



Handbook of Peace Psychology

Christopher Cohrs, Nadine Knab & Gert Sommer (Eds.)

Li & Leidner: Transitional Justice

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Cover picture: Hope (Esperanza). Peace, gratitude, creativity and resilience are the symbols and elements that are harmonised in this artwork. In large format, it is part of the graffiti tour in Community 13 in Medellín, Colombia. The artwork conveys an important message of hope to both the local community and foreign visitors.

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Transitional Justice

Mengyao Li & Bernhard Leidner¹

Abstract

Transitional justice refers to a variety of measures that aim to address large-scale or systematic human rights violations in societies emerging from repression or mass violence. This chapter reviews the interdisciplinary literature on transitional justice with a particular focus on empirical studies attempting to uncover its effects on individuals affected by violence and repression, including victims, perpetrators, and communities at large. We first consider retributive and restorative justice as two distinct notions of justice that are of primary concern in the aftermath of mass atrocities, and then zoom in on the psychological implications of major transitional justice measures. These measures include criminal trials, truth commissions, material and symbolic reparations, as well as grassroot and hybrid measures. In addition, we discuss the case of impunity, or the absence of transitional justice. Our review highlights the advantages and limitations of different transitional justice measures in promoting human rights, peace, and reconciliation, and identifies directions for future research.

Keywords: mass violence, transitional justice, retributive justice, restorative justice, human rights

Zusammenfassung

Übergangsgerechtigkeit bezieht sich auf eine Vielzahl von Maßnahmen, die darauf abzielen, groß angelegte oder systembedingte Menschenrechtsverletzungen in Gesellschaften zu bewältigen, die aus Unterdrückung oder Massengewalt hervorgegangen sind. Dieses Kapitel gibt einen Überblick über die interdisziplinäre Literatur zum Thema Übergangsgerechtigkeit, wobei der Schwerpunkt auf empirischen Studien liegt, mit denen wir die Auswirkungen der Übergangsgerechtigkeit auf die von Gewalt und Unterdrückung betroffenen Personen, einschließlich der Opfer, Täter und der Gemeinschaften im Allgemeinen, offenlegen möchten. Wir betrachten zunächst die vergeltende und die wiederherstellende Gerechtigkeit als zwei unterschiedliche Gerechtigkeitsbegriffe, die nach Massengrausamkeiten von vorrangiger Bedeutung sind, bevor wir anschließend näher auf die psychologischen Auswirkungen der wesentlichen Maßnahmen der Übergangsgerechtigkeit eingehen. Zu diesen Maßnahmen gehören Strafprozesse, Wahrheitskommissionen, materielle und symbolische Wiedergutmachung sowie basisdemokratische und hybride Maßnahmen.

¹I would like to dedicate this chapter to the memory of my dear friend, mentor, and colleague, Dr. Bernhard Leidner, who passed away on November 19, 2022. His invaluable contributions to the psychological understanding of transitional justice will continue to inspire empirical and theoretical work in this interdisciplinary field for years to come.

Darüber hinaus erörtern wir den Fall der Straflosigkeit bzw. des Fehlens von Übergangsjustiz. Unsere Betrachtung hebt die Vorteile und Grenzen verschiedener Maßnahmen der Übergangsjustiz bei der Förderung von Menschenrechten, Frieden und Versöhnung hervor und zeigt Richtungen für die zukünftige Forschung auf.

Schlüsselwörter: Massengewalt, Übergangsjustiz, vergeltende Gerechtigkeit, wiederherstellende Gerechtigkeit, Menschenrechte

One of the most pressing and difficult questions facing societies emerging from repression, wars, and violent conflicts is how to reckon with the past. Ordinary legal standards and principles are often inadequate in dealing with the scale and gravity of mass atrocities. Defined as the “conception of justice associated with periods of political change” (Teitel, 2003, p. 69), transitional justice encompasses a set of measures and processes specifically devised to confront systematic or massive violations of human rights. Modern transitional justice mechanisms typically include criminal trials, lustration and purges, truth commissions, reparation programs, as well as more symbolic processes such as political apologies and memorialization efforts.

The goals of transitional justice are ambitious and multifold, and chief among them are establishing accountability, discovering the truth, and achieving national reconciliation¹ (Forsberg, 2003; Leebaw, 2008). While many advocates and international organizations have portrayed these goals as mutually reinforcing and complementary, others have cautioned about the trade-offs between, or even the irreconcilability of, these goals (Leebaw, 2008). The most notable tension arises between the backward-looking goal of holding perpetrators accountable and the forward-looking goal of reconciliation. It has been argued that prosecuting and punishing perpetrators can pose a serious threat to the fragile peace in transitioning societies (e.g., Cobban, 2006). Truth and (criminal) justice have also been placed at odds with each other. According to José Zalaquett (1990), one of Chile’s leading human rights advocates and legal scholars, truth-telling should be encouraged by exploring bargaining policies and partial or even total amnesties in lieu of criminal prosecution and sentencing. Other tensions include that between a narrow focus on civil and political rights versus broader approaches also including, for instance, socio-economic and cultural rights (e.g., United Nations Human Rights Office of the High Commissioner, 2014).

The extraordinarily complex nature of transitional justice has prompted increasing scholarly interest in the past decades. The academic endeavor to study transitional justice has been characterized by interdisciplinary, multi-level, and multi-methodological approaches (David, 2018). In addition to fundamental issues of law, justice, morality, and politics, scholars

¹ Other transitional justice goals may include, but are not limited to, providing redress to victims, institutionalizing human rights, establishing rule of law, and promoting democracy (e.g., Leebaw, 2008).

have devoted considerable attention to three main levels of analyses (David, 2018). The first level is concerned with the history of transitional justice and its effects on democracy and human rights cross-nationally (Kim & Sikkink, 2010; Olsen, Payne & Reiter, 2010a, 2010b). The second level deals with case studies of specific transitional justice measures in select countries and regions that garnered significant attention in the general public, the political arena and policy and decision-making sphere, and hence the scholarly community; for example, Germany (Baldwin, 1990), South Africa (Backer, 2010; Gibson, 2004a, 2009), Eastern Europe and the Former Soviet Union (Stan, 2009), Latin America (Skaar, Garcia-Godos & Collins, 2016), and the former Yugoslavia (Dimitrijevic, 2008). The current chapter focuses on the effects of transitional justice at the third, micro level – of the individual, which as victim, perpetrator, or community member has been affected by violence and repression (for reviews see David, 2017; Leidner & Li, 2015). This micro-level approach is particularly relevant for the field of psychology, which offers important insights into the perceptions, motivations, and emotions of individuals and groups in societies undergoing profound political transformation. Substantial research in psychology has been devoted to examining the roots, development, and remedies of large-scale violence (e.g., Bar-Tal, 2007, 2011), different notions of justice (e.g., Wenzel, Okimoto, Feather & Platow, 2008), antecedents and obstacles to reconciliation (e.g., Nadler, Malloy & Fisher, 2008), all of which can contribute to the understanding of transitional justice.

In addition to psychology, we draw on a diverse set of disciplines (e.g., political science, legal studies, sociology) to offer an overview of research on major transitional justice mechanisms, including trials, truth commissions, material and symbolic reparations, as well as grassroots measures of so-called “homegrown justice”. We also contrast these transitional justice mechanisms with impunity and amnesties (i.e., lack of transitional justice) and their contested implications. The current chapter relies heavily on empirical studies of transitional justice, as the field has long received (valid) criticism for lacking empirical data to substantiate various assumptions and claims by advocates and policy makers (e.g., Fletcher, Weinstein & Rowen, 2009; Vinjamuri & Snyder, 2004). While focusing on micro-level analyses, whenever applicable, we also make use of case studies and cross-national evidence to support arguments regarding how individuals perceive, evaluate, and react to transitional justice mechanisms. Before discussing specific transitional justice mechanisms (and impunity), we first consider two notions of justice that are a frequent focus in the transitional justice discourse: retributive and restorative justice.

Retributive and Restorative Justice

One of the challenges of studying transitional justice lies in its conceptual complexity: It concerns various dimensions of justice, including but not limited to criminal justice such as retributive, restorative, and procedural justice, as well as reparatory and re-distributive justice, reconciliatory justice, and revelatory justice (David, 2017). These are not mutually exclusive categories, however, and most transitional justice measures function to serve multiple aspects

of justice. We focus on retributive and restorative justice for two reasons. First, they provide a useful theoretical framework to understand what it means to reinstate justice following large-scale atrocities such as intergroup violence (Wenzel et al., 2008). Second, they have received the most attention in psychology, especially in terms of empirical research (e.g., Carlsmith & Darley, 2008; Leidner, Castano & Ginges, 2013; Okimoto, Wenzel & Feather, 2012).

Retributive and restorative justice are two interlinked, but sometimes conflicting, notions of justice. Whereas retributive justice refers to traditional judicial processes in which punishment is unilaterally assigned to perpetrators (e.g., Carlsmith & Darley, 2008; Darley & Pittman, 2003), restorative justice refers to bilaterally rebuilding a sense of justice through reaffirming shared values between perpetrators and victims, with a strong emphasis on healing rather than punishing (e.g., Braithwaite, 2002; Wenzel et al., 2008). Unlike punishment, practices of restorative justice are rather heterogeneous, and typically involve direct interactions between affected parties, such as truth sharing, political apologies, material exchanges, and other forms of restitution to the victims (Menkel-Meadow, 2007).

Psychologists have conceptualized preferences for retribution and restoration as two general orientations toward justice (Okimoto et al., 2012). In other words, individuals differ considerably in their retributive or restorative justice orientations. Importantly, endorsement of either notion of justice has downstream implications for how people respond to transgressions. Whereas endorsing retributive justice can lead to preferences for punishment or even aggression against the perpetrators, endorsing restorative justice can lead to preferences for bilateral justice processes and non-violent approaches to addressing past transgressions (Leidner et al., 2013; Li, Leidner, Petrović, Orazani & Rad, 2018; Okimoto et al., 2012).

Recent work suggests that victims and perpetrators may have divergent justice orientations and preferences (see Li & Leidner, 2019, for a review). As one of the first psychological models that systemize the different perspectives of victims and perpetrators, the needs-based model of reconciliation proposes that victims of violence have a particular need for empowerment due to the loss of power and status during the conflict, whereas perpetrators have a particular need for acceptance due to the loss of moral reputation (Shnabel & Nadler, 2008; Shnabel, Nadler, Ullrich, Dovidio & Carmi, 2009). These divergent psychological needs drive group members' reactions to conflict interventions. In the context of transitional justice, punishing perpetrators directly reduces their power and status, thereby contributing to the restoration of the power balance between victims and perpetrators (Okimoto et al., 2012; Wenzel et al., 2008). It is therefore not surprising that victims often have strong desires for retributive justice, and perpetrators often object to such unilateral processes that further diminish their status and morality (Li et al., 2018). Restorative approaches to justice, on the other hand, have also been argued to empower victims, for example, by validating their suffering and returning to them a sense of control (Shnabel et al., 2009). The bilateral nature of restorative justice, however, should also help satisfy perpetrators' need for acceptance by

rebuilding their moral selves and facilitating reintegration into their communities (Braithwaite, 2002; Wenzel et al., 2008).

In the following sections, we zoom in on major transitional justice measures designed to address retributive, restorative, or both notions of justice. As we will illustrate, most measures of transitional justice are not limited in pursuing one type of justice – rather, they exert a multitude of direct and indirect effects on victims, perpetrators, and society at large. To offer a comprehensive outlook on approaches to dealing with an atrocious past, we start by looking into the case of impunity, or the absence of transitional justice.

Impunity and Blanket Amnesty

The creation and development of various international agencies – in particular, ad hoc international war crimes tribunals and a permanent International Criminal Court (ICC) – reflect clear international legal norms in favor of prosecuting and punishing perpetrators of genocide, war crimes, and crimes against humanity (Mendez, 2001; Orentlicher, 2007). Not many legal scholars or practitioners would advocate any more for blanket amnesties or de facto impunity for crimes of such scale and magnitude. This, however, was not always the case. Among the many prominent cases of mass atrocities approached with impunity are the gross human rights violations during the Franco dictatorship in Spain (Escudero, 2014), genocide against the Armenians by the Turks, and the terror and torture under authoritarian and military regimes in Latin America (see Skaar et al., 2016, for an analysis of the recent shift from impunity to accountability). Dominant arguments in favor of impunity rest on the prioritization of national reconciliation and stability over other transitional justice goals and the previously mentioned assumption that making political compromises with the still powerful former government or military can be a pragmatic route to peace (Huntington, 1991; Mendez, 2001; Vinjamuri & Snyder, 2004). In Chile, during the transition from military dictatorship to democracy, impunity was even equated with reconciliation (Paz, 1999). Impunity has also been pursued as a pragmatic solution that allows newly formed governments to move forward when they lack the ability or political will to establish a fair, independent, and well-functioning judiciary (e.g., during the democratic transitions in many African countries; Mbaku, 2019). Leaving the moral and normative arguments against impunity aside, the pragmatic arguments in favor of it begged empirical scrutinization. The question is, does granting impunity actually provide the chance for peace and reconciliation? Limited empirical research and case studies have yielded quite mixed findings. On the one hand, leading pragmatist scholars such as Huntington (1991) have noted successful cases of political transformation characterized by impunity (e.g., when leaders of the existing authoritarian regimes initiated the transition to democracy, and when the transition is negotiated between the new government and the powerful opposition). Critics of impunity (e.g., Mendez, 1997, 2001; Roht-Arriaza, 1996), on the other hand, have cautioned that there is no clear evidence that yielding to the pressures from the perpetrators would indeed prevent them from destabilizing new democracies. Reconcili-

ation predicated on impunity is uncertain and may be short-lived (Roht-Arriaza, 1996). Political compromises in the form of impunity can potentially put new democracies at risk because it might help perpetrators re-consolidate their power (Mendez, 1997). No empirical research, however, has systematically examined the effects of impunity on perpetrators and opposition groups.

While it remains unclear how impunity affects the perpetrators, the effects of impunity on victims of mass violence, at least in terms of their psychological well-being, are relatively well-understood (albeit still lacking systematic empirical research). The absence of justice has been found to be associated with a range of psychological problems, including post-traumatic stress disorder (PTSD), depression, fear, and feelings of powerlessness among victims and survivors (Basoglu, Jaranson, Mollica & Kastrup, 2001; Başoğlu et al., 2005; Lykes, Beristain & Pérez-Armiñan, 2007). The fear of history repeating itself if perpetrators are allowed to walk free was evident in interviews with survivors of the 1995 Xamán Massacre in Guatemala, which was followed by a series of criminal trials that exonerated the leaders of the massacre (Lykes et al., 2007; Study 2). Survivors also expressed feelings of sadness and desperation as a result of impunity. Similarly, a survey of war survivors and a control group in former Yugoslavia revealed that, among other things, survivors reported stronger negative emotional responses to impunity than did controls, which were associated with PTSD and depression (Başoğlu et al., 2005). The majority of survivors also reported a sense of injustice due to the perceived lack of redress for their trauma. It is worth noting, however, that emotional responses to impunity were only one of the many factors predicting the psychiatric outcomes and might not have directly contributed to PTSD and depression.

While these studies did not examine how impunity affects victims' participation in peacebuilding, there is some empirical evidence linking psychiatric symptoms with reconciliation-related attitudes and beliefs. In different post-conflict contexts, PTSD and/or depression have been found to be associated with less belief in community and interdependence with other ethnic groups (in Rwanda; Pham, Weinstein & Longman, 2004), support for violence as a way to achieve peace (in Northern Uganda; Vinck, Pham, Stover & Weinstein, 2007), as well as desire for revenge (in Cambodia; Sonis et al., 2009). These findings thus provide indirect evidence that impunity might obstruct peace processes by re-traumatizing victims and survivors.

So far, empirical research on the societal impact of impunity has been largely limited to examining its adverse effects on the well-being of victims and survivors. In line with the research on the needs-based model of reconciliation (Shnabel et al., 2009), closing the book on past atrocities not only does little to address victims' need for empowerment, but can further diminish their agency and sense of control, thereby creating psychological obstacles to peace and reconciliation. It remains unclear, however, how impunity affects perpetrators or members of the perpetrator group, especially regarding its long-term consequences. Given that the core rationale behind the pursuit of impunity lies in its pragmatic role in paving a way

for perpetrators' cooperation in the peace process, more empirical research is warranted to test the validity of this argument.

Criminal Trials

As the original and most popular form of transitional justice, criminal trials have been conducted at the regional, national, and international level. Well-known examples include the Nuremberg and Tokyo trials after World War II (also known as the beginning of modern transitional justice; Arthur, 2009; Mendez, 1997; Teitel, 2003), the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR). While there are increasingly strong international norms demanding retributive justice, relevant scholarship has been divided on the objectives and effects of criminal trials (see David, 2017, for a review). Overall, it has been argued that the effects of criminal trials go beyond achieving the primary backward-looking goal of settling accounts with the perpetrators. Trials can, at least in theory, also contribute to forward-looking goals of promoting peace, reconciliation, and transition to democracy, for example, by providing a sense of healing and closure for victims, deterring future crimes, and establishing democratic norms and values (e.g., Akhavan, 1998, 2001; Orentlicher, 1991). While being a primarily retributive measure, trials can therefore also serve restorative goals.

While not being the focus of the current chapter, empirical research conducted at the cross-national level has come to quite different conclusions regarding the societal effects of criminal trials. Whereas some found a deterrent effect of trials, which contributed to the improvement of human rights protection in transitional societies across the globe (Kim & Sikkink, 2010; Sikkink & Walling, 2007), others did not observe any impact of trials on human rights or peace (Meernik, 2005; Meernik, Nichols & King, 2010). A number of studies have examined the effects of trials on individuals, from both victim and perpetrator perspectives, which we discuss in detail below.

In the same research reviewed above on the massacre survivors in Guatemala, Lykes and colleagues (2007) also found that survivors expressed strong desires for punishment of perpetrators and showed signs of improved psychological adjustment as a result of participating in trials. Despite experiencing heightened stress and fear during the trials – which was partially due to the general climate of impunity – giving testimony reduced participants' sense of powerlessness and defeat through defending truth, history, and justice (Lykes et al., 2007; Study 2). Other research has similarly documented the positive experience of bearing witness in war crimes trials (e.g., in the Special Court for Sierra Leone, Horn, Charters & Vahidy, 2008; Horn, Vahidy & Charters, 2011; in the ICTY, Stover, 2005; King, Schoorl, Meernik, Rubert & Smit, 2016). Studies of torture victims in Chile have also uncovered the therapeutic effects of producing written documents systemizing and summarizing victims' experiences (Roht-Arriaza, 2006). In the contexts of the Bosnian war and the Iran-U.S. conflict, we recently

demonstrated that learning about an international tribunal prosecuting and punishing perpetrators can satisfy victim group members' need for retributive justice, thereby increasing their willingness to reconcile, compared to learning about impunity or not receiving any information about justice efforts (Li et al., 2018). Although our research did not examine the healing effects of direct trial participation, it indicates that trials may benefit members of the victim groups even more broadly by becoming part of the historical record.

It is worth noting, however, that the psychological benefits of trials on victims and survivors may be conditional and temporary. Analysts of the ICTY have argued that in some cases, war crimes trials can "effectively silence, rather than hear, victims" (Dembour & Haslam, 2004, p. 151). During a particular trial at the ICTY, Dembour and Haslam (2004) observed that the judges tended to interrupt victim witnesses, and make overly optimistic and paternalistic remarks, which essentially denied the suffering of the victims. It has also been pointed out that healing is a long-term process that goes beyond participation in trials (Fletcher & Weinstein, 2002). Interviews of witnesses who had testified at the ICTY revealed that the cathartic feelings of relief dissipated after they returned to their communities (Stover, 2005), arguably due to their individual difficulties (Stover, 2005) and the marginalization they face in their deeply divided communities (David, 2017). The research on the impact of trials on victims has therefore suggested overall positive effects with some caveats and cautions about the conditions of trials and their long-term benefits.

From the perpetrators' perspective, does the pursuit of retributive justice deter future crimes and facilitate reconciliation? The answer is also not straightforward. A survey of Bosniaks, Croats, and Serbs showed that belief in war crimes trials was positively linked to readiness for reconciliation (Biro et al., 2004), suggesting that trials' conciliatory effects may depend on how individuals evaluate the trials. As mentioned above, however, trials and punishment frequently face strong opposition or even violent retaliation from perpetrator groups (e.g., Cobban, 2006; Zalaquett, 1990). In northern Uganda, for example, the Lord's Resistance Army – an insurgent group responsible for gross human rights violations in the region – responded to arrest warrants issued by the ICC with escalated attacks against civilians and aid workers (Cobban, 2006).

Empirical research has similarly demonstrated negative reactions to punishment among members of the perpetrator group. In Serbia, successive public opinion polls suggest that Serbs, who are widely seen as the primary perpetrators during the Yugoslav wars between 1991 and 2001, hold attitudes toward the ICTY characterized by growing confusion and reduced interest (Dimitrijevic, 2008). Again, in the context of the Yugoslav wars, David (2014) conducted an experimental study that utilized vignettes to manipulate types of trials, ethnicity of perpetrators, and whether or not punishment was inflicted. The results revealed that the ICTY increased Croats' perceptions of justice when it punished Serb perpetrators who harmed Croats (compared to when it punished Croats who harmed Serbs). Such identity-based perceptions of retributive justice were echoed in our own experimental research across different conflict contexts (Li, Leidner & Fernandez-Campos, 2020; Li et al., 2018; Li, Leidner,

Petrović & Prelic, 2020). These findings highlight perpetrator group members' reluctance to cooperate with efforts of retributive justice. Whether or not such reluctance would translate into active resistance to the peace process or engagement in future violence, however, remains an empirical question.

Summary and discussion

For victims of mass violence, criminal trials generally have a positive impact by addressing their desire for retributive justice and providing an opportunity for healing, closure, or catharsis. These positive effects, however, are context-dependent and heavily influenced by the conditions and results of trials. Testifying in criminal courts can be re-traumatizing, for example, if victims' suffering is not properly acknowledged. It is also ambiguous whether the therapeutic effects of testifying can last after the trial concludes. After all, healing is "a long-term process that involves significantly more than emotional abreaction" (Fletcher & Weinstein, 2002, pp. 593-594). While there has been much less empirical work on the impact of trials on perpetrators, the existing evidence shows that prosecution and punishment tend to induce negative reactions and resistance among members of the perpetrator group. The direct link between criminal trials and perpetrators' support for the peace and reconciliation process, however, remains largely unexplored.

Truth Commissions

In cases of massive human rights violations, the prosecution and punishment of individual perpetrators by criminal trials are selective and symbolic, and therefore play a relatively limited role in uncovering the overall patterns of human rights violations (Hayner, 1994). An alternative to traditional retributive measures of transitional justice, truth commissions originated in Latin America in the 1980-90s as a response to the need to establish a full and fair account of what had happened during the era of military dictatorships, especially "enforced disappearances". Truth commissions are typically temporary, authoritative bodies set up to investigate patterns of past human rights abuses (Hayner, 1994). They also go beyond their mission of revealing the truth and serve an important symbolic purpose of *acknowledging* the truth (Hayner, 1994). Their proponents have argued that truth commissions can facilitate societal healing, bring about closure, pave a way to reconciliation in the process of uncovering and acknowledging "the truth" (David, 2017; Gibson, 2002, 2004a). Despite their "intrinsically different nature" (Hayner, 1994, p. 605), truth commissions and criminal trials therefore have many shared goals. Unlike trials, truth commissions are more concerned with healing rather than punishing, and hence considered a form of restorative justice (Braithwaite, 2002). Like trials, the effects of truth commissions on achieving their purported goals have been highly contested (David, 2017; Van der Merwe & Chapman, 2008).

Among the large number of truth commissions across the globe, the South African Truth and Reconciliation Commission (TRC) was the most famous and applauded one and attracted the most attention from scholars of transitional justice. For this reason, we focus on the TRC as a prominent example of a truth commission. While the international reception of the TRC has been mostly positive, many scholars have questioned the extent to which the TRC has delivered its promises to promote reconciliation within South Africa (Backer, 2010; Van der Merwe & Chapman, 2008).

Based on survey responses from 3,727 South African adults, Gibson (2004b, 2004c) examined the intricate relationships between truth and reconciliation, and between truth and support for human rights. Results indicated a bilateral relationship between acceptance of the TRC's truth and conciliatory attitudes among White South Africans; in other words, acceptance of truth led to greater reconciliation and reconciliation enabled a greater acceptance of truth (Gibson, 2004c). By contrast, this link between truth acceptance and reconciliation did not emerge among Black South Africans. Regarding truth and support for human rights, Gibson (2004b) found that acceptance of truth was positively related to support for universalism in rule of law (indexing support for human rights). This positive relationship emerged for both Black and White South Africans. It should be noted, however, that given the correlational nature of the data, it is impossible to draw any causal link between the TRC and conciliatory attitudes or support for human rights. These findings suggest that while the TRC, or its narrative of the truth, might go hand in hand with reconciliation and human rights among Whites and (to lesser extent) Blacks in South Africa, the positive effects of truth commissions may not extend to all racial groups or all conflicts and contexts.

Other research has examined whether participating or testifying at the TRC promoted victims' healing and forgiveness toward the perpetrators (Kaminer, Stein, Mbanga & Zungu-Dirwayi, 2001). Based on a survey of 134 survivors who gave testimony open or closed to the public, or no testimony to the TRC, Kaminer and colleagues (2001) found no significant relationship between participation in the TRC and survivors' psychiatric status or attitudes toward forgiveness. These null findings again call into question the ability of truth commissions to facilitate societal healing and reconciliation, especially among victim groups (see also Hamber, 2001). At the same time, however, these findings also offered no evidence that public truth-sharing can re-traumatize victims or further divide society, as many skeptics have argued (David, 2017).

One unique key feature of the TRC was that it had the authority to grant conditional amnesty to crimes "motivated by political objectives" (Gibson, 2002, p. 541), and those seeking amnesty were required to provide full disclosure of the crime committed. Trading criminal justice for truth and reconciliation, however, remained controversial both theoretically and empirically. In a longitudinal study of 153 victims of apartheid-related violations from Cape Town, South Africa, Backer (2010) found that victims' approval of the TRC process – affording amnesty to perpetrators in exchange for full disclosure of truth – dropped dramatically in 2008 relative to 2002-2003. The sharp decline was accompanied by an increased desire for

criminal accountability even at the risk of political instability. This shift in victims' attitudes toward the TRC suggests that while they may be initially willing to support truth commissions and amnesty due to their immediate need for stability, victims' needs can change over time to prioritize accountability and retribution.

Summary and discussion

Despite the international praise of truth commissions in general and the South African TRC in particular, empirical evidence on their ability to achieve restorative justice has been quite ambiguous. On the one hand, truth commissions may be effective for some groups, but not for others. While this seems to be a general issue for most, if not all, measures of transitional justice, it can be particularly concerning for restorative measures given their emphasis on societal healing and reconciliation for victims, perpetrators, and communities. On the other hand, truth commissions are often put in place in lieu of judicial processes to prioritize truth, reconciliation, and political stability. No empirical data, however, have substantiated the idea that forgoing accountability can encourage truth telling or contribute to sustainable peace. Even in cases where societal support for such a trade-off is initially strong, victims' needs may shift to refocus on retributive justice, if it remains unaddressed.

None of these limitations or drawbacks of truth commissions, however, deny their critical role in establishing a record of a country's atrocious past. As Hayner (1994) aptly puts it: "Leaving an honest account of the violence prevents history from being lost or re-written, and allows a society to learn from its past in order to prevent a repetition of such violence in the future" (p. 607). It is therefore crucial to recognize the inherent value in truth seeking and truth telling, although their effectiveness in preventing future violence remains to be tested.

Material and Symbolic Reparations

A central theme of transitional justice is the state's obligation to redress and repair past wrongdoings (Teitel, 2000). Reparatory practices are often focused on providing material or financial compensations to victims, but can also be symbolic such as issuing official, public apologies. Since the 1950s, symbolic approaches to reparation have become increasingly popular, and some have even referred to the 20th century as the "age of apology" (Brooks, 1999; Zoodsma & Schaafsma, 2022). Victim reparations not only serves distributive justice by addressing victims' socio-economic rights (García-Godos, 2013), but also contributes to restorative justice (Menkel-Meadow, 2007) by satisfying victims' material and psychological needs, and ultimately, promoting healing and reconciliation (David, 2017). It has been cautioned, however, that mere financial compensation may help repair distributive injustices, but does not necessarily have restorative meaning if it is not implemented through bilateral processes that contribute to re-affirming shared values between victims, perpetrators, and the community (Wenzel et al., 2008).

There has been limited, and yet growing, empirical research on the effects of material compensation (e.g., Bunselmeyer & Schulz, 2020; David & Choi, 2005; Firchow, 2017; Laplante & Theidon, 2007). Based on a survey study of 826 former political prisoners in the Czech Republic, David and Choi (2005) showed that satisfaction with the financial compensation received and the possibility to return to the previous profession were the strongest predictors of healing and redress (operationalized as self-assessment of overcoming the consequences of imprisonment and feelings of rehabilitation into the society, respectively). This research illuminates the possibility that financial and material compensation can have both instrumental and symbolic significance to victims. On the one hand, it provides the necessary means to rebuild victims' lives after trauma; on the other, it helps restore their self-respect and self-worth. Findings of an ethnographic study in post-truth commission Peru (Laplante & Theidon, 2007) echoed the idea that financial compensation may be indispensable for many, especially those undergoing severe economic hardships. This research also highlighted the potential differential needs of different victim groups – preferences for retributive justice might be “a luxury afforded only to victim-survivors without economic hardships” (p. 243), whereas justice for the rural poor is primarily understood in financial and material terms as they struggle to survive.

Other research using natural or quasi-experimental approaches, however, has yielded inconclusive evidence regarding the impact of material reparation on reconciliation (Bunselmeyer & Schulz, 2020; Firchow, 2017). In a qualitative field study conducted in Peru following the internal armed conflict, Bunselmeyer and Schulz (2020) compared levels of social cohesion (measured by indicators such as interpersonal trust, political trust, and interest in communal work) between recipients and non-recipients of reparation payments (i.e., individual reparation), as well as between communities with and without reparation projects (i.e., collective reparation). At both the collective and individual level, material reparation did not seem to have contributed to social cohesion. Similarly, quantitative research comparing two Colombian communities with different levels of reparation revealed little variance between the villages in terms of community-defined peace and reconciliation (Firchow, 2017). Among other factors, perceived procedural injustice in the implementation of reparation programs was responsible for eliciting and exacerbating tensions within these vulnerable communities. Firchow (2017) further noted that the lack consideration for the symbolic elements of reparation also hindered the reconciliation process in Colombia. This observation echoes the idea that reparation may not be conducive to achieving restorative justice if it does not involve bilateral processes that (re-)affirms symbolic values in divided communities (Wenzel et al., 2008).

While there is little psychological research on material reparation, social psychologists have developed an increasing interest in uncovering the impact of symbolic approaches to reparation – political apologies, in particular. An apology is broadly defined as “a speech act designed to promote reconciliation between two or more parties” (Blatz, Schumann & Ross, 2009, p. 221). Theoretically, complete and effective apologies should include elements of

remorse, acknowledgment of responsibility, admission of wrongdoing, promise of forbearance or “never again,” as well as offers of repair (Blatz et al., 2009). Each of these elements is thought to meet victims’ psychological needs, thereby contributing to reconciliation. A recent cross-national analysis of political apologies across 50 countries revealed that most apologies indeed contained statements of remorse, acknowledgment of wrongdoing, and a recognition of suffering (Zoodma et al., 2021). Experimental research showed that victims who received an apology from the perpetrator group perceived the out-group as more remorseful and were more satisfied with the response, compared to victims who did not receive an apology (Philpot & Hornsey, 2008). However, when it comes to forgiveness – a key pathway to reconciliation (Cehajic, Brown & Castano, 2008) – political apology does not seem to be effective. Across a large number of studies in various intergroup contexts, whether or not the perpetrator group had delivered an apology was largely unrelated to victim group members’ forgiveness of the perpetrator group (see Hornsey & Wohl, 2013, for a review).

Other research demonstrates that apology is less effective in increasing victims’ conciliatory attitudes when offered in isolation, rather than when offered in combination with other justice measures such as financial compensation and/or punishment (Blatz et al., 2009; David, 2016). In the context of the Japanese colonization in South Korea, David (2016) conducted an experimental study comparing the effects of punishment, reparation, and apologies on the victim group. One of the key findings was that neither reparation nor apology was sufficient to improve attitudes toward the perpetrator when offered alone, without punishment; transitional justice measures worked best when used in combination.

While the empirical evidence on the effectiveness of apologies in promoting forgiveness is generally pessimistic, victims tend to expect apologies to have positive outcomes and see them as the first step toward perpetrators’ conciliatory behaviors (Mellor, Bretherton & Firth, 2007; Wohl, Hornsey & Philpot, 2011). From the perpetrator group’s perspective, however, offering apologies implies closing the book on the past rather than engaging in further acts to repair the past (Corntassel & Holder, 2008). Indeed, research has shown that offering apologies or compensation to victims can serve as a pragmatic move that benefits the perpetrator group by generating a perceived obligation that it is now the victims’ turn to accept the perpetrators’ gesture (Zaiser & Giner-Sorolla, 2013). Importantly, such obligation shifting can lead to increased negative feelings toward the victims and reduced support for future acts of reparation.

Summary and discussion

Like truth commissions, reparations alone may not be sufficient in promoting peace and reconciliation when offered without punishment, further attesting to the idea that restorative and retributive justice are both needed when responding to past atrocities. With respect to

the peace and reconciliation potential among perpetrators, while reparations can have positive effects by being supported by perpetrators as a pragmatic move, they can backfire in the long term by leading to obligation shifting.

The research reviewed above also suggests that material and symbolic reparations might address different victim needs. While both types of reparation can be empowering, material reparation may “convey both tangible and intangible meanings” (David, 2017, p. 167), thereby addressing both material *and* psychological needs. Several differences between the studies on material and symbolic reparations are also worth noting. Research on financial compensation, for example, surveyed or interviewed direct victims of repression and violence or relatives of direct victims (Bunselmeyer & Schulz, 2020; David & Choi, 2005; Firchow, 2017; Laplante & Theidon, 2007), whereas the largely psychological research on apologies focused almost exclusively on indirect or secondary victims (i.e., members of victimized groups who are not personally affected; Hornsey & Wohl, 2013). It is possible that the same transitional justice measure has divergent effects on direct and indirect victims who might have different priorities of material and psychological needs. Furthermore, research on apologies tends to focus heavily on forgiveness as the outcome, which is arguably extremely difficult after mass atrocities and not one of the goals of transitional justice. Just as there is inherent value in truth-telling, whether or not to apologize should also not be a decision based on utilitarian arguments – as to whether or not it has a measurable benefit – especially in terms of its effects on forgiveness.

Grassroot and Mixed Measures

In many cases of dealing with the past, the state under transition has to reconcile the tensions between international legal obligations and local realities (Orentlicher, 2007). It has been argued, for example, that in contrast to the Western retributive justice models of punishment, other legal cultures have focused on more restorative forms of justice (Menkel-Meadow, 2007). One important innovation in transitional justice is therefore the development of grassroot measures rooted in the local political and legal culture.

The most famous example of localized transitional justice mechanisms is the *gacaca* courts in Rwanda (Meyerstein, 2007). Following the 1994 genocide, *gacaca* was designed as an alternative to the retributive focus of Western justice systems. The Kinyarwandan word *gacaca* refers to the lawn where community members traditionally resolve minor disputes among them. Based on this tradition, the Rwandan government established the *gacaca* as a community-based judicial system that encouraged dialogue between the involved parties with the broader goals of reparation and reconciliation. Different from its traditionally restorative form, the contemporary form of *gacaca* incorporated a retributive aspect that assigned punishment to perpetrators. This blend of restorative and retributive justice process is closely aligned with the concept of “restorative punishment” – a form of restorative justice that also

involves punishment (Wenzel et al., 2008). By bringing together all parties involved in a conflict, this restorative approach is thought to promote constructive punishment rather than a mere infliction of suffering (e.g., incarceration) on the perpetrators. According to Wenzel and colleagues' (2008), restorative punishments are more constructive and meaningful in the sense that they involve a dialogical (rather than unilateral) process that makes perpetrators accept responsibility and show remorse and encourages victims to overcome resentment.

The results of the Rwandan government's experiment with this hybrid form of justice, however, is perhaps best viewed as a mix of successes and failures (Brounéus, 2008; Kanyangara, Rimé, Philippot & Yzerbyt, 2007; Rimé, Kanyangara, Yzerbyt & Paez, 2011). Empirical evidence of its negative effects is primarily concerned with the psychological health of witnesses at *gacaca*. Based on a survey of 1,200 Rwandans, Brounéus (2008) found that *gacaca* witnesses suffered from higher levels of depression and PTSD than non-witnesses. Despite the robustness of the findings (i.e., effects remained significant after controlling for a variety of demographic variables) and the methodological rigor of the research, alternative interpretations of the results have been put forward. In David's (2017) analysis of the Rwandan context, he suggested that the negative effects of participating as a witness at *gacaca* could also be attributed to the experience of social marginalization of witnesses after they returned to their small, divided communities (p. 160).

While other empirical studies have similarly discovered an increase in negative emotions among participants of *gacaca*, they additionally found that some of these negative emotions have the potential to translate into positive intergroup attitudes and social integration (Kanyangara et al., 2007; Rimé et al., 2011). In a study of victims and perpetrators of the genocide, Rimé and colleagues (2011) found that participation in *gacaca* resulted in heightened experiences of avoidance emotions (i.e., sadness, fear, and anxiety) among both victims and perpetrators. Whereas victims additionally felt more anger and disgust, perpetrators reduced feelings of such antagonist emotions and instead increased feelings of shame, a sometimes-constructive moral emotion in intergroup conflict. Most critically, participation in *gacaca* led among both victims and perpetrators to less prejudice toward members of the other group, lower perceptions of the other group as homogenous, and weaker identification with their own group. Furthermore, these positive intergroup outcomes were positively associated with avoidance emotions, suggesting that certain negative emotions related to the past atrocity are not necessarily destructive for intergroup relations, but might open up channels for positive changes among both victims and perpetrators. These results therefore convey an optimistic message that hybrid justice mechanisms such as "restorative trials" that encourage bilateral dialogue between parties can potentially be conducive to peace and reconciliation.

Summary and discussion

Against the backdrop of a global norm in support of criminal accountability for atrocious crimes, it is crucial for transitional justice institutions to meaningfully engage with local communities, cultures, and values. As exemplified by the *gacaca* courts, however, localizing transitional justice is not an easy task and often subject to global contestation over norms of justice and human rights (Meyerstein, 2007). By incorporating the traditional restorative approach to justice into the international legal process, *gacaca* raises questions not only about the legality of grassroots transitional justice mechanisms (e.g., Amnesty International, 2002), but more pertinent to the current chapter, about the effectiveness of mixed justice models that combine restorative and retributive measures. While the existing evidence does not speak to the generalizability of the findings beyond the Rwandan context, it illuminates the possibility that hybrid approaches to transitional justice may be an effective alternative route to reconciliation among both perpetrator and victim groups.

Concluding Remarks

It should now be evident that there is not a single formula for transitional justice that is universally applicable or successful, and the meaning of justice can be vastly different across individuals, depending on their group membership, past experiences, and demographic backgrounds. The review of relevant literature highlights the divergent experiences, needs, and justice orientations of victims and perpetrators, which create one of the greatest obstacles to societal transitions from mass violence to sustainable peace. The current chapter focuses on retributive and restorative justice as a theoretical basis to understand how people react to various transitional justice mechanisms. This is not to suggest, however, that other notions of justice are of less importance. Procedural justice, or perceived fairness of the processes that legal authorities use when dealing with the public (Tyler, 2003), for example, should be highly relevant in shaping attitudes toward transitional justice, especially in terms of its legitimacy (Mazerolle, Antrobus, Bennett & Tyler, 2013). Future research can therefore benefit from integrating different theories of justice to arrive at a more holistic understanding of transitional justice as a multifaceted concept.

The current chapter also draws attention to the need for more empirical evidence to substantiate the many claims and assumptions in transitional justice advocacy and practice. While ethical and methodological constraints often make it incredibly difficult to conduct research in post-conflict contexts, the research reviewed here demonstrates the creativity and diversity in the empirical studies of transitional justice. In the future, a mix of contextualized and generalizable research using multi-methodological approaches can help both advance the academic field and inform policymaking in transitional societies.

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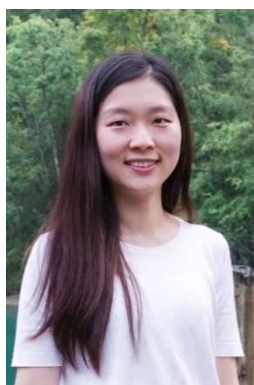
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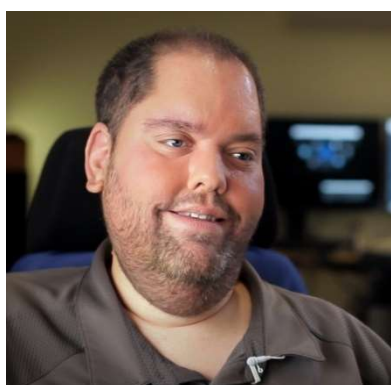
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