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The road from transitional justice to reconciliation: reflections and challenges. Introduction to the monograph

El camino de la justicia transicional a la reconciliación: reflexiones y retos.
Introducción al monográfico

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The road from transitional justice to reconciliation: reflections and challenges. Introduction to the monograph

El camino de la justicia transicional a la reconciliación: reflexiones y retos. Introducción al monográfico

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Summary: 1. A road from transitional justice to reconciliation?
2. Theoretical foundations of the paradigm of transitional justice.
3. From transitional justice to reconciliation. What the cases say. Final considerations. References.

Abstract: This contribution addresses the core elements when approaching post violent contexts in which societies confront the legacies of gross and systematic human rights violations. Starting from the theoretical framework of transitional justice and focusing on the relationship between the four pillars of truth, justice, reparation, and guarantees of non-repetition, highlights the

central role that victims must play in both Transitional Justice and reconciliation initiatives, an aspiration that is often proclaimed but unevenly realized.

Key words: human rights, transitional justice, reconciliation, violence, victims.

Resumen: Esta contribución recoge los elementos clave de contextos de post violencia en los que las sociedades se enfrentan a las secuelas de violaciones graves y sistemáticas de derechos humanos. Partiendo del marco teórico de la justicia transicional y centrándose en la relación existente entre los cuatro pilares de la verdad, la justicia, la reparación y las garantías de no repetición, resalta el papel central que deben desempeñar las víctimas tanto en la justicia transicional como en las iniciativas de reconciliación. Una aspiración que a menudo se proclama, pero que se materializa de forma desigual.

Palabras clave: derechos humanos, justicia transicional, reconciliación, violencia, víctimas.

1. A road from transitional justice to reconciliation?

Over the past several years, the Transitioning from Violence project, supported by the Mershon Center for International Security Studies at Ohio State University, has been traveling an intellectual and policy-relevant road to better understand how societies move through transitional justice toward reconciliation. Earlier workshops helped map the terrain and identify shared points of comparison. A seminar held at the University of Deusto in June 2024 marked a new stretch of this journey, one in which the contours of the landscape came into sharper focus as scholars and practitioners from multiple regions introduced new cases and perspectives.

This Special Issue grows out of the conversations initiated along this road. It carries the same title as the seminar, “The road from transitional justice to reconciliation,” and invites readers to reflect on the paths, detours, and intersections that emerge when societies confront the legacies of gross and systematic human rights violations.

The main goal of this Special Issue is to collectively reflect on the ways in which transitional justice can (and cannot) contribute to reconciliation in societies that have suffered gross and systematic violations of human rights in the context of violent conflict. Drawing on theoretical frameworks developed in the field of transitional justice, the contributions focus particularly on the relationship between the four pillars of transitional justice -truth, justice, reparation, and guarantees of non-repetition- in several case studies, as well as on cross-cutting issues.

2. Theoretical foundations of the paradigm of transitional justice

What is known as transitional justice, or justice of transition, has developed vertiginously over the last three decades, becoming a fertile field for rich and thriving academic reflection (Kritz 1995, Minow 1998, Hughes et al. 2007, Roht-Arriaza & Mariezcurrena 2006),¹ the emergence of NGOs and research and consultancy centers,² the

¹ There is also a journal dedicated exclusively to the field of transitional justice, *International Journal of Transitional Justice*.

² One of the centers of reference is the International Center of Transitional Justice, with its central branch in New York, and offices in places as diverse as Cape Town, Brussels, Jakarta, Katmandu, Kinshasa, Beirut, and Bogotá. See www.ictj.org. Likewise,

growing attention on the part of the international community,³ and the adoption of increasingly sophisticated legal and institutional standards, both domestic and international (Gómez Isa 2007). The contexts in which the mechanisms of transitional justice operate are often extremely complex situations in which political and opportunistic considerations frequently take priority, and the categorical successes that can be held up are few.

Despite this, what is certain is that in both academic and political circles there is an increasing sense of “inevitability” in terms of turning to transitional justice mechanisms in order to tackle the process of democratic transition after an authoritarian or dictatorial period or when emerging from a conflict riddled with grave and systematic violations of human rights. In this sense, we can assert that at least to a certain extent transitional justice has had some “epistemic success”—it is placed at the center of discussions on processes of political transition and conflict resolution and there is a certain recognition of its usefulness in dealing with uncomfortable legacies of the past.

Paradoxically, this relative epistemic success has been accompanied by a “scant advance in the theory” (de Greiff 2009) of transitional justice, which means that we still cannot properly speak of a new conceptual paradigm. We are still hostages of an episodic, partial, and very fragmented theoretical construction. This construction began in the 1980s in the heat of the transitions to democracy in the Southern Cone⁴; continued with the cases of conflict-resolution following the extremely prolonged conflicts in Central America; reached its pinnacle in South African post-apartheid; and has recently been extended to other contexts in Africa and Asia (Elster 2004). This particular evolution helps to explain why both the basic conceptual tools and the mechanisms of application of transitional justice have continued to evolve as they have been applied in new cases and in new contexts—revealing one of the inherent characteristics of transitional justice, its “versatility”. The norms and mechanisms of transitional justice cannot be absolutely uniform and monolithic; they must be sufficiently

there are also the Oxford Transitional Research Group, the Transitional Justice Institute of the University of Ulster in Ireland, and the Center for the Study of Violence and Reconciliation in Cape Town, South Africa.

³ Proof of this growing interest is the study of the Secretary-General of the United Nations (2004).

⁴ Some date the beginning of the field back to the period immediately following the Second World War, when mechanisms of transitional justice were applied in connection with the Nuremberg and Tokyo prosecutions and in reparation policies in France and post-fascist Italy. See Capellà (2009).

versatile and flexible in order to adapt to the distinct, complex, and varied circumstances in which they must necessarily operate.

Likewise, the experience of transitional justice to date shows that those who have designed and steered the processes of transition have normally been political actors with an agenda and interests that they wish to preserve and protect above all else. Such actors generally count on a power structure that supports their aspirations. Despite the fact that we have legal standards in the field of transitional justice that are increasingly elaborate and bearing a certain degree of coercion, we must recognize that in general it has not been these standards leading the way. Instead, the different actors involved have attempted to accommodate their interests and objectives strategically within the normative and institutional framework of transitional justice. This political strategic use of transitional justice discourse to legitimize the pursuit of one's own agenda is something that we find, to a greater or lesser degree, inherent in all processes of transition.

On the other hand, the widespread conviction as to the effectiveness of applying transitional justice concepts and mechanisms has meant expanding the instances in which they are applied to contexts that are not, strictly speaking, transitional (Bonet & Alija 2009). There is an increasingly marked pressure to amplify the spectrum of transitional justice's application, which could end up affecting both its basic conceptual character and the very nature of the mechanisms. In this vein, transitional justice discourse is lending itself to situations of open conflict, where there is no credible expectation of peace in the near future and where the peace processes are partial, limited to only one of the actors, such as it was the case of Colombia during the process of demobilization of paramilitaries some years ago (Botero et al. 2006).

This expansion of the discourse is also affecting democratic transitions that took place with a preference for forgetting and not addressing the abuses of the past, such as in the case of Spain. Now, decades later, different actors are turning to transitional justice discourse and practice as a way of definitively closing the book on a transition which they believe to be unfinished (Aguilar 2008, Escudero 2025). At the same time, there is a resort to transitional justice by specific groups demanding recognition of their historic roles and reparations for their suffering over the course of a history of injustice (Thompson 2002, Torpey 2003, Barkan 2000, Ulrich & Boserup 2003, Mate 2007). This includes indigenous populations (Gómez Isa 2011), afro-descendents (Mosquera & Barcelos 2007), and other subaltern

groups (Guha & Chakravorty 1985).⁵ Finally, it is also being asked whether transitional justice should address not just the most grave violations of civil and political rights, as it has until now, but whether its scope ought to be widened to include aspects related to development (de Greiff & Duthie 2009), social justice (Oré & Gómez Isa 2011), or economic, social and cultural rights (Cavallaro & Albuja 2008), all of which are essential ingredients for a process of transition to reach a satisfactory conclusion.

We must recognize that these pressures to extend the scope of the application of transitional justice discourse necessarily oblige us to undertake a systematic reconsideration of the epistemological and conceptual suppositions upon which transitional justice has so far been based. They require us to be permanently alert regarding the suitability or not of these theoretical suppositions in each individual case and, above all, of their possible impacts on the concepts and mechanisms of transitional justice. This is what we can see from the addressed cases in this contribution.

3. From transitional justice to reconciliation. What the cases say

The three central cases of this Special Issue, Spain/Basque Country, Northern Ireland, and Colombia, each represent contexts of long-standing violent conflict. Several contributions analyze the effects of, and responses to, serious and systematic human rights violations.

A contribution on Spain (Chinchón) focuses on the Civil War and the Francoist regime, using the elements of the Law of Democratic Memory as a reference for examining how the right to justice has been recognized and implemented, with particular attention to victims.

Two contributions on Northern Ireland (Roales and Alonso) analyze how the Good Friday Agreement incorporates measures aligned with the four pillars of transitional justice. The case of Northern Ireland reveals a form of political stagnation in which transitional justice has contributed to institutional peace, but this has not been reflected at the grassroots level. Society remains fragmented, with major challenges for social reconciliation.

Colombia is another case in which a written agreement has outlined measures for transitional justice and mechanisms for

⁵ The term “subaltern” was coined by Antonio Gramsci but has been developed in a very interesting way by those of the so-called field of subaltern studies.

promoting reconciliation. The country has extensive experience in addressing memory, truth, justice, reparation, and guarantees of non-repetition through agreements with armed actors. The three contributions on Colombia (Galindo, Reed and Gutiérrez, and De Perini) offer empirical findings on transitional justice “from below,” “from above,” and through the institutions created to implement it, such as the Special Jurisdiction for Peace. Across these analyses, the central role of victims and memory emerges as a crucial element for peacebuilding and reconciliation.

This Special Issue also includes reflections from other countries and regions. In the Americas, one article (Dávila) highlights the particularities of enforced disappearance and the public policies designed to repair the harm done to families. The analysis of the National Search Plan shows that progress toward reconciliation remains partial.

Another contribution examines Mexico (Vargas), focusing on the current context of violence within the drug war and the role of state and non-state actors in perpetrating abuses. Successive governments have shaped the political use of investigative agencies, with significant consequences for justice and reparation. Although the context differs from the previous cases, the impacts on the population and their human rights are evident.

From a more comprehensive perspective, the role of multilateral institutions is critical for reconciliation in transitional contexts. The Inter-American Human Rights System is analyzed in Nuñez’s article, which examines victims’ participation in its procedures. While full engagement in the Human Rights System can contribute to restoring trust in public institutions, the author warns that the failure to implement Court-ordered reparations hinders reconciliation and generates disillusionment among victims and human rights advocates.

Roestenburg’s contribution examines the role of the International Criminal Court in transitional justice and reconciliation in Africa. Beyond the ICC’s prosecutorial mandate, the article argues for a broader, culturally sensitive interpretation of its role and for stronger cooperation with domestic and regional actors. The African context is further explored in the contribution on the Democratic Republic of the Congo (Montero), which offers a critical reflection on transitional justice strategies with particular attention to sexual violence experienced by Congolese women over decades of conflict.

The final two contributions do not focus on specific geographical cases but instead examine ongoing debates in the academic field: coloniality and feminism. In the latter, Mendia analyzes how feminist

perspectives have enriched and complicated the debates on transitional justice and reconciliation by foregrounding women's experiences of violence and their rights to truth, justice, and reparation. Given the particular harms women suffer during armed conflict, their participation is essential to both transitional justice and reconciliation. The contribution by Sullo focuses on debates regarding colonialism, particularly on injustices and crimes against the cultural heritage of colonized nations. Approaching this issue from the perspective of international law, the article argues for reparative frameworks that avoid Eurocentric assumptions and engage alternative legal approaches.

Final considerations

This special Issue set out to examine how transitional justice can—and at times cannot—contribute to reconciliation in societies marked by widespread and systematic human rights violations. The articles collectively engage the core pillars of transitional justice, while drawing on diverse cases from the Americas and Africa to explore the complex terrain that lies between institutional justice efforts and the reconstruction of social trust. By situating theory alongside grounded empirical analysis, the contributions offer a nuanced understanding of how reconciliation unfolds in practice and what conditions enable or hinder it.

Advancing this discussion requires not only robust international standards but also sustained attention to how these standards take shape within specific historical, political, and cultural settings. The empirical work showcased here demonstrates the value of such context-sensitive approaches and highlights the central role that victims must play in both Transitional Justice and reconciliation initiatives, an aspiration that is often proclaimed but unevenly realized. In bringing these perspectives together, this Special Issue both consolidates what we have learned and points toward future paths of inquiry, encouraging continued engagement with the challenges that persist along the road from Transitional Justice to reconciliation.

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