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Transitional justice and liberal post-conflict governance: Synergies and symmetries, frictions and contradictions

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Executive Summary

What does it mean to “do justice” in times of transition? Justice for what, justice for whom, and to what ends? Attempts to answer these and other related questions have often aroused debate: from antiquity, to the so-called “third wave” of democratic transitions in the 1980s and 90s up through the present day. While “justice” may be an elusive and essentially contested concept deeply rooted in context-specific history and culture, increasingly, “doing justice” in the wake of large-scale human rights violations has become inseparable from the field of “transitional justice.” Such is the dominance of the mainstream transitional justice paradigm today that, in practice, the question is increasingly not *whether* there will be some kind of transitional justice in the aftermath of conflict, but *how* various components of the transitional justice “toolbox” will be implemented.

If the growth and trajectory of transitional justice discourse and practice has been seen in some quarters an unalloyed “good thing,” it has also been accompanied by fierce resistance and persistent frictions, leading some to question the future of the field and call for its re-examination. Such examination makes clear that the core narratives and preoccupations of the field contain something of a contradiction. Transitional justice is at times imagined as a post-political and post-ideological enterprise, part of “the end of history,” and yet is also heavily associated with liberal and neoliberal democratic political transitions and has been dominated by largely Western conceptions and modalities of justice. Though increasingly implicit, the idea of transitional justice as handmaiden to liberal political transitions—the “paradigmatic transition” of transitional justice—remains a deeply embedded narrative that continues to shape thinking, policy, and practice today. Together with post-conflict peacebuilding, transitional justice has, since the end of the Cold War, become an important feature of liberal post-conflict governance, a means by which Western liberal values are pushed from core to periphery.

While the narratives undergirding and shaping the field have had many positive dimensions, they have also served to limit and constrain the transitional justice enterprise in various ways. For example, they have heavily shaped the modalities of transitional justice (approaches that are generally state-centered, top-down, privileging the global over the local). In addition, they have served to limit our sense of what the “justice” of transitional justice should reasonably include (generally addressing civil and political rights rather than economic and social rights, physical violence rather than questions of economic or structural violence). In short, transitional justice theory and practice have typically failed to reflect the complex depth and pluralism of the many varied notions of justice across the globe, and this may ultimately hinder the emergence of a truly global project, where “global” is not simply a byword for “western” or “liberal.” In this light, there is a strong need to revisit and deconstruct the field’s core normative metanarratives, blindspots and assumptions as a prelude to seeking a more emancipatory ground for transitional justice policy and practice that is true to human rights ideals while becoming more open-textured and attuned to local needs and context.

In recent years, the view of transitional justice as handmaiden to liberal political transitions has begun to give way to a somewhat looser view of transitional justice as a component of post-conflict peacebuilding more generally. One can therefore ask whether the emerging transitional-justice-as-peacebuilding narrative is likely to address the aforementioned historic blindspots and tensions. To the extent that “peace” invokes more holistic sets of objectives than the narrower goals associated with facilitating liberal political transitions, the turn to peacebuilding might be seen to represent a broadening and a loosening of earlier paradigms and moorings, making this a significant moment in the normative evolution of the field. At the same time, given the parallel critiques that have been leveled against both peacebuilding and transitional justice since the end of the Cold War, there are reasons to be wary of this increasing association. Historically, the “peace” associated with international post-conflict peacebuilding efforts spearheaded by the United Nations and major international donors has typically been conceived of as a narrow liberal peace predicated on free markets and Western-style democracy. Thus, insofar as the goals of liberal international peacebuilding and the historic goals of transitional justice are essentially one and the same, without more, “transitional justice as peacebuilding” may be little more than a dressed up tautology.

Yet there are also emancipatory concepts of peace and peacebuilding that carry with them the potential to challenge longstanding blindspots and assumptions and to increase the possibility of a less rigid transitional-justice-as-peacebuilding narrative. Preventing simple elision of transitional justice and liberal international peacebuilding—and working toward a more emancipatory conception of transitional justice-as-peacebuilding in the process—can be facilitated in part through the use of several constructs from critical peacebuilding theory: positive peace, the everyday, popular peace, and hybridity. While they do not themselves create a program for action, these constructs offer a very useful starting point for reimagining transitional justice going forward.

Finally, principles of pluralism and concepts like the “margin of appreciation” worked out in historically liberal societies can be useful constructs in generating new transitional justice practice reflective of greater contextual openness and adaptability. Thus, if an arrogant, aggressive and narrow liberalism has historically been part of the problem in transitional justice, some of the solutions to modern-day transitional justice dilemmas might also be recovered from the broader liberal tradition.