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Transitional Justice

Transitional justice refers to a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future.

The concept is commonly understood as a framework for confronting past abuse as a component of a major political transformation. This generally involves a combination of complementary judicial and nonjudicial strategies, such as prosecuting perpetrators; establishing truth commission and other forms of investigation about the past; forging efforts toward reconciliation in fractured societies; developing reparations packages for those most affected by the violence or abuse; memorializing and remembering victims; and reforming a wide spectrum of abusive state institutions (such as security services, police, or military) in an attempt to prevent future violations.

Transitional justice draws on two primary sources to make a normative argument in favor of confronting the past (if one assumes that local conditions support doing so). First, the human rights movement has strongly influenced the development of the field, making it self-consciously victim-centric. Transitional justice practitioners tend to pursue strategies that they believe are consistent with the rights and concerns of victims, survivors, and victims' families.

An additional source of legitimacy derives from international human rights and humanitarian law. Transitional justice relies on international law to make the case that states undergoing transitions are faced with certain legal obligations, including halting ongoing human rights abuses, investigating past crimes, identifying those responsible for human rights violations, imposing sanctions on those responsible, providing reparations to victims, preventing future abuses, preserving and enhancing peace, and fostering individual and national reconciliation.

Defining Transitional Justice

At its core, transitional justice is a link between the two concepts of transition and justice. The etymology of the phrase is unclear, but it had already become a term by the 1992 publication of the three-part volume *Transitional Justice: How Emerging Democracies Reckon With Former Regimes* edited by Neil Kritz, which brings together the early and significant texts of the field. The term itself is misleading, as it more commonly refers to “justice during transition” than to any form of modified or altered justice.

Transitional justice has certain defining characteristics. First, it includes the concept of justice. Although the field depends on international legal principles that require the prosecution perpetrators, this context also includes broader forms of justice, such as reparations programs and truth-seeking mechanisms.

The second key concept is transitional, which refers to a major political transformation, such as regime change from authoritarian or repressive rule to democratic or electoral rule or a transition from conflict to peace or stability. Although transitions are understood as long processes, there is also an emphasis on key historical moments such as those that occurred in Chile (1990), East Timor (2001), Guatemala (1994), Poland (1997), Sierra Leone (1999), and South Africa (1994). When a society “turns over a new leaf” or “gests a fresh start,” mechanisms of transitional justice can help strengthen this process.

The transitional justice framework recognizes that transitions are complex and often characterized by both impediments and opportunities for new and creative democratic strategies. For example, the transition might be a negotiated settlement resulting in a tenuous peace or fragile democracy. The existing judicial system might be weak, corrupt, or ineffective. Justice during a transition may be limited by barriers such as a large number of perpetrators that is far beyond the capacity of the legal system to prosecute. Similarly, there might be an abundance of victims and survivors, many of whom would like the opportunity to tell their stories or receive financial compensation. Legal or constitutional limitations to accountability, such as amnesties for perpetrators associated with the former regime, may result from

negotiations, thereby limiting prosecutorial capabilities. Nascent democratic institutions might suffer from authoritarian enclaves or the lasting influence of former power brokers. In these contexts transitional justice requires an awareness of multiple imperatives during a political transition, suggesting that comprehensive justice must be sought in a context in which other values are also important, including democracy, stability, equity, and fairness to victims and their families.

Development of a Field

The origins of the field can be traced back to the post–World War II setting in Europe (e.g., the International Military Tribunal at Nuremberg and de-nazification programs in Germany). However, the transitional justice framework gained coherence in the last two-and-a-half decades of the twentieth century, especially beginning with the trials of the former members of the military juntas in Greece (1975) and Argentina (1983), in which domestic judicial systems successfully tried the intellectual authors of past abuses for their crimes.

The truth-seeking efforts in Latin America's Southern Cone—such as the Argentine National Commission on the Disappearance of People (1983), the Uruguayan nongovernmental effort that resulted in a best-selling report entitled *Uruguay: Never Again, and the Chilean Truth and Reconciliation Commission* (1990)—further expanded the possibilities of comprehensive justice during transition, relying on the idea of truth as an "absolute, unrenounceable value" (Zalaquett, 1993, p. xxxi). Argentina's and Chile's additional efforts to provide different forms of reparation to victims also made important contributions to establishing justice for victims of human rights abuses.

These developments emerged because democratic activists and their allies in government sought to find new and creative ways to address the past. To accomplish this, they began to develop the nascent transitional justice framework as a way to strengthen new democracies and comply with the moral and legal obligations that the human rights movement was articulating, both domestically and internationally.

Eastern European endeavors to deal with past violations by opening up the files of former

security agencies (e.g., the Stasi Records Act in Germany in 1991) also contributed to debates on how to achieve justice during transition.

In 1995, drawing on experiences from Latin America and Eastern Europe (Boraine, Levy, and Scheffer, 1997), South Africa established a Truth and Reconciliation Commission to address past human rights crimes. Since then truth commissions have become widely recognized instruments of transitional justice, and commissions have been formed in many parts of the world, including East Timor, Ghana, Peru, and Sierra Leone. All differ from previous models, and many demonstrate important innovations.

The creation of ad hoc tribunals for the former Yugoslavia and Rwanda, while not specifically designed to strengthen democratic transitions, have enhanced jurisprudence in transitional justice and achieved some visible victories for accountability. The ratification of the International Criminal Court (ICC) also represents an extremely important moment in the history of transitional justice.

Efforts to prosecute perpetrators of human rights abuses in Chile and Guatemala in the late 1990s and early 2000s have arguably strengthened movements for criminal accountability on the national level and been influential on an international scale in demonstrating the potential of this approach.

Comprehensive Approach to Past Abuse

By the first decade of the twenty-first century there was increasing consensus among scholars and practitioners about the basic contents of the transitional justice framework, which accepts the general premise that national strategies to confront past human rights abuses, depending on the specifics of the local context, can contribute to accountability, an end to impunity, the reconstruction of state-citizen relationships, and the creation of democratic institutions. It then proposes that such a national strategy consider the following complementary approaches in an effort to contribute to comprehensive justice at a critical political juncture.

These include:

- Prosecution of perpetrators, whether on the domestic level, in a hybrid internationalized court (i.e., the Special Court for Sierra Leone), or in an international court, such as the ICC.

- Establishing the truth about the past through the creation of truth commissions or other national efforts, such as engaging in major historical research, compiling victims' testimonials or oral histories, supporting the work of forensic anthropologists in determining the exact nature of victims' deaths, or exhuming the bodies of those killed.
- Establishing reparations policies that take into account the requirements of, or moral obligations to, the victims. These policies can include economic compensation as well as a variety of health (physical and mental) and education benefits, and symbolic measures, such as a state apology.
- Remembering and honoring victims through a series of measures, including consulting with victims to develop memorials and museums of memory, converting public spaces such as former detention camps into memorial parks and interpretive sites, and catalyzing constructive social dialogue about the past.
- Developing reconciliation initiatives, such as working with victims to determine what they require in order to experience healing and closure, and forging peaceful coexistence among former adversaries without sacrificing justice and accountability for perpetrators.
- Reforming institutions that have a history of abusive behavior, including, for example, security forces or the police, in order to prevent future patterns of abuse and establish state-society relationships based on functioning and fair institutions.

SEE ALSO Chile; East Timor; El Salvador; International Criminal Tribunal for the Former Yugoslavia; Reparations; Sierra Leone; Truth Commissions

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