it holds together our national narratives, from their most mundane (Billig 1995) to their most aggressive and militant expressions (Ramanathapillai 2006, 2012).

Truth, memory and the quest for shared reality

From a strictly logical point of view, the phrase “selective memories” comes close to a pleonasm. Memories simply *are* what we retain, for a given period, from a potential infinity of events, experiences or sensations, and there is no plausible reason to expect such selection to occur “randomly”, in the way that statisticians use the term: with equal chances of selection given to each instance. The idea of living every moment of our individual or collective existence with the cumulative legacy of anything ever experienced beforehand seems logically and psychologically untenable. It furthermore makes sense to expect that some good reasons are at play when we keep certain memories and unburden ourselves from others. But, as there can be a plurality of good reasons potentially in conflict with each other, the critical question is: what makes certain good reasons outweigh others, or when it comes to *collective* remembrance, what makes *some people's* good reasons prevail over those held by others?

The examples given in the previous section suggest that, for experiences that can either be forgotten or remembered in societies confronted with their troubled past, there is always an underlying political dimension. The “good reasons” of leaders, state representatives or militant challengers to favour certain memories over others appear often relatively easy to infer, once we have a good enough idea of the past involvements, current interests and future agendas of specific actors. The more complex and less well understood part of the process lies with larger groups of people, and with the questions of when and how they align their memories with those of particular political leaders, especially when there is no perfect match between elites and people's involvements, interests and agendas.

To grasp what is at play in these collective processes, we first need to be clear about one thing: the fact that there are specific reasons why certain

things are remembered and others forgotten does *not* imply that the process is fully deliberate, i.e. that we only remember what we *want* to remember. We also need to have a *chance* to remember. It is sociologically and psychologically well established that “memories” are not like inert things that can be put away and stored somewhere to be preserved. The only chance for our memories to survive is that we *practise* them: we remember by rehearsing. We retain a memory by spending time thinking about it, by telling it to someone, by writing it up, singing it, crying it or playing it. Therefore, when stripped of sufficient opportunities to do any of these things, we will, sooner or later, lose a memory. Another consequence is that each time we tell, write, sing, cry or play a memory, we do more than simply keep it alive: we give it *new* life. The memory is not simply preserved, it is re-elaborated and transformed – potentially enriched of certain qualities and impoverished of others – each time we remember.

The critical point for understanding the relationship between remembrance and social change is that we are seldom alone in these transformative moments. Two decades of research into the social psychology of remembrance suggest that “not being alone” when remembering might actually be a pre-condition both to keeping a memory alive and to transforming it by sharing it. Two telling experiments help to make this point concrete. In one experiment, Pasupathi, Stallworth and Murdoch (1998) showed short movie excerpts to research participants and then asked them to recount some of the clips they had seen to someone else. The clips were actually randomly allocated to three different types of treatment: for some clips, the person to whom a research participant retold the movie content was instructed to do nothing other than to listen attentively; for other clips (s)he was distracted by a different task while listening; while the remaining clips were not recounted at all. When asked to recall the content of the movie excerpts three weeks later, research participants proved able to provide significantly more details for those clips that they had been given an opportunity previously to relate to someone who was actively listening. Interestingly, distracted listeners were of no help: as many details were forgotten from the clips recounted to someone displaying no signs of genuine interest as from the clips that were not retold at all. These findings suggest, therefore, that we remember better what we are able to share: remembering is a *social* practice, not something that can be done effectively in isolation, or without the sense of a meaningful social exchange.

In another noteworthy experiment, Marsh (2007) was interested not so much in how detailed or accurate memories are depending on the social circumstances, but rather in how they are *transformed* by being shared. She asked research participants to read a story, then to retell it with a specific purpose (either to recommend the main character or to complain about him/her) and, finally, to recall the original story as accurately as possible. As a result, in the final recall, participants tended to forget elements from the original story that were incongruent with the purpose of their own previous

retelling of the story, and they added elements (not present in the original story) that were congruent with this purpose. This finding led Marsh to speculate: “What people remember about events may be *the story they last told about those events*” (p. 19, emphasis added).

Subsequent studies have reached similar conclusions. Some authors have gone further in theorizing the underlying motives and mechanisms through which our memories change. Echterhoff et al. (2009) have highlighted our epistemic and social need to live in a *shared reality* as a driving force. Most facets of our lives unfold in a social world that *is* the world we share with others and upon which we can act jointly. Being unable to live in a shared reality breeds isolation, helplessness and estrangement. As a consequence, we invest effort in keeping intact a sense of shared reality by selecting and accommodating what we share with others to what we anticipate they will be able to hear and recognize as true and as relevant. But there is also an internal side to the process: we tend to remember our experiences in the way we’ve shared them. Our stories become our memories and what we can’t turn into “good stories” – stories others will listen too attentively – is doomed to oblivion.

Those who control state power can pull a variety of strings that shape opportunities to share stories publicly and position them as “good stories” that are worthy of being widely heard and rehearsed. But no state is almighty, and the spaces to share stories are negotiated at multiple scales. For example, Di Pasquale (2012) has studied a small mountainous village community, in the Italian region of Tuscany, that has managed to keep alive, over a period of 60 years, a locally shared memory of a World War II massacre, despite a policy of forgetting and impunity pursued by state authorities, until their memories were finally sanctioned by a belated trial of the Nazi officers responsible for the atrocity:

The survivors and the relatives of the dead have constructed their memory around their own cognitive and cultural horizons. They have crystallized their experiences, integrated personal stories with details of everyday local life and linked this collective representation with relevant information from the outside. In this way, the subjectivities of mourning have formed a mnemonic community defined by continual recollection of their wartime past. This means that the Nazi violence has affected the entire social group: none of the members has been able to forget it, even if not all of them have wanted to deal with it.

(p. 501)

Scales of transformation

So far, we have referred rather loosely to processes that play out at the most contrasting levels of human experience: from the intimate process of remembering to the “global norm” of transitional justice, with community and state levels in between. In our current world of nations, how a process of

transitional justice becomes instituted at the national level is often particularly consequential and the question as to what international actors can and should do to facilitate the occurrence of such a process is typically of particular pragmatic relevance. This question is tied, however, to difficult unresolved problems, both normatively and analytically.

Normatively, there is the question of what legitimacy “foreign” actors have to influence a domestic process. As alluded to already with the Sri Lankan example, state actors facing international pressure are often eager to point out their own democratic legitimacy and the principle of national sovereignty, and to denounce external human rights claims as power politics conducted under a moral guise. Friction between international and local actors accusing each other, respectively, of “interference” and “spoilerism”, might be more typical than harmonious cooperation and converging objectives (e.g. Höglund and Orjuela 2013). In this context, recent voices have warned against romanticizing local communities’ roles in transitional justice, as they often become the sites of competition between domestic and international actors, where either side refers to local practices, traditions or aspirations to further their own agendas and project their own understanding of coming to terms with the past (e.g. Kochanski 2020).

Thorough and controversial ethical debates certainly remain necessary in this field, as there will never be a neutral perspective from which to judge the legitimacy of different actors entering into friction with each other in the global system. But these debates might remain fruitless so long as they are guided by abstract and idealized notions of the “national community” or of the “international community”. It is important therefore to look at specific groups of actors that have a stake in the process and to wonder to what extent their perspective and interests are, and can be, concretely represented by entities such as state institutions or international organizations. For example, what justice can defeated groups or minority communities expect from the nation-state when state institutions are controlled by the majority? What effective access do groups that occupy a peripheral position in any given social structure have to formal justice?

Analytically, there is the question of how complex processes that intersect across different scales end up making a difference in practice. A simple political analysis of key actors’ interests, power calculus and resources risks falling short of processes that are also about emerging dynamics, unintended consequences and shifting social ecologies. Political power is always contingent upon the capacity to mobilize support and shape collective action: even in the most coercive authoritarian regime, the question remains, for example, at what point people expect that others will follow orders and that those who disobey will be punished. Moreover, social groups and social systems generally do not come out of periods of collective violence as they have entered them (Elchereth and Reicher 2017). What is valuable – and hence defines collective and individual interest – changes in the face of collective trauma (Spini et al. 2019), or during the very process of addressing

past crimes (Rimé et al. 2011). Sometimes new groups emerge out of violence (e.g. Thiranagama 2013). Often, intergroup configurations shift entirely, when previous alliances break up or new alliances are created, or when previously passive third parties become actively involved (Dixon et al. 2020). Such complex dynamics and moments of unpredictable change are sometimes feared as potential roads to chaos, but they also sow the seeds for progressive social change (Drury 2018). In moments of transition, small differences can have large consequences when one change triggers the next, in a cascading sequence of events. Social change is not decreed top-down, but well-timed policy initiatives can take an emergent movement beyond a specific tipping point (see Nyborg et al. 2016). If the success of transitional justice is to be measured at its capacity to be transformative, it becomes important to judge any transitional justice process not only by its internal procedures, but also by the way it interacts, at a specific place and time, with collective resources set in motion locally and globally. The oversights of transitional justice with the most far-reaching consequences might be those that “forget” that resources such as potential allies for justice, changing collective values or facilitative “stocks” of common experiences are available, where and when they are.

Exploring the shadows

At this point, a range of reasons why we aim to revisit transitional justice from its shadows might have transpired. We do not only borrow the idea from Billig and Marinho, and Macherey, that omissions – what is *not* shown, said or remembered – can be meaningful, but also anticipate that by shifting our gaze away from what is actively lit to what is rendered more difficult to see, we can learn something useful about demobilizing delusions, missed opportunities or unexplored possibilities. To recap with examples from two sites already alluded to, which will be deepened throughout this book: in South Africa, deep economic injustice and racial segregation never went away, but might have been temporarily more difficult to see, during the post-apartheid “honeymoon” period. In Sri Lanka, internally displaced communities have been caught in transient spaces over periods long enough for new generations to grow up as so-called refugees, but largely moved out of sight for the country’s dramatic end of the war and triumphalist transition to the new post-war era. Other examples of questions raised by typical oversights that merit closer scrutiny are: what is overwritten when a state celebrates the “rehabilitation” of the combatants it has just defeated? Or, which experiences are implicitly accepted for marginalization when transitional justice is delivered nationally, while many armed conflicts or repressive regimes around the world have also produced generations of forced exile communities?

While we believe in the relevance of critically questioning the effective contribution of existing transitional justice processes for creating more fairness and less suffering in the long term, we do not want to throw the baby

out with the bathwater. Setting in motion processes of “transformative justice” is certainly a laudable objective in many circumstances, but affirming this objective does not remove the need for societies that have been confronted with injustice and suffering at an extraordinary scale to find extraordinary means to deal with their past – and to seize windows of opportunity for doing so during periods of political transition. Rather than shelving the historic “toolkit” that several decades of societal experiments with transitional justice have left us with, we therefore suggest looking at this collective legacy from new angles, in order to reimagine its transformative power.

Joint aims, plural approaches: how 15 original angles make a book

To find these new angles, we have prioritized out-of-the box thinking and proceeded in a somewhat unorthodox manner. Most of the scholars who look into the shadows of transitional justice here are *not* specialists on transitional justice. This means that – several notable exceptions apart – most contributors to this collective volume did not make a career studying, let alone implementing, transitional justice mechanisms, but come from a broad range of different research fields. It also means that many of us have been trained originally in disciplines not seen as core to the transitional justice community, such as social psychology, oral history, anthropology, cultural or gender studies – while law, criminology and political science are not absent. But we all have in common a marked interest and years- or decades-long research experience with problems of social justice, collective action, social trauma, collective remembering and/or history writing.

There is still something else that binds together the different contributors: a joint involvement in an international doctoral training initiative – initially as part of the Pluralistic Memories Project, before it became the Lausanne Summer School on Transitional Justice and Conflict Transformation – as lecturers, participants or organizers. This common involvement has facilitated, over the years, the development of common references and a culture of dialogue between scholars with different sensibilities, rooted in different societal and disciplinary backgrounds. When the project to write a collective book arose and concretized, this culture of exchange was further nurtured through author-editor brainstorming meetings, original co-writing arrangements for some chapters, collective discussions of chapter drafts between authors from each section, and written feedback from peer contributors as well as the editors. The aim of this process was not to create consensus, but rather to eventually convey a lively debate where different voices express themselves with sufficient clarity to be mutually intelligible, and where arguments rooted in different sensibilities speak to each other, instead of ignoring each other. One salutary aspect of this process is that it sometimes led us to see and circumvent peculiarities of the conceptual jargons or assumptions shared conventionally within specific fields, hopefully to the benefit of a similarly diversified readership.

From spotlights to shadows: how the book is organized

The cross-national orientation of the book, and the case examples it discusses, serve its overarching goal to look into both the local and global shadows of transitional justice. To inspect the local shadows, the book relies on some emblematic cases which include South Africa, but also Rwanda and Argentina, with a focus on processes and societal dynamics not yet mainstreamed in the abundant literature that exists already on these cases. To inspect the global shadows created by these same cases – which tend to set the standard of what is and what is not considered as a transitional justice process in the international arena – the book integrates contributions from experts of sites better known for resisting the setting-up of mechanisms to deal with their troubled pasts than for embracing international norms of transitional justice, such as Sri Lanka, Turkey and Côte d'Ivoire. To combine, moreover, the advantages of contextual depth and multiple perspectives on one specific case with the reward of cross-contextual variability and comparative analysis, the book features two key case analyses deepened through several contributions – South Africa, as a prototypical case of transitional justice, and Sri Lanka, as a case of “resistance”, alongside analyses of multiple cases, within and across individual contributions.

In effect, the book is organized as a counter-current journey from the spotlight to what is in the shadow of transitional justice. Starting with a description of how instructive cases of transitional justice have turned commemoration into celebrations of a certain version of history, the different contributions then progressively explore the issues, actors and resources that are typically forgotten when societies celebrate their pasts rather than mourn their losses, or get sidelined in the focus on the classic pillars of transitional justice.

The first section of the book hence presents three cases where commemoration of past suffering has turned into political celebration of the moral triumph of overcoming past harm, and of the role of current regimes. The ensuing self-referential dynamics by which victors, or those “on the right side of history”, celebrate their achievements tend to obscure the creative process of undoing frontlines, making emergent communities visible, transforming understandings of social relationships and empowering new collectives of actors. The first two case analyses, by Murithi and by Jessee, show how commemoration has turned into celebration in the aftermath of emblematic transitional justice processes in South Africa and Rwanda. The following contribution, by Saravanmuttu, shows how, in Sri Lanka, similar political ends are achieved, ironically, through resisting international pressures for transitional justice rather than by complying with them.

The second section pursues a systematic analysis of three types of challenges that justice delivered during limited periods of transition, and focusing on the most egregious forms of violence, struggles with tackling structural social inequality (Durrheim and Murray); being relevant to post-generations, born after specific violent events but affected by their long-term

consequences (Surenthiraraj); and preventing new forms of violence grounded in the disenchantments of the formerly oppressed, when expectations for historical redress remain unfulfilled (Kerr and Dixon). Bringing into focus time periods long after the official dismantling of apartheid in South Africa, or the resettlement of Muslims evicted from their homes during the civil war in Sri Lanka, these chapters foreground what has been neglected in the mechanisms instituted and the fault lines that have emerged in the meantime.

The third section highlights those who are left out, or inadequately considered, when transitional justice is delivered as a nationalist and state-driven process in the hands of victors, or parties and institutions claiming the moral high ground. Discussing prosecutions and truth-processes from the perspective of exiles on the one hand (Parmentier, Rauschenbach and Hein), and women from rural communities on the other (de Mel and Medawatta), and state-sponsored “rehabilitation” from the perspective of former combatants, including child and female combatants (Usoof-Thowfeek and Gunasekera), the section offers insights into why a broader or fairer inclusion of forgotten actors is vital for avoiding some of transitional justice’s pitfalls.

The fourth and final section starts with Jones’ critical examination of resistance to transitional justice, problematizing the normative assumptions underlying its understanding and inviting us to see the creative potential in certain forms of resistance. The section then moves on with three systematic discussions, offered by Vollhardt, Twali and Jayakody, by Acar and Reicher, and by Penic, Drury and Bady, of under-exploited collective resources that can potentially make engagement with collective trauma more transformative, such as inclusive, cross-sides narratives, the creative power of crowds and new, emergent forms of solidarity and resilience.

Our guiding ambition in the process of assembling and bringing into dialogue these different contributions has been to end up with a collective book that becomes more interesting when it is explored as a whole. We hope that its readers might approach it like a collective exhibition, where one not only wishes to rush to one’s favourite piece but takes the time to wander around and let oneself be surprised by how each piece gains an additional dimension through the context created by all the others.

Acknowledgements

The work leading to this chapter and book has been greatly facilitated by two research grants from the Swiss National Science Foundation, funding the Pluralistic Memories Project (r4d – Swiss Programme for Research on Global Issues for Development, SNSF grant numbers: 400240_146955 / 400240_171188). The University of Lausanne, through its International Relations Office, has provided financial and logistic support for the Lausanne Summer School on Transitional Justice and Conflict Transformation, without which many of the encounters at the origin of the book would not have taken place. The editors would also like to thank all members of the

Pluralistic Memories Project for years of fruitful exchanges, which have inspired much of the ideas and research discussed in this book.

References

- Balasco, Lauren Marie. "Locating transformative justice: Prism or schism in transitional justice?" *International Journal of Transitional Justice*, vol. 12, no. 2, 2018, pp. 368–378.
- Ben-Josef Hirsch, Michal. "Ideational change and the emergence of the international norm of truth and reconciliation commissions". *European Journal of International Relations*, vol. 20, no. 3, 2014, pp. 810–833.
- Billig, Michael. *Banal nationalism*. London, Sage, 1995.
- Billig, Michael, and Cristina Marinho. *The politics and rhetoric of commemoration: How the Portuguese parliament celebrates the 1974 revolution*. London, Bloomsbury, 2017.
- Brounéus, Karen. "The trauma of truth telling: Effects of witnessing in the Rwandan gacaca courts on psychological health". *Journal of Conflict Resolution*, vol. 54, no. 3, 2010, pp. 408–437.
- Burnet, Jennie E. "The injustice of local justice: Truth, reconciliation, and revenge in Rwanda". *Genocide Studies and Prevention*, vol. 3, no. 2, 2008, pp. 173–193.
- Buxton, Rebecca. "Reparative justice for climate refugees". *Philosophy*, vol. 94, no. 2, 2019, pp. 193–219.
- Di Pasquale, Caterina. "Massacre, trial and 'choral memory' in Sant'Anna di Staz-zema, Italy (1944–2005)". *International Journal of Transitional Justice*, vol. 6, no. 3, 2012, pp. 486–501.
- Dixon, John, and Kevin Durrheim. "Contact and the ecology of racial division: Some varieties of informal segregation". *British Journal of Social Psychology*, vol. 42, no. 1, 2003, pp. 1–23.
- Dixon, John, Guy Elcheroth, Philippa Kerr, John Drury, Mai Albzour, Emina Suba-šić, Kevin Durrheim, and Eva G. T. Green. "It's not just 'us' versus 'them': Moving beyond binary perspectives on intergroup processes". *European Review of Social Psychology*, vol. 31, no. 1, 2020, pp. 40–75.
- Drury, John. "Beyond the contagion concept". *Psychology Review*, November 2018.
- Echterhoff, Gerald E., Tory Higgins, and John M. Levine. "Shared reality: Experiencing commonality with others' inner states about the world". *Perspectives on Psychological Science*, vol. 4, no. 5, 2009, pp. 496–521.
- Elcheroth, Guy, and Stephen Reicher. *Identity, violence and power: Mobilizing hatred, demobilizing dissent*. London, Palgrave Macmillan, 2017.
- European Commission. *A Union of Equality: EU anti-racism action plan 2020–2025*. European Commission, 18 September 2020, ec.europa.eu/info/sites/default/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf. Accessed 29 March 2021.
- Evans, Matthew. "Structural violence, socioeconomic rights, and transformative justice". *Journal of Human Rights*, vol. 15, no. 1, 2016, pp. 1–20.
- Evans, Matthew. *Transformative justice: Remediating human rights violations beyond transition*. London, Routledge, 2018.
- Gready, Paul. *The era of transitional justice: The aftermath of the truth and reconciliation commission in South Africa and beyond*. London, Routledge, 2011.

- Gready, Paul. "Introduction". *From transitional to transformative justice*, edited by Paul Gready and Simon Robins. Cambridge: Cambridge University Press, 2019, pp. 1–28.
- Gready, Paul, and Simon Robins. *From transitional to transformative justice*. Cambridge University Press, 2019.
- Höglund, Kristine, and Camilla Orjuela. "Friction and the pursuit of justice in post-war Sri Lanka". *Peacebuilding*, vol. 1, no. 3, 2013, pp. 300–316.
- Hyndman, Jennifer, and Amarnath Amarasingam. "Touring 'terrorism': Landscapes of memory in post-war Sri Lanka". *Geography Compass*, vol. 8, no. 8, 2014, pp. 560–575.
- Human Rights Council. *Human Rights Council holds an urgent debate on current racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests*. News section of the United Nations Human Rights Council, 17 June 2020, www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25971&LangID=E. Accessed 29 March 2021.
- Jessee, Erin. "The danger of a single story: Iconic stories in the aftermath of the 1994 Rwandan genocide". *Memory Studies*, vol. 10, no. 2, 2017, pp. 144–163.
- Kerr, Philippa, Kevin Durrheim, and John Dixon. "Xenophobic violence and struggle discourse in South Africa". *Journal of Asian and African Studies*, vol. 54, no. 7, 2019, pp. 995–1011.
- Khalili, Laleh. "Heroic and tragic pasts: Mnemonic narratives in the Palestinian refugee camps 1". *Critical Sociology*, vol. 33, no. 4, 2007, pp. 731–759.
- Klar, Yechiel, Noa Schori-Eyal, and Yonat Klar. "The 'never again' state of Israel: The emergence of the Holocaust as a core feature of Israeli identity and its four incongruent voices". *Journal of Social Issues*, vol. 69, no. 1, 2013, pp. 125–143.
- Klinsky, Sonja, and Jasmina Brankovic. *The global climate regime and transitional justice*. London, Routledge, 2018.
- Kochanski, Adam. "The 'local turn' in transitional justice: Curb the enthusiasm". *International Studies Review*, vol. 22, no. 1, 2020, pp. 26–50.
- Licata, Laurent, and Olivier Klein. "Holocaust or benevolent paternalism? Inter-generational comparisons on collective memories and emotions about Belgium's colonial past". *International Journal of Conflict and Violence*, vol. 4, no. 1, 2010, pp. 45–57.
- Macherey, Pierre. *A theory of literary production*. London, Routledge & Kegan Paul, 1978.
- Marsh, Elizabeth J. "Retelling is not the same as recalling: Implications for memory". *Current Directions in Psychological Science*, vol. 16, no. 1, 2007, pp. 16–20.
- McKnight, Janet. "The anatomy of mass accountability: Confronting ideology and legitimacy in Rwanda's gacaca courts". *Conflict Trends*, vol. 1, 2014, pp. 35–42.
- Millar, Laura. "Touchstones: Considering the relationship between memory and archives". *Archivaria*, vol. 61, 2006, pp. 105–126.
- Nyborg, Karine, et al. "Social norms as solutions." *Science*, vol. 354, no. 6308, 2016, pp. 42–43.
- Orjuela, Camilla. "Passing on the torch of memory: Transitional justice and the transfer of diaspora identity across generations". *International Journal of Transitional Justice*, vol. 14, no. 2, 2020, pp. 360–380.
- Parasram, Ajay. "Erasing Tamil Eelam: De/re territorialisation in the global war on terror". *Geopolitics*, vol. 17, no. 4, 2012, pp. 903–925.
- Pasupathi, Monisha, Kate C. McLean, and Trisha Weeks. "To tell or not to tell: Disclosure and the narrative self". *Journal of Personality*, vol. 77, no. 1, 2009, pp. 89–124.

- Pasupathi, Monisha, Lisa M. Stallworth, and Kyle Murdoch. "How what we tell becomes what we know: Listener effects on speakers' long-term memory for events". *Discourse Processes*, vol. 26, no. 1, 1998, pp. 1–25.
- Ponselet, Gaëlle. "Commission on Belgium's colonial past: 'It's important, but will it succeed?'" *Justice Info*, 8 October 2020, www.justiceinfo.net/en/45612-commission-belgium-colonial-past-important-but-will-it-succeed.html. Accessed 29 March 2021.
- Ramanathapillai, Rajmohan. "Past traumas and present suffering: Consequences of Buddhist narratives in the Sri Lankan peace process". *South Asia: Journal of South Asian Studies*, vol. 35, no. 4, 2012, pp. 832–857.
- Ramanathapillai, Rajmohan. "The politicizing of trauma: A case study of Sri Lanka". *Peace and Conflict*, vol. 12, no. 1, 2006, pp. 1–18.
- Rimé, Bernard, et al. "The impact of Gacaca tribunals in Rwanda: Psychosocial effects of participation in a truth and reconciliation process after a genocide". *European Journal of Social Psychology*, vol. 41, no. 6, 2011, pp. 695–706.
- Spini, Dario, Davide Morselli, and Guy Elcheroth. "War experiences and emerging rights claims in postwar former Yugoslavia: The role of generalized conflict exposure and collective anomie." *European Journal of Social Psychology*, vol. 49, no. 6, 2019, pp. 1173–1189.
- Thiranagama, Sharika. "Claiming the state: Postwar reconciliation in Sri Lanka". *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, vol. 4, no. 1, 2013, pp. 93–116.