

Introduction: Transitions from Violence – Analyzing the Effects of Transitional Justice

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Editorial (p. 3)

Focus Section 1: Transitions from Violence – The Impact of Transitional Justice

▶ **Introduction: Transitions from Violence – Analyzing the Effects of Transitional Justice** Thorsten Bonacker / Susanne Buckley-Zistel (pp. 4 – 9)

Bringing Justice and Enforcing Peace? An Ethnographic Perspective on the Impact of the Special Court for Sierra Leone Friederike Mieth (pp. 10 – 22)

Contesting International Norms of Transitional Justice: The Case of Timor Leste Eva Ottendörfer (pp. 23 – 35)

Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness Chrisje Brants / Katrien Klep (pp. 36 – 49)

Focus Section 2: Qualitative Research on Prejudice

Guest Editorial: Qualitative Research on Prejudice Felix Knappertsbusch / Björn Milbradt / Udo Kelle (pp. 50 – 56)

Racism, Differentialism, and Antiracism in Everyday Ideology: A Mixed-Methods Study in Britain Peter Martin (pp. 57 – 73)

“It Depends How You’re Saying It”: The Complexities of Everyday Racism Jessica Walton / Naomi Priest / Yin Paradies (pp. 74 – 90)

The Meaning of Anti-Americanism: A Performative Approach to Anti-American Prejudice Felix Knappertsbusch (pp. 91 – 107)

How Racist Violence Becomes a Virtue: An Application of Discourse Analysis E. Rosemary McKeever / Richard Reed / Samuel Pehrson / Lesley Storey / J. Christopher Cohrs (pp. 108 – 120)

Dealing with Discrimination and the Struggle for Social Advancement in Migrant Families: Theoretical and Methodological Aspects of a Study on Adolescent Generational Dynamics in Turkish Migrant Families Subjected to Marginalization Vera King / Hans-Christoph Koller / Janina Zölch (pp. 121 – 134)

Economic Prosperity as “Narcissistic Filling”: A Missing Link Between Political Attitudes and Right-wing Authoritarianism Oliver Decker / Katharina Rothe / Marliese Weißmann / Johannes Kiess / Elmar Brähler (pp. 135 – 149)

“I Am First and Foremost a Man of Logic” – Stereotyping, the Syndrome Character of Prejudice, and a Glance at Anders Breivik’s Manifesto Bjoern Milbradt (pp. 150 – 163)

Open Section

The Dynamics of the Creation, Evolution, and Disappearance of Terrorist Internet Forums Manuel Ricardo Torres-Soriano (pp. 164 – 178)

The Effect of Youth Demographics on Violence: The Importance of the Labor Market Noah Q. Bricker / Mark C. Foley (pp. 179 – 194)



Introduction: Transitions from Violence – Analyzing the Effects of Transitional Justice

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Transitional justice refers to processes of dealing with the aftermath of violent conflicts and human rights abuses in order to provide for a peaceful future. It makes use of a number of instruments and mechanisms – including tribunals, truth commissions, memory work, and reparations – which aim at uncovering the truth about past crimes, putting past wrongs right, holding perpetrators accountable, vindicating the dignity of victim-survivors, and contributing to reconciliation. The objective of this focus section is to critically assess the potential of transitional justice, its achievements thus far, any conflicting goals, and the inherent or external obstacles that limit its influence and reach. Through empirical case studies from across the globe it paints a multi-faceted picture of the strengths and weaknesses of the approach.

Transitional justice refers to processes of dealing with the aftermath of violent conflicts and human rights abuses in order to provide for a peaceful future. It makes use of a number of different instruments and mechanisms, including national and international tribunals, truth commissions, memory work, reparations, and institutional reforms, which aim at uncovering the truth about past crimes, putting past wrongs right, holding perpetrators accountable, vindicating the dignity of victim-survivors, and contributing to reconciliation. In terms of its temporal focus, transitional justice is, at one and the same time, oriented towards the past, present, and future. As a past-oriented practice, transitional justice addresses wrongs committed during a conflict. As a present-oriented practice, it establishes a new ethical and institutional framework and, through this, seeks to prevent the future occurrence of gross injustices and violence. Over the past two decades, the concept of transitional justice has acquired a central place in international and domestic politics, as well as in political, sociological, and legal academic research.

Given that a number of transitional justice instruments have been in place since the mid-1980s, with a significant

increase since the 1990s, it is now possible to expand academic analysis from the modalities of their operation to their effect on societies, politics, and beyond. With five to seven years or more having passed since the ending of some of the mechanisms, this focus section is concerned with the question if and how transitional justice mechanisms live up to the high expectations placed upon them by various agents including human rights groups, victims' associations, new governments, international organizations, and (international) donors. The call for papers invited contributions assessing the social, political, and legal effects of the following objectives of transitional justice: establishing the truth about the past, holding perpetrators accountable, vindicating the dignity of victims, improving community relations in divided societies, contributing to national reconciliation and nation-building, preventing future violence, and establishing the rule of law and supporting democratization.

Transitional justice processes have provoked a number of conceptual debates regarding their various (anticipated) effects. Most prominent is the debate about peace vs. justice which revolves around whether truth commissions and

tribunals contribute to establishing justice for the society, leading to stabilization and peace, or whether they have a destabilizing effect dividing the society even more deeply between victims and perpetrators (for that debate see Sri-ram and Pillay 2010). Another intense discussion centers around the question of the need for a global jurisdiction. Some proponents argue that institutions such as the International Criminal Court could be seen as an essential milestone in legalizing international relations as well as an expression of a civilizing process, while others doubt that this kind of limitation to state sovereignty can prevent the outbreak of future violence (for an overview see Bonacker, forthcoming). All these debates are full of implicit assumptions about the impact and consequences of transitional justice instruments, which merit closer attention.¹

The objective of this focus section is therefore to critically assess the potential of transitional justice, its achievements thus far, any conflicting goals, and the inherent or external obstacles that limit its influence and reach. Through empirical case studies from across the globe we paint a multi-faceted picture of the strengths and weaknesses of the approach. Since research on transitional justice is spread across a broad range of disciplines including sociology, politics, law, history, anthropology, etc., we have assembled contributions that combine different approaches.

1. Assessing Effects

Initially, academic scholarship dedicated attention mainly to the various mechanisms and their workings and was, at least in the early phase, accompanied by great trust in their effects on transitional processes. It was firmly believed that truth commissions uncover the truth, that tribunals render justice, that reparations lead to social and economic repair, and that memorials contribute to a shared understanding of the past. These “articles of faith,” as Michael Ingantieff (1996) aptly labeled them, went unchallenged, and remain so for some to this very day. This might be explained by the strong practical orientation of the field, where the desire prevails that something positive has to come out of these processes.

Meanwhile, the initial enthusiasm has ebbed and scholarship turned more sober. Over the past decade, numerous publications have challenged many aspects of the transitional justice concept and its application: Is it appropriate for the contexts in which it operates? Are its normative assumptions legitimate? Does it function in the ways initially intended? Are its outcomes non-ambiguous? How does it support transitional moments? How does it affect the communities and structures concerned?

However, the body of literature assessing the effects of transitional justice is still rather small. This might be a consequence of the enduring policy orientation of the field even though, as Neil J. Kritz recently pointed out, research can – and should – inform policy choices for drafting transitional justice programs. This, he argues, may include finding “ways of disaggregating the different contextual factors and different transitional justice components at play in any particular case” (Kritz 2009, 15) in order to better understand their effects. The lack of literature assessing the impact of transitional justice is somewhat surprising, since there is a small but growing group of authors who argue that transitional justice policy choices need to be evidence-based and that it is crucial that academia produce more insights about the impact and effects of transitional justice mechanisms (see for instance Pham and Vinck 2007; Clark 2011). One example is the question as to how different kinds of reparations affect the transitional process of a post-conflict or post-dictatorship society. Even though a number of analytical or normative approaches to reparations, as well as descriptive case studies, have recently been published by transitional justice scholars and practitioners (de Greiff 2006; Ferstman, Goetz, and Stephens 2009) there are very few empirical case studies dealing with the consequences of reparation mechanisms, including the different impacts of individual or collective reparations (or material or symbolic reparations) on victims’ views, their mental health, or their openness to reconciliation processes (Rauchfuss and Schmolze 2008; Backer 2010; Pham, Vinck, and Stover 2009). And yet, for drafting a reparations program, systematic knowledge about those effects would be of great importance.

¹ For a discussion of different concepts of transitional justice see Buckley-Zistel et. al. 2013.

This focus section seeks answers to the very broad questions: *does transitional justice work?* Does it achieve its goals? Needless to say, this is a difficult task. Assessing effects on social change, modifications in attitudes and values, and the transformation of political or social structures are aspects social sciences – both quantitative and qualitative – have been grappling with for some time. In the context of transitional justice, too, separating “utopian dreams or practical possibilities” is certainly a challenge (Hamber, Sevenko, and Naidu 2010). This is further complicated by the fact that the results of transitional justice can be interpreted in different ways by different audiences, so that there is no direct path of cause and effect that can be followed. For “justice ... will never be a singular outcome but is an ongoing relational process involving an exchange between people’s ‘ideals’ and the structural ‘realities’ that limit action” (Dancy 2010, 55–356). Nevertheless, some efforts have been undertaken recently to develop methodologies and indicators to assess impact using empirical data (Van der Merwe, Baxter, and Chapman 2009; Duggan 2010) and by applying multivariate regression to measure the impact of transitional justice on the quality of democracy, human rights, and transitional justice (Olsen et al. 2010, 146).

In the following pages, our intention is however not to focus on causal relations of output and impact in a narrow sense. Instead, we are concerned with transitional justice’s effects on a much wider and much more diverse level, including its impact, consequences, and influence, as well as with methodologies for its evaluation. The contributions thus discuss its effect on the politics of national elites (and *vice versa*), on democratization, and on the construction of memories and grand narratives. In line with this, we are also interested in cases where the potential impact on a constituency is undermined, for instance where transitional justice institutions are based on concepts of little relevance for the people concerned. Moving beyond the mere assessment of simple correlations of cause and effect, our authors draw on rich empirical data and recent insights for their analysis of the effects of transitional justice.

2. Overview of the Issue

Based on extensive ethnographic field research, the first article by Friederike Mieth (2013) examines the impact of

one of the key mechanisms of transitional justice: the tribunal. “Bringing Justice and Enforcing Peace? An Ethnographic Perspective on the Impact of the Special Court for Sierra Leone” explores the underlying assumptions that the court brings justice to those affected by the war and contributes to peace in Sierra Leone.

Mieth’s findings are sobering. Regarding justice, she describes how most of her interviewees stated that the court did not bring justice to them. The first reason for this is that their understanding of justice differs from the retributive justice rendered by judicial mechanisms of punishment of offenders. A notion of justice defined in restorative terms seemed to be much more meaningful to her informants. Second, in the interviews Sierra Leoneans stated that the courts bore little relevance for their daily lives, again undermining its ability to lead to justice in their eyes. In the midst of poverty, the challenges of everyday existence, and the frequent experience of other injustices (such as corruption, but also in encounters with justice institutions), dealing with the war is not the first priority of many people interviewed. Interestingly, rather than trusting in a court to right past wrongs, Mieth describes how people place faith in metaphysical ideas of justice such as bad karma or judgment in the afterworld.

Regarding the second aspect, namely, whether the Special Court brings peace to Sierra Leone, Mieth notes certain positive effects, although not in the ways intended. Interviewees stated that it was not necessary to bring peace to the country – given that the country is at peace – but were glad that those who might ignite new feuds and throw the country into turmoil were behind bars as a result of the Special Court. Here, they felt it had a positive effect.

Mieth concludes that few Sierra Leoneans perceive the Special Court as a means to bring justice to the country. In order to have an impact on the people concerned, she contends, they must be involved in the very conception of transitional justice mechanisms, and not only in their execution. In the case of Sierra Leone, this might entail moving away from a punitive understanding of justice to a restorative one, as well as addressing social injustices more broadly than by a special court dealing only with those related to the war.

Eva Ottendörfer's contribution (2013) assesses the effects of transitional justice on prevailing political structures and nation-building. "Contesting International Norms of Transitional Justice: The Case of Timor Leste" applies a complementary approach to weigh up the success of the United Nations strategy of implementing transitional justice by following a so-called complementary approach. After the experience of countries where only tribunals were set up (such as Rwanda and the former Yugoslavia), the judicial process of dealing with the past in Timor Leste was complemented by a truth commission. Ottendörfer's critical analysis reveals that this approach, too, failed to have its desired impact since political leaders successfully sidelined the efforts, while forwarding their own understanding of the future of the country. To conceptually frame her analysis, Ottendörfer couches it on recent contributions to the emergence and salience of norms and, like Mieth, draws on extensive field research to substantiate her argument.

Ottendörfer's objective is to assess the impact of externally induced transitional justice on the domestic, political level by exploring the responses of domestic actors to the mechanisms and their outputs. She argues that the UN has pursued a rather functionalist approach to transitional justice, assuming that it would have an effect on the rule of law and nation-building. Yet this was undermined by political leaders, both in government and opposition, who were successful in promoting their own version of nation-building based on the notion of a morally infeasible resistance and who undermined legal prosecution through acts of clemency and forgiveness. Moreover, the report of the truth commission was not discussed in parliament and its recommendations were ignored. Importantly, the author concludes, transitional justice is not simply a moment of imposing international, external norms onto a post-conflict society, but also a moment where domestic political leaders can promote their own interests and norms. When it comes to assessing the effects of transitional justice mechanisms, this implies that they have to be considered against the framework of the political and social circumstances in the post-violence country.

Both Mieth and Ottendörfer provide good illustrations of the limitations of the effects of transitional justice. From

Mieth's perspective, it is hampered by culturally different views and expectations about what is necessary and appropriate to deal with a violent past. In Sierra Leone, it seems that transitional justice is simply not the answer to the most pertinent questions. While this might also be the case in Timor Leste, Ottendörfer's insights into the political elites and their power to restrict the impact of courts and truth commissions are equally revealing, showing how transitional justice processes do not operate in a political vacuum but in the highly complex environment of renegotiation of the country's future.

While the first two contributions focus on the social and political effect of transitional justice – or the absence thereof – Chrisje Brants and Katrien Klep (2013) take a slightly different approach by opening up the black box of tribunals and truth commission. In "Transitional Justice: History-Telling, Collective Memory and the Victim-Witness" they discuss the effects of witness accounts, testimonies, and statements given to international courts and truth commissions on the construction of collective memories about past human rights abuses. While these transitional justice mechanisms are generally considered to contribute to uncovering facts and punishing perpetrators, the authors contend that their processes also have a strong impact on the ways the past is narrated. Although many competing truths emerge from the hearings and consultations of tribunals and truth commissions, the authors argue, they tend to produce one coherent version of the past whose fixation in verdicts and reports renders it authoritative and thus hegemonic.

Brants and Klep focus particularly on the role of victim-witnesses in this process, since their recollections enunciated to courts and commissions function as a crucial source for history and collective memory. Victims can shape narratives because they have become the central figures of transitional justice processes, with their accounts of past injustices being key sources for piecing together an overall account of the crimes. While the authors consider this to be a positive development from a moral perspective, they caution that there may also be drawbacks. For Brants and Klep, victims can serve as key sources of information only if they are imbued with the specific subject position of

survivor, which is inevitably associated with suffering and pain.

Turning to the general victim orientation of transitional justice since the 1990s (Bonacker and Safferling 2013), Brants and Klep show how the victim-centered paradigm, under which victims become the main narrators of past events, grants their suffering an influential role in the way the past is narrated. Concerning the construction of collective memory, as one outcome of these processes, they argue that the disproportionate representation of victims' accounts might lead to a distortion of the factual truth of human rights abuses. While they contend that this holds true for both mechanisms – international tribunals and truth commissions – they point out that an important dif-

ference remains: in a tribunal the truth is established in the fixed form of a verdict, which allows no room for dissent, while a truth commission establishes a version of the truth that is always open to contestation and renegotiation, if not in the course of the commission's work itself then in other more general arenas in the post-violence society.

The articles in this focus section reveal that initial efforts to assess the effect of transitional justice are under way, but also that much remains to be done. We understand it as a small contribution to ongoing scholarship on these questions. In addition to providing more comparative studies there is a need to develop and refine methodologies, both qualitative and quantitative, for studying the effects of transitional justice in more detail.

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