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March 31, 2019

The Conceptual Foundations of Transitional Justice. By Colleen
Murphy. Cambridge: Cambridge University Press, 2017.

By: BALIGH BEN TALEB

Over the past few decades, communities around the world have embarked on transitions from conflict, repression and historical injustice to the rule of law and respect for human rights. Societies have established legal institutions, such as truth-telling commissions and criminal trials to confront past abuses and attempt to transition into a new era of human dignity. Theorists have coined the term “transitional justice” to describe processes involved in confronting legacies of historical wrongdoings. Pressing questions raised in such contexts include: what does it mean to properly acknowledge past abuses and how does a community justify the choice of a specific response? It is not obvious which particular type of response is right, or wrong, as transitional justice may mean different things to different people in different contexts. The tasks of evaluating the motley epistemic meanings of “transitional justice” and the appropriate choices communities make are at the heart of Colleen Murphy’s elegant book, *The Conceptual Foundations of Transitional Justice*. In a combination of rigorous theories and brilliant analytical writing, she argues that the just pursuit of societal transformation is the essential heartbeat of transitional justice.

<http://historicaldialogues.org/2019/03/31/book-review-the-conceptual-foundations-of-transitional-justice/>

Historical Dialogues, Justice, and Memory Network, Columbia University,
<http://historicaldialogues.org/>

Murphy begins by unpacking the logic, assumptions and philosophical backgrounds in which “ordinary” forms of retributive, distributive, or corrective justice are salient. The first two chapters trace the context, practices and deficiencies of these “ordinary” forms of justice in transitional circumstances. She argues that each of these familiar forms developed a reducible approach to reckon with past abuses. This approach is understood as a “principled compromise” which focuses more on accountability. Justice is not however “an all-or-nothing matter,” as Murphy pinpoints (159). Rather, it comes in degrees and is grounded in societal transformation. It is the lack of societal transformation that makes the nature of “ordinary” forms of justice unresponsive to the core moral questions confronting transitional societies. In Chapter One, Murphy explains why “ordinary” expectations of justice cannot be satisfied when four significant circumstances are in place: (1) pervasive structural inequality in the various economic, social, political, and legal institutions that shape the general interaction among citizens and between citizens and officials; (2) normalized collective and political wrongdoing—the ability of state apparatuses and public expectations to banalize wrongdoing; (3) serious existential uncertainty—doubting whether transitional change will be a stable and lasting achievement; and (4) fundamental uncertainty about authority—the standing of an old regime to respond to historical abuses is deeply contentious and morally difficult (41). For transitional justice to be useful, indicates Murphy, each of these circumstances must be addressed properly.

Chapter Two fleshes out why the proper acknowledgement of the problems that arise in transitional justice is not reducible to other familiar kinds of justice prevalent in “stable democracies.” Murphy argues that these specific theories of justice are neither crucial nor adequate for explaining transitional circumstances. That is, they are either based on victim-oriented claims of justice, as corrective justice avers; or perpetrator-oriented claims, as retributive justice asserts. To Murphy, both approaches fall short when confronting the central moral question in transitional circumstances which is: how to pursue societal transformation? Chapters Three and Four explain why transitional justice is an exclusive form of justice. Murphy offers an adequate account of the principles that constitute transitional justice oriented towards a proper

response to the aforementioned fourfold set of transitional circumstances. In Chapter Three, she marshals evidence for the distinctiveness of transitional justice in the primary moral question confronting societies in transition, which is not only societal transformation, but also the ethical requirements for pursuing societal change justly (194). Murphy suggests that the question of societal transformation is structurally analogous to the relationship between the *jus ad bellum* and *jus in bello* components of just war theory; and to how those two “distinct sets of moral criteria interact” (115). The overall justification for a war may fail to be just in two contrasting ways: by failing to satisfy either of the sets of criteria. War may be justified from the *jus ad bellum* perspective (the recourse to war); but fails from a *jus in bello* prism (the conduct of war).

Using this structural analogy, Chapter Four demonstrates that societal transformation is the overarching moral goal of responses to wrongdoing in a manner that treats particular perpetrators and particular victims properly. Such pursuit is conditioned on the intrinsically just nature of the means that are used to address abuses. At its center, relationships among citizens and between citizens and officials should be transformed so that they are premised on respect, human agency, dignity, and reciprocity (194). Murphy describes this process as “relational transformation.” It hangs on the existence of three conditions: (1) the rule of law; (2) threshold levels of relational capabilities; and (3) the conditions under which political trust and trust responsiveness become reasonable (119). The absence or erosion of these three premises prevent the development of a just societal transformation.

Murphy demonstrates that an “ordinary” justice does not offer a comprehensive process of responding to wrongdoing because it treats issues of institutional reform as separate from the moral dilemmas that ensnare victims and perpetrators. In transitional justice however, she looks at the moral objectives, the design, implementation and evaluation of responses to victims and perpetrators as “holistic” (161). Failure to acknowledge and repair holistically the wrongdoing and damages inflicted upon people, institutions, infrastructure and relationships will jeopardize the future of a community.

Murphy writes with a clear audience in mind: philosophers, lawyers, transitional justice theorists, policy makers, and citizens of transitional communities. At the author–audience discourse level, the

argument of transitional justice as a different kind of justice offers original and compelling grounds. Bolstering the relationship between the two dimensions of societal transformation and the fitting treatment of past wrongdoings is at the core of transitional justice and political reconciliation. Under these circumstances, one may still wonder how much to expect, morally, from “transitional justice” in dealing with colonial legacies and forced dispossession of Indigenous communities in settler societies. Where does transitional justice begin and where does it end? What are the appropriate standards of justice to use when evaluating the complex set of institutional and interpersonal in settler nations? Is still it erroneous to think of justice in “post” settler colonial circumstances as involving a moral compromise between truth and justice?

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