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LOCALIZING TRANSITIONAL JUSTICE

INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE

Edited by

ROSALIND SHAW and LARS WALDORF,

with Pierre Hazan

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Preface

Ruti G. Teitel

WE ARE WITNESSING what I have elsewhere identified as a “global” and “normalized” phase of transitional justice, a proliferation of accountability mechanisms and processes at and across different levels—international, regional, domestic, and local (Teitel 2008). Yet it is often unclear what these developments actually mean, either theoretically or operationally, at the intersection of the international and the local. This challenge goes to the heart of this book. By focusing on issues of locality, this work puts in question prevailing assumptions and illuminates current controversies in the field through comparative and interdisciplinary research covering a wide ground.

This searching book sets out to get beyond generalizations about the global moment, to take a hard, close look at local realities and impacts on the ground, and to interrogate the state of current responses to conflict and repression. The contributors challenge the teleological assumptions of transitional justice, examining the concrete ways in which its mechanisms intersect with survivors’ practices, standpoints, and priorities in specific places and times. They thereby refashion conventional understandings of “the local,” “justice,” and “transitions.”

The range and depth of experience here are impressive. The various contributions probe across regions in far-ranging inquiries spanning Central and South America, Eastern Europe, the Middle East, Africa, and Southeast Asia, exploring complex forms of accountability. Through careful work on the ground, the contributors show persuasively that transitional justice developments have not moved along a linear and progressive trajectory but are instead reshaped through a diverse array of forums and interests, as well as through clashes among multiple rule-of-law values. In so doing, the contributions unsettle as

they challenge the notion of so-called best practices of transitional justice that can be exported throughout.

A recurring theme throughout this scholarly inquiry is how to learn from local standpoints. If a global approach means we are somehow beyond the state and its democratization project, the place-based approach advocated by this book's editors returns us to survivors' experiences of the state and of the global processes that affect them—experiences that may generate other aims and priorities. Choosing between the local and the international has been said to involve the values of objectivity and fairness of a neutral judiciary as opposed to those of local discretion and accountability. But framing the dilemma this way can obscure the often profound disjuncture between survivors' priorities and the interests of international specialists. Moreover, who gets to decide?

As this book tacks between the ideals of transitional justice and the realities on the ground, it opens up an important evaluative space—one that is always guided by the central place of the victims of these mass crimes. Given the pervasive sense of threat and the ever-greater toll borne by civilians in contemporary conflict, this ought to be the guiding principle today. What is the impact of transitional justice measures on survivors? How can their well-being be reconciled with state building? By posing these fundamental questions, which are as much moral as legal and political, this book sheds light far beyond transitions.

RGT
New York City
May 2009

Acknowledgments

THIS BOOK HAS ITS origins in the discussions of six visiting fellows at Harvard University during the spring of 2005. At that time Pierre Hazan, Jamie O'Connell, and Habib Rahiab in Harvard Law School's Human Rights Program formed a transitional justice working group with Tiawan Gongloe, Fabienne Hara, and Rosalind Shaw at the Carr Center for Human Rights Policy. Zinaida Miller, then a JD student at Harvard Law School, also contributed to our exchanges of ideas. We are most grateful to Michael Ignatieff and Pierre Allan for their support of our endeavor, and to Jamie O'Connell as co-writer of funding applications. The following year, we brought additional scholars and practitioners together at the Rockefeller Foundation's Study and Conference Center in Bellagio, Italy. We wish to express our gratitude to the Rockefeller Foundation for providing such a supportive and beautiful environment in which to discuss some of the ideas presented here. We also wish to thank Tufts University's Jonathan M. Tisch College of Citizenship and Public Service for funding some of the participants' travel and accommodations as part of Rosalind Shaw's Tisch College Faculty Fellowship. This volume builds upon these two sets of discussions. We are especially grateful to Kate Wahl of Stanford University Press and Mark Goodale as series editor of Stanford Studies in Human Rights, both for their sustained interest in this project and for their expert guidance. We also express particular appreciation to the two anonymous reviewers for the Press, who gave us extraordinarily helpful feedback on an earlier version of the manuscript. Finally, we are indebted to all our contributors and to the original members of the transitional justice working group at Harvard. Although the only members of the working group represented in this volume are Pierre Hazan and Rosalind Shaw, all of you made its conception and development an inspiring experience.

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Frames

Introduction

Localizing Transitional Justice

Rosalind Shaw and Lars Waldorf

Rethinking the Paradigm of Transitional Justice

Since the turn of the millennium, the field of transitional justice has been increasingly challenged by the very people it is designed to serve: survivors of mass violence. Transitional justice has grown over the past twenty years into a normalized and globalized form of intervention following civil war and political repression (Teitel 2003). It embodies a liberal vision of history as progress (Hazan, this volume), a redemptive model in which the harms of the past may be repaired in order to produce a future characterized by the nonrecurrence of violence, the rule of law, and a culture of human rights. This vision is put into practice through a set of legal mechanisms and commemorative projects—war crimes prosecutions, truth commissions, purges of perpetrators, reparations, memorials—that is often conceived as a “toolkit” for use all over the world. But as the heated public controversy over the International Criminal Court’s involvement in Uganda indicates, the current phase of transitional justice is frequently marked by disconnections between international legal norms and local priorities and practices. When national and international accountability mechanisms are engaged in specific places and times, they are often evaded, critiqued, reshaped, and driven in unexpected directions.

In this volume, we wish to problematize the local engagement of justice interventions and, in so doing, to rethink the orthodox transitional justice paradigm and the analyses, policies, and practices that it engenders. The contributors to this book promote this rethinking process by interrogating the teleological assumptions of transitional justice and by examining the concrete ways in which its mechanisms actually work.