

Introduction

Localizing Transitional Justice

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Rethinking the Paradigm of Transitional Justice

Since the turn of the millennium, the field of transitional justice has been increasingly challenged by the very people it is designed to serve: survivors of mass violence. Transitional justice has grown over the past twenty years into a normalized and globalized form of intervention following civil war and political repression (Teitel 2003). It embodies a liberal vision of history as progress (Hazan, this volume), a redemptive model in which the harms of the past may be repaired in order to produce a future characterized by the nonrecurrence of violence, the rule of law, and a culture of human rights. This vision is put into practice through a set of legal mechanisms and commemorative projects—war crimes prosecutions, truth commissions, purges of perpetrators, reparations, memorials—that is often conceived as a “toolkit” for use all over the world. But as the heated public controversy over the International Criminal Court’s involvement in Uganda indicates, the current phase of transitional justice is frequently marked by disconnections between international legal norms and local priorities and practices. When national and international accountability mechanisms are engaged in specific places and times, they are often evaded, critiqued, reshaped, and driven in unexpected directions.

In this volume, we wish to problematize the local engagement of justice interventions and, in so doing, to rethink the orthodox transitional justice paradigm and the analyses, policies, and practices that it engenders. The contributors to this book promote this rethinking process by interrogating the teleological assumptions of transitional justice and by examining the concrete ways in which its mechanisms actually work.

The paradigm of transitional justice, we argue, is increasingly destabilized by its local applications. Because this is especially apparent when we focus on specific places and times, the contributors to this volume examine how transitional justice actually functions in those places and times and attend to local experience, priorities, and practices. If attention to locality shows us how foundational assumptions and practices of transitional justice break down, it can also show us new sets of possibilities. Too often, an engagement with “realities on the ground” signifies a focus on practical outcomes alone (“lessons learned,” “best practices”), while the intellectual and normative frame of transitional justice floats above these in the realm of the transcendent. Here, though, we wish to disturb the dichotomy between the concrete and the conceptual, arguing that the very nature of transitional justice—its underlying teleology of evolution and progress, its dualistic moral vision, its dominant models of memory, speech, and personhood, and its privileging of criminal justice and civil/political rights over other forms—is exposed, challenged, disassembled, and reconfigured precisely in its local engagements (see Tsing 2004).

Recently, transitional justice has itself undergone a shift toward the local. Customary law and other forms of local justice currently receive unprecedented attention as complements to tribunals and truth commissions. And increasingly, transitional justice policymakers conduct surveys to consult people in areas of conflict and post-conflict about their priorities for transitional justice. But closer examination reveals a paradox. This latest phase of transitional justice is marked not only by a fascination with locality, but also by a return to Nuremberg’s international norms against impunity and a UN prohibition against granting amnesties for war crimes. Although policymakers and scholars now routinely recognize the importance of adapting mechanisms of transitional justice to local circumstances, such adaptation tends to be conceptualized in ways that do not modify the foundational assumptions of transitional justice. Often, for example, local human rights NGOs are assumed to represent “the local voice,” while interactions with ordinary civilians tend to be limited to top-down “outreach” or “sensitization” processes such as workshops and information sessions. And while survivors of violence are increasingly surveyed about their priorities for justice, there is not always agreement as to how surveys should be conducted, interpreted, and translated into practice. Survivors are in any case unlikely to get what they ask for if it contradicts international legal norms.

Kofi Annan's influential report to the United Nations Security Council on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" provides a prominent instance of this paradox. Annan affirms that

Success will depend on a number of critical factors, among them the need to ensure a common basis in international norms and standards and to mobilize the necessary resources for a sustainable investment in justice. We must learn as well to eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support on national assessments, national participation and national needs and aspirations. (2004a:1)

Thus while Annan argues that models of transitional justice can and should be adapted to a specific context, these models must at the same time reflect transcendent values that cannot be modified. He also identifies "the context" in question as that of the nation-state. Here, then, is the conundrum. Increasingly, visible signs of "the local" are incorporated into transitional justice by adapting customary law processes and by involving local NGOs and local elites. Yet local experiences, needs, and priorities often remain subsumed within international legal norms and national political agendas.

In transitional justice discourse, the challenges of localization are sometimes cast in terms of a "clash" between "local (and implicitly 'traditional') culture" and "universal" justice norms. But just as anthropologists studying human rights have changed the terms of the intractable debate between cultural relativism and human rights by recasting ideas of "culture" and examining human rights practice and discourse in particular contexts (e.g., Cowan, Dembour, and Wilson 2001; Goodale 2006b; Merry 2006; Wilson 1997), we use a place-based approach to move us from the model of collision to one of engagement (albeit a frictional engagement: see Shaw 2007). Thus in this volume the contributors explore the complex, unpredictable, and unequal encounter among international norms, national agendas, and local practices and priorities through the operations of transitional justice in particular locations. This is far from being a purely academic exercise. By taking a deeper, more critical look at these operations in specific places and times; by examining the hierarchies, power relations, and heterogeneous interests that frame them; and by tracing how people respond to and sometimes transform them, we wish to lay a foundation for postviolence processes based on more responsive forms of place-based engagement and broader understandings of justice.

Reframing "the Local"

Yet what is "the local"? This is not merely an abstract question, since concepts of locality have direct consequences for the ways in which organizations, policymakers, and practitioners approach concrete locations. Recently, Mark Goodale (2006a) has challenged the conceptualization of "the local" in human rights discourse and most of the social sciences, criticizing the prevalent notion of a nested set of "levels" descending from the global to the regional, from the regional to the national, and from the national to the local. This language of "levels" obscures the fact that no location in the world exists in detachment from national and global processes. It would be hard to find places that, however remote from metropolitan centers, are not pervaded by circulations of ideas and images from human rights to hip-hop.

When we conceptualize "the local" as a level, we place it in a different frame and set it up to carry meanings of remoteness, marginality, and circumscribed contours (see Gupta and Ferguson 1997a:43). To borrow Appadurai's language, we render it as a form of spatial incarceration (1988:37). Through a levels-based definition, we depoliticize locality, constructing it as a residual category characterized both by separation (from "the national," "the international," and "the global") and by absence (of modernity). In place of these absences, we make "culture"—often presumed to be "naturally the property of a spatially localized people" (Gupta and Ferguson 1997b:3)—the most salient feature of "the local." The implications for transitional justice and human rights practice are significant. When we construct "the local" as a level, this predisposes us to marginalize the experiences, understandings, and priorities of people within this residual space. And since, according to this conceptualization, locality can provide no basis for knowledge beyond that of "culture" or "tradition," "local knowledge" becomes conflated with "tradition," while knowledge beyond "tradition" must come from outside.

Rather than approaching "the local" as a level, what if we view it as a standpoint based in a particular locality but not bounded by it? "The local" now becomes the shifted center from which the rest of the world is viewed. The reality with which we have to begin—and without which transitional justice cannot be legitimate or effective—is that of a nuanced understanding of what justice, redress, and social reconstruction look like from place-based standpoints.

As a first step, we need to ask how people affected by armed conflict and political repression experience the mechanisms designed to address their

needs. Over the past ten years or so, scholars and practitioners have begun to explore this question through close methodological engagement in specific sites (e.g., Cobban 2007; Fletcher and Weinstein 2004; Kelsall 2005, 2006; Laplante and Theidon 2007; Ross 2003a; Shaw 2007; Stover 2005; Stover and Weinstein 2004; Wilson 2001). As the chapters in Part Two of this volume explore, the “counterviews” gained from local experiences of justice mechanisms often present a startling contrast to the formal goals of these mechanisms and, in many cases, force a reexamination of some fundamental premises of transitional justice.

As a second step, we need to place particular emphasis on survivors’ priorities for postviolence reconstruction. This forms the focus of Weinstein, Fletcher, Vinck, and Pham’s chapter in this volume. Asking “Whose priorities take priority?” they draw attention to the gap between the idealized goals and assumptions of transitional justice and the realities of life on the ground. They locate this gap in historical context, reviewing the discrepancies that have emerged at different genealogical phases of transitional justice and addressing the challenges these discrepancies pose—among which the authors give precedence to “our ability to question assumptions and to hear what the beneficiaries of justice believe to be important.” This, in turn, prompts them to explore the methodological challenge of how to listen to local priorities, to which we turn later. From their comparison between the priorities of international justice and those of people affected by violence, Weinstein et al. conclude that “[m]any involved with international justice have lost sight of its goals in favor of developing and maintaining an international system of criminal law over and above what might be the needs and desires of the victims of abuse.”

These struggles over justice and reconstruction now unfold on a terrain configured by the U.S.-led war on terror. Since September 11, 2001, this “war” has transformed international norms, reconfigured the power of states, intersected in paradoxical ways with transitional justice, and created new frictions with local priorities for dealing with the aftermath of violence. Pierre Hazan’s contribution to this volume provides a crucial analytical frame by exploring the ways in which the war on terror is eroding the redemptive paradigm of transitional justice. The events of September 11 created a geostrategic rupture in which, he argues, the dominant discourse of global security is displacing the optimistic model of political evolution through transitional justice. These events also ushered in a new *realpolitik*: “in this neo-conservative vision,”

observes Hazan, “the alliance with repressive regimes is from now on interpreted as a strategic necessity in the name of the global war for the ‘defense of freedom.’” If the paradigm of transitional justice has been destabilized from below, it is now, in key areas, crumbling from above. In places that are not considered particularly relevant to the war on terror—several of which are examined in the current volume—the international community still regards transitional justice as offering a useful toolkit for responding to specific instances of violence. But even here, argues Hazan, transitional justice is becoming decoupled from the encompassing vision of moral and political progress that prevailed “between the fall of the Berlin Wall and the fall of the twin towers in New York.”

“Victims” and “Perpetrators”: Rethinking Justice

Where this moral vision still obtain its most basic assumption is perhaps that of victims’ rights to justice. This premise underlies a recurring feature that structures much transitional justice discourse and practice: the dichotomy between “victims” and “perpetrators.” While this dichotomy characterizes many legal approaches, the postauthoritarian context in which transitional justice developed, with its legacy of large power imbalances between citizens as victims and repressive state agents as abductors, torturers, and murderers, may have reinforced it. But in intrastate conflicts originating in part from *structural* violence, this dichotomy tends to be less clear. Not only are such conflicts typically moral gray zones with blurred boundaries between “victims” and “perpetrators,” but this Manichean division also has major—although unintended—consequences for people placed in either category.

One of these is a profound depoliticization: neither “victims” nor “perpetrators” are political actors. Writing about the International Criminal Court and its intervention in Uganda, Kamari Clarke (2007) views the ICC’s universalizing jurisdictional claims over “victims” through the lens of Agamben’s (1998) concept of “bare life.” Such claims reduce people to mere existence “marked by a condition of pre-political absolute victimhood” that “exists in tension with the attempts to produce political beings found in the struggles of individuals from postcolonial African regions to implement their own forms of justice” (2007:137). In order to relocate people as political agents within international justice, she concludes, we need to “rethink the conditions within which we envisage justice in the first place” (2007:158).