

AMERICAN UNIVERSITY OF BEIRUT

JUSTICE FOR WHOM?:
A DISCOURSE ANALYSIS ON TRANSITIONAL JUSTICE IN
SYRIA

by

HELIN AKCAM

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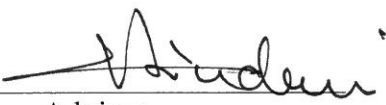
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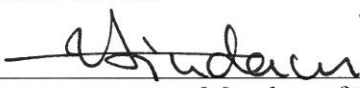
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by
HELIN AKCAM

Approved by:

on his behalf/ and with his authorization 
Dr. Sari Hanafi Advisor
Department of Sociology, Anthropology, and Media Studies


Dr. Coralie Hindawi Member of Committee
Department of Political Studies and Public Administration


Dr. Dahlia Gubara Member of Committee
Civilization Studies Program

Date of thesis/dissertation defense: April 27, 2017

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AN ABSTRACT OF THE THESIS OF

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The United Nations (UN) defines ‘transitional justice’ as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with the legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.” To achieve such goals, five official mechanisms are recognized by the UN to be employed in these transitioning societies. These include criminal prosecutions (the legal action against perpetrators of crimes); truth-seeking processes (such as Truth and Reconciliation Commissions, that allow for victims to face their abusers); reparations (monetary or material compensation for victims’ losses); institutional reform; and institutional vetting and dismissals (meant to ensure new leadership is fair and transparent).

While the contemporary definition of the term is relatively new, the UN has been either implementing or supporting transitional justice operations for decades. Along with these operations, there has come great debate on how effective the UN’s approach is to achieving its stated objectives. This debate has come in many forms – whether scholarly discussions or discourses among local populations at the receiving end of such operations. At the heart of the debate lie contending conceptualizations of the meaning of justice. How do each of these discourses matter in the implementation of society-rebuilding projects? Whose justice is being implemented, and for whom? What does justice mean for those that it is affecting? Can one uniform definition of justice – as espoused by the United Nations – ensure the return to a ‘just’ society, or is it crucial to account for different understandings thereof? This research intervenes particularly within this debate.

The purpose of this thesis is to conduct an analysis of these questions, attempting to explore their answers through looking at a particular case of transitional justice – that of Syria. The Syrian case is crucial here not only due to its relevance in international affairs at the moment, but also because the war in Syria is not yet over. While there have already been vast documentation and data collection efforts done by Syrian human rights organizations, transitional justice here is only in its inception stages. It is precisely at this early point in the conversation in which I intervene, in order to shed light on the conversations that go into shaping a transitional process. The most important question for me is the following: how do Syrian discourses around transitional justice differ from or relate to those articulated by mainstream international discourses, and how does this speak to the understanding of ‘justice’? Ultimately, my analysis will attempt to think through whether and, if so, how the discourses of transitional justice at different levels address justice and what this implies for transitional justice as a field.

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CHAPTER 1

INTRODUCTION

What can we – as human beings, societies, nation-states, etc. – do in order to respond to situations in which our most basic principles and norms of humanity have been violated? More specifically, how can we rebuild societies in which massive atrocities and the breakdown of the rule of law have taken place, causing tremendous devastation to the lives of people residing in them? These are the questions that have guided the thoughts and actions of ‘us’ as members of an ‘international community’ for decades. These thoughts and actions are manifested primarily in the international entity we know as the United Nations. The questions posed here are at the core of why it was established after the Second World War, and they continue to shape the policies and laws that the UN espouses in attempt to circumvent such events from taking place. It is the larger context of this post-World War II international order and the United Nations from which we have to begin our inquiry into the concept of transitional justice. For the concept itself stems from the core questions raised by the UN on which universal principles and norms should reign over all people across the globe.

Transitional justice, while a relatively new term, is said to be rooted in the traditions of many societies, going back to as early as Ancient Greece circa 2,000 years ago.¹ Today, the term, as defined by the United Nations, comprises “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”² In other words, it is the internationally recognized tool for answering the questions posed above. Over the course of its

¹ Anja Seibert-Fohr, "Transitional Justice in Post-Conflict Situations," *Max Planck Encyclopedia of Public*

² United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, S/2004/616 (23 August 2004), available at undocs.org/S/2004/616, 4.

development, the transitional justice field has evolved and shifted its focus from ‘democracy promotion’ towards reinstating the ‘rule-of-law’. Nonetheless, it is directly implicated in the human rights activities and discourse of the United Nations and its partnering and fellow international organizations and institutions, all of whom are a part of the ‘international community’.

This community, which is made up of nation-states and various institutions and people operating at a global level, including international research centers, think tanks, human rights activists, and nongovernmental organizations, has been in the process of discussing, as well as implementing transitional justice in various countries throughout the world since the mid- to late-1980s. Some well-known examples are South Africa, Sierra Leone, Argentina, Chile, the former Yugoslavia, and, in more recent times, Iraq and Afghanistan. However, with these developments there also came large debate on how effective transitional justice was at achieving its stated objectives. This debate has come in many forms – whether scholarly discussions or discourses among local populations at the receiving end of such operations. At the heart of the debate lie contending conceptualizations of the meaning of justice. How do each of these discourses matter in the implementation of society-rebuilding projects? Whose justice is being implemented, and for whom? What does justice mean for those that it is affecting? Can one uniform definition of justice – as espoused by the international community – ensure the return to a ‘just’ society, or is it crucial to account for different understandings thereof? This research intervenes particularly within this debate.

The purpose of this thesis is to conduct an analysis of these questions, attempting to explore their answers through looking at a particular case of transitional justice – that of Syria. Great research has been conducted on the effects and effectiveness of transitional justice – some

of which led to the questioning of the core tenets of the concept. This has been done by scholarship and the international community itself, challenging the theoretical groundwork of the concept; at the same time, we have seen many case studies published, in which the effects on a particular country have been analyzed. This research will attempt to streamline these strategies by taking the case study of Syria, and attempting to explore the deeper conceptual foundation of transitional justice through its example.

I have chosen to take Syria as the case study, not only as a result of the relevance of the Syrian crisis to international affairs at the moment, but also because the war in Syria is not yet over. In fact, transitional justice has shifted in recent years from being a reflection solely on post-conflict societies to including societies *in* conflict as well. While there have already been vast efforts done by Syrian human rights organizations to document and record the atrocities that have and continue to take place, it is still too early, given that the conflict has not ceded, to begin implementing transitional justice mechanisms. However, there has already been great conversation and debate about what transitional justice would and *should* look like for Syrians. It is precisely at this early point in the conversation I want to intervene, in order to shed light on the conversations that go into shaping a transitional process. The questions asked and issues discussed at this juncture provide crucial insight into underlying assumptions and bring to light any inherent tensions, if they exist. For example, what does justice mean to the Syrian people? Who *are* the Syrian people in the first place? What kind of principles of justice should be applied and how? And who ultimately decides? Syria thus provides for an extremely valuable addition to the analysis of transitional justice.

The most important research question guiding this study is the following: how do Syrian discourses around transitional justice differ from or relate to those articulated by mainstream

international discourses, and how does this speak to the understanding of ‘justice’? In other words, what I will argue in this paper is that the key element underlying all debates of transitional justice is the concept of justice itself. Whether debating the theoretical framework, its implementation, or the issues surrounding local ownership of transitional justice operations – the major theme emerging is the matter of what ‘justice’ in the term transitional justice implies. Ultimately, this study will not outline a formal definition or understanding of justice; my analysis will simply attempt to think through whether and, if so, how the discourses of transitional justice at different levels address justice and what this implies for transitional justice as a field.

In order to complete this study, I naturally must first define the field of transitional justice, as well as understand its discourse at the international level. To make sense of the Syrian case study and how it reflects on broader conceptual discussions within the field, the discourses of international institutions and scholarship must first be addressed. Thus, I have chosen three particular levels of discourse to analyze. I will first look at the international community – how transitional justice is defined and discussed among the large institutions and organizations presiding over the international field. Second, I shall analyze international scholarship – or ‘the Academy’ – which consists of scholars and activists of various disciplines (including political science, sociology, law, etc.) who discuss the issues facing the field of transitional justice. Lastly, the primary focus of this study will be the local context of Syria and its discourse of transitional justice.

Through the analysis of these three levels, I believe it will become possible to place the case of Syria within the broader context of the field of transitional justice. Furthermore, from here, we can attempt to understand the challenges faced by Syrian transitional justice processes, as well as elucidate the ways in which these reflect upon the broader challenges of the

transitional justice field itself. This exercise, I believe, will highlight some potential tensions within the field, including the complex notion of justice itself.

1.1 Methodology

Throughout this essay, I will be using the notion of discourse and discourse analysis to describe my efforts. What I mean by this is simple: I will be looking at the complex communicative events that make up the conversations regarding transitional justice at each level. The primary types of communication analyzed here will be in text format. At the international level, this indicates documents published by international institutions dealing with transitional justice, whether these are reports, studies, or statements. At the scholarship level, the text analyzed will be peer-reviewed articles and books published by professional academics regarding the topic of transitional justice. Lastly, in the case of Syria, the texts analyzed here will include newspaper articles, reports and documents by various Syrian actors, as well as statements, press releases and surveys, all published by secondary sources and whose subject addresses transitional justice.

In looking at these texts, I will analyze their content and attempt to discern the implication of these texts on the field of transitional justice. Through doing this, it is my hope to shed light on how transitional justice is framed, discussed, and understood at the various levels of discourse examined here. The texts chosen for this research include some of the seminal and crucial writings that make up the core of transitional justice work in each respective level of discourse. For this reason, comparing the discussions had and understanding how each addresses the conceptual framework of transitional justice, will help us understand the relationship between local and international discourses on transitional justice (at least, in the local context of Syria),

and elucidate potential tensions that exist and how these would speak to some of the issues of the field.

Furthermore, in my efforts to analyze the actual content and provide findings, I adopt here the core tenets and assumptions of what is referred to as a Critical Discourse Analysis (CDA), which is “a type of discourse analytical research that primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context.”³ Its basis is founded upon the explicit awareness of discourse analysts of their role in society. Here, it is argued that science, especially scholarly discourse, are inherently part of and influenced by surrounding social structures, and thus reproduced in social interaction.⁴ “Theory formation, description, and explanation, also in discourse analysis,” according to this method, “are socio-politically ‘situated’, whether we like it or not.”⁵ In other words, the use of language and communication in all forms are directly implicated in structures of power that reproduce themselves in the minds of those involved.

Thus, a central notion in CDA is that of power, more specifically the social power of groups or institutions. There are various types of power that can be distinguished according to the different resources employed to exercise such power. For example, the military will have coercive power based on force, the rich based on their money, and parents, professors, or journalists will exercise a persuasive power based on knowledge, information and authority.⁶ Thus, access to specific forms of discourse, such as politics, media, or science, is itself a power source. Furthermore, action is controlled by our minds; hence, CDA argues that if one is able to influence people’s minds by affecting their knowledge or opinions through discourse, it is

³ Tuen A. Van Dijk, "Introduction: What Is Critical Discourse Analysis?" in *The Handbook of Discourse Analysis*, ed. Deborah Tannen et. al. (Massachusetts: Blackwell Publishers, 2001), 352.

⁴ *Ibid.*

⁵ *Ibid.*, 353.

⁶ *Ibid.*

possible to indirectly control some of their actions (for example, manipulation and persuasion).⁷ Finally, “this means that those groups who control most influential discourse also have more chances to control the minds and actions of others.”⁸

Taking this understanding, CDA splits up the issue of discursive power into two basic questions for its research: how do (more) powerful groups control public discourse? And, “how does such discourse control mind and action of (less) powerful groups, and what are the social consequences of such control?”⁹ Thus, in this understanding, discourse is defined as complex communicative events.¹⁰ The notions of access and control can then be understood as both context and the structures of text and talk themselves. Context is the mentally represented structure of those aspects of the social situation that are needed for the production or understanding of the discourse. Controlling the context:

involves control over one more of these categories, e.g. determining the definition of the communicative situation, deciding on time and place of the communicative event, or on which participants may or must be present, and in which roles, or what knowledge or opinions they should (not) have, and which social actions may or must be accomplished by discourse.¹¹

Furthermore, control over content as well as over the structures of text and talk are crucial to the exercise of power. In this sense, powerful groups can decide on the different discourse genres and speech acts possible during the occasion of discourse, hence controlling the format of communication.¹²

This is significant for the following reason: controlling discourse is a major form of power, which allows for the control over people’s knowledge and opinion; this, in turn, indicates

⁷ Ibid.

⁸ Ibid., 355

⁹ Ibid., 355.

¹⁰ Ibid.

¹¹ Ibid., 356.

¹² Ibid.

that discourse control is a fundamental way through which dominance and hegemony are reproduced. The reasons why discourse control is able to influence recipients' beliefs are many fold, and can be as a result of them viewing the controller of discourse as authoritative (scholars, experts, professionals, etc.); being obliged to be the recipient of discourse, such as through education of jobs training; having no alternative forms of discourse available to them; or perhaps the recipients not having the knowledge or beliefs needed to challenge the hegemonic discourse.¹³ In all of these cases, power and dominance are associated with large social domains (such as politics, media, law, education, etc.) and the people and institutions that represent them. The targets of such power are thus the public at large, the masses, students, and other groups that are dependent on institutional and organizational power.¹⁴

Having gone over a brief explanation of what CDA is and does, it is noteworthy to remark that this paper will not offer a rigorous *critical discourse analysis* as such. In other words, I will not engage in the traditional methods of conducting a CDA study. What is crucial to my research, however, is to understand the relationship between power and discourse throughout the analysis of transitional justice. As previously mentioned, transitional justice is a field that was established and adopted by major global institutions – the key international actors of our time. Hence, all knowledge production on the matter of transitional justice refers back to and is controlled by the original discourse of international actors, such as the United Nations and other large international organizations. Furthermore, it is tied into a larger ideological discourse of human rights, rule of law, democracy promotion and universalist notions of justice. Thus, the discourses of transitional justice at any level are implicated in the relationship between knowledge production and power. These themes will emerge repeatedly throughout this study

¹³ Ibid.

¹⁴ Ibid.

and thus understanding what CDA is and does will be useful for making sense of the conclusions reached in this essay.

Naturally, there are some limitations to analyzing solely the texts discussing transitional justice. Firstly, this paper will not address policy solutions to transitional justice. Instead, it is an introductory exploration into how we can deconstruct and understand some of the core conceptual underpinnings of a complex and large concept such as transitional justice. Furthermore, the sole analysis of texts does not imply that some of the more complex concepts that operate within transitional justice are sufficiently problematized and explored. Again, this study is a preliminary look into some of the tensions that can be revealed through exploring the conversations had, through text, at three different levels of discourse. With Syria providing the primary focus, the issues discussed will also be context-specific to the Syrian case and its implications. Any further study would expand upon some of the problematics within this essay, in order to explore fully the theoretical – as well as practical – implications of the questions and concerns raised here.

Nevertheless, as I continue in my analysis of transitional justice discourse, it will be interesting to observe whether and how the discourse structures at the international levels have an impact upon the way in which transitional justice is conceived of in the Syrian context. Is CDA useful in explaining the relationship between the Syrian discourse of transitional justice and those articulated at the international level? If so, what can it tell us about the field of transitional justice as a whole? Furthermore, having argued that the concept of justice is crucial to all debate surrounding transitional justice, what are the consequences of the internationally espoused and accepted definition of justice upon that of local Syrian actors, if any? These relationships between discourse, power and the subsequent actions of various groups are not only

interesting, but an important lens through which to view important international projects, including transitional justice. The analysis of its discourse will allow us to gain better insight into how a key international field operates and expose any underlying tensions that exist, if they exist at all.

1.2 The Outline

I have divided this research into four subsequent chapters. In Chapter 2, I will first introduce the field of transitional justice, how it emerged and what precisely it entails. It is important to gain a clear understanding of the core principles and the theoretical framework upon which the field rests. The concept's origin and development will be discussed in this chapter.

The next three chapters represent the three levels of discourse I have chosen for this study. Chapter 3 will discuss the larger international discourse on transitional justice, with the focus on two key players in the field of transitional justice. Namely, the United Nations, which has espoused the most widely accepted definition for the term and the field; and, more importantly, the International Center for Transitional Justice (ICTJ), which has been the primary arbiter of transitional justice promotion and knowledge production since its foundation in 2001. Together, these two institutions are the cornerstone of the international transitional justice discourse. Chapter 4 will focus on international scholarship. This is a very important chapter, as we can observe the various scholarly debates about the very core principles shaping the field of transitional justice. While these debates are crucial to understanding some of the tensions that exist in the field, I will argue that they do not push far enough in untangling the problematic elements of transitional justice.

Lastly, Chapter 5 will provide for the Syrian context. Giving a brief introduction on the situation, this chapter will outline what transitional justice work and research has already occurred for the particular situation of the Syrian crisis. This will include the discussions of both international and local actors, all of whom are weighing in on what transitional justice in Syria should look like. Through this analysis, I aim to point out the crucial themes that emerge in the Syrian discourse, which also emerge throughout the other two discourses I have analyzed here. Seeing the relationship between them, I will comment on what I believe are the key takeaways from the case of Syria and how they relate to the larger issues relevant to transitional justice as a field.

Once again, the concept of justice will recur as a major theme throughout this work. It is arguable that the definition of ‘justice’ as a concept within the field of transitional justice is the most crucial factor in determining how its processes are shaped and what impact it has. Thus, my ultimate aim is to understand how the concept of justice, as defined and mobilized by international actors within the field, relates to that articulated by Syrian transitional justice advocates within the Syrian context. I believe that it is at this juncture at which we can observe some of the core tensions of the transitional justice field.

CHAPTER 2

TRANSITIONAL JUSTICE – HISTORY AND THEORETICAL BACKGROUND

In order to proceed with this study, we must first address key questions regarding the field of transitional justice. What exactly *is* the field of transitional justice? When did it emerge and how? Why has it developed into an important part of the international system today? And, most importantly, what are the conceptual and theoretical underpinnings and core assumptions of this field? How does it then relate to the broader fields of international law and human rights? Is it a part of these other fields, or a category all of its own? This chapter will address these questions, as well as attempt to explore some of the possible implications of their answers.

The question of history with regards to transitional justice seems at first glance straight forward. However, as I will attempt to demonstrate in this chapter, the arguments on the manner in which ‘transitional justice’ as a field and concept is historicized reflect some of the core tensions within the field itself. Thus, to understand this work’s discursive analysis of transitional justice, it is crucial to first think through the questions posed above and to ascertain the underpinning theoretical framework upon which the field rests. It will not only bring insight to issues discussed later, but also shed light on deeper theoretical implications of this subject.

2.1 History

Many scholars¹⁵ trace back the origins of ‘transitional justice’ in its most basic sense (meaning the consideration of what occurs in a society after turbulent and destructive times) to as early as Ancient Greece, approximately 2,000 years ago. Following a period of extreme violence,

¹⁵ The most prominent of these is John Elster’s intervention in his book *Closing the Books: Transitional Justice in Perspective*, published in 2004 by Cambridge University Press.

the time of restoration to democracy in Ancient Athens is included in the analysis as the first example of leaders instituting mechanisms to reconcile and reestablish justice after systematic abuse of power.¹⁶ Others, meanwhile, claim that modern considerations of the concept began in the post-World War II Nuremberg Trials. The trials represent a cornerstone for international law, in which the international community felt responsible and justified in dealing out retribution for Nazi crimes.¹⁷

So, should a historical analysis of transitional justice begin at one of these important dates in history? Paige Arthur disagrees. In her historical examination of the emergence of the transitional justice field in the international level, she argues that treating transitional justice “as a perennial problem, a timeless construct whose varieties can be understood and dissected across the ages – from Athens to present,” is erroneous when attempting to understand transitional justice today.¹⁸ She argues that this practice homogenizes and universalizes the conception of transitional justice, attributing our own conventional, twenty-first century understanding of the concept to actors 2,000 years ago, who had never heard of the term ‘transitional justice’.¹⁹

What Arthur attempts to do, which for the purposes of this study is crucial, is to instead begin at the invention of the phrase itself. For this, she first defines what the *field* of transitional justice even means: “an international web of individuals and institutions whose internal coherence is held together by common concepts, practical aims, and distinctive claims for legitimacy,” which began to emerge “as a response to ... new practical dilemmas and as an attempt to systematize knowledge deemed useful to resolving them.”²⁰ The field was a direct

¹⁶ Anne Bronwyn Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30 (2008), 98.

¹⁷ *Ibid.*, 98.

¹⁸ Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31 (2009), 328.

¹⁹ *Ibid.*

²⁰ *Ibid.*, 324.

result of collaboration between human rights activists, lawyers and legal scholars, policymakers, journalists, donors, and comparative politics experts who were concerned with human rights and the dynamics of ‘transitions to democracy’ that emerged in the late-1980s.²¹

For Arthur, the context is as seminal as the term itself, as the former informs the evaluative judgement placed on the words itself. She argues that “the invention of new terms, or the shift in meaning of old terms in a political vocabulary are responses to concrete problems faced in political life,” and that “some of these political terms are, moreover, intersubjectively normative.”²² Words describe and, in describing, also evaluate according to the context in which they are invoked. Thus, the context of political shifts in the 1980s can inform the observer about the implication of using the particular terms ‘transitional’ and ‘justice’ together.

Political change at this particular time was often viewed through the normative lens of ‘transition’ and, more specifically, ‘transition to democracy’. These political shifts consisted primarily of the downfall of many authoritarian regimes in places like Latin America in the mid-1980s, the events which have commonly been characterized as the ‘third wave’ of democracy. While it has been acknowledged by now that this characterization of the period is problematic, the fact that these changes were understood almost universally as ‘transitions to democracy’ is striking and quite consequential.²³ This paradigm was attractive at the time due to several contextual conditions. Firstly, many populations in these countries undergoing regime change stated as their primary goal the transition to democracy. Second, the concept of ‘transition’ itself was recycled, as it came to mean political instead of social-economic transformation (as it was understood previously by Marxists). Lastly, the global decline of the ‘radical Left’ during the 1970s had spurred an ideological shift in favor of human rights. Rights of the individual became

²¹ Ibid.

²² Ibid., 328.

²³ Ibid.

the cornerstone of this new paradigm and were seen as the only appropriate response to widespread abuse of both left- and right-wing political institutions. This, in turn, propelled the increasing attraction and visibility of international human rights organizations, which heralded this new paradigm.²⁴

It was from this political backdrop that the field of transitional justice emerged. Following several different international seminars and conferences in the late-1980s discussing the issues undertaken by the field of transitional justice, the first appearance of the term itself was in 1992. It appeared in a *Boston Herald* article about the Charter 77 Foundation's conference in Salzburg that year, titled "Justice in Times of Transition."²⁵ However, the true signal that confirmed the existence of a transitional justice field was the 1995 publication of Neil Kritz's four-volume compendium *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. This publication, which became the accepted canon of transitional justice literature, set the boundaries of the field: transitional justice was something to be undertaken by states that had undergone a change of regime and could be characterized as 'emerging democracies'.²⁶

It is apparent that historians were not involved in the production of Kritz's canon, as 'dealing with the past', instead of encompassing coming to terms with historical complexities, took on to mean something entirely different. The intellectual and conceptual framework of the transitional justice field was, in Kritz's compendium, clearly defined in *political* terms. Transitional justice was enmeshed in inherently political problems at the legal-institutional levels and that could be dealt with within a short, 'transitional' period. Arthur identifies three areas of interest in his work; namely, human rights, law and comparative political science, all three of

²⁴ Ibid.

²⁵ Ibid., 331.

²⁶ Ibid.

which are sometimes distinct and other times overlapping. An oversimplified analysis of these interests could lead to transitional justice consisting of the synthesis of three separate yet interrelated fields of morality, law and politics.²⁷

But why is this omission of the historical discipline interesting? The intellectual underpinnings for the field of transitional justice clearly reflect the purpose transitional justice was supposed to serve. It was reflective of the broader political context at the time, and the term itself was invented as a tool to signal a new sort of human rights activity as a response to concrete political dilemmas; the discipline of history had no place in this. From this we can, in turn, ascertain very specific implications of the use of the terms ‘transition’ and ‘justice’. In this context, each word comes to suggest a very particular evaluation; ‘justice’ for ‘emerging democracies’ may contain, theoretically, a different set of claims than emerging socialist regimes, for example. Arthur describes this notion more precisely:

In a liberal-democratic context, for example, invoking terms such as “democracy,” “dictatorship,” “rational,” “tolerant” implies an evaluation, a particular normative judgment. Calling another country “democratic” or another person “tolerant” is, in this context, a description that expresses approval – which, in turn, helps to legitimate the actions of those who invoke them.²⁸

In the case of transitional justice, claims to justice were based on two normative aims: achieving justice for victims (individual human rights), and establishing a new, democratic system (a new political order).²⁹ Keeping in mind the shifts in political ideology and the growth of the human rights discourse, ‘transitional justice’ thus came to form a very specific field at the intersection of human rights advocacy and contemporary political ideology.

While it is true that the questions underpinning transitional justice and the measures through which we have tried to answer them have been around for a long time, Arthur’s

²⁷ Ibid.

²⁸ Ibid., 328.

²⁹ Ibid.

intervention points to a crucial matter. Namely, “it is only recently that they have been justified through appeals to universal norms such as human rights, or that they have been seen as legitimate only when undertaken by a democratic polity, or that they have been seen as having an underlying, determined connection related to the normative goal of promoting democracy.”³⁰ In other words, in order to understand transitional justice today, we must begin in the political environment of the mid-1980s, which helped shape the field we recognize today. These normative and conceptual underpinnings will be crucial to our analysis later on.

2.2 Development of the Field and its Institutionalization

From the mid-1990s onward, the field of transitional justice developed further and eventually became institutionalized by the international community. The process for this was closely linked with the increase of human rights and international law activity by key institutions, such as the United Nations. As previously mentioned, the development of international law in terms of addressing criminal activities of states or their representatives became a crucial part of the conversation with the Nuremburg Trials. At the time, it was assumed that retribution for Nazi atrocities was not only appropriate, but that the international community had a right and obligation to carry out this retribution. This paramount event began the conversation that discussed the proper role for international law in framing retribution.³¹

When, during the 1980s, scholars, lawyers and bureaucrats from various fields met to discuss issues of transitional justice, some countries had already formed ‘transitional’ institutions. Many Latin American countries forged the way in this period for cementing the transitional justice mechanisms we recognize today, through their own national projects that

³⁰ Ibid., 334.

³¹ Leebaw, “The Irreconcilable Goals of Transitional Justice.”

attempted to deal and reconcile with the abuses of the previous regimes.³² These were the examples of processes that lay the groundwork for transitional justice as we know it today, as Arthur already pointed out. Simultaneous to this was the increase in importance of the international legal framework with the United Nations promulgating increasing amounts of customary international law and carving its spot and significance in world affairs.³³

The international community's role in transitional justice processes was officially cemented by the mid-1990s with the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).³⁴ The decade was marked by multiple civil wars, as well as many former communist regimes under the Soviet Union transitioning into democracies. By the year 2002, this commitment to criminal justice in the international legal arena was once again confirmed by the establishment of the International Criminal Court (ICC), which would henceforth be the chief governing body over cases of massive violations of the norms and principles guiding international law.³⁵ It was through the establishment of these prosecutorial mechanisms, as well as the surge of international attention on violations of human rights, that increased international involvement in domestic affairs. Namely, as international law and institutions expanded as a response to an increased awareness of and concern about human rights, international actors began to play a greater role in framing approaches to transitional justice.³⁶

As previously discussed, the earlier scholarship largely emphasized the use of transitional justice mechanisms to build and ensure democracies. This wave of 'democratization discourse' was an important element of this period and shaped the understanding of what post-conflict

³² Seibert-Fohr, "Transitional Justice in Post-Conflict Situations."

³³ Leebaw, "The Irreconcilable Goals of Transitional Justice."

³⁴ Seibert-Fohr, "Transitional Justice in Post-Conflict Situations."

³⁵ Ibid.

³⁶ Leebaw, "The Irreconcilable Goals of Transitional Justice."

justice meant.³⁷ Throughout this era, a distinguishable transitional justice template was being formed that would, in the twenty-first century, lead to a clearly stated principle of transitional justice. A loosely defined, ambiguous concept that was used to refer primarily to state-instituted processes, developed into an internationally recognized and celebrated mission. In the words of Kieren McEvoy, “Transitional justice...emerged from its historically exceptionalist origins [and became] something which is normal, institutionalized and mainstreamed.”³⁸

In the last decade, this institutionalization has been consolidated through various publications and reports released by various bodies of the United Nations, as well as through the establishment of a series of nongovernmental organizations (NGOs) with the primary objective of pushing forward the field of transitional justice (for example, the International Center for Transitional Justice [ICTJ], which began operating in March, 2001). In 2004, it was the report of the Secretary-General given to the Security Council that confirmed the UN’s commitment to the processes involved in transitional justice. Four additional documents followed by the Secretary-General and UN Office of the High Commissioner for Human Rights (OHCHR) in the next decade. Since the turn of the twenty-first century, transitional justice became officially recognized by the highest order of the international system and is now considered to be an unquestionable part of the activities of the UN and its partnering organizations.

2.3 Shift in Terminology and Resulting Challenges

At this point, it became apparent that the democratization discourse that had dominated the framework during the establishment of the field, was slowly evolving. The focus began to

³⁷ Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter, “Transitional Justice in the World, 1970-2007: Insights from a New Dataset,” *Journal of Peace Research* 47.6 (2010).

³⁸ Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34.4 (2007).

shift towards post-conflict societies and the reestablishment of the rule of law in the aftermath of civil strife, repression or atrocity. Emphasis was placed on reestablishing the rule of law – regardless of what legal traditions or governance systems that might entail.³⁹ In other words, there was an attempt to reformulate the discourse and make it less politicized. Through its institutionalization transitional justice hence refocused itself on conceptions of the rule of law.⁴⁰

This shift in terminology, however, raises some particular challenges. As previously discussed, the use of certain terms and concepts are crucial to the context and meaning they imply. When the conceptual boundaries of the field are shifted from ‘transition to democracy’ to ‘reestablishing the rule of law’, a whole new set of questions arises. For example, how does the understanding of ‘transition’ now change? The establishment of the rule of law now being the center of focus, when does the transition period officially end? Is it different than that of a transition to democracy? Furthermore, are justice claims different under this new conceptual paradigm than that during democracy promotion? Ultimately, what seems most important is whether the shift in terminology actually provides for a significant shift in purpose and aim. Does the change in words used actually reflect a different normative aim within the transitional justice field? Or do the goals remain the same, despite being expressed in different words?

The choice by the United Nations to change the terminology to shift away from democracy promotion to a less politicized language of establishing the ‘rule of law’ most likely came as a result of the ‘transitions to democracy’ paradigm having failed. Namely, a number of countries that, in the 1980s and 1990s, were supposed to have made a transition to democracy ultimately had failed to do so. This was clear by the late 1990s.⁴¹ Additionally, the entire democratization discourse was tainted too conspicuously by a particular political agenda that

³⁹ Olsen, Payne and Reiter, “Transitional Justice in the World, 1970-2007.”

⁴⁰ Leebaw, “The Irreconcilable Goals of Transitional Justice.”

⁴¹ Arthur, “How ‘Transitions’ Reshaped Human Rights.”

were supported by Western, and more specifically U.S. democracy-promoting organizations. The UN's shift signaled an attempt to be more politically neutral at a time people became suspicious of hidden agendas in democracy promotion.⁴²

It seems that this change in terminology and attempt at depoliticizing the transitional justice field has shifted the focus. Instead of emphasizing the 'transitions' paradigm, which focused the field on the nature of the transitions occurring, the 'justice' aspect of the field is being more highlighted. The type of political institutions to which a country transitions is no longer the primary concern. Establishing the 'rule of law' indicates that the central objective is to foster legal-institutional reform that creates a legal culture compliant with the one deemed most fair – most 'just' – by the international system. As I will discuss in Chapter 4, there are clear reasons why this preference for legal reform has been made by the international community and that this has come at a serious price, according to many scholars. However, what is important to note here, is that this shift naturally raises questions about whether transitional justice today has the same conceptual boundaries and normative aims of the transitional justice that was first articulated in the late 1980s to mid-1990s. Exploring this topic, as well as articulating what the implications of the answers are will be a focus throughout the rest of this work.

John Elster is correct in pointing out that the most difficult task in transitional justice today, is to spell out the role of 'justice' in the field.⁴³ What and for whom is justice? What is justice in 'transitional' periods and is it the same as justice in 'ordinary' times? Who is allowed to define justice? These questions are of crucial importance to the field and, in many ways, they remain internally unresolved. As we will see, many discussions on transitional justice involve the renegotiation of the answers to these questions. However, what is even more interesting is

⁴² Ibid.

⁴³ Jon Elster, "The Structure of Transitional Justice," in *Closing the Books: Transitional Justice in Perspective* (Cambridge: Cambridge University Press, 2004).

attempting to understand how these discussions filter down through various layers of actors who are involved in transitional justice. From the international community, to ‘the Academy’, to people on the ground in post-conflict societies, does the language – the discourse – change? Do notions of justice differ? What can we learn about the field through an analysis of these various levels? How do these relate to the underlying conceptual framework created by the international community for transitional justice and the unresolved issues at the conceptual level? I will attempt to find answers to these questions in the following three chapters.

CHAPTER 3

DISCOURSE I – THE UNITED NATIONS AND “THE INTERNATIONAL COMMUNITY”

Since the mid-1990s, the international community has played a crucial role in transitional justice. As discussed above, the field developed simultaneous to the increase in attention on individual-based human rights and the international legal sphere. Today, the notion of transitional justice is deeply intertwined with international norms for universal human rights, as well as peacekeeping and rule of law activities. The transitional justice paradigm has not only been adopted and institutionalized by the United Nations, but it has also become the primary mission of various international nongovernmental organizations (NGOs), whose mandates are, either in part or in full, to carry out the work of transitional justice. The most prominent and important NGO in this field is the International Center for Transitional Justice (ICTJ), established in 2001 by the Ford Foundation. From its establishment until now, the ICTJ is considered the primary arbiter of transitional justice research and work.

These organizations, as well as the UN, play a crucial part in defining and implementing transitional justice throughout the world. While the origin of the transitional justice field began with lawyers, scholars and bureaucrats, today the field’s conceptual boundaries and normative framework are defined by the common language of the international community’s human rights and legal discourse. Therefore, the first step in analyzing transitional justice discourse should begin at the highest level – the actors who set the definitions and boundaries of the field.

In this chapter, I will focus on the five documents of the UN written in the last decade that pertain to transitional justice. These documents hold within them the internationally accepted definition of the term itself, as well as the guiding principles, values and normative

framework of the field. In addition, I will also look at the work and publications of the ICTJ, as well as those of several other international organizations that are involved in transitional justice activities. Analyzing the internal discussions and debates will help elucidate the crucial elements of transitional justice and shed light on some of the questions posed in the previous chapter.

3.1 Definition & Function

The Secretary-General's report in 2004, named "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," was a consequential text, as it established an official United Nations position on transitional justice for the first time. In this document, transitional justice is said to encompass "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."⁴⁴ The Report goes on to provide insight to several other related areas, as well. First, it places the concept of transitional justice in the broader human rights agenda of the U.N. Furthermore, two additional definitions are given for the terms 'rule of law' and 'justice'. These three terms, the Secretary-General states, are essential to understanding the organization's efforts to enhance human rights worldwide and ensure that all people are provided equal access to them.⁴⁵

The 'rule of law' is defined by the Secretary-General as "a concept at the very heart of the Organization's mission...[which] refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and *which are*

⁴⁴ United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 2004, 4.

⁴⁵ *Ibid.*, 3-4

consistent with international human rights norms and standards [emphasis added].⁴⁶ Justice, meanwhile, is “an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs.”⁴⁷ Transitional justice, under this understanding, thus becomes the tool through which to return societies to the rule of law, reinstate justice and to ensure the protection of human rights for the people in that society.

Another important aspect of this report is that the Secretary-General provides the normative foundation for the work the UN does in advancing the rule of law. This, according to the report, is the Charter of the United Nations itself, as well as the four pillars of the modern legal system: namely, international human rights law, international humanitarian law, international criminal law, and international refugee law.⁴⁸ It can be ascertained from the report that the Charter and pillars of the legal system gain their legitimacy from their adoption by a vast majority of states across the globe. Any work done by the UN on the topic of justice, rule of law and transitional justice is thus shown to be a legitimate effort, approved and universalized by the approval of nearly every participating member state.

Lastly, transitional justice is purposefully left to remain a vague and flexible concept. In other words, the Secretary-General argues that while transitional justice operations must be holistic and comprehensive, the question on how it must be implemented should not be clearly defined by the UN. The argument goes that top-down approaches in which the outside international community constructs strict formulas of transitional justice are too invasive and oftentimes do not succeed. Therefore, the Secretary-General states “the role of the UN and the international community should be solidarity, not substitution.”⁴⁹ This means that the UN’s role

⁴⁶ Ibid., 4.

⁴⁷ Ibid., 4.

⁴⁸ Ibid., 5.

⁴⁹ Ibid., 7.

is primarily one of consultation, advice and support. The responsibility of implementing transitional justice operations thus falls on local and state actors, who can incorporate indigenous and cultural traditions that bear great importance to the society in question. This is meant to foster legitimacy and local ownership of the transitional justice processes.

Following the 2004 Report, another four separate documents were published by the United Nations regarding transitional justice. Two of these were written by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which I will return to below. The other two, both written by the Office of the Secretary-General, were published in 2010 and 2011. The first of these constitutes a guidance note written by the Secretary-General, elucidating the UN-defined guiding principles of transitional justice. These reemphasize the importance of taking into consideration local political and cultural contexts, as well as list other principles that are crucial to human rights – such as women’s rights and child-sensitive approaches.⁵⁰

The second of these Secretary-General documents, published in 2011, is a report following up on the one released in 2004. It is meant to report the progress made in implementing transitional justice since the first report, as well as provide some lessons learned and best practices. Articulating once again the commitment to rule of law and human rights, the Secretary-General’s Office states that since 2004, the UN had increased its efforts to assist nations with transitional justice and that the Security Council had become an active and vital participant in this process. A renewed emphasis is placed on the seemingly insufficient levels of

⁵⁰ United Nations Secretary General, *Guidance Note of the Secretary General: United Nations Approach to Transitional Justice* (March 2010), available from http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf, 1.

national ownership that apparently have plagued previous attempts at reconstructing justice institutions in post-conflict societies.⁵¹

Lastly, the two other UN-issued documents mentioned above were published in 2006 and 2009. These two are significant in that they articulate the actual implementation and best practices of transitional processes. Issued by the OHCHR, the first document represents a study conducted on human rights and transitional justice activities undertaken by the human rights components of the UN system,⁵² while the second is the Annual Report of the OHCHR for the year 2009.⁵³ Reading the two together, it becomes clear that the OHCHR is the primary body of the UN system that actively supports and provides assistance to transitional justice mechanisms. In fact, in November of 2006, the Secretary-General designated the OHCHR as such and, since then, the Office actively supported transitional justice programs in more than twenty countries around the world.⁵⁴ In the years since 2009, the OHCHR has released a series of ten publications, named *Rule of Law Tools for Post-Conflict States*, which list the lessons learned, best practices, and suggestions on each aspect and mechanism of transitional justice.

The OHCHR support for transitional justice activities is conducted through its transitional justice coordinator within the Rule of Law and Democracy Unit. In 2009, the post had been operational for just over three years. Through this post, the Office supports UN field presences, particularly in the human rights components. Over the years, the array of transitional justice activities of such field presences has grown with the support of the OHCHR. They range

⁵¹ United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*, S/2011/634 (12 October 2011), available from undocs.org/S/2011/634

⁵² United Nations Economic and Social Council, *Promotion and Protection of Human Rights*, E/CN.4/2006/93 (7 February 2006), available from undocs.org/E/CN.4/2006/93, 1.

⁵³ United Nations General Assembly, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and Secretary-General: Analytical study of human rights and transitional justice*, A/HRC/12/18 (6 August 2009), available on undocs.org/A/HRC/12/18, 1.

⁵⁴ *Ibid.*

from technical advice and assistance (including the application of relevant international human rights standards) to training of law enforcement, public officials, judicial sector workers, relevant NGOs and so on.⁵⁵

In reading these five documents together, the notion that transitional justice is inextricably linked to human rights, ‘rule of law’ activities, and even democracy promotion become apparent. To further understand the way in which the UN navigates through these concepts, however, it is crucial to first understand the mechanisms through which transitional justice processes are implemented.

3.2 Mechanisms of Implementation

The transitional justice process consists of both judicial and non-judicial components and mechanisms. As alluded to above, the judicial mechanisms have often been prioritized. Criminal prosecutions and truth recovery investigations have dominated the public discourse in cases of transitional justice for the last couple of decades. Nevertheless, the UN recognizes, promotes and assists in the administration of five core mechanisms in the transitional justice process, including non-judicial processes. While advocating for the use of all five mechanisms, the UN states that political and cultural contexts should determine which combination of the mechanisms are most suitable for the local society.⁵⁶ These five mechanisms are criminal prosecution, truth recovery/reconciliation, reparations, institutional reform and vetting/dismissals.

The most familiar of the five mechanisms is undoubtedly criminal prosecutions. The international community’s involvement in this arena has, as previously discussed, been consolidated throughout the last couple of decades. The emergence and subsequent proliferation

⁵⁵ United Nations Economic and Social Council, *Promotion and Protection of Human Rights*, 2006.

⁵⁶ United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 2004, 1.

of international law and prosecutorial mechanisms has often stolen the spotlight during UN involvement in post-conflict areas. The primary purpose of criminal prosecutions is to hold perpetrators of human rights violations accountable for their actions. They are seen as a more objective choice for trying and convicting leaders of their crimes, when post-conflict states are unwilling or unable to do so.⁵⁷

Another primarily judicial mechanism, yet one that takes a decidedly different approach, is that of truth recovery and reconciliation. We have witnessed this mechanism most frequently in the form of Truth and Reconciliation Commissions, some of the most important examples of which were in South Africa, South Korea, Argentina and Chile, among others.⁵⁸ Truth commissions are seen as vital to the transitional justice process, as their primary purpose is to foster and promote reconciliation. In many cases, the South African one being a particularly relevant example, truth commissions provide either a reduced sentence or full amnesty for perpetrators of mass atrocities in return for full disclosure of the crimes they committed.⁵⁹ Hence, this mechanism is seen as complementary to criminal prosecutions. While the latter attempt to give victims a chance for retributions, the former take a victim-centered approach by allowing victims to address their grievances directly to the perpetrators.⁶⁰

Reparations are also seen as a mechanism that focuses on the needs of victims while, however, taking a non-judicial approach. Reparations entail providing victims compensation, restitution or rehabilitation, accompanied by some form of accountability for the perpetrators to avoid the appearance of the reparations being simply 'blood money'.⁶¹ The United Nations has

⁵⁷ United States Institute of Peace, *Transitional Justice: Information Handbook* (September 2008), available at http://www.usip.org/sites/default/files/ROL/Transitional_justice_final.pdf.

⁵⁸ Seibert-Fohr, "Transitional Justice in Post-Conflict Situations."

⁵⁹ United States Institute of Peace, *Transitional Justice*, 2008.

⁶⁰ Seibert-Fohr, "Transitional Justice in Post-Conflict Situations."

⁶¹ Ibid.

tried to streamline the approach to providing reparations with the promulgation of its Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian law, which was adopted in 2005 by the United Nations General Assembly.⁶² This mechanism is meant to “foster civic trust by demonstrating the seriousness with which institutions now take rights violations.”⁶³

Another non-judicial mechanism is that of institutional reform. Apart from (re)building the justice sector for the purpose of fostering the rule of law, institutional reform also embraces constitutional and legal reforms and free elections. Naturally, this process is geared towards the democratization of institutions.⁶⁴ It is thus heavily dependent on United Nations interpretation of what good governance entails, as the Organization only supports the establishment of institutions that foster government mechanisms that allow for democratic rule.⁶⁵

Lastly, the notion of vetting/dismissals is a mechanism that primarily exists for ensuring the non-repetition of the previously committed atrocities. It entails the purging of institutions and ensuring that new public officials are willing and apt to carry out their duties in strict adherence to the newly prevailing forms of justice and rule of law. This process can induce trust by opening up public sector jobs to new individuals and thereby changing the patterns that had characterized the previous regime. Furthermore, this process demonstrates and ensures “a commitment to

⁶² United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 2011.

⁶³ Pablo De Greiff, “Theorizing Transitional Justice,” *Nomos (American Society for Political and Legal Philosophy)*, 51 (2012), 46.

⁶⁴ United States Institute of Peace, *Transitional Justice: Information Handbook*, 2008.

⁶⁵ Seibert-Fohr, “Transitional Justice in Post-Conflict Situations.”

systemic norms of governing employee hiring and retention, disciplinary oversight, prevention of cronyism, and so on.”⁶⁶

Together, these five mechanisms make up the core of how transitional justice functions and the objectives it attempts to accomplish. It is important to note that other mechanisms have also received some attention in recent years by various think tanks and NGOs. These include measures such as ‘cultural interventions’, which employ art and music to influence perceptions about past evil; or ‘memorialization’, where monuments or memorial sites are constructed as a tribute to victims and to establish an agreed-upon narrative of the past abuses.⁶⁷ However, these are new ideas and processes that are not officially listed by the UN as belonging to transitional justice mechanisms. They do indicate, however, that the field is attempting to expand beyond traditional approaches to solving the complex issues faced by a ‘transitioning’ society. This, as we will see in the upcoming chapters, is most likely a direct response to some of the criticisms the field of transitional justice has faced.

3.3 The ICTJ

The International Center for Transitional Justice was, as previously mentioned, established in 2001. The founder and first president was Alex Boraine, a South African politician and humanitarian activist, who had been a chief architect in establishing the Truth and Reconciliation Commission in post-Apartheid South Africa. Born out of a meeting organized by the Ford Foundation, the Center was founded to “assist countries pursuing accountability for

⁶⁶ De Greiff, “Theorizing Transitional Justice,” 46.

⁶⁷ GSDRC Applied Knowledge Services, *Transitional justice: Topic guide*, University of Birmingham (August 2016), available at <http://www.gsdrc.org/topic-guides/transitional-justice/>.

mass atrocity or human rights abuse.”⁶⁸ The group of activists from various backgrounds and fields determined the need for institutionalizing and creating a uniform approach to expanding the newly developing field.⁶⁹ Since then, the Center has been very active in not only transitional justice operations, but also in expanding and strengthening the field. The countries in which it operates include those emerging from repressive rule or armed conflict, as well as democracies in which historical injustices or systemic abuse remain unresolved. The method of assistance is provided through comparative information, legal and policy analysis, documentation, and strategic research to governments, NGOs and other such institutions.⁷⁰ Furthermore, the ICTJ identifies the same five mechanisms listed by the UN as its own focus when it comes to transitional justice efforts. The ultimate promise of the ICTJ is a commitment to building local capacity within ‘transitioning’ societies, as well as the general strengthening and expansion of the field of transitional justice as a whole.⁷¹

The definition of transitional justice that can be found among ICTJ documents is generally more straightforward than that of the United Nations:

Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and *democracy* [emphasis added]. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse.⁷²

Noteworthy here is the simplicity of defining transitional justice as a response to systematic human rights violations, as well as the stated mission of seeking a democratic outcome. In fact,

⁶⁸ International Center for Transitional Justice, *Annual Report 2001-2002*, available at https://www.ictj.org/sites/default/files/ICTJ_Annual_Report_2001-2002.pdf

⁶⁹ International Center for Transitional Justice, *Annual Report 2011*, available at https://www.ictj.org/sites/default/files/ICTJ-Global-Annual-Report-2011-English_0.pdf

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² International Center for Transitional Justice, *What is Transitional Justice?*, available at <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>

further on in this “What is Transitional Justice” guidance pamphlet, the ICTJ goes on to state that “transitional justice should be designed to strengthen democracy and peace – the key goals for societies picking up the pieces after periods of mass abuse.”⁷³ The ICTJ clearly did not move away from the ‘politically charged’ language as much as the UN did.

In fact, in not a single report, guidance note, or case study does the ICTJ shy away from confirming the intrinsic link between transitional justice and the promotion of human rights and democracy. Its stated core principles all revolve around assisting the emergence of new democracies or ensuring the survival of already consolidated ones. The promotion of compliance with international obligations and supporting accountability efforts that ensure violators of human rights standards face up to their actions are at the very center of the Organization’s mission.⁷⁴ To state it simply and in the ICTJ’s own words, “all transitional justice approaches are based on a fundamental belief in universal human rights.”⁷⁵ The very basis and primary motivation for ICTJ’s work becomes the restoration of humanity within a society – where impunity is rejected, the dignity of victims upheld and trust is restored. This can be achieved through truth seeking. Here, truth is seen as the basis of history and seeking truth becomes an “ethical, legal and political imperative,” as well as the cornerstone of lasting peace.⁷⁶

While its language is significantly more politically charged than that of the United Nations’, the ICTJ also reiterates and highlights the importance of different societies choosing their own paths. There is no single formula for dealing with the past and as such, local communities must be consulted and have a part in shaping their own processes. The involvement

⁷³ Ibid.

⁷⁴ International Center for Transitional Justice, *Annual Report 2001-2002*.

⁷⁵ International Center for Transitional Justice, *What is Transitional Justice?*.

⁷⁶ International Center for Transitional Justice, *Strategic Plan 2015-2018: Pursuing Justice in Changing Times*, available at <https://www.ictj.org/sites/default/files/ICTJ-Strategic-Plan-2015-EN.PDF>

of victims in the process, according to the ICTJ, increases the likelihood of the transitional justice mechanisms working effectively and being widely accepted.⁷⁷

The field does, however, face some serious challenges according to the Center. In its strategic plan for the years 2015-2018, the ICTJ expresses concern that the transitional justice field is being pulled in two directions. The first cause of this is what the center calls “a sometimes overly formulaic ‘check-the-box’ approach, which fails to take account of the local context.”⁷⁸ This echoes some anxieties expressed by the UN documents, as well. More interesting, however, is the second cause for concern for the ICTJ is “an unrealistic, ever-expanding notion of transitional justice as a means to cure all of society’s ills.”⁷⁹ It seems, in a sense, that these two concerns stand in opposition against one another. The ongoing issue of having a too heavily ‘top-down’ approach juxtaposes the need for contextualized and innovative solutions with the need for a requirement to create uniformity in the standards applied. While the transitional justice field suffers from overly formulaic attempts at solving the issues at hand, there is also a concern that too much innovation and expansion of the field will create a situation in which people expect the process to cure all ills of the society. The solution to this is finding a balance between the two through the active engagement with other partners in the field and continuing the accumulation of knowledge about best practices during these processes.⁸⁰

3.4 Discussion: The Discourse at the International Level

A reading of the UN documents together with those of the ICTJ highlights interesting elements of the discourse on transitional justice from the founders and arbiters of the field. So

⁷⁷ International Center for Transitional Justice, *What is Transitional Justice?*.

⁷⁸ International Center for Transitional Justice, *Strategic Plan 2015-2018*, 3.

⁷⁹ *Ibid.*, 3.

⁸⁰ *Ibid.*

far, we have come to understand that the field experienced a shift towards a more politically neutral approach to transitional justice after the turn of the millennium, in which the ‘transitions to democracy’ paradigm was replaced by one that emphasizes the ‘rule of law’. While this may be true and clearly observable in the language of the United Nations, it does not seem to be the case for the ICTJ. While the UN really emphasizes the need for accountability and transparency in the legal and political systems of a society, the ICTJ does not hesitate to take this a step further and creates an indubitable link between democracy promotion and transitional justice.

Upon reflection, this difference in discourse is not necessarily surprising. While the ICTJ is an organization founded for the sole purpose of promoting and furthering the field of transitional justice, the United Nations serves a much larger purpose. The implication that the UN promotes a particular political agenda could be seen as more controversial, given the complexity and range of states it represents and missions it undertakes. Nevertheless, the comparison of language used by these two institutional bodies is interesting and speaks to a seeming tension in the field. Namely, the clearly politicized language of the ICTJ is pulling against the more neutral legalist approach of the United Nations.

This does not imply, however, that the UN’s language is completely depoliticized. In fact, it is through its definition of justice that we can attempt to understand how the field is still implicated in political decisions. The rule of law, which the UN makes a crucial element of its transitional justice policy, cannot exist without the notion of justice. Ceding the fact that the concept of justice is a complex one, which has a plethora of philosophical and normative understandings, the Secretary-General states his own interpretation of justice to encompass “an ideal of accountability and fairness in the protection and vindication of rights and the prevention

and punishment of wrongs.”⁸¹ The report goes on to clarify that “justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large.”⁸² Moreover, the notion is universalized by the report confirming that justice “is a concept rooted in all national cultures and traditions.”⁸³ This is a very loosely-defined example of justice. No information is provided here on the specific ethical imperatives implied by the UN’s justice. We are not told what ‘wrongs’ must be punished and how; ‘accountability’ and ‘fairness’ are not defined or clarified; the ‘rights’ of both the accused and the victims are not provided, nor do we know who the victims are and what makes them ‘victims’. This is, however, precisely the intention of the Secretary-General – to leave ‘justice’ vaguely defined, so that it is amiable to be applied in various cultural and national contexts. Yet the seemingly blank slate of justice and the question of what justice is and who it serves is, in fact, not blank or unanswered at all.

It is here that we find ourselves faced with a political element. While the Secretary-General remains vague on these elements of justice within the definition, the answers are provided elsewhere. Namely, the plethora of documents (conventions, treaties, declarations, etc.) promulgated by various key bodies and member-states of the United Nations, throughout time, regarding internationally agreed upon definitions of universal ‘rights’. In other words, the human rights discourse that has prevailed throughout the international arena for decades provides the answers. While dissecting the human rights discourse has not only been done before, but also is worthy of an entirely separate research endeavor on its own, it is crucial at this point to identify what it is that I mean by the human rights discourse.

⁸¹ United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, 4.

⁸² *Ibid.*, 4.

⁸³ *Ibid.*, 4.

Primarily, the core elements of the human rights discourse are made up of what the Secretary-General himself identified as the pillars of the international legal system – human rights and humanitarian law. These sets of laws, as well as various documents, treaties, conventions and declarations, such as the Universal Declaration of Human Rights, all make up the core discursive texts. Within them, one can find an expression of certain ‘rights’, which are seen as inherently granted to every single human being on this earth. These are standards and norms that can be applied to all people throughout the world, regardless of nationality, ethnicity, religion, social class, gender or any other qualifying factor. Its terms are set by the international community and thus the creation, dispersal and protection of this discourse is also the job of the international community. The promotion of these rights and the efforts to ensure the realization of these rights by every person is thus called the human rights agenda.

This large-scale, universalizing language of the human rights agenda becomes interesting in light of the Secretary-General’s statement that, in transitional justice, all ‘one-size-fits-all’ approaches should be eschewed and the role of the international community in transitional justice processes should be one of solidarity, not substitution.⁸⁴ It is generally understood and accepted that the human rights agenda includes the promotion of democracy throughout the world.⁸⁵ Democracy being a particular political structure and project thus makes transitional justice inherently political. Namely, if transitional justice discourse is purposefully placed within the larger human rights discourse, which promotes democracy and democratic values, the transitional process is automatically implicated in this politicization.

⁸⁴ United Nations Security Council, *Report of the Secretary-General*, 2004, 7.

⁸⁵ McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice.”

Furthermore, the transitional processes involve often contentious decisions based on power, interests and prudence.⁸⁶ These decisions are made with reference to a broadly defined understanding of justice, based wholly on the additional corpus of terms and concepts that constitute the UN's human rights discourse. Thus, while seeming to leave justice loosely defined in order to create amiability, in fact the values and principles of justice are already set in stone, leaving open ended questions about how it is possible to avoid 'one-size-fits-all' approaches in transitional justice in the first place. This tension does not, however, escape the attention of the UN. It is for this very reason that the lack of national ownership is stated as a persisting problem in the Secretary-General's 2011 report.⁸⁷

The international community's discourse on transitional justice thus has a dual political and legal nature, both of which serve to reinforce each other. The legal focus of the UN and its 'rule of law' paradigm bases itself upon human rights and humanitarian law, which consist of certain political principles and values. The ICTJ is no different, except in the fact that it does not attempt to be as politically neutral as the UN. Thus, transitional justice here comprises of a set of political and legal aims or goals, all of which are meant to return a society to a universalist understanding of the term 'justice'. The methods it attempts to achieve this through are also both political and legal in nature, yet with a heavy emphasis on legal mechanisms. They also rest upon the core assumptions of the UN's legal system, which the Secretary-General himself defines as being represented by human rights principles. Hence, despite justice being left largely undefined in a direct sense, we see here that both the understanding of justice, as well as the methodology employed within transitional justice, are part and parcel of the larger human rights agenda.

⁸⁶ GSDRC Applied Knowledge Services, *Transitional justice: Topic guide*, 2016, 3.

⁸⁷ United Nations Security Council, *Report of the Secretary General*, 2011, 3.

One major problematic remaining in light of this discussion is the following: having understood the core elements and tensions of justice as espoused by these UN documents, how are we to regard the fact that transitional justice is yet separately defined than justice itself? If transitional justice is different from ‘ordinary’ justice, then how are the two related? Addressing these questions, as well as responding to the tensions highlighted above, is the undertaking of a vast number of international scholars who treat the subject of transitional justice.

CHAPTER 4

DISCOURSE II – “THE ACADEMY” AND INTERNATIONAL SCHOLARSHIP

Since Kritz’s four-volume compendium was published in 1995, scholarship on transitional justice increased exponentially. Scholars and academics from across various fields began contributing to the conversation. As the UN and the ICTJ began proliferating transitional justice work around the world, and the concept became an important aspect of the international community’s promotion of peace and the rule of law, lawyers, human rights activists, sociologists, political scientists and many others began analyzing and responding to these trends. Many of the questions posed in the second chapter of this work are also being asked by scholars. It is therefore crucial to analyze the transitional justice discourse through the lens of scholarship. The discourse taking place at this level provides critical insight into the field of transitional justice.

Two major themes emerge from the analysis of the international scholarship discourse, both of which address many of the questions posed earlier in this work. The first of these is the nature and meaning of ‘justice’ in the field of transitional justice. These discussions focus on what kind of justice is implied when pertaining to transitional measures and whether this form of justice differs from that during ‘ordinary’ times. The second – and far more interesting – theme is a serious critique of the field’s increasingly prevalent shift towards legalist approaches. Having observed the modification in terminology within the field, the move away from the ‘transitions to democracy’ paradigm and the adoption of the ‘rule of law’ standard, this strand of scholarship highlights the underlining problems caused in both scholarship and practice as a result.

4.1 Transitional v. Ordinary Justice

While the term ‘transitional justice’ has become widely accepted, the word ‘justice’ still inspires controversy with regards to what exactly is being implied.⁸⁸ Recalling the UN’s definition of justice, which was vague and yet was deemed to be rooted in all cultures and traditions, it is easy to understand why such confusion exists. Understanding the role of justice within transitional justice has therefore become a large focus of recent scholarship, attempting to make up for a lack of clearer definition on part of the international community.

Alex Boraine, in his attempt to work through the concept, explains that justice has several different forms and types. Namely, justice can often fall under the categories of retributive, restorative, or distributive.⁸⁹ Historically, when it came to justice during times of transition, the retributive element had been emphasized, specifically through the establishment of international criminal courts. Defenders of this definition claim that some form of retribution or prosecution that would hold accountable the perpetrators of violence is the most vital aspect of justice.⁹⁰ Some even articulate the suspicion that transitional justice does not go far enough to decisively uphold the principles of international criminal law.⁹¹ The advocates of criminal justice articulate what is essentially a perpetrator-focused form of justice. The other side of the argument is made by those who advocate for restorative and non-prosecutorial mechanisms to reinstate justice in post-conflict societies. This scholarship advocates for a victim-centered approach in which the main aim is to provide for healing and reconciliation within societies.⁹²

⁸⁸ Alexander L. Boraine, “Transitional Justice: A Holistic Interpretation,” *Journal of International Affairs* 60, (2006), 17-27.

⁸⁹ Ibid.

⁹⁰ Olsen, Payne and Reiter, “Transitional Justice in the World, 1970-2007.”

⁹¹ Boraine, “Transitional Justice: A Holistic Interpretation.”

⁹² Olsen, Payne and Reiter, “Transitional Justice in the World, 1970-2007.”

In his article on the different forms of transitional justice he perceives to exist, Jeremy Webber has a similar approach to delineating types of justice. He divides the different forms of justice into the categories of ‘retrospective’ justice and ‘prospective’ justice, which indicate the backward-looking and forward-looking nature of each, respectively. Backward-looking justice, for Webber is any form of justice which focuses on past abuses. Criminal prosecutions and other mechanisms that deal with perpetrators of human rights violations would fall under this category. Alternatively, therefore, forward-looking justice is that which focuses more on the reconciliation and recovery of society. Its mechanisms involve attempting to foster forgiveness and emotional healing for both the victims, as well as the perpetrators of crimes.⁹³

This two-pronged approach, according to some, is what sets apart justice in transitional times from the type of justice within ordinary social function. Justice during ordinary times is reflected in laws that provide order and stability. However, justice within transitional times is extraordinary in that it attempts to maintain order even as it enables transformation.⁹⁴ The navigation between retributive or retrospective and restorative or prospective justice in the transitional justice field thus reflects the way in which justice functions differently in these contexts. While, no doubt, these questions exist also for justice during ordinary times, they are amplified during transitional periods because of the urgency of the need to both deal with the past and secure the future simultaneously. For this reason, transitional justice is considered by some to be a unique component of the empirical study of justice.⁹⁵

The solution to the dilemma of deciding between backward-looking and forward-looking justice can be located in the notion of a ‘holistic’ interpretation of transitional justice. Generally,

⁹³ Jeremy Webber, “Forms of Transitional Justice,” *Nomos (American Society for Political and Legal Philosophy)* 51 (2012): 98-128.

⁹⁴ Leebaw, “The Irreconcilable Goals of Transitional Justice.”

⁹⁵ Elster, “The Structure of Transitional Justice.”

this has come to reflect the UN's notion of carefully picking and choosing the types of transitional justice mechanisms for a particular society and context. No nation is the same, so thus the solutions must be adjusted according to the specific needs of that nation. Boraine argues that this is possible to do through the five conventional mechanisms of transitional justice. A thorough combination of these mechanisms, with respect for local context and traditions, provides transitional justice with the highest possible rate for success, as the five mechanisms together represent a perfect combination of both perpetrator- and victim-centered approaches.⁹⁶

Webber takes this a step further. In his work, he outlines a third form of justice, which he defines as “the adjustment of contending legal and political orders.”⁹⁷ The third category argues for a combination of the two other forms of justice through a careful assessment of the existing political, cultural and legal traditions of the given society. In other words, Webber argues that every case of transitional justice should be meticulously contextualized in order to formulate a unique form of justice that is particular to its local community. He states that “every system of law, even if it does attempt to respect universal principles, pursues justice through a particular vernacular – a set of terms, concepts, exemplifications, and points of reference.”⁹⁸ Many of the issues within transitional justice arise when the topic of discussion is whose language or traditions should be used while attempting to pursue a just society. This third approach, therefore, calls for the adjustment of transitional justice to the particular local traditions in the society in which it is working.⁹⁹

Pablo de Greiff, in his work attempting to provide for a normative theoretical conception of transitional justice also seems to arrive at a similar answer. In a field that has, according to

⁹⁶ Boraine, “Transitional Justice: A Holistic Interpretation.”

⁹⁷ Webber, “Forms of Transitional Justice,” 99.

⁹⁸ *Ibid.*, 109.

⁹⁹ *Ibid.*

him, been vastly undertheorized, de Greiff, in carrying out this critical endeavor, articulates a ‘holistic’ notion of transitional justice.¹⁰⁰ He argues that the various measures undertaken by transitional justice processes form an intricate web and cannot be separated from each other to emphasize some more than others. In other words, some measures should not be traded off at the expense of others. To understand transitional justice as a compromise between distinct forms of justice undermines the entire purpose of the process and inevitably favors either perpetrators or the victims.¹⁰¹

This scholarship reflects the same trend as can be observed in the UN documents on transitional justice. Namely, a call for ‘holistic’ interpretations of justice that reflect the needs and traditions of local communities, yet nevertheless stay true to universally espoused principles of justice. This approach works towards creating an idea of justice that is both bound to certain values, yet simultaneously flexible in shape and form. While aesthetically pleasing perhaps, practically it is difficult to understand the applicability of such a conception of justice. Webber correctly identifies the problem of language when it comes to asking whose justice is being applied and for whom. Yet he does not go far enough in questioning this. Is it possible to do as he says and change the language of transitional justice according to each particular cultural and social space in which it attempts to work? Does adapting the words used in a particular context change anything at all when they are still evaluated according to the international community’s grammar rules? In other words, does the transitional justice field allow for enough flexibility to permit the adaptations of justice to be sufficiently contextualized?

¹⁰⁰ De Greiff, “Theorizing Transitional Justice.”

¹⁰¹ Ibid.

4.2 The Legalese of Transitional Justice

These discussions on justice clearly do not answer some of the more basic concerns about transitional justice. Various scholars in the field, having picked up on this, direct their critique at a different aspect of the current condition of the field. In doing so, the transitional justice discourse at this level concerns itself more with the deeper conceptual complexities. Namely, the primary concern within this group of scholarship is the increasingly legalized language of transitional justice. As previously discussed, transitional justice, for the most part, developed alongside international law. Thus, when international law increasingly focused on criminal law and the promotion of the rule of law, transitional justice became directly intertwined with such efforts. Furthermore, references to ‘transition’ became less political, as ‘post-conflict situations’ replaced the conventional ‘transition to democracy’ terminology and transitional justice became inextricably linked to the rule of law discourse. Legalism and the authority of law replaced a politically charged terminology in efforts to allow transitional justice to remain neutral in the face of criticisms of perceived Western political agendas to spread democracy.¹⁰²

This movement towards legalism has dominated nearly every aspect of international collaboration and relations, transitional justice occupying just one space within the larger context. The rule of law paradigm is pervasive and strong as it marks the cornerstone of the international system’s approach to solving issues of politically unstable states around the world. Today, (re)establishing of the rule of law is “regarded as a prerequisite for the emergence of stable and peaceful societies.”¹⁰³ Moreover, “development co-operation has been reformulated in legal terms and more and more international effort has gone into building courts, writing laws, punishing perpetrators of human rights abuses, supporting human rights NGOs, and generally

¹⁰² Leebaw, “The Irreconcilable Goals of Transitional Justice.”

¹⁰³ Patricia Lundy, and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35.2 (2008):266.

promoting the rule of law abroad.”¹⁰⁴ Transitional justice as a legal concept depends heavily on these larger discourses of rule of law, as well as human rights. While not strictly a legal concept in the conventional understanding of international law, its normative framework and conceptual boundaries are exclusively based on international human rights and humanitarian law. This, by no means, has escaped the attention of the transitional justice scholarship.

The 2007 work of Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” addresses exactly these developments in transitional justice. He argues that the field is characterized by one key trend, despite its relative infancy: it is dominated by legalism.¹⁰⁵ He argues that the trend has been caused by a strongly positivistic understanding of transitional justice, in which legal institutions and legalism have emerged at the forefront. Furthermore, the institutionalization of transitional justice within various legal edifices (namely, the ICTY, ICTR, and the ICC) has also contributed to the dominance of a legalist discourse. This has come, according to McEvoy, to the large detriment of other vital aspects and sources of knowledge that inform transitional justice work. He ultimately argues that while legalism is crucial to transitional justice, it is dangerous and irresponsible to focus primarily on this particular facet of its work. Instead, scholarship on the subject and the international community should recognize that legal frameworks and paradigms have become effectively interwoven into the fabric of transitional justice; in other words, it is time to allow other disciplines to contribute so as to address some of the underlying tensions in the work of guiding societies through tumultuous transitions.¹⁰⁶

In outlining the ways in which a principally legalist view limits the scope and understanding of transitional justice, McEvoy raises three main points of contention. The first of

¹⁰⁴ Ibid., 266.

¹⁰⁵ McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice.”

¹⁰⁶ Ibid.

these is what he calls ‘the seduction of legalism’. These so-called seductive qualities of a legalistic analysis present themselves particularly appealing and valuable during times of transition. Namely, strong advocacy for the rule of law, with its claims of providing for “justice, objectivity, certainty, uniformity, universality, rationality, and so on [is] particularly prized in times of profound social and political transition.”¹⁰⁷ Law, in such contexts, becomes an important practical and symbolic break with the past – one where a public demonstration of positive change and accountability take place. What these practices ignore, however, is to ask simple yet monumentally important questions: namely, what transitional justice is for and whom it serves.¹⁰⁸

Secondly, in many ways the dominance of legalist discourse seems for some to signal a sort of triumph of human rights, according to McEvoy. This suggests many different consequences. First and foremost, there has been much criticism around the world of international human rights discourse, claiming that it is a form of neo-imperialism, in that it represents the West “imposing standards of rights and justice which it has always violated in the developing world and amongst Islamic societies in particular.”¹⁰⁹ In many ways, then, the legalistic bent of contemporary human rights discourse (as alluded to above) is seen as the mechanism through which this cultural and social imperialism is institutionalized and imposed on lesser-developed states. In fact, the legalist expression of human rights standards has been criticized as ignoring what is obviously the political agenda of the nature of its argumentation and of the many Western states that dominate the international arena.¹¹⁰

¹⁰⁷ *Ibid.*, 417.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, 418.

¹¹⁰ *Ibid.*

This claim has been supported by other scholarship, as well. For example, Anne Leebaw expresses in her piece called “The Irreconcilable Goals of Transitional Justice,” that this ‘depoliticization’ achieved through a purely legalistic discourse is just one symptom of the larger problem: namely, that the stated goals of transitional justice are inherently paradoxical and irreconcilable in nature. She argues that even though in the post-Cold War era, transitional justice advocacy changed its language from the clearly political agenda of promoting democracy to the more politically neutral tone of conflict resolution and rule of law, the foundational principles and underpinnings of transitional justice regimes did not. More specifically, because “transitional justice institutions continue to judge political violence and so are implicated in political judgments,” it causes fundamental “tension[s] with their aspiration to political impartiality.”¹¹¹ Furthermore, it is important to keep in mind that not only can transitional justice institutions not avoid becoming politically involved, the purely legalist approach is not depoliticized in and of itself. In fact, many of the universalizing nature of legal approaches to transitional justice assume that international laws and institutions would be widely accepted as legitimate and politically neutral.¹¹² This, as both Leebaw and McEvoy indicate, is not necessarily true.

McEvoy further points out that the ‘legalese’ of international standards, as well as the claims of legal certainties and political objectivity often lead to a severe simplification of complex and multifarious problems that arise in transitional societies. This apparent simplicity of approach, combined with the false claim to political neutrality significantly undermines the purpose of transitional justice by rendering it a seemingly ‘Western-centric’ and top-down

¹¹¹ Leebaw, “The Irreconcilable Goals of Transitional Justice,” 106.

¹¹² Ibid.

mechanism.¹¹³ This in turn inevitably results in the alienation of local communities who are, often times, the ones who have suffered the most under previous regimes.

The top-down focus of transitional justice regimes is what McEvoy expands upon to articulate the third and last of his critiques. He argues that there is a strong tendency in the legalism of transitional justice to portray itself as state-centric and hence top-down. This can once again be demonstrated through the institutionalization of transitional justice into expensive supra-state and ‘state-like’ structures, such as the Tribunals and the ICC. These are, however, not the only mechanisms of transitional justice that have an almost state-like appearance. Other institutions, such as the truth and reconciliation commissions, reparation bodies and a range of other initiatives that are not necessarily legal or judicial in nature, have also become severely institutionalized and law-centric.¹¹⁴ The argument in favor of such processes is made through pointing out that institutional capacity is of vital importance to rebuilding the rule of law in a society. Activities such as constitution writing, creating a constitutional court, and building a well-equipped police force are all part of the institutional capacity building project. Thus, the logic of using legal mechanisms and state-like institutions to develop state justice capacity seems unimpeachable. However, this once again represents a gross simplification.¹¹⁵

By having such large and formal institutions take charge of transitional justice processes, it is easy to “fail to take sufficient account of local customs and practical knowledge and to engage properly with community and civil society structures.”¹¹⁶ This becomes especially true when a particular self-image is developed in which actors within such institutions see themselves as serving a higher purpose. Most often, this type of sensibility results in local communities

¹¹³ McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice.”

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*, 424.

being viewed as constituencies that must be managed, as opposed to individuals to whom they must be accountable.¹¹⁷

All three of these pitfalls of a purely legalistic approach to transitional justice result in one major trend that has been seen through various cases of transitional justice processes: namely, that local communities most affected by the violence that characterized their former realities feel alienated and disenfranchised with the transitional justice regime. This, naturally, causes severe complications and undermines the whole purpose of transitional justice, which is, after all, to reestablish a functioning and just society in which everyone – especially the victims – have the opportunity to heal and restore their dignity. The United Nations itself has outlined this to be a major objective of its understanding of transitional justice. So how is it possible to find a solution to these seemingly intrinsic paradoxes?

The research conducted by Laurel Fletcher, Harvey Weinstein, and Jamie Rowen attempts to resolve this particular issue. In their survey of seven different cases in which transitional justice mechanisms were employed, they were able to discern the plethora of factors that contribute to a country's response to its past period of repression or mass violence. In identifying these elements, their research also found the excessive focus on legal processes to be at the heart of the issue. They argue that this focus on legalism “has dislodged or obscured the importance of other processes and interventions needed to create an enduring platform for social stability in countries that have experienced protracted, state-sponsored violence.”¹¹⁸ Once again, the notion that purely legalistic approaches alienate local communities is echoed.

The three researchers offer an important addition to the debate through their extensive focus on the local contexts and historical assessments of the countries they study. Contrary to

¹¹⁷ Ibid.

¹¹⁸ Laurel E. Fletcher, Harvey M. Weinstein, and Jamie Rowen, “Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective,” *Human Rights Quarterly* 31 (2009), 166-67.

other scholarship that focuses on the failure of large supra-state institutions, Fletcher, Weinstein and Rowen focus instead on what it is that local communities and victims actually need. One such historical element that their research elaborates on is the colonial legacy that has been left in the majority of states that are to this day struggling with the aftermath of decades-long occupation. Countries still reeling with the legacy of colonialism often times are even more suspicious or hesitant to trust international institutions that seem to mimic former imperialist ones. It is through their discussion of post-colonial cases of transitional justice that the importance of contextualization becomes apparent.¹¹⁹

It is particularly this element through which the researchers choose to critique transitional justice policies – namely, that they often are both ahistorical and decontextualized. Their findings point to the need of this approach to transitional justice to be in dire need of refinement. They suggest that “policymakers and scholars need to develop an appreciation for the ways in which a country’s inheritance of its legal system, culture, and democratic traditions as well as its social and political institutions and history of sovereignty interact with each other and the country’s contemporary political climate to shape the form and pace of transitional justice efforts.”¹²⁰ In order to achieve this, focus needs to be shifted from legal justice, to more comprehensive and nuanced efforts that take into consideration local customs and traditions and offer a bigger variety of mechanisms, beyond the simple prosecutorial and judicial processes.¹²¹

This suggestion does not appear to be far removed from the policies articulated by the Secretary-General in the various United Nations documents discussing the Organization’s approach to transitional justice. In fact, the Secretary-General Guidance Note specifically lists “Base assistance for transitional justice on the unique country context and strengthen national

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*, 209.

¹²¹ *Ibid.*

capacity to carry out community-wide transitional justice processes,” and “Encourage a comprehensive approach integrating an appropriate combination of transitional justice processes and mechanisms,” as two of its guiding principles of transitional justice.¹²² Be that as it may, Fletcher, Weinstein and Rowen express their skepticism as to whether this is possible. They argue that the assessment of the effects of implemented programs over the long-term indicates that there exists a gap between local needs and priorities and the specific transitional justice mechanisms that had been put into place.¹²³ Once again, the purely legalistic approaches to transitional justice are implicated in this failure. This leads the researchers to ask whether in order for transitional justice “to model fairness and justice, is it necessary to put into place a model that mimics Western legal mechanisms?”¹²⁴

This question undoubtedly echoes the works of McEvoy and Leebaw, who both extensively criticize the glaringly evident paradoxes of a purely legal approach to transitional justice. One, in fact, that has attempted so strenuously to depoliticize itself, that it has led to its inability to even recognize how inherently involved in political processes it is – whether through its role in reestablishing political order or its unavoidably political agenda of promoting ‘universal’ principles and norms. Ultimately, Patricia Lundy and Mark McGovern state the problem quite simply: the attempts of the international community to play an active role in promoting the rule of law in post-conflict societies represent “attempts to ‘influence the rules of the game’, [which evidences] the fact that international justice and rule of law initiatives are not politically neutral.”¹²⁵ Without the recognition of this basic truth, it is impossible for international transitional justice activities to be received as legitimate or effectively carry out the

¹²² United Nations Secretary-General. *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, 1.

¹²³ Fletcher, Weinstein and Rowen, “Context, Timing and the Dynamics of Transitional Justice.”

¹²⁴ *Ibid.*, 210.

¹²⁵ Lundy and McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” 266.

stated mission, as it “disconnects individuals and communities from any sense of sovereignty” over the entire enterprise.¹²⁶

While the United Nations clearly seeks to address this, as evidenced by the Secretary-General’s advice to take into consideration local traditions and customs through increased on-the-ground cooperation, “simply involving local people at the implementation stage of these initiatives is not enough.”¹²⁷ In other words, a simply diversified and ‘holistic’ approach to justice that involves non-judicial mechanisms as well as judicial ones, as scholars like Webber, de Greiff and Boraine call for, is not sufficient in ensuring this. For a fully participatory process to exist and properly function, local people should not just have an array of justice mechanisms at their service, “they should also take part at every stage in the process including conception, design, decision making, and management.”¹²⁸ This requires, as McEvoy puts it, “letting go” of legalism.¹²⁹ This does not mean abandoning the advances made so far in the transitional justice realm. Instead, it suggests an honest acknowledgement of the limitations of legal thinking and the array of paradoxes that accompany it.¹³⁰ Specifically, it would perhaps be possible to envision a transitional justice paradigm in which local communities and individuals are able to outline and determine their own articulations of justice, rule of law and peace building if allowed to do so based on their own traditions, customs and historical perspectives.

4.3 Discussion: The International Scholarship’s Discourse

The scholars correctly point out some deeply entrenched tensions in the field of transitional justice. While many issues arise out of the extensive focus on legalism within the

¹²⁶ McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” 425.

¹²⁷ Lundy and McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” 266.

¹²⁸ *Ibid.*, 266.

¹²⁹ McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” 440.

¹³⁰ *Ibid.*

field, the primary critique the scholars seemed to have was regarding the shroud of neutrality the language of legalese created. The paradoxes apparent to this type of discourse within transitional justice seem to be unquestionable. The scholars do not, however, take their critiques far enough. Legalist discourse in transitional justice is described as a ‘triumph’ of human rights discourse, in which the latter represents a ‘Western’ project to impose ‘Western’ cultural values and principles to countries that may not welcome this effort. However, over and over again the scholars argue that the proper method to dismantle such a political agenda is to thoroughly mobilize local populations to define their own approaches based on local traditions and cultures. This echoes directly the call by the numerous international institutional actors for the need of local ownership of transitional justice processes. Yet the question I wish to pose here is the following: is this even possible?

To think through this question, I would first like to articulate one of the key characteristics of the human rights discourse. Emerging first at the turn of the twenty-first century and maturing fully at the height of the Cold War, this human rights discourse is what led to the establishment of the transitional justice field in the first place. Given its particular placement within human rights discourse, we should first seek to elucidate how human rights discourse functions.

Human rights discourse is primarily a discourse of global power. The primary claim made is that individual-based human rights supersede the cruelties perpetrated by all prior ideological constructs in the previous centuries. Namely, all acts of cruelty and violence that came as a result of various political ideologies and value systems are overcome and triumphed over by human rights discourse. It represents a value system based on the rights of each individual and is thus the champion of all people, regardless of the various identities they might

possess. It is distinguishable by the fact that the position of power from which it is articulated stems not solely from a particular hegemonic enforcer, but rather from a ‘world community’. This community of individual states that champion the rights of all individual people across the globe is from where the discourse gains its legitimacy.¹³¹

Another distinguishing characteristic is the spaces in which the discourse operates. The primary concern of this human rights discourse is to right the wrongs of *local* abuses – atrocities committed by neighbors upon neighbors – as opposed to issues such as the global maldistribution of wealth. The perpetrator always has a face, as it is one person or group’s actions against another group, and thus the scale is always local. The enforcement of the values espoused, meanwhile, is *global*, wherein third parties have a *duty* to intervene to *rescue* neighbor from neighbor. The wellbeing of each individual is thus the responsibility of the rest. Ultimately, through the dispersal of values and their enforcement by a ‘world community’, human rights discourse “attempts to move once divided societies from a moral psychology of struggle to one of reconciliation,” guided by the universal principles of the rights of every human.¹³²

What is interesting here is that the entire discourse of human rights itself operates today in the realm of intervention and rescue.¹³³ It has a set of guiding principles, as espoused first in the 1948 UN Declaration of Human Rights, and later added to through various UN treaties, conventions, and the like. It has set boundaries, marked by political ideology, as well as laws. Its purpose is thus to promote and ensure the realization of these values through intervention and rescue. As we have seen time and time again, the field of transitional justice is a direct product of and relies on this human rights discourse. Transitional justice is a specific discursive contract that carries out the intervention needed for the human rights discourse to succeed in its mission.

¹³¹ Meister, *After Evil: A Politics of Human Rights*.

¹³² *Ibid.*, 8.

¹³³ *Ibid.*

So how can we have one without the other? The issue with the authors' critiques is that legalism becomes the primary problematic for why transitional justice is not properly contextualized: the 'rule of law' and legal paradigm hides the politically motivated human rights agenda behind a façade of neutrality, all the while enforcing top-down and legal-institutional policies that alienate local populations. However, is the issue really the shroud of legalism? It seems the actual concern of the scholarly discourse is the alienation that legalist approaches to transitional justice bring about. Namely, the façade of neutrality posed by the excessive focus on the 'rule of law' paradigm undermines the ability of transitional justice processes to properly function. This seems more a critique of the human rights discourse than of legalism. Further compounding the seeming futility of such criticism is the fact that, apart from the UN, other major arbiters of transitional justice do not make strong efforts to appear politically neutral. As we saw in the previous chapter, the ICTJ lists the consolidation of democracy as *the* primary objective of transitional justice mechanisms. Given these facts, it is difficult to believe the solution the scholars are looking for would be found by simply a change in the 'rule of law' rhetoric.

Anne Leebaw seems to be the only author who unpack the issue sufficiently. She argues that the shroud of legalism is only one symptom of the larger problem. In fact, transitional justice institutions inherently have a conflicting set of aspirations: "they seek to respond to local practices in order to be perceived as legitimate, yet they also seek to challenge and transform the basis of political legitimacy by rejecting traditions and practices implicated in systematic political violence."¹³⁴ In other words, the issue lies not solely in the ahistorical and depoliticized nature of the legalist language and practice of transitional justice. In fact, there are certain problematic assumptions and unacknowledged trade-offs within the design of the transitional

¹³⁴ Leebaw, "The Irreconcilable Goals of Transitional Justice," 117.

justice itself.¹³⁵ Therefore, it is not sufficient to replace legal-institutional approaches to transitional justice with more nuanced and relativized mechanisms designed to fulfill the goals expressed by the field. Instead, we must question the core assumptions of the entire field itself and try to understand how they play out in the discourses of local populations attempting to think through the future of their societies.

As we will see in the next chapter, the case of Syria brings to light some of the issues outlined by the scholars above. In fact, we will observe the rigorous participation of Syrians, both inside and outside of Syria, in discussing, preparing and organizing for a post-conflict Syria. The local engagement is extensive and many international actors supporting the Syrians in this process feel enthusiasm and optimism for Syrians being able to determine their own transitional justice process. Does this, however, truly address the concerns listed above? Does it suffice to include local populations in the processes? McEvoy, Leebaw and the others would surely disagree. What it takes to fully realize an organic transitional justice process is to allow for these local populations to not only participate in creating their own approaches, but to also allow them to redefine what ‘justice’ and ‘transition’ mean to them. We will now turn to the case of Syria in order to help us think through whether this is possible or whether the inherent paradoxes of transitional justice discourse prevent such level of flexibility.

¹³⁵ *ibid.*

CHAPTER 5

DISCOURSE III – TRANSITIONAL JUSTICE IN SYRIA

Syria's uprising started in February 2011 when protestors took to the streets after the severe beating of a young man by three policemen. By March 2011, further protests sprung up around Deraa and Damascus, calling for an end to political oppression and for economic relief. These protests, peaceful in nature, were met by the government with fierce violence. Many protestors were arrested and tortured, causing the whole country to erupt into further demonstrations. When peaceful protesters were met with violence once again, Syrians around the country began asking for the regime's resignation. As a result of the violence, in which the military actively participated, many defections occurred within the Syrian Army. These defectors, along with some civilian volunteers, were the founders of the FSA – Free Syrian Army – which was initially organized to protect civilians during demonstrations.¹³⁶

This marked a new era in the conflict, as continued military assault upon the protestors led to armed opposition groups arising and attacking the Syrian Army beyond measures of self-defense. By early 2012, the protests had decreased in number and size due to the spread of armed clashes between the FSA and the Syrian military. In spring 2012, the first reports of massacres committed by the Syrian military and the regime's militias began emerging. Most of these attacks targeted Sunni inhabitants or villages in mixed areas, which gave the conflict a sectarian note that continues on today. Ground campaigns were joined by the beginning of aerial military

¹³⁶ Dawlaty, *Transitional Justice in Syria*, 2013, Available at <https://docs.google.com/file/d/0BYiEQIM67EVEVUZNNV4LXROUDQ/edit>.

campaigns as well and by July 2012, the conflict was officially labeled a non-international conflict – or civil war – by the International Committee of the Red Cross.¹³⁷

Since the beginning of the conflict, many international outlets have reported grave violations of human rights occurring within the country. Use of chemical weapons, cluster bombs, massacres, bombing of civilians and hospitals, and strict sieges preventing access to basic needs like food and medical supplies have dominated the news. While both sides have committed atrocities, international organizations argue that the majority of them have been perpetrated by the regime. The civilian death toll is close to half a million and rising steadily as no resolution appears near. The crisis, which has by now garnered intensive foreign involvement (whether in arms support, military training of armed factions, or diplomatic pressures), has become seemingly intractable with tens of different factions and a sizeable number of armed groups fighting with or against each other and for differing interests. Furthermore, the war has caused a mass exodus of Syrian refugees, with their numbers in the millions, fleeing to Turkey, Lebanon, Jordan, or washing up on the shores of Europe.¹³⁸

With no solution in sight, the Syrian crisis has become one of the most important topics in international affairs of this century. Diplomatic talks have tried and failed to put an end to the fighting and the refugee crisis remains unsolved. The sheer humanitarian implications of the conflict have sparked international outrage and serious debate about how Syrians and the international community should react. What response is appropriate to such massive suffering? How can such a seemingly intractable situation be solved? What can be done to rebuild Syria as a strong, stable and just country?

¹³⁷ *ibid.*

¹³⁸ *ibid.*

Naturally, the topic of transitional justice is extremely relevant to those seeking answers to the questions above. In this chapter, I will discuss the discourse surrounding transitional justice as pertaining to Syria in the aftermath of its conflict, which many people hope is not too far into the future. The discussions had among Syrians and the international community regarding Syria's post-conflict transitional period will be very enlightening for the larger themes discussed so far. How transitional justice discourses actually begin, who the relevant actors are for starting the conversation, and what different issues and concerns arise in the process are very interesting to this research paper. While there have been many studies of whether transitional justice was or was not successful post-implementation, I believe a look at transitional justice discourse in a country that has not yet fully begun its process will shed light on some of the deeper issues facing a nation undergoing transition. Clearly, the crisis is not yet over. Hence, transitional justice with regards to Syria is merely a conversation at this point, as no formal mechanisms have been implemented so far. It is this conversation, however, that will allow us to better understand the broader themes discussed in this paper through applying them to a contemporary example.

5.1 Transitional Justice in Syria – As It Stands Today

Before delving into the deeper analysis of transitional justice discourse, however, we must first understand the current situation in Syria and its implications on the transitional justice process. Seeing as the war is not yet concluded, the actual steps towards setting up transitional justice mechanisms within Syria have been limited. The large part of the work being done today involves fact finding commissions, and documentation and data collection on the abuses that are taking place within the country. There are numerous Syrian, as well as international

organizations and institutions who have been working tirelessly since the beginning of the conflict to document human rights abuses and track the violence across Syria. These are vital efforts to the transitional process, as many of the mechanisms established during a transitional period heavily rely on the information collected by these endeavors. Accurately portraying the events that took place – who was targeted, who were the perpetrators, what violations occurred and when and where did they take place, etc. – are the cornerstone of the recovery of truth, which is a vital aspect of transitional justice. Without such fact finding and documentation efforts, the truth about what happened cannot be brought to light, as transitional justice argues is crucial for the reparation and reconciliation of a society post-conflict.

Over the course of the last six years, there has been a flourishing of Syrian nongovernmental organizations (NGOs) that have either emerged, or refocused themselves to work towards realizing transitional justice in Syria. These NGOs range across several different fields and missions, all of which aim to assist Syria in transitioning post-conflict. Given the nature of the work, these organizations consist of Syrians who, most importantly, envision a Syria after the downfall of the regime. Therefore, the majority of the work conducted and published by these NGOs assumes that a transitioning Syria indicates a political change and the rebuilding of all state institutions along political and legal reforms. The efforts realized by these activists is multifold; while some NGOs specifically exist for the purposes of research, data collection and documentation of violations during the war, others work directly with other Syrian groups, as well as international organizations, to map out a future plan for Syria's transition.

The number of Syrian NGOs working on fact finding, documentation and data collection is vast. There are various methods and types of data collection that are being conducted, both by Syrians inside the country, as well as those that are currently living abroad. Some examples

include Syria Untold,¹³⁹ which is an independent digital media project that tries to account for various perspectives and stories of Syrians and their struggle during the war; the Syrian Network for Human Rights,¹⁴⁰ which works on documenting violations committed by all conflict parties against the Syrian people; the Association for the Defence of the Rights of the Victims of the Syrian Revolution,¹⁴¹ which works to inform both Syrians and people around the world of the violations that have and continue to occur inside Syria; and the Syrian Center for Statistics and Research,¹⁴² which works on data collection, monitoring, and statistical analysis to measure the depth of impact of the war on Syrian communities, as well as the promotion of rigorous and professional documentation standards among other Syrian organizations. This list is not exhaustive by any means, yet provides a suitable picture for the various kinds of work Syrian NGOs have been doing with regards to documenting the events of their war.

The documentation of rights violations, however, has also been a crucial activity of the international community from early on in the conflict. In April 2011, the General Assembly of the United Nations passed a resolution by the Human Rights Council, addressing the issue of documentation in Syria. The resolution called for a “transparent and effective investigation into the situation” in Syria and for the immediate dispatch of a mission into the country by the Office of the United Nations High Commissioner for Human Rights (OHCHR).¹⁴³ The mission was asked to “investigate all alleged violations of international human rights law and to establish the

¹³⁹ Available at <http://www.syriauntold.com/en/>

¹⁴⁰ Available at <http://sn4hr.org/>

¹⁴¹ Available at <http://advrsyria.org/en/>

¹⁴² Available at <http://www.csr-sy.org/>

¹⁴³ General Assembly Resolution adopted by the Human Rights Council S-16/1, *The current human rights situation in the Syrian Arab Republic in the context of recent events*, A/HRC/RES/S-16/1 (29 April 2011), available at <http://www.undocs.org/A/HRC/RES/S-16/1>

facts and circumstances of such violations and of the crimes perpetrated.”¹⁴⁴ The report of the findings was then asked to be delivered by the next session of the Human Rights Council.

This report was provided by the OHCHR in its following session, where, along with the findings, an official investigative commission into human rights abuses in Syria was discussed.¹⁴⁵ With the passing of another resolution (S-17/1),¹⁴⁶ the Human Rights Council established the Independent International Commission of Inquiry on the Syrian Arab Republic in late 2011. The mandate of this commission included the investigation of all alleged violations of international human rights law since March 2011; to establish the facts and circumstances of such violations; and to identify those responsible in order to allow for them to be held accountable.¹⁴⁷ Since then, this inquiry commission has added to its mandate through three other resolutions, and has published numerous reports and publications documenting the violence and human rights abuse within the country. Its mission continues on today, with its most recent report having been published on 10 March 2017.¹⁴⁸

Apart from fact finding and documentation, however, there have also been some preliminary efforts by Syrian organizations, in collaboration with international actors, to map out a clear path for a Syrian transitional justice process. This has come in many forms, including the formation of various coalitions of NGOs working towards figuring out a transitional process. One, however, is of crucial importance; namely, the Syrian Commission on Transitional Justice.

¹⁴⁴ Ibid.

¹⁴⁵ UN Office of the High Commissioner for Human Rights (OHCHR), *Report of the Fact-Finding Mission on Syria pursuant to Human Rights Council Resolution S-16/1*, August 2011, available at:

<http://www.refworld.org/docid/4e4e2ba72.html>

¹⁴⁶ Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/ResS17_1.pdf

¹⁴⁷ “Independent International commission of Inquiry on the Syrian Arab Republic: Mandate,” United Nations Human Rights Office of the High Commissioner, accessed February 2, 2017, <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/ColMandate.aspx>.

¹⁴⁸ Human Rights Council Report CRP-3, *Human rights abuses and international humanitarian law violations in the Syrian Arab Republic*, 21 July 2016- 28 February 2017, A/HRC/34/CRP.3 (10 March 2017), available at <http://www.undocs.org/A/HRC/34/CRP.3>

Founded in 2013, the commission is an independent body established in order to lead the transitional justice and national reconciliation process in Syria.¹⁴⁹

The story of how this commission came to be goes back to the establishment of the National coalition for Syrian Revolution and Opposition Forces, or Syrian National Coalition (SNC), in 2012. The SNC represents an alliance of various opposition groups within the Syrian crisis, who joined together to work together towards transitioning Syria away from the Assad regime to a free and democratic country.¹⁵⁰ In November 2013, this coalition formed what is called the Syrian Interim Government, which was to operate inside Syria. The interim government, structured to appear and function as a real government would, consists of a president, a cabinet, as well as various ministries and other governing bodies. While limited in scope by the nature of the war (for example, there is a lack of a proper defense ministry and legitimate armed forces, as well as no official government buildings and locations inside Syria), this interim government attempts to act as the legitimate ruling body of the Syrian people. Thus, the interim government ideally envisions itself as the replacement for the current regime during a process of political transition for Syria.¹⁵¹

It was this Interim Government under which the Syrian Commission on Transitional Justice was established. Since then, the Commission continues its work through documentation, as well as through publishing reports, organizing conferences, meeting with representatives of various post-transitional states, and more. It has various partnerships with a vast number of

¹⁴⁹ "Ziadeh Named Head of Syrian Commission on Transitional Justice," Syrian Center for Political & Strategic Studies, accessed February 2, 2017, <http://scpps.org/en/?p=1326>.

¹⁵⁰ "Mission Statement and Goals," National Coalition of Syrian revolution and Opposition Forces, accessed February 2, 2017, <http://en.etilaf.org/about-us/goals.html>.

¹⁵¹ Sardar Milla Drwish, "Syrian Interim Government' still seeks legitimacy amid violence," Almonitor.com, accessed January 14, 2017, <http://www.al-monitor.com/pulse/originals/2016/10/syria-interim-government-pm-regime-violence.html>.

Syrian civil society institutions and works to develop a comprehensive national vision for justice in Syria that is in accordance with international human rights and humanitarian law.¹⁵²

Apart from this official body, however, there have been several other coalitions and alliances formed within the Syrian civil society. For example, in the year 2013, a group of eighteen Syrian NGOs that work on transitional justice and civil peace came together to form the Transitional Justice Coordination Group. It was set up to improve collaboration and coordination between various Syrian civil society groups working on the same goals.¹⁵³ Another example can be found in the Syrian Center for Political and Strategic Studies (SCPSS), also a vital documenting and research institution. Once again in 2013, it established its National Preparatory Committee for Transitional Justice. Consisting of judges, lawyers, former political prisoners and Syrian human rights activists, this Committee was established to build programs and future plans for transitional justice in Syria.¹⁵⁴ As part of this process, the SCPSS, in collaboration with another NGO named Syrian Expert House, met in various conferences throughout the year to come up with an official roadmap for Syrian transitional justice (which will be discussed below). These two groups met once more in 2015 to elaborate and expand on the work and vision outlined in this roadmap.¹⁵⁵

We can thus begin to understand the vast work that has been and continues to be done by various Syrian civil society institutions with regards to transitional justice efforts in Syria. Whether it is documenting and fact finding or laying out roadmaps for the future, there is

¹⁵² "Statement by the Syrian Commission for Transitional Justice on International Human Rights Day," Syrian Commission for Transitional Justice, accessed February 2, 2017, <http://syriatransitionaljustice.org/en/?p=766>.

¹⁵³ Available at <http://justicesyria.org/EN/Home>

¹⁵⁴ "Establishment of 'National Preparatory Committee for Transitional Justice' Announced in Istanbul, Turkey: Syrian Judges, Lawyers, Activists to Prepare Plans for Post-Assad Judicial System and Reconciliation," Impunity Watch, accessed February 2, 2017, <http://impunitywatch.com/establishment-of-national-preparatory-committee-for-transitional-justice-announced-in-istanbul-turkey-syrian-judges-lawyers-activists-to-prepare-plans-for-post-assad-judicial-sys/>.

¹⁵⁵ "Transitional Justice in Syria after Vienna Process: Achieving Justice and Accountability," Syrian Center for Political & Strategic Studies, accessed February 2, 2017, <http://scps.org/en/?p=1995>.

tremendous activity at a grass roots, as well as international level. With the fifth round of peace talks in Geneva approaching on 23 March 2017, a political transition still seems out of sight, however. While there has been much support for these civil society groups within Syrian and international communities, the truth remains that the current regime does not seem willing to allow for a political transition.¹⁵⁶ Because the war is not yet over, it is impossible to tell what the outcome might be. What is important for us, however, is to understand how these various Syrian groups and the Syrian people understand, discuss and express their vision of transitional justice in Syria. In order to understand this, as well as elucidate some of the questions posed earlier in this research, we will now work through the Syrian discourse of transitional justice.

5.2 Syrian Civil Society Organizations

Transitional justice began appearing as a term relevant to the Syrian crisis as early as 2012. Since then, there have been a great number of voices who have provided input into what they believe a transitional justice process in Syria should look like. In this section, I will be discussing the discourse among Syrian civil society organizations. I do this by analyzing three major reports published by three separate NGOs regarding a Syrian vision for transitional justice. While they do not encompass everything that there is on the topic, these three reports represent the most well-cited and known resources in this field. Additionally, they are the most comprehensive and structured publications (at least in the English language) regarding Syrian transitional justice, which comes as a result of these organizations being some of the most prominent actors working in the field currently.

¹⁵⁶ "Marwa: Assad Regime Seeking to Evade Political Transition," National Coalition of Syrian Revolution and Opposition Forces, accessed March 11, 2017, <http://en.etilaf.org/all-news/news/marwa-assad-regime-seeking-to-evade-political-transition.html>.

5.2.1 The Day After Project

In the summer of 2012, one of the most important Syrian NGOs working on Syria in the aftermath of the crisis, The Day After, released a publication outlining their vision of supporting a democratic transition in Syria. Consisting of approximately 45 Syrians, who “represent the diversity of the opposition and who are leading an independent transition planning project” for Syria, with the facilitation of the U.S. Institute of Peace (USIP) and in partnership with the German Institute for International and Security Affairs (SWP).¹⁵⁷ The document released was the result of more than six months of deliberation and consultation, taking place between January to June 2012. Furthermore, the background of the participants was quite diverse: they were professionals, technical experts, political activists, attorneys and academics; their ethno-religious backgrounds included Sunnis, Christians, Kurds, Alewites, and Druze; they were made up of men and women, youth activists, and individuals with experience in the FSA; some had ties to the Syrian National Council, some to the local coordination committees, others to the Syrian Muslim Brotherhood, and even other organized elements of the Syrian opposition.¹⁵⁸

The group in its entirety had only two things in common: each of the participants were “active in the revolution to bring down the regime of Bashar al-Assad,” and all were seeking “to help Syria transition from dictatorship to democracy.”¹⁵⁹ Due to their diversity and difference in background, the document naturally represented a collective contribution to an ongoing debate among Syrians. What was important, however, was that it was not received as a blueprint, but only as the beginning of the conversation. The Day After also stressed that the contents did not reflect the unanimous consensus of all project participants, as not everybody agreed with every

¹⁵⁷ "Vision, Goals, and Principles," The Day After, accessed December 5, 2016, <http://thedayafter-sy.org/excutive-summary-2/>.

¹⁵⁸ The Day After, *The Day After Project: Supporting a Democratic Transition in Syria*, 2012, available at <http://thedayafter-sy.org/wp-content/uploads/2014/12/thedayafteren.pdf>

¹⁵⁹ *Ibid.*, 1.

single recommendation made in the report. The most important aspect of the document was that it was meant to further the conversation about how Syrians everywhere could begin to conceive of a “truly Syrian democracy” in a post-Assad period, which – according to The Day After project – was an inevitable future.¹⁶⁰

Ultimately, the document represented the suggestions of the group with regards to six issue areas: namely, the rule of law, transitional justice, security sector reform, electoral reform and forming a constitutional assembly, constitutional design, and economic restructuring and social policy. Crucial to our analysis are the first two issue areas. With regards to the rule of law, The Day After argues that “the overarching goal of efforts designed to consolidate the rule of law in Syria are to transform Syria from a state governed by arbitrary power of individuals to a state of law, in which no individual is above the law and all are subject to the protections and obligations of the law.”¹⁶¹ These efforts, furthermore, have to be consistent with international human rights norms and standards, be legally transparent, be drafted with procedural transparency, allow for the involvement of ordinary citizens in the law-making process, and, lastly, be publically promulgated.¹⁶² With regards to transitional justice, The Day After argues that mechanisms of transitional justice in Syria have to abide by international norms and standards and involve restorative as well as retributive elements. The key principles guiding these endeavors are listed to be inclusiveness and participation, transparency and accountability, and consensus.¹⁶³

With regards to each key issue, The Day After addresses principles, guidelines and challenges to the process, as well as offer a clearly laid out strategy to pursuing the stated

¹⁶⁰ Ibid., 2.

¹⁶¹ Ibid., 6.

¹⁶² Ibid.

¹⁶³ Ibid.

objectives. What is interesting is the similarity in tone with regards to both issues. In both areas, the language is dual in nature: first, it reinforces the commitment to internationally espoused principles of human rights, transparency and justice and discusses the specific actions that need to be taken in order to ensure their adoption in Syria; second, it raises questions of legitimacy, arguing that steps must be taken in order to make these changes appear legitimate and inclusive. For example, with regards to the rule of law, it stresses, both as a principle and as a guideline, the need for the process and solutions to come from Syrians themselves. They must be inclusive, locally owned, and no foreign models should be adopted outright. However, the core principles of the rule of law, as applied in Syria, must be consistent with international law by dealing with human rights violations and ensuring that they cannot recur. This requires trust in and legitimacy of the new justice system, which *The Day After* argues can only be done through raising an “awareness of a culture of respect for human rights and the rule of law,” communicating about the process made, and seeking input and feedback from the public.¹⁶⁴

A similar language can be found in the section addressing transitional justice. The goals of the transitional justice process in Syria are listed to be the following: achieving justice for victims of systematic human rights violations and past abuses; providing shared truth about the behavior of perpetrators and the experiences of victims; establishing varied mechanisms of accountability, transparency, and inclusion; restoring citizens’ confidence in state institutions, contributing to the consolidation and legitimacy of the rule of law and of democratic institutions; restoring civic trust and constructing a new positive narrative for Syria as a whole; and enable the healing and recovery of individual victims and of society at large.¹⁶⁵ While pursuing these goals, the mechanisms and processes “must be consistent with internationally accepted norms

¹⁶⁴ *Ibid.*, 33.

¹⁶⁵ *Ibid.*, 38.

and standards,” while “at the same time, it must address and incorporate national and local conditions and contexts and integrate culturally-appropriate norms of justice and reconciliation.”¹⁶⁶ While international involvement is needed to achieve these goals and abide by these principles, The Day After emphasizes repeatedly the need for a bottom-up approach that includes all people of Syria and allows each to have input into the process. Justice for Syrians should be decided *by* Syrians while simultaneously abiding by internationally espoused norms.

Naturally, The Day After project released this document quite early on into the conflict. Since then, the situation on the ground and the feasibility of a post-Assad transitional justice period has been questioned. Therefore, it is unclear whether this original proposal would still be accepted by the majority of its members. However, as a first look at a Syrian version of transitional justice as outlined by a diverse group of Syrians themselves, this document is extremely important.

The work of The Day After project did not stop there, however. Two years after this document was published, the organization spearheaded the establishment of the Coordinating Group of Transitional Justice in Syria (as mentioned above). At the invitation of The Day After project, 20 members of 14 organizations that work in civil society, transitional justice and peace efforts met with representatives of the Syrian National Coalition between 28-31 January. In this meeting, they announced the establishment of the abovementioned coordinating group and discussed its objectives and the prospects for its work.¹⁶⁷ Previous examples of transitional justice in the region were discussed, while challenges facing the Syrian situation were also thought through. While only three official meetings are currently reported on their website, this

¹⁶⁶ *Ibid.*, 39.

¹⁶⁷ “Statement: Coordinating Group of Transitional Justice in Syria Established,” International Center for Transitional Justice, accessed December 5, 2016, <https://www.ictj.org/news/statement-coordinating-group-transitional-justice-syria-established>.

group continues to meet amongst itself, as well as with other international actors (such as the ICTJ and UN Office of the High Commissioner of Human Rights).¹⁶⁸ Today, the group includes 18 Syrian NGOs that work on transitional justice and civil peace, as well as the representatives of the interim government. The group works on increasing collaboration and strengthening relations between the various Syrian civil society organizations that work in the field of transitional justice and the official institutions of the Syrian Opposition.¹⁶⁹

5.2.2 Dawlaty

Another Syrian organization who has weighed in on issues of transitional justice in Syria is Dawlaty, with the cooperation of the international NGO, No Peace Without Justice. In the report published by Dawlaty in 2013, we can see similar tones and approaches to calls for transitional justice being used. The main argument of the report, similarly to that of the The Day After project, states that no peace can occur without justice being served in Syria and the only method to achieve this is through transitional justice. Dawlaty also argues that “only Syrians themselves can design and implement a transitional justice process for Syria,” and that “Thousands of Syrian activists, journalists and individuals are already engaged in the preparation for that process.”¹⁷⁰ In other words, Syria has the capacity and thus must be able to decide for itself what its goals and chosen mechanisms are for transitional justice, based on the cultural, religious and historical context of the country.¹⁷¹

¹⁶⁸ While this information cannot be found on their website, I was able to confirm this during my meetings with staff at ICTJ Lebanon office and Mr. Abdelaziz Abdelaziz, Human Rights Adviser to the UN RC/HC for Syria.

¹⁶⁹ "About Us," Syria Transitional Justice Coordination Group, accessed December 5, 2016, <http://justicesyria.org/EN/AboutUs/227>.

¹⁷⁰ Dawlaty, *Transitional Justice in Syria*, 8.

¹⁷¹ *Ibid.*

Two major themes emerge in this document. The first is emphasizing the particular context of Syria and discussing how this may affect the transitional justice processes the country will choose. Apart from calls for inclusiveness and transparency in the process, Dawlaty also makes it a point to discuss some of the ways in which the diversity of the Syrian population could shape how transitional justice should operate in the aftermath of the conflict. Syria's own history, culture, religions and politics have shaped the conflict, Dawlaty argues, and must therefore also influence the process of transitional justice. Syrians are, at this point, already trying to begin this process. For example, documentation efforts are currently being conducted by groups such as the Syrian Human Rights Information Link, the Centre for Documentation of Violations in Syria, the Syrian Justice and Accountability Centre, the Syrian Centre for Documentation, the Syrian Observatory for Human Rights and Insaan Rights Watch.¹⁷²

Furthermore, the Syrian Accountability Project, in collaboration with No Peace Without Justice, is currently compiling a comprehensive crime matrix that details and links individual events, while identifying cases in which both Syrian and international law have been violated.¹⁷³ Various civil society organizations and think tanks, meanwhile, are conducting research and offering policy recommendations to the transitional justice process in Syria. For example, Dawlaty also mentions the Syrian Centre for Political and Strategic Studies' announcement in 2013 of the creation of a National Preparatory committee for Transitional Justice.¹⁷⁴ These organizations are the ones that worked to collaborate with the Syrian National Council and eventually entered into the Transitional Justice Coordination Group discussed above.

While current work is being done, Syrians should also refer to their traditional justice mechanisms, Dawlaty argues. Local justice initiatives have already begun evolving, despite the

¹⁷² *Ibid.*, 67-68.

¹⁷³ *Ibid.*, 68.

¹⁷⁴ *Ibid.*, 71.

lack of collaboration between the different initiatives existing so far. Dawlaty contends that while these are of crucial importance already, further transitional justice processes can work to increase the collaboration between them and ultimately integrate them into a coherent national process. The local Sharia and mixed courts based in cities such as Aleppo and Raqqa provide for an example. They, at the time this report was written, were already ruling on a number of important issues based on their own beliefs and principles of justice. While these are great examples of initiatives that reflect the local culture and customs of the Syrian people, they must be made to collaborate and integrate into a larger national process to benefit all Syrians and ensure a comprehensive transition for all people.¹⁷⁵

The second major theme of this report addresses the complicated issue of international involvement and the perceptions of the Syrian people thereof. While Syria, unlike the revolution in Libya, for example, has not received the type of international intervention (whether humanitarian or something else) that other countries in the region have experienced, international involvement in the crisis is still a major concern. In fact, foreign countries played, and are continuing to play, a vital role in shaping the conflict and its aftermath. The revolution in Syria is “of great significance to a number of states in the region and this significance is being felt in international forums and in the flow of arms, material support and even combatants.”¹⁷⁶ Dawlaty worries that this high level of international involvement can create potential complications for the transitional justice process in Syria. For example, the various actors may have different visions of a post-conflict Syria and will want to influence the transitional justice process to

¹⁷⁵ Ibid.

¹⁷⁶ Ibid., 65.

achieve their visions. This, in turn, could cause complications with respect to the political, financial and material support that Syria may ask for during the transitional justice process.¹⁷⁷

This situation notwithstanding, Dawlaty still argues that it is crucial for the Syrian transitional justice process to be in line with international legal obligations and norms. Even though Syria should be free to choose its own path, the obligation to not allow impunity, the obligation to provide reparations to victims, the prohibition against amnesties for war crimes, crimes against humanity and genocide, as well as internationally espoused human rights norms should be respected during the process. They even go so far as to argue that while Syria is not a signatory member of the Rome Statute, which established the International Criminal Court in 2002, the promulgation of its decisions should and are considered as customary international laws and therefore apply to Syria as well.¹⁷⁸

Nevertheless, Dawlaty states that there is a primary challenge that must be addressed before any of these obligations and norms can be met. Namely, the first challenge that transitional justice advocates in Syria will encounter, according to Dawlaty, is that of making the case for transitional justice.¹⁷⁹ There are several facets to why this is the case. First and foremost, some may believe that it is inappropriate to discuss such a large project when the pressing needs of the population should come first, such as returning home, the process of grieving, and economic reconstruction. Furthermore, many people might not want to remember the past horrors and simply try and move on.

However, the larger aspect of this challenge is the limited awareness among the Syrian population of the concept of transitional justice, as well as its value and importance. Some may not know about it at all, while others may confuse it with other concepts. Dawlaty believes that

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*, 18.

some Syrians could “even perceive it as an attempt at victors’ justice or as unwelcome international interference with Syria’s transition.”¹⁸⁰ Furthermore, deep divisions within the society based on ethnic, political or religious lines can make it difficult for all to agree on one comprehensive process that meets the expectations of all citizens. Dawlaty, however, argues that this is where the role of civil society is crucial. Most importantly, it can play the role of educating the population and informing them of the need and value of a transitional justice process for Syria. It can bring people together and allow them to discuss critically where the country should go and how this should be achieved. Thus, for Dawlaty, the most important aspect of a transitional justice system in Syria involves the capacity building of civil society organizations, so they may educate the public and foster public support for the process.¹⁸¹

5.2.3 SCPSS and Syria Expert House

The large report, titled *Syria Transition Roadmap* was the result of a year-long collaboration between 300 Syrian human rights activists, academics, judges, lawyers, opposition leaders, and diplomats. This document, which represents their combined vision of the transitional period and deliberate recommendations for Syria’s political future, is highly regarded and respected. It is considered as the most comprehensive vision for the democratic future of Syria and is endorsed by the Syrian opposition, the Friends of Syria coalition, as well as the United Nations.¹⁸² Within its 238 pages, the Syrian Expert House and the Syrian Center for Political and Strategic Studies discuss various aspects of Syria’s future and outline their vision for it. The

¹⁸⁰ Ibid., 75.

¹⁸¹ Ibid.

¹⁸² "Dr. Radwan Ziadeh – Executive Director," Syrian Center for Political & Strategic Studies, accessed February 2, 2017, http://scps.org/en/?page_id=520.

document covers a variety of topics. For our purposes here, however, we will look at their vision for transitional justice.

Like the other two reports, the *Syria Transition Roadmap* also reiterates its absolute commitment to transitional justice by claiming that it alone establishes national reconciliation after a serious civil conflict. It furthermore shares the other two organizations' belief that the main purpose of transitional justice would be to ensure Syria's transition towards pluralism and democracy. For Syria, the path for transitional justice is thus colossally important. In fact, through its implementation, "Syrians without exception will feel that there is a path toward national reconciliation that their representatives will take that ensures adequate pluralism and the necessary credibility."¹⁸³ In this regard, the *Syria Transition Roadmap* takes the case of transitional justice even further than the other two reports. Namely, it assumes that through transitional justice alone will the Syrian population be unified, reconciled and rebuild trust. It is the inherent, unavoidable outcome of transitional justice and because the process will bring about pluralism and democracy, it will appear credible and legitimate in the eyes of the Syrian people.

In further comparison to the other two documents analyzed here, the *Syria Transition Roadmap* is vastly more general in terms of its approach to outlining transitional justice in Syria. Namely, it primarily summarizes each internationally recognized mechanism and discusses their definition, purpose and applicability in Syria. Instead of contemplating how transitional justice will be received and the technicalities of implementation, the report instead lays out a broad framework for what needs to occur and why each mechanism is crucial to the Syrian case.

With regards to prosecutions, the *Syria Transition Roadmap* suggests something that also slightly differs from the other two reports. Namely, it argues that the only viable option for

¹⁸³ Syrian Center for Political and Strategic Studies and Syrian Expert House, *Syria Transition Roadmap*, 2013, available at http://syrianexperthouse.org/reports/Syria_Transition_Roadmap__Full_en.pdf, 142.

holding perpetrators accountable is through hybrid courts. The logic behind this is two-fold. First, the authors do not believe that the Syrian judicial system will feasibly be ready to launch an accountability process after years of war and institutional erosion. Second, the option of resorting to international justice at the International Criminal Court seems also unlikely, given that the authors believe that Russia, with its veto-power in the Security Council, would block any such efforts. Therefore, they conclude, hybrid courts would be the best option for accountability measures in Syria.¹⁸⁴ This implies that the tribunals would be held on Syrian territory and involve the direct participation of Syrian judges, supported by the international expertise of the United Nations. International experts, moreover, are a crucial component to this, as “it will send the message to all Syrians that revenge is not the goal, as well as reassure them that the toughest standards of justice and international transparency will be guaranteed.”¹⁸⁵ Lastly, it would also return a sense of reassurance to the international community that they can be confident in Syria’s renewed commitment to justice, accountability, transparency, fairness and international norms.¹⁸⁶

This faith in the international community is reiterated multiple times throughout this report. It repeatedly calls for the necessity of international involvement in the transitional processes in Syria, claiming that the international community had failed Syrians throughout the war and thus should make up for it in the post-conflict period. The international community is needed by Syrians “to rebuild their country and construct their future institutions in all conditions, and confidence building in it.”¹⁸⁷ The authors do concede, however, that there are limits to the help that can be provided by the international community and that, ultimately,

¹⁸⁴ Syrian Center for Political and Strategic Studies and Syrian Expert House, *Syria Transition Roadmap*.

¹⁸⁵ *Ibid.*, 142.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*, 142.

Syrians must rely on themselves alone to build their democracy.¹⁸⁸ This call for Syrians to rely more on themselves, however, seems more a criticism of the international community's perceived lack of action to prevent the Syrian civil war than a legitimate acknowledgment of the necessity of a locally owned Syrian transitional justice process.

The rest of the chapter on transitional justice outlines four key objectives for the National Commission for Transitional Justice and Reconciliation, established by the SCPSS during these year-long meetings. These are fact-finding and commissions of inquiry; filing lawsuits, compensation, and institution building for the future. These objectives reflect the five mechanisms of transitional justice and the Commission is thus tasked with capacity building for and preparing implementation processes for these mechanisms to take place. Ultimately, these key objectives should result in the Commission seeking to establish the truth regarding the grave human rights violations perpetrated by the Assad regime; hold accountable these perpetrators through providing evidence to courts and tribunals; hold forums for and encourage public debate among victims on issues of transitional justice; give recommendations for compensation for victims; give recommendations for necessary legal and institutional reforms; promote social reconciliation at multiple levels, most importantly at the grassroots level; and help strengthen the democratic transition.¹⁸⁹

In order to achieve this, the *Syria Transition Roadmap* expresses concern over some serious challenges that lie ahead. For example, with regards to compensation (as well as other elements of the process), it is crucial to first and foremost identify and define the 'victims' and various categories of 'beneficiaries' of the old regime. This is a challenge due to the limited nature of any state's resources. For example, the wider the category of victim, the lower the

¹⁸⁸ Ibid.

¹⁸⁹ Ibid., 145.

amount of compensation for each victim. Conversely, if ‘beneficiary’ is too narrowly defined, the new government could inadvertently exclude a large number of legitimate victims.¹⁹⁰ This challenge seems to reflect a larger theme that the other two reports picked up on and which, in this text, seems largely unaddressed. Namely, the fact that the Syrian society will most likely be very divided along various ethnic, religious, or even regional lines and will come to the transitional justice process with differing notions of who the victims and perpetrators were. This will be extremely difficult to navigate, yet the *Syria Transition Roadmap* does not seem to address this sufficiently.

The report goes on to comment on challenges and aspects of transitional justice that need further elaboration, with which it tasks the National Commission. An interesting addition is made to the discussion with the report’s treatment of memorialization processes. In this text, the two organizations call for the establishment of various memorial sites, national remembrance days, monuments and statues built to commemorate the fallen victims and heroes of the war, as well as museums of conscience. These are meant to create a unified, ‘collective memory’, setting the terms of the official narrative and account of what happened and allowing the Syrian society to remember and grieve the past.¹⁹¹ Once again, however, the question of whose narrative will become the official memory is not discussed here.

Ultimately, the *Syria Transition Roadmap*, within this document, upholds the unquestionable and absolute necessity for a transitional justice process in Syria, in which international norms and standards are applied. This is the only viable path towards national reconciliation and democracy for Syrians, it argues. In fact, the authors claim that “the legacy of

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

reconciliation has roots far back in Arab-Islamic history.”¹⁹² Thus, transitional justice is a concept endowed in the roots and traditions of the Syrian society. How this is so, where the historical roots for national reconciliation in Arab-Islamic society lies, the report does not expand upon however. Nevertheless, this final report is by far the strongest and most steadfast argument for the application of transitional justice in Syria we have seen thus far.

5.3 The International Input

Given the tremendous international attention the situation in Syria has received, the international community naturally has also weighed in on the possibility of a political transition in Syria and its aftermath. In 2013, the International Center for Transitional Justice (ICTJ), published a report on what a Syrian strategy for transitional justice could look like. In fact, it lists five key considerations that it urges the Syrian community to take into account while making their decisions on the process. These include: ensuring that the basic conditions are met for accountability processes to function properly (security, sufficient social organization, etc.); engendering national ownership and credibility; in-country independent assessments being conducted; implementing the various mechanisms of transitional justice together; tempering expectations for timely results from the outset, in combination with a strong demonstration of political will.¹⁹³ Without heeding these instructions, ICTJ warns, Syria may end up seeing results as were seen in places such as Iraq and Afghanistan.

Once again, ICTJ joins the chorus of other (Syrian) organizations in stressing the importance of credible national ownership over the process. Consultation sessions among different factions and members of the Syrian populace is important to ensure this. The biggest

¹⁹² Ibid., 152.

¹⁹³ Paul Seils, *Towards a Transitional Justice Strategy for Syria* (New York: The International Center for Transitional Justice, 2013), <https://www.ictj.org/sites/default/files/ICTJ-Syria-Analysis-2013.pdf>

way the international community could hinder this, according to ICTJ, is through imposing or *being seen as imposing* a model that does not have the backing of a legitimate, nationally owned process.¹⁹⁴

Another interesting contribution to the discussion was given by a report written by a member of the Istanbul-based think-tank, Menapolis. I include this here due to its appearance on various Syrian NGO websites; on many of these pages, the organizations list this document as one of the reference points from which to think about and understand the possibility of transitional justice in Syria. Due to its frequent appearance, therefore, I have also included it here.

This document urges Syria to focus on promoting, explaining and subsequently adopting a human rights model among its public and thus its transitional justice process. A successful strategy for Syria must comply with international norms and standards, while also taking into account its local context. Menapolis, the writer states, “advocates for careful consideration of the political and social dynamics of the transition when designing transitional justice mechanisms, but believes that a core set of principles could be followed.”¹⁹⁵ These core principles are based on human rights and any transitional justice strategy based upon them will enable Syria to adhere to the principles embedded within international law.¹⁹⁶

According to Menapolis, transitional justice “by its very nature...should not be a rigid concept; what it means, and substantively involves, varies depending on the circumstances of each transitional society, limited only by international law standards.”¹⁹⁷ Syria, which is at a

¹⁹⁴ Ibid.

¹⁹⁵ Monica Leonardo, *Syria at the Crossroads: Paving the Path Ahead with International Law and Comparative Examples*, Istanbul: Menapolis (September 2013), available at <http://menapolis.net/publications/files/1423237233pdf1FinalTJPaperWebVersion.pdf>, 1.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid., 16.

crossroads in its history, must carefully consider its past and learn from it, so that it can move forward. Transitional justice is an ideal tool for this, as it allows Syria to pave its own path while laying the foundations for a new democratic society. By making “a commitment to particular values embedded in international law going forward,” Syria can emerge from its turbulent and difficult past and, like many countries before it, ensure a brighter future for itself as a nation and the citizens living within it.¹⁹⁸

Thus, the theme that emerged from very early on in the Syrian civil society’s writing on their own ideas of what transitional justice should look like in Syria are also reflected in the international community’s input. The argument remains twofold: Syria should pave its own path, based on its own values, history and particular socio-political context; but it should nevertheless hold true to the fundamental principles espoused in international human rights and humanitarian law.

5.4 The Syrian Perspective – Two Crucial Surveys

A final piece to this discussion is of utmost importance and will, in my opinion, contribute a valuable voice to it. Two studies were conducted by the Syrian Justice and Accountability Centre (SJAC), one in 2014 and the other in the following year, 2015. These studies involved the interviewing of a sample of the Syrian population from various different parts of the country and taking their input on transitional justice, peace, and reconciliation. Neither of these studies represent a full and truly representative sample of the Syrian populace. However, they nevertheless provide crucial insight into the opinions and beliefs of the average

¹⁹⁸ *Ibid.*, 17.

Syrian populace, which must absolutely be taken into consideration for the purposes of any study on Syrian transitional justice.

The first of these studies was, as mentioned above, taken in 2014. A total of 46 in-depth interviews were conducted in Damascus, Aleppo, Raqqah, Hama, Homs, and al-Qamishli, as well as in Turkey and Jordan. Interviewers spoke with both regime supporters and opponents, as well as with refugees and those internally displaced within Syria. Furthermore, the sample represented a variety of ethno-religious backgrounds, including 34 Sunnis, four Alewites, four Christians, three Kurds, and one Shiite. In terms of gender, 32 of the subjects were men and 14 women. Lastly, with regards to education, five had only primary education, 25 had completed secondary education, while 16 had either some or complete tertiary education. Once again, while this does not proportionally represent the Syrian population, the study was intended to ensure that all the main demographic and confessional groups and people in various government- and opposition-held locales would be included in the study.¹⁹⁹

The purpose of this first study was to survey Syrian perspectives on how Syria could begin to address the abuses and losses resulting from the conflict. Their findings were quite enlightening. According to the SJAC, there was a surprising degree of consensus regarding transitional justice, despite the deep polarization in perceptions of leaders and actors in Syria's civil war. All sides portrayed a strong desire for a negotiated settlement to end the violence and believed that coexistence among people of different faiths and views was desirable.

Accountability for abuses committed was called for on all sides.²⁰⁰ The following is a more detailed summary of the findings.

¹⁹⁹ Craig Charney and Christine Quirk, *"He who did wrong should be accountable": Syrian Perspectives on Transitional Justice*, 1 (The Hague: Syrian Justice and Accountability Centre, 2014), http://syriaaccountability.org/wp-content/uploads/SJAC_Syrian_Perceptions_2014_EN.pdf

²⁰⁰ Ibid.

With regards to the settlement process, all respondents preferred a negotiated settlement and agreed that it was the only way to stop the killing. However, with regards to the terms of the settlement, people had opposing views. This came mostly in light of whether Assad should be exiled, tried or given immunity.²⁰¹

Accountability for abuses was seen by all sides to be vital to the peace process. Many respondents even argued that abusers from both sides (regime or anti-regime) should be held accountable for their actions during the war. Many expressed concerns for a ‘culture of revenge’ taking hold of Syria post-conflict, in which people would engage in revenge-killings against former perpetrators of violence, whereas some actively expressed support for capital punishment in dealing with those that had committed crimes during the war. Overall, however, criminal prosecutions were seen as favorably by all sides and nearly every interviewee believed that both sides should be included in these prosecutions. The one area in which there was uncertainty, however, was how accountability would be possible to achieve beyond court trials. The report states that alternatives for transitional justice, such as compensation and truth commissions, had not received much thought or discussion among many Syrians.²⁰²

Thus, when it came to the topic of actual transitional justice alternatives, many people expressed a lack of knowledge of what these processes implied. However, few Christians respondents were familiar with the concept of truth commissions and, when informed, others agreed that they would be a suitable mechanism for Syrian transitional justice. Another major theme that emerged in the discussion of transitional justice alternatives was the nearly universal rejection of international involvement in the criminal prosecutions. The general hostility to an international component in transitional courts was also reflected in the call for Syrian courts and

²⁰¹ Ibid.

²⁰² Ibid.

Syrian judges conducting the prosecutions. Any international component in the prosecutions would be viewed by the majority of respondents as unwanted foreign meddling within Syrian affairs. One respondent said:

*We did not start the revolution to keep the judiciary of Hafez al-Assad, nor to bring a Western one. The revolution was to have free independent Syrian law.*²⁰³

Furthermore, many respondents agreed that the new Syrian political order must establish the rule of law and that justice must be served legitimately and transparently.²⁰⁴

Ultimately, the report concludes that transitional justice processes in Syria, while not easily, have a viable chance for success. In order to do this however, substantial divisions between people of opposing sides must be overcome. Furthermore, awareness of options for transitional justice should be spread and many resources should be divested into civic education in order to make them viable. This education, in turn must be impartial, available, and acceptable to partisans of both sides. Thus, it should facilitate discussion and forge consensus by Syrians themselves, without imposing answers or policies determined in advance.²⁰⁵

The second survey, taken in 2015, had similar parameters to the first one. This time, 40 in-depth interviews were conducted in Damascus, Aleppo, Homs, Hamah, Deir al-Zor, al-Hasakah, and Raqqah, as well as among refugees in Jordan and Turkey. To achieve comparable results, the locations were similar or the same as the 2014 study. Once again, members of all major demographic, ethnic, and confessional groups were consulted. Yet this time, the topics discussed were more general in nature and consisted of the perceptions of how local

²⁰³ Ibid., 38.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

communities in Syria might begin to heal from the wounds inflicted by all parties to the conflict.²⁰⁶

The most striking finding of this survey was simply the enormous difference in mood and perspective encountered this year. Compared to the year before, the respondents had grown much more polarized and fragmented with regards to their attitudes towards the crisis and its possible solution. On both sides, SJAC argues, expectations and demands for total victory had replaced the broad support for a formally negotiated national settlement that they had found the prior year. However, the one positive finding of the study was the support of local initiatives for creating ceasefires and ending local sieges.²⁰⁷ Once more, a detailed analysis of the findings follows.

With regards to the mood, most respondents seemed more pessimistic and entrenched in their own socio-political affiliations than those of the year before. Regime supporters generally looked at the situation favorably, as the Syrian Army had made many strategically important gains in the last year and attributed this also to the killing of ‘terrorists’. Meanwhile, anti-regime respondents seemed more pessimistic about the prospects of solution and diverged, even amongst themselves, on who was to blame and what could be done. However, nearly all respondents on all sides expressed resentment of foreign interference in the conflict, which they perceived as a threat to the territorial integrity of the country. They argued that foreign fighters were playing too large of a role in the war by intervening and struggling over influence

²⁰⁶ Craig Charney, *"Maybe We Can reach a Solution": Syrian Perspectives on the Conflict and Local Initiatives for Peace, Justice, and Reconciliation*, 2 (The Hague: Syrian Justice and Accountability Centre, 2015), http://syriaaccountability.org/wp-content/uploads/SJAC_Perceptions_2015.pdf

²⁰⁷ Ibid.

of the various factions within Syria. Many blamed fighters from abroad (but from within the region), the Americans, Israel and Russia.²⁰⁸

While many viewed negatively the formal channels for negotiating an end to the conflict (such as Geneva-type processes), most had a more positive view of local-level initiatives. This was spurred by a remaining belief that coexistence should exist and different communities should be brought back together. Nearly all respondents were familiar with and had positive opinions of *Sulha* and *Musalaha*, the traditional approaches to reconciliation and compensation in the Levant. *Sulha*, meaning negotiation and compensation, claims to restore peace between individuals, families, tribes and villages after a period of conflict. The final ritual of *musalaha*, or reconciliation, is done openly so that the entire community is aware and informed about it. The ritual is complex and symbolic, the details differing based on the region. Yet the basic principles are based on forgiveness, shaking hands, and sharing a meal and coffee between opponents. Furthermore, this is seen as binding to those present and not present at the ritual, including those not yet born. This type of process was not only known to all, but also appealed to respondents on both sides of the conflict.²⁰⁹

Nevertheless, many interviewees voiced their concerns that these local initiatives would not be enough to solve the larger national crisis. However, they agreed that to find national success strategies, local communities should spearhead activities that rebuild trust between people on different sides. Most respondents stressed the importance of economic development projects. Despite the harsh polarization and rhetoric that deepened between the year it took to conduct each study, the SJAC concluded that local initiatives were seen as highly popular and appeared to be the only method through which Syrians believed their war-torn communities

²⁰⁸ Ibid.

²⁰⁹ Ibid.

could be rebuilt. This positivity was a result of the following reasons: such initiatives would be Syrian-led, based on Syrian interests, and thus be more achievable.²¹⁰

Ultimately, SJAC reports at the end of their second study, that international assistance to the Syrian post-war context should remain in providing the needed resources for local initiatives to foster and flourish. Those outside of the country should try to facilitate positive change in Syria by promoting discourse around local initiatives that “can meet the expectations of those on the ground while also creating the groundwork for a sustainable peace based on justice and dignity.”²¹¹ This, however, can only be a legitimate process if the majority of the work is done at the grassroots level and undertaken by Syrians themselves.²¹²

These two studies provide a crucial insight into the Syrian perspectives on transitional justice, as well as peace and reconciliation and how to achieve it. One comment must be made, however. Neither the questions asked nor the transcripts for the interviews were published along with the results of the study. These are important especially in the first survey about transitional justice. For example, respondents expressed an unfamiliarity with transitional justice alternatives, yet when they were given explanations had generally positive reactions to them. Here it would be important to know just how the interviewers explained the alternatives, which terms they were put in, and what associations the words triggered in the minds of the recipients. Were they provided with an explanation that represents the full extent of what ‘rule of law’ and ‘accountability’ mean in the international discourse? Or when terms such as ‘justice’ and ‘just society’ were mentioned, was a full definition of these terms provided as well? To find answers to these questions, the study could have asked each respondent what they conceived of to mean justice and what a just society entails for them.

²¹⁰ Ibid.

²¹¹ Ibid., 86.

²¹² Ibid.

5.5 Discussion: The Syrian Discourse

The importance of using the case of Syria as an additional insight into the discourse surrounding transitional justice has been established. From the discourse analyzed here, we gain a clear picture of how transitional justice processes are formed at the initial phases: they are discussed, planned for and organized rigorously through collaboration between local civil society actors and the international community. At this very first step of conception, we can now begin to elaborate further on some of the core elements discussed in the previous chapters. So how does the Syrian case factor into this larger discussion?

The innumerable amount of Syrian voices – the multitude of organizations, groups, commissions, institutions, individuals, etc. – that have actively participated in the discussion regarding Syria’s future is proof of how robust and vigorous Syria’s civil society is. In many ways, the Syrian case is a perfect example of what both the international community, as well as the scholarship call for in a transitional justice operation – the active involvement and participation of local groups in the very formation of the process. It is clear from the examples above that Syrians feel strongly about not only implementing their transition process, but that they have the capacity, will and determination to shape the entire process themselves. Syrians want a *Syrian* transitional justice that is based on *Syrian* conceptions and understandings of justice.

Yet what is the notion of justice expressed by these organizations? It is here where we find ourselves faced with the same tensions we experienced through our analyses of the first two discourses. Namely, there does not seem to be a clearly elucidated *Syrian* notion of justice. In fact, the only thing we do know is that the majority of these civil society organizations, as well as

the international actors voicing their suggestions to the Syrian people, call for a transitional justice process that is at once coherent with international norms and standards *and* which is particularly Syrian. All organizations are clearly in favor of transitional justice. However, the majority of the discourse analyzed here also lists international involvement as the primary concern for such processes. Namely, any international involvement will potentially be seen by the Syrian public as further foreign meddling. The SJAC's second report clearly demonstrates that the feelings in this regard are already quite strong and deeply entrenched within all sectors of the Syrian society. Furthermore, the concern also includes, as Dawlaty mentioned, the possibility of international actors putting terms and conditions on the aid and technical assistance that they provide to Syria during its transitional process, rendering the entire operation an exercise to fulfill the wishes and interests of foreign actors.

Despite these expressions of worry, however, no single organization clearly illuminates just *how* the local ownership of the transitional process can be ensured. The strategies outlined here are superficial at best. For example, we encountered multiple calls for community-based initiatives in which local groups are actively engaged in the process through public debates, elections, information sessions, workshops, etc. This was also the proposed solution to the deep fragmentation of the Syrian society, by allowing *all* Syrians, regardless of their political, religious or ethnic affiliations to have their voices heard. This way, the argument goes, every single Syrian will feel like they are a vital part of the transitional process. This idea, as we saw with the SJAC report, was very well received by the Syrians interviewed, where nearly all viewed favorably the already existing local justice mechanisms.

The reason I argue that these strategies still do not allow for a Syrian notion of justice to emerge is simple. While discussing all the local initiatives that could account for a feeling of

legitimacy of the transitional process in the eyes of the Syrian public, nearly every single organization discussed here also states that one of the most important aspects of the process will be the education of the Syrian public on what transitional justice even is. These local outreach initiatives seem less of an opportunity to explore community-based justice mechanisms, and more of an opportunity to educate each community on the justice values and principles espoused by the international community and to perhaps adapt local justice procedures to adhere to these principles.

While the SJAC reports cannot be taken at face value to represent the opinions and views of the entire Syrian population, they do allow us to look at just a fraction of this society to understand the way they view transitional justice. The 2014 report clearly states that the majority of participants in the interviews did not know or were not too familiar with the concept of transitional justice or the mechanisms it involves. This idea is also reflected in the reports of *The Day After* and Dawlaty, meaning there is a general concern about this among civil society organizations. While the report goes on to state that most people viewed transitional justice, and especially accountability measures, favorably once they were explained to them, we have no way of knowing what language or terminology were used to define the concepts. Nor do we know what the terminology used to explain transitional justice implied within their own socio-cultural contexts. It is quite possible that the way in which the understanding of these terms was internalized by the interviewees coincided exactly with the understanding of the international community. Yet, the opposite could also be true.

In order to truly understand what Syrians would want, how they envision a ‘just’ Syria, and what they perceive justice to be, one would first have to start by asking these questions outright. A truly locally-owned, community-based process would begin at “what is justice to

you? What do you believe a just society entails?” The suggestion of these organizations, however, is almost in direct opposition to this. Here, the local communities must first be introduced to the concept of transitional justice and explained the manner in which it operates, the values and principles it promotes, and how it is an ideal method of creating national reconciliation in Syria. This is where the power of discourse presents itself. The education on transitional justice provided by Syrian grassroots organizations to their local communities is a part of the link in the long chain of discursive power; namely, it is how the discourse of the international community is passed down from international organizations to grassroots organizations to the individual. Instead of consulting the Syrian notions of justice, the international understanding thereof is introduced and local mechanisms are adapted to this particular notion of justice.

This critique does not inherently imply that Syrian notions of justice are fundamentally different than those espoused by the international community. In fact, it is quite possible that the majority of Syrians agree with and subscribe to international principles and values with regards to justice, human rights and the rule of law. The desire for democracy and pluralist governance could be genuine and authentically Syrian. The issue is simply the fact that this is already *assumed* by both the international community, as well as the Syrian civil society reports analyzed here. There is no room for alternative sources of knowledge, because it is taken for granted that Syrians will welcome and accept the transitional justice process as soon as they are informed of what it actually represents. No organization stated this better than those involved in the creation of the *Syria Transition Roadmap*: “With the implementation of a transitional justice program, Syrians *without exception* [emphasis added] will feel that there is a path toward national

reconciliation that their representatives will take that ensures adequate pluralism and the necessary credibility.”²¹³

Here I must address, however, a core limitation of this study. Naturally, the Syrian discourse I have analyzed here does not represent the voices who might share my concerns. Namely, by analyzing publications of organizations that promote transitional justice in Syria, I have already excluded those individuals and organizations that might be working on Syria’s post-conflict society without calling specifically for transitional justice. Furthermore, it is also possible to assume that any Syrian organization working in this field must adopt the transitional justice framework and language in order to receive the adequate attention, support and technical assistance of the international community. Seeing as the country’s resources will most likely be too scarce to conduct such a massive restructuring and institution-building process, foreign financial and logistical support will probably be necessary. To achieve this assistance, it is quite possible that certain organizations have no choice but to adopt international frameworks, regardless of their personal stances.

Yet this, once again, highlights the inherent tensions that exist within the field of transitional justice. How can we expect a truly locally owned transition if the framework, language and conceptual infrastructure is already in place? How can Syrians self-determine their own ideas of justice when, in order to receive support, they must first adopt the language of international justice? What is shown to us by the case of Syria is that from the very inception of a transitional process, the ability to create a comprehensive and fully locally-owned process is already severely limited. This is made evident most prominently in the assumptions of what values and principles shape the concept of justice for the very people implicated in the transitional justice process.

²¹³ Syrian Center for Political and Strategic Studies and Syrian Expert House, *Syria Transition Roadmap*, 142.

CHAPTER 6

CONCLUSION

Over the last several decades, transitional justice has been a field of constant development and change. This is partially due to the new nature of the field, which is in its infancy and must therefore constantly redefine itself until enough knowledge has been accumulated. However, it is also as a result of the diversity of voices contributing to its maintenance and advocacy. For the last thirty years, international scholars, human rights activists, lawyers, politicians and others have played a crucial role in defining the field and implementing its work. Because of this dynamic range of contributors, the field itself carries elements from various professions and disciplines. Yet, the very nature of this fact also opens up the field to a vast assortment of criticisms.

Nevertheless, the most prevalent criticisms of transitions justice, and the primary theme throughout this work, has been the paradox of its universalizing language standing at odds with its attempt to work in a multitude of diverse settings and contexts. The primary arbiters of transitional justice, such as the UN and the ICTJ, all understand that this issue of contextualized application of universal values and principles of justice is the primary challenge facing the field today. We have seen that throughout the last decade in particular, the attempt has been made to circumvent this obstacle. Whether it is through a change in rhetoric (from ‘transitions to democracy’ to ‘rule of law’ promotion), or whether through more active engagement of local civil society groups, transitional justice actors constantly attempt to incorporate strategies of creating local ownership over transitional processes.

The criticism posed by the international scholarship, however, argues that this has not been sufficient. Namely, they point to the overly legalist rhetoric and approach of the

international community with regards to transitional justice. This legalism in the field, the critique goes, shrouds the field in false political neutrality. Yet this neutrality is nothing more than a façade, as the political agenda of the transitional justice field is inescapable due to its intrinsic ties to the human rights discourse. This focus on legalism further debilitates transitional justice efforts through its alienation of local populations, who often view such efforts as an intrusion by ‘Western’ forces attempting to distill and enforce their own value systems upon their populations. What the scholarship does not address, however, is the deliberate politicization of the discourse of non-UN international transitional justice actors. The ICTJ, for example, does nothing short of directly tie transitional justice efforts to the promotion and consolidation of democratic governments across the globe. In this regard, Anne Leebaw and other critics like her are the only ones who acknowledge the root of their criticism to lie in the actual link between transitional justice and the human rights discourse that birthed it.

Having understood the complexities of the transitional justice discourse at the international level, we thus turned to the primary focus of this research endeavor: Syria. Not only was the aim to map out transitional justice efforts and discourses as they pertain to the context of Syria, but it was also to explore whether it is possible to learn anything about the deeper conceptual foundation of transitional justice through its example. Indeed, analyzing the discussions had at the local and international levels with regards to the possibility of a Syrian transitional justice operation elucidated many aspects of this tension pointed out by the international community and the scholarship. Yet, once again, we were faced with a similar type of challenge. The discourse of the case in Syria does not seem too distant from that of the international community. Here we find similar language, terms and concepts used to articulate the needs of the Syrian population. At once, the Syrian actors call for a transitional justice

operation that adheres strictly to international norms and principles, while at the same time asking for it to be based on Syrian understandings of justice, accountability, fairness and good governance. How these two can simultaneously coexist is never properly addressed. In fact, what is suggested is that the only way in which Syrians can have a truly *Syrian* and *internationally accepted* process of transitional justice is through the massive education and mobilization of local communities to adopt the terms and conditions of the international discourse.

All of these analyses of discourse lead us to the primary problematic of this research. Namely, how do the various discourses at different levels interact and reflect on each other and what, if anything, does this tell us about the understanding of *justice* at play. What becomes evident more than anything else is the importance of the role the conception of justice plays within this field. Justice, in fact, lies at the heart – the very core – of the seemingly irreconcilable tensions of transitional justice. *What* justice is, *whom* it serves and *how* it is applied is what is fundamentally in contention. The study of Syrian transitional justice discourse highlights this element particularly well. It is through its example that we begin to see the value of the basic assumptions of Critical Discourse Analysis (CDA) discussed in the introduction.

The transitional justice field attempts to resolve its core tension through the dissemination of its language, and thus value system, throughout all levels of discourse. The international community, as defined here, is the arbiter of the transitional justice field; hence, it is also the international community who controls the discourse of transitional justice. As CDA tells us, the ability to control discourse is tantamount to the exercise of power upon the minds, beliefs, and perhaps even actions of others. It is the international community who controls the content and context of the complex communicative events that make up the discourse of transitional justice.

Through this exercise, it thus determines the language, boundaries, and structures of discourse, and reproduces the hegemony and dominance of its ideas.²¹⁴

We were able to observe the full impact of this in the analysis of the Syrian discourse. Throughout the various texts analyzed here, it became apparent that one of the primary concerns for implementing a transitional justice process in Syria was the likelihood that many Syrians either did not know what transitional justice was, or did not have a positive view of it. The solution to overcoming this challenge, which was proposed by every actor who touched upon this topic, was a massive mobilization of grassroots campaigns that would educate and inform the Syrian public about the value of transitional justice. When looking carefully at this proposed solution, we can see the discursive power at play. This program of massive information dispersal is a core function of how the international community's dominant discourse attempts to pervade every societal context. Not only is the content already predetermined, but the context and the access to information is also controlled. Through this process, the understanding of justice that will inevitably prevail is that of the international community.

This, however, is not part of some elaborate scheme to enforce unwanted values upon an unsuspecting population. Instead, this process of discursive power through dispersal of information is part and parcel of transitional justice itself. As Paige Arthur argued in her examination of the development of the transitional justice field, the words the advocates and actors of transitional justice use are crucial. This is because words, by nature, describe; in describing they also evaluate based on how, when and why they are invoked.²¹⁵ Thus, the very fact that the term transitional justice is invoked within a particular context, implies a multitude of predetermined values and principles, including those of the internationally espoused

²¹⁴ Teun A. Van Dijk, "Introduction: What Is Critical Discourse Analysis?"

²¹⁵ Paige Arthur, "How 'Transitions' Reshaped Human Rights."

understanding of justice. It is thus seemingly impossible for there to exist any other interpretation of justice other than that defined by the international community.

This does not mean, however, that the goals of transitional justice are necessarily irreconcilable. Given a society in which the notion of justice is entirely coherent with that of the international community, the issue would cease to exist. The fundamental problem, however, is that the opportunity for exploring this is rarely afforded to any post-conflict society. When such important and extremely complex issues are at stake, such as what justice means to a society and what the ideal 'just' society should look like, the field of transitional justice is not only insufficient, but it actively does not allow for these societies to self-determine. Any effort is automatically circumvented by the fact that the very usage of the concept of transitional justice already applies a set of moral, legal and political principles and values that must first be accepted by the majority of the population in order to create a situation in which the operation would be deemed successful. Transitional justice leaves no room for alternative conceptions of justice.

There are, however, certain crucial questions and problematics that arise as a result of the conclusion reached here. While it is true that this criticism is important in thinking about practical applications of transitional justice throughout the world, we should keep in mind the actual purpose of the field. For the international actors in the transitional justice field, the purpose is to find practical and pragmatic solutions to issues they deem important to solve. Therefore, one issue raised by this work's criticism of transitional justice has to do with the relationship between 'relativism' and pragmatism. For example, it would be legitimate to question whether the calls for 'contextualization' by the UN or other institutions actually represent an advocacy of 'relativist' approaches – the assumed antithesis of 'universalism'. Perhaps, however, instead of arguing for relativism simultaneous to universalism, the calls for

contextualization are simply a pragmatic approach meant to ensure the sustainability and durability of their transitional justice efforts. In other words, the extent to which the UN and other international transitional justice actors are concerned with issues of relativist versus universalist approaches to justice can be seriously called into question. This is an important tension alluded to by this work's criticism, which deserves further elaboration and research.

Ultimately, this research study serves as a preliminary exploration into some of the more complex issues facing the field of transitional justice today, particularly the tension between theory and practice, which the notion of justice reveals. Through this discourse analysis, we have not only provided an introductory survey of the discourses surrounding the field, but also began exploring some of the tensions it has created. The case of Syria functioning as the primary focus of this study, we were able to observe the ways in which the discourse of transitional justice filters throughout different levels and what impact this can have on the actual practices and processes of transitional justice. These findings should ultimately serve to trigger further and more in-depth studies related to this subject. For example, a deeper exploration of key concepts discussed here, such as 'justice', 'universalism' and 'relativism'; even the notion of human rights discourse deserves more weighty attention. Inasmuch as this study set out to begin exploring the conceptual tensions of transitional justice as a field through a survey of a particular local context – namely, Syria – the findings certainly invite further research.

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