

# Transitional Justice in Aparadigmatic Contexts: Accountability, Recognition, and Disruption

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## Introduction: Transitional Justice in Aparadigmatic Contexts

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# Introduction

## Transitional Justice in Aparadigmatic Contexts<sup>1</sup>

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### Introduction

Transitional justice is an established and well-theorised field of study and practice. Implemented in over 140 countries since 1970 and discussed in thousands of academic books and journal articles, it has become the dominant paradigm to address legacies of large-scale violence and disrupt the dynamics that contribute to authoritarianism and/or violent conflict (Shaw and Waldorf 2010). Where the past is defined by violence, transitional justice postulates that recognition of, and accountability for, past wrongs are necessary to break the cycle of violence and ensure a peaceful and just future (Quinn 2009). Over time, a paradigm has emerged which posits that societies need to deal with their past for their future to become stable. This claim is articulated by powerful global institutions, such as the UN Security Council, which states that '[t]o be able to rebuild lives without fear of recurrence and for society to move forward, suffering needs to be acknowledged, confidence in state institutions restored and justice done. Demands for justice can be denied, but they will not disappear' (the UN High Commissioner for Human Rights, quoted in UN Security Council 2020, 2).

This paradigm did not come from nowhere; it has a history. In the decade following the end of the Cold War, democratic regimes replaced authoritarian governance in sites across the globe, such as Argentina, Brazil, Chile, Hungary, Poland, reunified Germany, and South Africa. Incidents of mass violence were followed by 'wondrous, though painful and complex, transformations of the surrounding societies' and the emergence of '[l]ess oppressive, and even democratic regimes', while societies struggled over 'how much to acknowledge, whether to punish, and how to recover' (Minow 1998, 2). These transitions away from conflict or authoritarianism included a shift from illiberal to liberal governance, as well as various kinds of justice responses that provided some recognition and accountability (Elster 2004; Teitel 2000). In all of these

<sup>1</sup> This research was partly funded through ERC-StG-804154 VictPart.

cases, the objects of redress – the atrocity, repression, or injustice – was in the recent past: conflict had just ended or authoritarian rulers had recently been brought down. These post-authoritarian and post-conflict settings became the ‘paradigmatic’ cases from which transitional justice was theorised and around which practitioners, scholars, and policy-makers built an inter-disciplinary field (Sharp 2018). Over the course of the 1990s and 2000s, processes of legalisation, internationalisation, and professionalisation consolidated this field, including its paradigmatic transitional state imaginary.

The paradigmatic cases that have fuelled most transitional justice theory involve a *transitional state*, where either power-sharing regimes or successor governments struggle to consolidate their new politics. These transitional states became conceptualised as a partner in the transition, no longer its adversary. The partner state sanctioned or carried out criminal trials, truth commissions, commissions of inquiry, reparations or vetting programmes, and institutional reform. It opened up archives, handed over incriminating information, and legally protected transitional justice institutions. As a result, the core transitional justice mechanisms – trials, truth commissions, reparations, and reform – are state-centric (Hamber and Lundy 2020, 748). One could even argue that the assumption and centrality of the transitional state represents an appropriation of transitional justice by the state. In South America, for example, transitional justice originated in the 1980s as popular responses to abuses committed by authoritarian regimes against their own citizens. The disruption demanded by this kind of bottom-up transitional justice distinguished itself both from state-centred transitional justice practices that are often less disruptive, and from other disruptive practices, like militarised opposition, because it resembled a movement (Rowen 2017). As the focus shifted from these disruptive movements and their demands towards the transitioning state, however, the substantive focus also shifted. The quest for accountability became central to the practice of transitional justice (Gissel 2017). Accountability, of course, relies on state institutions: the law, the public prosecutor, the courtroom, the judgeship, the prison, and the payroll.

This volume problematises transitional justice’s long-standing, structural focus on the transitional state by identifying and theorising different understandings of accountability, recognition, and disruption that emerge from *aparadigmatic* cases. Aparadigmatic cases are those where transitional justice is pursued by varied actors in circumstances outside the paradigm of post-conflict or post-authoritarian states, i.e. in sites of ongoing conflict, fragile states, occupied territories, settler democracies, and consolidated democracies. These circumstances are aparadigmatic chiefly because they are not transitional in the classic sense. What these aparadigmatic cases have in common is that actors use transitional justice mechanisms in contexts that rarely envision the consolidation of a political transition but instead have more diverse, and sometimes ambiguous, objectives. In many of the aparadigmatic cases, transitional justice is conceptualised in ways that challenge straightforward conceptions of justice.

By one measure, the invocation of transitional justice in aparadigmatic contexts challenges the conceptual vigour of transitional justice by highlighting its amorphous ideological structure and unproven results (Israel and Mouralis 2014). By another, the fact that actors in aparadigmatic cases are invoking transitional justice discourse, concepts, and frameworks may signify a return to the foundations of transitional justice, which started as a disruptive mobilisation in opposition to the state.

The kind of disruption that animates practice both in early transitional justice and in contemporary aparadigmatic cases is specific to each society and is an empirical question. At the same time, the field lacks a rigorous theorisation of the disruptive potential of transitional justice. To develop this and map the evolving landscape of transitional justice, the book starts from the empirical question of why and how actors on the ground invoke or contest transitional justice. This volume gathers empirical chapters from a selection of aparadigmatic transitional justice cases to more fully theorise transitional justice's disruptive potential and analyse transitional justice in contexts without a transitional state. These insights add to and enrich mainstream transitional justice theory, discourse, and practice (Quinn 2014; Sharp 2014) and move some practices from the margins to the centre of the field.

## **Transitional Justice: Accountability, Recognition – and Disruption**

Accountability and recognition are often considered the central aims of transitional justice (Quinn 2009). The mantra that there is 'no peace without justice' implies that accountability is necessary for stability and peace. Accountability processes may deter future violations and also provides recognition to victims. Legal and criminal accountability is provided through criminal trial processes, vetting or lustration programmes, and institutions such as truth commissions, commissions of inquiry, and historical commissions, which document a truth or the truth about the violent past.<sup>2</sup> While accountability does not necessarily imply only criminal or legal accountability, this is mainly how the field has conceptualised it. Yet, even within this state-centred conceptualisation of accountability, the notion has disruptive and transformative potential.

Truth-seeking efforts and reparations also contribute to the objective of recognition. Reports of truth-seeking bodies as well as material or symbolic reparations provide official recognition of the wrong that requires justice. They may be tied to accountability processes but can also exist independently of questions of guilt. In addition, various transitional justice initiatives, notably those rooted in traditional or restorative justice, seek to restore relations

<sup>2</sup> Purges, on the contrary, represent a form of accountability for perpetrators, while violating rule-of-law safeguards.

between individuals and communities. In these initiatives too, some form of accountability and recognition are often deemed crucial for restorative justice to emerge. Accountability and recognition are, however, *potential* effects. Whether a particular transitional justice initiative actually results in more accountability or recognition is an empirical question.

Disruption is a third potential effect of transitional justice. Transitional justice processes enable a break with the past because they disrupt the practices and institutions of repression or violence. Institutional reform can be argued to seek to disrupt the practices and institutions that produce injustice. But other mechanisms, such as trials, truth-telling and vetting processes, may also disrupt. Empirically, however, and given the cooptation of many transitional justice initiatives by the state, transitional justice does not always disrupt or seek to disrupt. Instead, it is often ‘managed’ in ways that undermine disruption (Macdonald 2019) or ‘instrumentalised’ by actors wishing for, fearing or seeking to prevent its disruption (Arnould 2021). While recognition and accountability are well-established aims, disruption is rarely identified as a central objective of transitional justice; we therefore lack a rigorous theorisation of what disruption means for transitional justice.

‘Disruption’ can mean a disturbance that interrupts a process or practice and a radical change to an existing industry or institution. In paradigmatic transitional justice contexts, the object of interruption and radical change are the institutions and practices that produce harm and injustice, notably the *ad hoc* or institutionalised violence and discrimination produced by wars or authoritarian government institutions. In aparadigmatic cases, these institutions and practices could refer to colonial or post-colonial repression or, on the contrary, ongoing violence. Through transitional justice, it is hoped, practices and institutions of violence and discrimination will be replaced with non-violent, peaceful, and tolerant processes and behaviour.

Interruption and change are thus central to the concept of disruption, but so is power (Hayward 2020; Piven 2006). The status quo is reproduced by power and its disruption therefore requires (access to) power. This can be the power of institutions but also the power of the many, the disobedient, or the in-your-face survivors who refuse to go away. It can be used in opposition to the state or by a new political elite seeking to re-fashion the state in more modest ways. These various kinds of disruptive political actions ‘can help shift the terms of political discourse’ (Hayward 2020, 449).

In Argentina, *Madres y Abuelas de la Plaza de Mayo* provide an example of a disruptive political action that seeks to shift the political discourse. Beginning in 1977, these women demanded attention to the fate of those disappeared by the military government. They refused to stay silent or to go away (Bevernage 2012) and directed their practice against the transitional state. It resulted in the successor government investigating and prosecuting the military Juntas, which in turn changed the terms of political discourse and instituted a radical change in the military. To President Alfonsín (quoted in Sikkink 2011, 72), the main

justification for the trials was ‘prevention: to keep this from happening again’. This is a clear example of disruption taking place in response to the mobilisation of grassroots actors in a transitioning context. There are also more formal and institutionalised transitional justice initiatives that have explicitly sought to disrupt: South Africa’s Truth and Reconciliation Commission, for example, which was imbued with legal and political authority, envisaged disruption using ‘the full glare of publicity’ to change the terms of political discourse (Tutu 1998, para. 3).

Against these paradigmatic cases, how does transitional justice in aparadigmatic contexts seek to provide accountability and recognition and disrupt the institutions and practices that produce injustice and harm, if at all? And given that transitional justice is so well-studied a field, what use is another volume? We argue that transitional justice scholarship is constructed around a limited typology of cases which have defined the paradigm of transitional justice, even if this paradigm has shifted across decades of practice. The concepts and methods of transitional justice practice, as well as the contexts in which it is applied, have all changed drastically in the past three decades. Yet most theorisation is still rooted in paradigmatic cases and, as such, fails to take into account all those experiences and insights emerging from the application of transitional justice in aparadigmatic cases. Aparadigmatic transitional justice practices are occurring in circumstances as varied as ongoing conflict and consolidated democracies. The promising avenues and questions opened up by these cases have so far not been addressed or theorised in a comprehensive way. Most analyses about the expansion of transitional justice to aparadigmatic contexts have either taken place within state-building, peace-building, and conflict studies (in case of transitional justice in ongoing conflict) or within comparative politics (in case of transitional justice in consolidated democracies). This has impeded a dialogue between scholars studying transitional justice in cases of ongoing conflict and those studying its use in consolidated democracies, as well as stifling the theoretical evolution of transitional justice as a field.

This volume brings these increasingly important transitional justice practice into the mainstream conversation, by mapping and exploring the changing terrain of transitional justice as it has expanded to contexts without a transitional state, either because they are cases of ongoing conflict or because they are consolidated democracies. The next section provides a brief account of the evolution of the field and then introduces a typology of transitional justice contexts centring on political authority and the nature of the state to show how paradigmatic and aparadigmatic cases stand in relation to each other.

## **The Evolution of Transitional Justice**

Beginning in the 1980s, transitional justice focused mostly on how newly established democratic governments could use a unique and presumably confined ‘transitional moment’ to respond to the abuses committed by their repressive

predecessors (McEvoy and McGregor 2008, 6). The implicit assumption was of a repressive and violent past, a (brief) transitional window of opportunity, and a (never-ending) peaceful and democratic future, at least in so far as transitional justice is used appropriately (Hansen 2017). Transitional justice was designed for, and evolved in relation to, a particular set of transitional states. These *paradigmatic contexts* were pacted transitions or those where successor governments took over from conflicted governments or dictatorships (e.g. Argentina, Peru, Rwanda, South Africa).

The comprehensiveness and versatility of the multitude of mechanisms that are now conceptualised as transitional justice, combined with the field's normative ambition of consolidating democracy and contributing to just societies, made the paradigm appealing in a much broader range of contexts than the paradigmatic cases for which it was developed. As the field expanded, it was also transformed, while still preserving some of its elements (Arnould 2021; Ni Aolain 2017). First, there was a *geographical* expansion from Latin America to Africa and, later, the Middle East, Australia, Canada, the United States, New Zealand, and Europe. This included a *contextual* expansion from post-dictatorship to post-conflict and further to ongoing conflict, settler democracies and, more recently, 'old democracies'.<sup>3</sup> Finally, there have been changes in the field's *applicability*, the sense of when transitional justice is a relevant paradigm, particularly in relation to the forms of harm for which it is appropriate. This is an expansion from situations of atrocity and physical violence to non-physical forms of suffering, such as colonial discrimination (e.g. in Greenland) and social justice (e.g. in the United States).<sup>4</sup> More recently, restitution of cultural property has been included in transitional justice discourse (O'Donnell 2011). The field became imbued with holistic normative ambitions rather than the narrower goals associated with facilitating liberal political transitions (Sharp 2014, 151).

Due to its expansion, transitional justice has been invoked and implemented in situations that belie the concept of 'transition', including in cases of ongoing conflict, consolidated democracies dealing with legacies of violence, or ambiguous contexts where there is neither obvious political transition nor an all-out war. The support for expansion can be observed in scholarly debate (e.g. Sarkin 2016), in calls by UN bodies to go beyond post-conflict settings (UN Advisory Group of Experts 2015, UN Framework Team 2012), and by activists and practitioners using transitional justice tools in paradigmatic contexts. More conceptually, the processes of expansion changed the notion of justice from an exceptional justice to ordinary justice in exceptional contexts. In this process of 'normalisation', the 'transitional' prefix changed meaning, describing not the *nature* of justice but the *context* in which it occurs

3 See Destrooper in this volume.

4 See, respectively, Gissel and McGonigle Leyh in this volume; see also Joshi 2020.

(Gissel 2017). As the UN High Commissioner for Human Rights (2009, 2) argued, transitional justice was ‘not a particular conception of justice, such as distributive or retributive justice’, but rather ‘a technical approach to exceptional challenges’, such as dealing with massive human abuses committed in the course of armed conflict or by repressive regimes and in circumstances of scarce resources, urgently competing demands, and frequent institutional breakdown. In the past decade, transitional justice increasingly moved away from this ‘politics of exception’ so central to its foundational *raison d’être* (Gissel 2017; Israël and Mouralis 2014). This coincided with the application of transitional justice in paradigmatic cases, which was facilitated by the availability of an emerging standard.

### **Standardisation**

Although accountability and recognition have been explicit objectives of transitional justice since the emergence of the field, scholars and practitioners have pursued these aims in increasingly standardised ways. The conceptualisation of transitional justice as revolving around four institutionalised mechanisms, or pillars, is the most obvious example of the standardisation process. Truth-telling, justice, reparations, and guarantees of non-recurrence constitute the ‘model’ relevant for application across local contexts (African Union 2019; European Union 2015; United Nations 2010). This standardised ‘toolkit’ prioritises a formal commitment to anti-impunity, defines harm in terms of violations of civil and political rights, and seeks to attribute (criminal) culpability for harm to individual perpetrators (see also Gissel 2022).

This standardised model, to which many central actors adhere, risks marginalising initiatives that do not easily fit the four-pillar model. Lustration and amnesties, for example, which are problematic from a rule of law perspective (McAuliffe 2010), came to be seen as undesirable. Memorialisation or community-based and artistic forms of engaging with a legacy of violence have also come to be seen as nice-to-haves rather than as necessary dimensions (Cohen 2020; Rush and Simic 2014).

Moreover, the model’s mechanisms are state-centric. They require state backing and simultaneously reify the centrality of state institutions. Criminal justice needs to be state-sanctioned, while there is a vast literature on the role of criminal law and trials for consolidating state power (see, e.g. Shapiro 1981). Similarly, reparations programmes are difficult to implement without (national or local) public authority. Equally so, institutional reform constructs the state, while civil society can only shape the reform in an indirect manner and over the *longue durée*. Truth-telling is arguably the standardised justice mechanism that requires the least state involvement and gives the least state consolidation (but see Hamber and Wilson 2002). Yet, truth commissions, too, are often legally bounded, and their commissioners are officially appointed by parliaments or

ministers. In summary, standardised transitional justice both depends on and strengthens politico-legal authority.

This standardisation process is remarkable, given the disruptive roots and ongoing disruptive potential of transitional justice.<sup>5</sup> It could be argued that the standardisation process is precisely an attempt to sanitise transitional justice and strip it of its excessive disruptive potential, as evidenced by other examples of state-generated standardisation (Scott 1999). Put differently, the field's legalisation and standardisation offer a way to bracket those disruptive promises that may threaten the powerful. Yet, standardised and non-standardised forms of transitional justice are in constant conversation with each other in ways that affect how we think about accountability, recognition and/or disruption.

For all its dominance, the standardised model has been heavily critiqued. For instance, its legalistic approach is criticised for being too narrow to work towards broader transitional justice objectives. Or North-based governments apply it in their foreign policy work but not domestically.<sup>6</sup> Lastly, it has blind spots, overlooking wrongs committed by multinational companies or involving structural injustice or colonial harm.

### ***A Typology of Transitional Justice Contexts***

Paradigmatic and aparadigmatic transitional justice contexts can be organised in a typology based on types of state and the status of political authority. The typology involves seven types of transitional justice context (A–G) in six different types of state, from ongoing conflict (type A) in a conflict state to consolidated democracy (type G) in an ‘old’ democracy. The types of contexts are organised on a spectrum of political authority that ranges from contested to consolidated. Authority is most contested and least consolidated in a context of ongoing conflict and it is least contested and most consolidated in an ‘old’ democracy. The typology highlights the fact that not all contexts where transitional justice has been implemented or rolled out are, in fact, transitional. There is neither a significant political transition in contexts of ongoing conflict or those marked by political violence or occupation (contexts A–C) nor in consolidated democracies (F and G).

The typology is not processual; it does not indicate the ideal or empirical path from ongoing conflict to consolidated democracy. Rather, it proposes a list of mutually exclusive contexts in which transitional justice takes place in practice. A state may have context A (ongoing conflict) and then D (pacted transition), but this does not necessarily mean it has also found itself in situation B or C (fragile state and occupation). As the typology is organised according

5 This is the topic of the definitional debate of first-generation transitional justice, the ‘peace versus justice debate’, and its accompanying queries regarding impunity and amnesty (Roht-Arriaza and Mariezcurrena 2006).

6 See Carlson in this volume.

to the status of political authority, political violence may be present in all of the contexts, but likely to different degrees: Where this authority is contested, there is likely to be more political violence, while less political violence is likely in areas of consolidated authority.

In typologies of modern state forms, categories are usually organised along constitutional (monarchy, republic) or regime (authoritarian, democratic, hybrid) type. More recently, scholars have proposed typologies based on state fragility (Ziaja et al. 2019). Risse and Stollenwerk (2018, 105) argue that most states are neither consolidated nor failed but are rather characterised by ‘areas of limited statehood’. Although our seven types of context articulate different degrees of limited or consolidated statehood, the diversity of contexts requires more categories than afforded by the dichotomy of limited/consolidated statehood. For instance, both settler and former imperial democracies are consolidated democracies, but the potential for and modalities of accountability, recognition, and disruption are different in these two settings.

Table 0.1 illustrates the typology and the field’s expansion from paradigmatic to aparadigmatic contexts. It shows that the expansion occurred in two directions from the paradigmatic transitions to different forms of non-transitions: first, to contexts of ongoing conflict, political violence, or occupation, all of which are characterised by contested political authority. This is a movement from the central columns towards the left of Table 0.1. Second, the field expanded to contexts, where political authority is consolidated. This movement was to settler and old democracies, respectively, which are located on the right of the table.

A conflicted state is a state of ongoing conflict, such as, presently, the Democratic Republic of Congo (DRC), Syria, and Yemen. Political authority is contested, as conflict parties build, challenge, and seek to preserve this authority. In this context, transitional justice initiatives can be used to disrupt political authority, hold perpetrators accountable while the conflict is still ongoing, or seek recognition for the suffering of victims. However, the government is not necessarily a partner in transitional justice; it may be involved in the conflict and is not interested in addressing any wrongs (Syria is an example), or it is instrumentalising transitional justice (like the DRC has done). A fragile state does not have ongoing conflict, but it does have political violence that transitional justice may seek to address. Occupied territories are controlled by a state, the United Nations (such as East Timor), or an ‘international coalition’ of states (until recently, Afghanistan and Iraq) or international organisations (Kosovo). There the political authority is imposed by the occupier and therefore likely contested by excluded political elites and the wider society. Transitional justice can play a role there by disrupting the existing status quo and seeking accountability and recognition for injustices and harm. The kind of accountability, recognition, and disruption envisaged here will necessarily differ substantially from that envisaged in paradigmatic cases. Pacted transitions and successor governments make up the category of paradigmatic contexts; as argued above, here

Table 0.1 Typology of paradigmatic and aparadigmatic transitional justice contexts

	Aparadigmatic			Paradigmatic			Aparadigmatic		
<b>Context for Justice State Form</b>	<b>A. Ongoing conflict</b>	<b>B. Fragile state</b>	<b>C. Occupied territory</b>	<b>D. Pacted transition</b>	<b>E. Successor government</b>	<b>F. Consolidated democracy</b>	<b>G. Consolidated democracy</b>	<b>F. Consolidated democracy</b>	<b>G. Consolidated democracy</b>
<b>Status of Political Authority Examples</b>	Conflicted state Very contested	Fragile state Contested	Occupied state Imposed, contested	Transitional state Transitional	Transitional state Transitional	Settler democracy Consolidated	Old democracy Consolidated	Settler democracy Consolidated	Old democracy Consolidated
	DRC (2000s, 2010s) Uganda (2000s, 2010s) Syria (2010s, 2020s) Yemen (2020s)	Kenya (2000s) Burundi (2000s, 2010s) Myanmar (2010s, 2020s)	Afghanistan* (2000s, 2010s) East Timor (1990s)	Chile (1990s) Poland (1990s) South Africa (1990s)	Argentina (1980s) Peru (1990s) Rwanda (1990s)	Australia (2010s) Canada (2010s) New Zealand (2010s) US (2010-2020s)	Belgium (2020s) Denmark (2020s) Spain (2010s)		

Notes: Table compiled by the authors. \*Afghanistan is categorised as an occupied state because the book was written when it was an occupied state. However, since August 2021, when NATO troops withdrew from the country, it has been a fragile state.

the state is more likely the partner in the justice process. Transitional justice has also taken place in two types of consolidated democracies: in settler democracies like Australia, Canada, New Zealand, and the United States, and, more recently, in old democracies like Belgium, France, and Denmark.

### **The Problem of the State**

The different contexts vary on specific parameters that are of theoretical interest for this volume, including state form and the status of political authority. While a typology based on state form does not require state-centric analysis, it does require us to theorise the problem of the state and to think about how actors grapple with the nature of the state. Unpacking the issue of the state is crucial because the field of transitional justice assumes a particular form of state, the transitional state: a state that will engage in transitional justice processes, reform itself, support a truth process, and carry out trials, even if reluctantly. The field has generated a series of dichotomous concepts to accompany this assumption, such as before/after, backwards-looking/forwards-looking, authoritarianism/democracy, war/peace, impunity/accountability, perpetrator/victim, restorative/retributive, force/reason, politics/law, top-down/bottom-up, and (Global) North/South. In aparadigmatic contexts, transitional justice practitioners cannot assume a transitional state and this challenges the relevance of some of these binaries. Instead, as this volume demonstrates, aparadigmatic transitional justice contexts evidence civil-society-driven processes, the activism of third states, violence by third parties, and government refusal to partner in transitional justice.

There are good reasons why transitional justice became a state-centric field. On the one hand, the state is often central to the harms done, in the sense that the state either perpetrated them or failed to protect against them. On the other hand, transitional justice requires official state recognition of past harm. State acknowledgement of past harm affirms the idea that civilians ought to have been protected by their state, and thereby it performs sovereignty and enacts the fundamental structure of the contemporary state system.

There are nevertheless grounds for challenging the long-standing assumption that the state is the only logical focus in the quest for recognition and accountability. For many victims, state-based initiatives are not the only relevant approach to transitional justice. Alternative justice processes that include marginalised voices may be experienced as equally meaningful. For example, in post-war Guatemala, many indigenous women found alternative civil society processes (e.g. the *Tejidos que lleva el alma*) to be more meaningful than the work of the official *Comisión para Esclarecimiento Histórico*, the Commission for Historical Clarification. It was experienced as a more genuine form of recognition and acknowledgement of suffering than the official initiatives, which were perceived as remote (Destrooper and Parmentier 2018). Furthermore, national processes are primarily pursuing a national political agenda, which

may be at odds with the pace or nature of individual or community-level processes to overcome trauma (Hamber and Wilson 2002). There are multiple contradictions, ‘disjunctures’, and ‘convergences’ between individual survivor responses and the transitional justice of national institutions (Hamber and Wilson 2002, 49).

The centrality of the state begs the question of how one can get justice from a state that is, or has been, involved in wrong-doing or which is not transitioning. This challenge is most visible in aparadigmatic contexts since there the violating regime is either still in place or long gone. Here the field’s assumption of the constructive transitional state does not help the analysis. The expansion of transitional justice to aparadigmatic contexts has prompted actors to grapple with the problem of the state in new and different ways. They may develop new and different conceptions of justice as a result, introducing innovation into the field while consolidating other aspects. Moreover, innovation in one context may mean consolidation in another. Since the field has expanded to conflicted and failed states and contexts without regime change, it is urgent to learn from these aparadigmatic cases how stakeholders conceptualise recognition, accountability and disruption in the absence of a transition.

But how to empirically study accountability, recognition, and disruption in aparadigmatic contexts? How to identify the ways in which justice actors negotiate transitional justice in their non-transitional state? What does disruption look like when the state is anything but a constructive partner? We propose a focus on the dynamic relations between *intentions* and *responses* as a strategy to understand the practices, processes, or politics of aparadigmatic transitional justice.

## **Studying the Disruptive Potential: Intentions and Responses**

Intentionality is central to the practice of transitional justice, as the intentions behind transitional justice processes constitute much of what meaningfully distinguishes them from other fields, such as peace-building, democratisation, and governance. Looking at intentionality helps to begin an empirical mapping exercise by asking what justice actors intend to achieve by turning to the transitional justice toolbox and discourse as well as how and which initiatives they apply, and in which ways, to further that intention. By examining intentionality, we may thus understand how transitional justice is understood or envisaged and what is at stake. These intentions may be either articulated by activists, advocates, politicians, bureaucrats, diplomats, and so on, or they may be stated in formal documents such as reports, policies, and laws.

The analysis should, however, look beyond these stated intentions, and consider that ‘real’ intentions may be very different from stated ones. A criminal justice process, for example, may serve the official intention of holding specific perpetrators accountable, while enjoying elite support precisely because

it leaves other individuals, policies, or institutions undisturbed (Carlson 2022). When it referred a conflict situation to the International Criminal Court in 2003, the Ugandan government stated that its intention was to ensure accountability. In practice though, it sought to incentivise rebel participation in peace negotiations, and/or mobilise international support for the military pursuit of its insurgent adversary (Branch 2011). Distinguishing ‘real’ from stated intentions is useful because the standardisation process made transitional justice a tool available for states to serve various ends, while inscribing themselves in the normatively appealing rhetoric of transitional justice.

A focus on intentions also allows us to acknowledge non-standardised transitional justice efforts, such as community-driven initiatives or artistic practice, as potential instances of transitional justice. This means moving our focus away from the state as the central object of analysis, and foregrounding instead the mobilisation for accountability, recognition, and disruption as it happens in practice. In the paradigmatic cases in this volume, political will is often in short supply. Civil society practitioners, activists, survivors, or other stakeholders may be the ones pushing for some form of transitional justice in their quest for accountability, recognition, and/or disruption. Moreover, these actors do not always have access to state bodies. Their non-standardised transitional justice may be side-tracked, co-opted, or otherwise fail to ensure accountability, recognition, and/or disruption, but it is still a meaningful object of analysis. Indeed, the responses to this kind of mobilisation, too, shape what transitional justice is and becomes.

The second focus of the chapters in this volume is therefore on the responses to the stated and deduced intentions by actors such as activists, advocates, community members, leaders, officials, politicians, survivors, suspects, or even an opinion-surveyed population. Responses should be examined within their context and are likely to span a wide range, from wholesale uncritical adoption to a complete rejection. Julie Bernath and Sandra Rubli (2013) argue that rejection and resistance should be further explored in order to understand the importance and legitimacy of certain standardised and non-standardised approaches that might better align with victims’ needs and resources. Indeed, the paradigmatic cases in this volume describe a panorama of responses to transitional justice: resistance against an imposed foreign agenda; rejection by international actors of deeply contextualised proposals; government rejection of initiatives that would recognise past wrongs; principled and practical objections to certain objectives or mechanisms; critical or reluctant adoption of the model by ruling elites; or partial adoption by civil society actors who see it as a tool to further their own agendas.

Intentions and responses are interrelated; to analyse and understand their dynamic relationship we need to pay attention to context, positionality, and power. Rather than assuming the transitional state or, indeed, a genuine desire for accountability, recognition, and/or disruption, the chapters in this volume seek to understand the messiness and complexity of transitional justice on the

ground, by providing a contextualised and actor-centred analysis rather than starting from the model of transitional justice.

By focusing on the relationship between intentions and responses, the basic framework may visibilise new actors and their agency. It may open the ‘justice imagination’ by offering new perspectives on what can be expected of transitional justice and how (Herremans and Destrooper 2021). For instance, a focus on trans-local transitional justice practice may destabilise North/South or bottom-up/top-down binaries.<sup>7</sup>

## **Our Cases**

The chapters in this volume explore transitional justice in the five types of paradigmatic contexts: ongoing conflict, fragile state, occupied territory, consolidated settler democracy, and consolidated old democracy (see Table 0.2 below). Together, they show that the contemporary practice of transitional justice takes many different forms, which are shaped and constrained by context. In spite of their position in Table 0.2, the cases can hardly be termed ‘outliers’. Due to the expansion of the field, non-transitional states make up the majority of contexts where transitional justice is currently being implemented or imagined.

This typology does not seek to facilitate a controlled comparison, but instead problematises taken-for-granted assumptions of standardised transitional justice: its state centrality, the assumption of the transitional state, and the question of disruption. By exposing the limits of the model and its assumptions, the case studies interrogate and shed new light on the field of transitional justice.

## **Outline of the Volume**

The structure of the volume follows our typology of transitional justice contexts presented in Table 0.2, beginning with ongoing conflict and fragile states, moving to occupied territory and then types of consolidated democracy, and ending with comparative considerations. The first two chapters therefore analyse Libya, Yemen, and Syria. Thereafter the volume turns to the fragile state of Turkey/Kurdistan, before moving to occupied Afghanistan. This is then followed by settler democracies and consolidated democracies, i.e. the United States, Greenland/Denmark, Belgium, Denmark, France, and the United Kingdom. Finally, the volume closes with a cross-cutting chapter on historical commissions and a theoretical discussion of stretching transitional justice from consolidated democracy to ongoing conflict. The concluding chapter reflects on the theoretical lessons that can be learnt from these empirical insights.

<sup>7</sup> See Saeed and Aboueldahab in this volume.



The volume opens with a chapter by Noha Aboueldahab that links several cases of paradigmatic transitional justice in situations of ongoing violence, notably Libya, Yemen and Syria. These are cases where the absence of state-endorsed transitional justice policies has prompted domestic and diaspora actors to shape truth and justice-seeking initiatives in ways that have disruptive potential. Their innovative conceptualisations of accountability and recognition cast a wider net of accountability that includes international actors, including Western-based multinational corporations. The chapter suggests that in contexts where the state continues to exercise repressive rule, unexpected opportunities for accountability, recognition, and disruption may emerge.

The chapter by Brigitte Herremans and Veronica Bellintani likewise explores how certain local and international actors are testing and advancing elements of the transitional justice toolkit while abuses are ongoing. They argue that Syrian justice actors have turned to the transitional justice toolkit to counter the reigning defeatism about the impossibility of pursuing justice while the conflict is ongoing, building on a diverse international justice network. The chapter empirically describes the evolution of the initial transitional justice efforts, examining the intentions of justice actors who embraced transitional justice tools as a way to defy the accountability gap, achieve recognition and disrupt violent state practices. The chapter shows how justice actors are animated by this potential for accountability, recognition and disruption, thus explaining why justice actors are using transitional justice even in cases where the state is not transitional.

The non-transitional state is also the background to Nisan Alici's chapter on Kurdish transitional justice activists in Turkey. Turkey has never adopted an official, overarching transitional justice agenda to deal with the past atrocities in its Kurdish areas, and the Kurdish question poses a particular threat to the contested political authority of the Turkish state. Nonetheless, Alici follows two engagements seeking to disrupt the hegemonic state narrative in pursuit of recognition and eventual accountability; the Diyarbakır Commission, which was led by civil society actors, and managed to push the Parliament to open up an investigatory sub-commission, and Erdoğan's apology for the Dersim massacre, which led to controversies around the underpinning motivation, but disrupted the public silence over the issue.

Huma Saeed's chapter on transitional justice in Afghanistan addresses the question of how domestic and diaspora attempts at transitional justice are shaped by the lack of political will from international and local (institutional) actors to address legacies of mass atrocities. Saeed examines how Afghanistan's complex societal and political structure was affected by direct and indirect foreign interventions, in ways that relegated formal transitional justice initiatives to the background. Through an analysis of various policy reforms, including a contested amnesty law, she demonstrates how an unjust and unaccountable status quo was consolidated. The chapter underlines the need for innovations to the standardised transitional justice paradigm by arguing in favour of a transnational

transitional justice that integrates diaspora and refugee communities both as agents of change and as beneficiaries of transitional justice programmes in their host countries. In doing so, the chapter expands the scope of how we commonly think about accountability and recognition within a transitional justice context, and paves the way for the disruption of rights-violating policies and regimes.

The framing possibilities that transitional justice's categories can offer to social justice challenges in democratic states outside of conflict or transition is the topic of Brianne McGonigle Leyh's chapter. She considers how the four pillars of paradigmatic transitional justice could direct more effective social justice initiatives. Her chapter visits several lesser-known social justice initiatives that pursue the accountability, recognition and disruption upon which transitional justice is premised. Her chapter argues that the significant challenges that impede the facilitation of social transformation include a decentralised and disjointed legal system, underlining the importance of a coherent and comprehensive response at the federal level to complement and fully realise the innovative and disruptive potential of local-level initiatives.

The government rejection of transitional justice is central to Line Engbo Gissel's chapter analysing the politics of potential accountability, recognition, and disruption in Greenland and Denmark. In 2013 the Danish government rejected participation in the Greenland Reconciliation Commission, which therefore became a unilateral project seeking recognition and – to some extent – disruption. In the absence of Danish involvement, the Commission's work turned towards intra-Greenlandic relations, outlining the contours of a disruptive potential that may shape the island's future independence. The case illuminates the state-centric nature of both standardised truth-telling and transitional justice in post-colonial Denmark.

In his chapter on justice for crimes by the UK military, Thomas Obel Hansen provides a detailed analysis of justice measures in the United Kingdom and internationally relating to crimes committed by British military forces in campaigns abroad. He explores the added value of model transitional justice in contexts like these. His case goes beyond the typical way in which consolidated democracies have been implementing – parts of – the model transitional justice agenda, i.e. in relation to historical abuses. Instead, he asks what transitional justice's intentionality of accountability, recognition and disruption can mean in the context of violations committed by the United Kingdom's armed forces in recent military campaigns. By considering several government efforts that de facto obstruct rather than promote accountability, he underlines the need for standardised and innovative practices to be in conversation to allow for some form of accountability to materialise.

The limits of permissible disruption frame the two examples in Tine Destrooper's chapter on the adoption of certain model transitional justice mechanisms in Belgian case. Destrooper contrasts the scepticism and rejection she observed regarding the applicability of transitional justice approaches to

Flanders' educational programme aimed at dealing with societal polarisation and conflict transformation with the 2020 Special Parliamentary Commission on Belgium's colonial past. Explicit transitional justice architecture was rejected for one, while it was nominally, arguably instrumentally, adopted for the other. Destrooper's chapter demonstrates how engaging with transitional justice's core intentions of accountability for and recognition of past harm, requires the state to engage in a rethinking of, and potential challenge to, the legitimacy of the existing state institutions and of the existing narratives about those institutions.

Government actors rejecting transitional justice discourses also feature in Kerstin Bree Carlson's chapter on Danish and French legal responses to domestic terror actors and foreign fighters. Carlson explores the potential benefits of applying transitional justice as a tool to counter emerging illiberal terror laws in European states, arguing that transitional justice has the capacity to circumvent the security/rights impasse in which liberal democracies find themselves regarding domestic terror actors. Carlson explores how objections to illiberal terror law highlight intentionality and response in seeking to disrupt state terror law practices.

These contested narratives are also at the heart of the historical clarification commissions (HCCs) used in consolidated democracies to address a legacy of the past. Cira Pallí-Asperó relies on a functional definition of what these commissions do, i.e. using the historical method as a fact-finding to shed light on social and political events of the past that were linked to the origin, causes or developments of conflict. She explores the extent to which HCCs fit the model of transitional justice. Functionally they may show overlaps, but do they share the intentionality of accountability, recognition, and disruption? While their history of being used as political, diplomatic, or clarification tools, suggests otherwise, Pallí-Asperó sheds light on their potential as accountability mechanisms for crimes and other violations of human rights committed in the distant past, which makes them relevant in light of the intentionality of transitional justice, even if they have not always been framed as such.

Stephen Winter's chapter challenges some of the arguments presented above in asking whether it is relevant to refer to transitional justice-like practices as transitional justice in cases where there is no regime or political change. He relies on a legitimating theory of transitional justice to argue that transitional justice is both performative and political in that it can help states, with various forms of political authority, to discharge duties of justice to create a more reasonable political order. Transitional justice is necessarily a driver of transition, bringing state practice into accord with developing legitimating discourses, in cases of illegitimacy created by authorised wrong-doing. His legitimating account argues that political institutions necessarily aim to exercise political authority, but that transitional legitimation is necessary both

when political authorities have negated their purpose by committing systemic injuries and/or when their weakness or absence requires the constitution of new institutions. As such, the chapter explicitly engages with this Introduction's discussion of state forms and how they relate to the disruptive potential of transitional justice.

The concluding chapter by Par Engstrom and Tine Destrooper pulls together the insights emerging from the empirical chapters about how to do transitional justice in different contexts, and what 'doing transitional justice' in different contexts tells us about transitional justice as a field. It shows that what we see as innovative today sometimes entails an expansion of the transitional justice repertoire and sometimes entails a stripping back of layers and going back to practices in ways that make transitional justice more context sensitive. It reflects on the cross-cutting themes, such as issues related to bottom-up/top-down perspectives; accountability politics/law; the scope and objectives of transitional justice. The chapter shows that transitional justice norms and politics remain locally embedded in many places around the world, including in some very inhospitable contexts.

## References

- African Union (2019) 'Transitional Justice Policy'. 12 February. Available at: <https://au.int/en/documents/20190425/transitional-justice-policy>.
- Arnould, V. (2021) 'Developments in the Field of Transitional Justice'. Leuven Transitional Justice Blog, 23 June. Available at: <https://blog.associatie.kuleuven.be/ltjb/tag/colonialism/>.
- Bevernage, B. (2012) "'Unpopular Past": The Argentine Madres de Plaza de Mayo and Their Rebellion against History'. In: S. Berger, C. Lorez and B. Melman, eds. *Popularizing National Pasts: 1800 to the Present* (pp. 331–351). Abingdon: Routledge.
- Branch, A. (2011) *Displacing Human Rights: War and Intervention in Northern Uganda*. Oxford: Oxford University Press.
- Carlson, K.B. (2022) *The Justice Laboratory: International Law in Africa*. London, UK and Washington, DC: Chatham House/Brookings.
- Cohen, C. (2020) 'Reimagining Transitional Justice'. *International Journal of Transitional Justice* 14(1), 1–13.
- Destrooper, T. and S. Parmentier (2018) 'Gender-Aware and Place-Based Transitional Justice in Guatemala: Altering the Opportunity Structures for Post-Conflict Women's Mobilization'. *Social and Legal Studies* 27(3), 323–344.
- Elster, J. (2004) *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press.
- European Union (2015) 'The EU's Policy Framework on Support for Transitional Justice'. 16 November 2015. Available at: [www.eeas.europa.eu](http://www.eeas.europa.eu).
- Gissel, L.E. (2017) 'Contemporary Transitional Justice: Normalising a Politics of Exception'. *Global Society* 31(3), 353–369.
- (2022) 'The Standardisation of Transitional Justice'. *European Journal of International Relations* 28(4), 859–884.

- Hamber, B. and P. Lundy (2020) 'Lessons from Transitional Justice? Toward a New Framing of a Victim-Centered Approach in the Case of Historical Institutional Abuse'. *Victims and Offenders* 15(6), 744–770
- and R.A. Wilson (2002) 'Symbolic Closure through Memory, Reparation and Revenge in Post-conflict Societies'. *Journal of Human Rights* 1(1), 35–53.
- Hansen, T.O. (2017) 'The Time and Place of Transitional Justice'. In: C. Lawther, L. Moffett and D. Jacobs, eds. *Research Handbook on Transitional Justice* (pp. 34–51). Cheltenham: Edward Elgar.
- Hayward, C.R. (2020) 'Disruption: What Is It Good For?' *The Journal of Politics* 82(2), 448–459.
- Herremans, B. and T. Destrooper (2021) 'Stirring the Justice Imagination: Countering the Invisibilization and Erasure of Syrian Victims' Justice Narratives'. *International Journal of Transitional Justice* 15(3), 576–595.
- Israël, L. and G. Mouralis (2014) *Dealing with Wars and Dictatorships: Legal Concepts and Categories in Action*. The Hague: T.M.C. Asser Press.
- Jones, B., J. Bernath and S. Rubli (2013) *Reflections on a Research Agenda for Exploring Resistance to Transitional Justice*. Working Paper 3/2013. Bern: Swiss Peace Foundation.
- Macdonald, A. (2019) "Somehow This Whole Process Became So Artificial": Exploring the Transitional Justice Implementation Gap in Uganda'. *International Journal of Transitional Justice* 13(2), 225–248.
- McAuliffe, P. (2010) 'Transitional Justice and the Rule of Law: The Perfect Couple or Awkward Bedfellows?' *Hague Journal on the Rule of Law* 2, 127–154.
- McEvoy, K. and L. McGregor (2008) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*. Oxford and Portland: Hart.
- Minow, M. (1998) *Between Vengeance and Forgiveness*. Boston, MA: Beacon Press.
- Ni Aolain, F. (2017) 'After Things Fall Apart: Challenges for Transitional Justice Futures'. *Human Rights and International Legal Discourse* 11(1), 23–40.
- O'Donnell, T. (2011) 'The Restitution of Holocaust Looted Art and Transitional Justice: The Perfect Storm or the Raft of the Medusa?' *European Journal of International Law* 22(1), 49–80.
- Piven, F.F. (2006) *Challenging Authority: How Ordinary People Change America*. New York: Rowman & Littlefield.
- Quinn, J. (2009) 'Introduction'. In: J. Quinn, ed. *Reconciliation(s): Transitional Justice in Postconflict Societies*. Quebec: McGill-Queens University Press.
- (2014) 'Whither the "Transition" of Transitional Justice?'. *Interdisciplinary Journal of Human Rights Law* 8(1), 63–79.
- Rowen, J. (2017) *Searching for Truth in the Transitional Justice Movement*. Cambridge: Cambridge University Press.
- Roht-Arriaza, N. and J. Mariezcurrena, eds. (2006) *Transitional Justice in the Twenty-First Century. Beyond Truth Versus Justice*. Cambridge: Cambridge University Press.
- Rush, P.D. and O. Simic, eds. (2014) *The Arts of Transitional Justice. Culture, Activism, and Memory after Atrocity*. New York: Springer.
- Sarkin, J. (2016) 'Refocusing Transitional Justice to Focus Not Only on the Past, But Also to Concentrate on Ongoing Conflicts and Enduring Human Rights Crises'. *Journal of International Humanitarian Legal Studies* 7, 294–329.
- Scott, J.C. (1999) *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press.

- Shapiro, M. (1981) *Courts: A Comparative and Political Analysis*. London and Chicago: The University of Chicago Press.
- Sharp, D. (2014) 'Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition'. *International Journal of Transitional Justice* 9(1), 150–169.
- (2018) *Re-Thinking Transitional Justice for the 21st Century: Beyond the End of History*. Cambridge: Cambridge University Press.
- Shaw, R. and L. Waldorf, eds. (2010) *Localizing Transitional Justice*. Stanford: Stanford University Press.
- Sikkink, K. (2011) *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*. New York and London: W.W. Norton & Company.
- Teitel, R. (2000) *Transitional Justice*. Oxford: Oxford University Press.
- Tutu, D. (1998) 'Chairperson's Foreword'. In: Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report* (vol. 1, pp. 1–23). Pretoria: Government of South Africa.
- UN Advisory Group of Experts (2015) *Identical Letters dated 29 June 2015 from the Chair of the Advisory Group of Experts on the Review of the Peacebuilding Architecture Addressed to the President of the General Assembly and the President of the Security Council*. A/69/968-S/2015/490, 30 June. New York: General Assembly, Security Council.
- UN Framework Team (2012) 'The United Nations Interagency Framework Team for Preventive Action'. Available at: [https://www.un.org/en/land-natural-resources-conflict/pdfs/FRAMEWORK\\_TEAM\\_FLYER-2July12.pdf](https://www.un.org/en/land-natural-resources-conflict/pdfs/FRAMEWORK_TEAM_FLYER-2July12.pdf).
- UN High Commissioner for Human Rights (2009) *United Nations Approach to Transitional Justice, Address by Navanethem Pillay*. 15 October. New York: United Nations.
- UN Security Council (2020) *[Summary Minutes from the] 8723rd Meeting*. S/PV.8723, 13 February. New York: United Nations.
- United Nations (2010) *Guidance Note of the Secretary General: United Nations Approach to Transitional Justice*. New York: United Nations.
- Ziaja, S., J. Gravingholt and M. Kreibaum (2019) 'Constellations of Fragility: An Empirical Typology of States'. *Studies in Comparative International Development* 54, 299–321.