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Transition and Justice

Transition and Justice: An Introduction

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ABSTRACT

Since the end of the Cold War, political new beginnings have increasingly been linked to questions of transitional justice. Africa is no exception. Since the establishment of the South African Truth and Reconciliation Commission and the International Criminal Tribunal for Rwanda during the mid-1990s, the African continent has loomed large in academic and political debates about how to deal with past injustices and realize political transition. The contributions to this collection examine a series of cases where peaceful 'new beginnings' have been declared after periods of violence and where transitional justice institutions played a role in defining justice and the new socio-political order. Three issues seem to be crucial to the understanding of transitional justice in the context of wider social debates on justice and political change: the problem of 'new beginnings', of finding a foundation for that which explicitly breaks with the past; the discrepancies between lofty promises and the messy realities of transitional justice in action; and the dialectic between logics of the exception and the ordinary, employed to legitimize or resist transitional justice mechanisms. These are the particular focus of this Introduction.

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INTRODUCTION

In spite of the dramatic growth of transitional justice there are other sites in countries and regions affected by violence and armed conflicts where ideas about justice, reconciliation, retribution and political participation are being instantiated and contested. Among the sites explored in this special issue are re-education camps for demobilized combatants, refugee camps and prisons, as well as domestic courts, parliaments and village meetings. In these sites, former combatants and their leaders, politicians, civil society activists, village elders and ordinary people advance their views on how to realize justice or seek to secure a place in the new political system. Such negotiations of the terms of new beginnings in Africa, in which transitional justice measures are only one aspect of— and often challenged by — a multitude of much broader societal attempts at realizing more 'justice', constitute the subject matter of this collection. It is aimed at furthering our knowledge about transition and justice, including and transcending the usual transitional justice mechanisms, by presenting fine-grained case studies of sites where claims to justice are advanced and contested.

The focus on Africa in this special issue is not accidental. Since the establishment of the Truth and Reconciliation Commission (TRC) in South Africa and the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, the African continent has turned into a veritable laboratory of transitional justice. The International Criminal Court (ICC), the first permanent international criminal tribunal in history, has focused almost exclusively on Africa. At the time of writing in June 2013, the prosecutor of the ICC had conducted investigations or trials against accused from seven African countries. This has attracted considerable criticism from various quarters, especially in Africa, where some see the ICC as a thinly veiled instrument of neo-colonialism. The advent of this critique is directly linked to the expansion of transitional justice mechanisms in post-conflict situations in African countries characterized by fragile state institutions, widespread poverty and considerable internal fragmentation due to ethnicity and regionalism. In Sierra Leone, for instance, no less than four transitional justice mechanisms (amnesty, truth commission, international tribunal and domestic criminal trials) co-existed in

often uneasy relationships, as Gerhard Anders describes in his article. In Uganda, a similar pluralism of transitional justice institutions can be observed, as Adam Branch and Kimberley Armstrong show in their contributions. Uganda and Rwanda are of particular interest as these countries have experienced the most sustained efforts to create alternative transitional justice mechanisms more attuned to local culture and conceptions of justice.

In contradistinction to Latin America, where transitional justice was one of the means to address human rights violations by authoritarian military regimes, transitional justice in Africa is mainly employed in efforts to end violent conflicts and civil wars in societies characterized by the absence of a strong state apparatus and a plurality of de facto sovereign political and military groups. The growing importance of transitional justice in international efforts to pacify volatile regions affected by civil war has resulted in a growing convergence of international peacebuilding, development and transitional justice mechanisms (de Greiff and Duthie, 2009; Mani, 2008; UN, 2004). The interventions of foreign actors such as the United Nations or donor countries promoting transitional justice institutions as part of much larger military-humanitarian interventions have resulted in complex relationships with state institutions and locally operating groups. This variety and complexity is not matched by other regions and allows the comparison of different debates about transition and justice both across Africa and within specific countries. Due to this complexity and variety, the African experiences can shed light on debates about transitional justice and new beginnings elsewhere. Put differently, given that 'Africa' is often treated as a prime location for putting transitional justice into practice, African case studies seem particularly suited to decentre such approaches and to refocus on broader attempts at bringing about transition and justice.

The articles in this special issue cover a wide range of situations, putting an emphasis on either explicit 'transitional justice' mechanisms in the context of broader negotiations of justice and transition or on the multifarious ways in which debates about new beginnings speak to lessons to be learnt for 'transitional justice'. In this sense, the first set of articles aims at destabilizing the emphasis on transitional justice institutions in the analysis of new beginnings in Africa by

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studying other sites where past injustices are addressed. The second set contextualizes transitional justice mechanisms, situating them in relation to conflicts and negotiations about the past and the future. Widening the scope and including other sites of contestation will benefit the social-scientific study of political change and attempts to come to terms with past injustices in Africa and elsewhere. By transcending the narrow focus on institutions this special issue seeks to address fundamental questions about transitions and justice in societies characterized by a high degree of external involvement and internal fragmentation.

We contend that the new beginnings examined in this special issue are shaped by two inter-related dialectics. The first is the discrepancy between lofty promises of justice issued by lawyers, commissioners, diplomats and politicians and the messy realities on the ground and within the institutions themselves, where the official narrative is constantly invoked and challenged by people's everyday actions. The second is the dialectic between the logics of exception, on the one hand, and the ordinary or normal, on the other hand. Re-education camps, repatriation of refugees, land restitution claims, truth commissions and war crimes trials are by no means ordinary measures; they are justified by an emergency or other exceptional circumstances. Yet there is no evidence for consensus on this, as the case studies in this collection show. In fact, there are groups and individuals who make a case for continuity by denying the extraordinary character of a situation and insisting on doing business as usual.

These dialectics, and how they play out during political new beginnings, have not been addressed by the current debate on localizing transitional justice, as the literature review in part one of this Introduction shows. The second part of the Introduction discusses the problem of new beginnings, the paradox of legitimizing a new social-political order that seeks a break with the laws and mores of the past. The third part outlines the importance of the discrepancies between lofty promises of justice and messy realities in the context of new beginnings, and the fourth examines the importance of the dialectics between logics of the exceptional and the ordinary or normal for a more comprehensive understanding of justice that transcends transitional justice as a field of study.

APPROACHING TRANSITIONAL JUSTICE: STATE OF THE ART

Transitional justice became an interdisciplinary field in its own right at the turn of the twenty-first century and has given rise to a burgeoning body of literature. Scholars from a range of disciplines including social and cultural anthropology, political science, theology and legal studies as well as practitioners and activists have focused on the analysis and development of institutions and processes including truth commissions, criminal prosecution, amnesty and reparations (Arthur, 2009; Bell, 2009). According to a widely quoted definition by former UN Secretary-General Kofi Annan transitional justice 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. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof. (UN, 2004: 4)

During the 1980s and the 1990s, democratically elected governments replaced military regimes across Latin America. This resulted in heated debates about how to address the human rights violations committed under military rule. In Argentina, Chile and El Salvador, truth commissions were established to signify a new, democratic beginning. These institutions had the task to throw light on the fate of tens of thousands of suspected dissidents who had 'disappeared' under military rule and produce an authoritative historical record. Truth commission were advanced as an alternative to amnesty provisions, passed by the military rulers before relinquishing power, on the one hand, and criminal prosecutions, seen as threatening the stability of the new democracies, on the other. The first transitional justice studies were a direct response to these discussions about the merits and disadvantages of the various institutions set up to deal with the human rights violations of the military regimes in Latin America. During the 1990s, the first

systematic studies under the newly coined term 'transitional justice' were published, discussing possible solutions to the problem of how to come to terms with a violent past (Cohen, 1995; Kritz, 1995; Orentlicher, 1991).

In its formative years, transitional justice was mainly seen as a tool that could be employed to effect a transition to democracy and adequately deal with past injustices regardless of the specific socio-cultural context. The field was dominated by legal scholars and political scientists who adopted a model of legal and political reform to be employed during a transitional period from autocratic rule to democracy. This reflected a broader shift during the 1980s and 1990s, away from the emphasis placed by modernization theory and Marxism on socio-economic structures (Arthur, 2009: 337–8). Instead, the quickly expanding transnational human rights movement advanced individual rights and political liberalism as the main drivers of progress. Authors like Bass (2000), Minow (1998) and Teitel (2000, 2003) legitimized the new concept of transitional justice by tracing it to the Nuremberg Trials and other trials against perpetrators of war crimes and the holocaust after World War II, although the term itself was not coined until the 1990s, as Arthur (2009) points out.

This shift is particularly striking with regard to Africa where, during the 1960s and 1970s, socio-economic structural transformation was seen as key in overcoming the legacy of colonialism. After the wave of democratization of the 1990s, when many countries across Africa introduced multi-party democracy, political liberalism and the belief in the potential of the free market became the principal paradigms in sub-Saharan Africa. The international financial institutions and the Western donor community welcomed the vision of individual rights and agency underlying both liberalism and capitalism, and vigorously promoted democracy, human rights and good governance. Transitional justice, also informed by a liberal belief in the transformative power of individual rights, became a key part of international humanitarian and development interventions and of national projects with the goal of realizing democracy, human rights and the rule of law.

On how to achieve these objectives, opinions have been divided. At one end of the spectrum are those who deem compromises necessary to maintain peace. At the other end are those who maintain that the punishment of perpetrators is the only

credible means of achieving justice. This debate, known as peace versus justice, has shaped transitional justice for a long time. In this context, truth commissions were advanced as compromise between amnesty and criminal prosecutions, creating a form of accountability but refraining from the punishment of perpetrators (Rotberg and Thompson, 2000; van Zyl, 1999). Recent studies have attempted to transcend the stark opposition between peace and justice by advocating a mix of several institutions including truth commissions and various forms of community justice, as well as criminal trials at national and international courts (Roht-Arriaza and Mariezcurrena, 2006; Sriram and Pillay, 2009).

The question of whether truth commissions or criminal trials are better suited to deal with past injustices has been partly eclipsed by the recent debate about localizing transitional justice. The idea that transitional justice institutions need to be adapted to socio-cultural specificities reflects growing doubts about the universalism of transitional justice, the ability to aid the establishment of liberal democracy in any socio-cultural setting. This universalistic outlook is mainly due to the influence of political science and law, the principal academic disciplines defining the field (Arthur, 2009; Bell, 2009).

The universality of the institutions and the objectives of transitional justice have come under critical scrutiny by a growing body of scholarship. Especially anthropologists, with their keen eye for the specificities of place and cultural difference, have been at the forefront of this critique. Wilson's (2001) anthropology of the South African TRC is one of the first examples of this approach. His book questions two basic assumptions informing the establishment of the TRC in South Africa. The first concerns the vision of a truly multicultural, non-nationalist constitutionalism after the end of apartheid based on universal human rights; a new culture not refracted by ethnicity, communalism or nationalism. The second was the idea of the existence of a unified concept of African restorative justice aimed at national reconciliation shared by all South Africans. By contrast, Wilson's ethnographic evidence shows how 'human rights talk is enmeshed in culturalist discourses on community and becomes an integral part of nation-building' (Wilson, 2001: 17). According to him, the ultimate objectives of the TRC process were the strengthening of the state's bureaucracy and legal system (ibid.) rather than

realizing restorative justice and national reconciliation. He further shows that perceptions of restorative justice and reconciliation as cornerstones of the new constitutionalist national identity were by no means shared by all South Africans, some of whom favoured retributive justice (ibid.: 14–16).

This focus on the people in whose name justice is said to be done and the places where official narratives are challenged both in word and action gained in importance as more research on transitional justice in action was conducted in a number of different countries and institutions. It also became clear that the concept of transitional justice was by no means universal. A number of social-scientific studies have argued that ideas about achieving justice through truth-telling and punishment are rooted in Occidental religious and legal traditions. Research on Rwanda (Barnet, 2008; Buckley-Zistel, 2006; Eltringham, 2004; Thomson, 2011), Uganda (Allen, 2006; Finnstrom, 2008), South Africa (Ross, 2003) and Sierra Leone (Shaw, 2005, 2007) revealed a wide variety of voices and experiences in the regions affected by large-scale violence. For instance, Buckley-Zistel (2006) and Shaw (2005, 2007) argue that people in these regions did not share Western conceptions of truth-telling and reconciliation but preferred silence or social forgetting as a way to come to terms with the violent past.

Other studies highlight the diversity of views held by people in the regions affected by violence. Allen's research on Northern Uganda (2006) traces the divisions between those preferring amnesty, those who support neo-traditional reconciliation ceremonies and those who demand retributive justice from the ICC. Finnstrom's (2008) ethnography of the everyday survival of the Acholi people in Northern Uganda suggests an even more complex picture defying simplistic accounts of clear divisions between victims and perpetrators as people struggle to come to terms with 'bad surroundings'.

With regard to international criminal justice, several authors adopt a cultural relativist stance similar to Shaw's perspective. For instance, Clarke (2009) and Kelsall (2009) focus on the cultural differences between international criminal justice and African conceptions of justice, truth and fact-finding. Clarke argues that local conceptions of justice and law tend to be at odds with the language of human rights and international criminal law. In his study of the Special Court for Sierra

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Leone, Kelsall blames the problems encountered by the court on cultural differences between Western law and African culture. According to Kelsall, the Special Court failed to appreciate 'different ideas of social space and time, of causation, agency, responsibility, evidence, truth and truth-telling' (Kelsall, 2009: 17) prevalent in Sierra Leone.

Other studies situate the international criminal tribunals in relation to the international influences and the national political landscape, and trace how the tribunals produce historical narratives. Anders (2009) situates the Special Court for Sierra Leone in relation to the debate about international criminal justice and the national political arena in Sierra Leone. Hagan et al. (2006) show how US politics affected the prosecutorial strategy at the International Criminal Tribunal for the former Yugoslavia (ICTY). Wilson's (2011) study analyses how various features and dynamics of international criminal justice have shaped the historical accounts produced by the international tribunals. By tracing the various influences, these studies have contributed to a better, empirically more grounded understanding of the development of international criminal justice.

This revisionist scholarship has started to make some impact in the wider field of transitional justice. This is mainly due to the growing body of empirical knowledge about the manifold problems encountered when transitional justice mechanisms have been adapted to different situations and places. Even proponents of transitional justice admit that place matters, as abstract ideals such as reconciliation or justice are constantly contested and questioned by people who seek to engage or try to avoid the mechanisms of transitional justice at work (Orentlicher, 2007). In response to these problems, attempts have been made to localize transitional justice by advancing alternative mechanisms. Africa has been spearheading this trend with the *gacaca* courts in Rwanda and supposedly traditional reconciliation ceremonies in Northern Uganda. These institutions are presented as drawing on African cultural values and concepts of justice by emphasizing community involvement and reconciliation between perpetrators and victims. Several authors such as Kelsall (2009) support the establishment of these alternative transitional justice mechanisms due to their hybrid and localized character.

Generally, the donor community has hailed these neo-traditional institutions as being more responsive to African values and expectations but a growing number of scholars have advanced a scathing critique. They argue that in fact they do not constitute manifestations of authentic African culture. In Rwanda, international humanitarian activists (Oomen, 2005) and the government (Waldorf, 2010) have promoted the *gacaca* courts as a cheap and quick way of dealing with the large number of *génocidaires*. Clark's (2010) study also draws an ambivalent and complex picture of community involvement in the *gacaca* courts, which does not correspond with simplistic ideas about African culture. With regard to Uganda, Branch (2011) criticizes the essentializing culturalism driving supposedly African transitional justice mechanisms, a critique he further develops in his contribution to this special issue. The edited volume *Localizing Transitional Justice* (Shaw et al., 2010) exemplifies the critique of the aloofness of transitional justice and the problems surrounding the introduction of supposedly African alternative institutions such as the *gacaca*. In the book's introduction, Shaw and Waldorf suggest adopting a 'place-based' approach to explore the multifaceted encounters between universal transitional justice discourse and 'local practices and priorities' (ibid.: 5). Their empirical evidence on local practices shows how clearly differentiated categories of victim and perpetrator fail to account for complex realities on the ground where people often prefer silence to public displays of truth-telling.

By now, the emphasis on sound empirical knowledge of the local and increasing scepticism towards the efficacy of transitional justice mechanisms are shared by a growing group of scholars in the field of transitional justice (Bell, 2009; Orentlicher, 2007; Teitel, 2003; Theidon, 2009). We agree with Shaw and others that local, place-based empirical evidence is important. Clearly, the emphasis on empirical evidence is sensible from a methodological perspective. However, it runs the risk of reproducing the scalar logic of global, national and local that tends to obscure the multifarious ways in which these scales are being made and re-made in processes of negotiation and contestation. Transcending the mainly methodological concern with scalarity we deem three issues to be crucial to the understanding of transitional justice in the context of much wider social debates on justice and political change: the problem of 'new beginnings' — the paradox of legitimizing a

novelty, of finding a foundation for that which explicitly breaks with the past; the discrepancies between lofty promises and the messy realities of transitional justice in action; and the dialectic between logics of the exception and the ordinary employed to legitimize or resist transitional justice mechanisms.

THE PROBLEM OF NEW BEGINNINGS

New beginnings have often been associated with violence. According to Arendt:

> The relevance of the problem of beginning to the phenomenon of revolution is obvious. That such a beginning must be intimately connected with violence seems to be vouched for by the legendary beginnings of our history as both biblical and classical antiquity report it: Cain slew Abel, and Romulus slew Remus; violence was the beginning and, by the same token, no beginning could be made without using violence, without violating.
> (Arendt,1990/1963:20)

In Arendt's seminal analysis, the problem of beginning is key to the understanding of modern revolutions and the violence with which revolutionary change tends to be brought about. According to Arendt, the modern idea of revolution differs from pre-modern ideas of political change as it envisages the beginning of a new era, a complete break with the past to realize freedom, social equality and justice.

When Arendt was writing *On Revolution* in the early 1960s, many African countries were achieving independence. Prominent African leaders such as Kwame Nkrumah, Sekou Touré and Julius Nyerere framed the strife for national independence in the language of revolution, socialism and Pan-Africanism and did not eschew the use of violence to achieve independence. Theorists such as Fanon (2004/1961) explicitly condoned violence to end colonialism and emancipate the colonized populations from deeply entrenched racism and economic exploitation. During the 1990s, this appeared to change, and since the turn of the twenty-first century, violence is no longer seen as a legitimate means to bring about social change. Representative democracy has spread throughout the continent, but many parts of Africa have also experienced widespread violence and civil war in bitter

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conflicts over the control of state institutions and natural resources, with Sierra Leone, Rwanda, Uganda, Liberia and Somalia becoming the most prominent examples of state failure and armed conflict.

It was these conflicts that triggered the establishment of international tribunals, truth commissions and other transitional justice mechanisms, which are now seen as key in strengthening representative democracy and the rule of law. Following the Latin American template, South Africa was the first country in sub-Saharan Africa to establish a transitional justice mechanism in the form of the Truth and Reconciliation Commission during its transition from the apartheid regime. This was followed by the International Criminal Tribunal for Rwanda, established to hold accountable the main perpetrators of the genocide in 1994. In 2002, another ad hoc criminal tribunal, the Special Court for Sierra Leone, was set up in Freetown to hold accountable perpetrators of war crimes committed during the civil war. In the same year, the ICC, the first permanent international criminal tribunal, was established in The Hague. The ICC has mainly focused on African situations including the case against the leaders of the Lord's Resistance Army in Northern Uganda, and its first concluded trial against Thomas Lubanga, who was found guilty in March 2012 of conscripting and enlisting children in the DRC.

All of these situations face the problem of new beginnings. In contradistinction to Arendt's analysis of revolutionary new beginnings and the revolutionary spirit of decolonization during the 1960s, current debates about new beginnings in Africa often revolve around transitional justice and explicitly reject revolutionary violence. Transitional justice also seeks a break with the past but by addressing past injustices rather than by violent means. The two principal techniques employed are the production of an authoritative historical record contributing to national reconciliation, and criminal trials to hold accountable the perpetrators of war crimes and human rights violations.

As mentioned earlier, liberal constitutionalism, rule of law and human rights are the ultimate objectives of fact-finding by truth commissions and criminal tribunals. For instance, the preamble of the South African Promotion of National Unity and Reconciliation Act of 1995 establishing the truth commission invokes 'a future founded on the recognition of human rights, democracy and peaceful co-

existence for all South Africans, irrespective of colour, race, class, belief or sex'. Similarly, representatives of international criminal courts have highlighted the importance of criminal trials beyond the mere punishment of individuals who have committed crimes. In 2000, for instance, the UN Secretary General stated in his report to the UN Security Council that the Special Court for Sierra Leone 'would contribute to the process of national reconciliation and to the restoration and maintenance of peace in that country' (UN, 2000: 13).

Truth commissions and courts are manifestations of a reformist and legalistic approach to effecting new beginnings; they have their foundation in legal documents including national legislation, international law or peace agreements between warring factions. The South African truth commission is based on the South African interim constitution of 1993 and the Promotion of National Unity and Reconciliation Act (1995); the Special Court for Sierra Leone on an agreement between the UN and the Government of Sierra Leone authorized by the UN Security Council; the ICTR on several Security Council Resolutions; and the ICC on an international treaty.

These founding documents differ from the American Declaration of Independence of 1776 or the French Declaration of the Rights of Man and of the Citizen of 1789 as they do not represent a complete break with the past. Whereas the French Declaration of 1789 rejected the sovereignty of the monarch and introduced popular sovereignty, the African South constitution was the outcome of a long process of negotiation between the apartheid regime and the African National Congress (ANC) resulting in the gradual transfer of power and a compromise between the old regime and the new political order. According to Lollini, the 'language of constitutional law became the syntax and shared language' (Lollini, 2011: 28) of the National Party (NP) and the ANC.

Generally, the condemnation of violence is one of the hallmarks of transitional justice with its focus on legal reform and peaceful dialogue. In spite of the promise of peace and inclusion even the new social and political order envisaged by transitional justice might rely on founding violence, as Branch shows in his article on Northern Uganda (this issue). His account reveals the contradiction between the rhetoric of reconciliation and justice espoused by the advocates of

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transitional justice mechanisms such as *mato oput* and continued violence and injustices in the supposedly pacified districts of Northern Uganda. The discrepancy between the liberal narrative informing truth commissions, courts and localized, neo-traditional initiatives, on the one hand, and the messy contradictory realities in the regions affected by violence and injustice, on the other hand, are one of the key themes addressed by this special issue.

LOFTY PROMISES AND MESSY REALITIES

Tensions and contradictions between the often lofty and abstract ideals of (transitional) justice and their actual enactments and realizations in practice have a profound impact on the ways in which new beginnings in Africa evolve. The ethnographic case studies in this volume on Sierra Leone, Kenya, Uganda, Rwanda, Mauritania and South Africa explore the relationship between abstract ideas and ideals of justice, on the one hand, and often bitter political power struggles and mundane bureaucratic practices, on the other hand. Justice is always refracted in individuals' everyday experiences, challenged or instantiated in specific situations, as Riano-Alcalà and Baines (2012) argue in a recent publication on transitional justice and the everyday. It is striking how absolute ideas about justice are constantly invoked by international organizations, social activists and politicians as well as ordinary people who are engaged in complex negotiations, while ostensibly upholding justice as a non-negotiable principle. For instance, in Steffen Jensen's discussion on South African police reform in this volume, justice as such does indeed seem non-negotiable; however, quite different and conflicting versions of justice emerge in practice, depending on whether freedom is sought from a repressive state apparatus, i.e. the police itself, or from crime. Similarly, the justice of actual outcomes in South African land restitution, in the course of which the state compensates victims of former race-based dispossessions, is evaluated quite differently on the basis of divergent property regimes that are hardly ever made explicit (see Olaf Zenker, this volume). What is more, it might take a conscious effort to raise public awareness in the first place for the fact that normalized poverty

actually constitutes an unacceptable state of injustice, as the recent 'toilet wars' in South Africa show (Steven Robins, this volume) — whether such goals are pursued through spectacular or rather ordinary activism.

The international criminal tribunals have promoted an ambitious vision of justice and peace based on retributive justice, the punishment of political and military leaders who are held responsible for war crimes, crimes against humanity and genocide. Anders' analysis focuses on the discrepancy between the lofty promises of justice made by the Special Court for Sierra Leone and the violent conflicts between the political leaders and former commanders of the warring factions who sought to secure a place in the political order after the end of the civil war. Similarly, Nigel Eltringham's ethnography of the experiences of lawyers and judges at the ICTR raises fundamental doubts about the promise of new beginnings heralded by the tribunal. The contributions by Kimberley Armstrong, Adam Branch and Sabine Höhn on the interventions by the ICC in Uganda and Kenya also highlight the conflicts and contestations about new beginnings and justice in the affected regions where the international project of global justice is often challenged by individuals and groups.

BETWEEN EXCEPTIONS AND BUSINESS AS USUAL

Transitional justice institutions are exceptional instruments established to address extraordinary situations. None of these institutions is meant to be permanent. Even investigations of the ICC, a permanent international organization, are conceived as temporary interventions in the internal affairs of a country in response to extraordinary circumstances sanctioned by international law. And yet special tribunals or truth commissions follow a well-established set of templates with criminal trials at one end of the continuum and blanket amnesty at the other end. Arendt's (1963) account of Eichmann's trial reminds us that ordinary measures such as criminal trials often seem barely adequate to deal with the most extraordinary crime of genocide (see also Drumbl,2007: 1–10).

In her history of transitional justice, Teitel (2003: 71–2) points out that in 'this contemporary phase, transitional jurisprudence normalizes an expanded discourse of humanitarian justice'. In her view, 'there is no clear boundary between ordinary and transitional periods' (ibid.: 93). We would like to interrogate this boundary between the extraordinary and the ordinary, which we think is key to understanding new beginnings in Africa and elsewhere. The contributions to this special issue question the clear boundary between the transition phase and normality. For instance, the articles on South Africa illustrate that, more than a decade after the TRC published its report, the transition phase is not over. At the ANC National Policy Conference in June 2012, President Zuma called for a 'second transition' to highlight the ongoing need to come to terms with apartheid's legacy. As a consequence, debates about justice, compensation and recognition have expanded in various arenas, as Jensen, Zenker and Robins show in their case studies.

Logics of the exception are invoked and employed by a wide range of actors. This includes the classical 'state of exception', as declared in a foundational act of state sovereignty (Agamben, 2005; Benjamin, 1996; Schmitt, 1985). In a reconfiguration of such sovereign power, a similar logic of exception is also utilized within foreign interventions and by various transitional justice institutions, drawing on a pan-human ethic of compassion, international humanitarian law and universalized human rights standards in order to justify local engagements (Fassin and Pandolfi, 2010). But logics of exception are by no means the prerogative of modern states, international organizations or humanitarian activists alone, as a multitude of voices advances similar or divergent claims to sovereignty (Hansen and Stepputat, 2005). Negotiations of new beginnings in Africa are thus shaped by competing logics — logics that vary not only between different actors, but also possibly within a unitary agent such as 'the state'.

The multitude of voices and claims to exceptionality is mirrored by logics of the ordinary instantiated by states, international agencies and Africans from all walks of life. For instance, international organizations and transitional justice mechanisms often emphasize a normal sequence from chaos to order based on a tried and tested model or tool to aid transition and reconciliation. However, it is important to note that these claims — even though backed up by an overwhelming

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military-humanitarian apparatus — do not go unchallenged. Often the envisioned beneficiaries of these good intentions refuse to adopt the proclaimed reading of exceptionality. Instead, they invoke an alternative logic of the ordinary in seeing a neo-colonial agenda or other perfectly mundane political and economic interests at work behind the rhetoric of exception. We hence propose to pay particular attention to the dialectics of various logics of the exception, which justify extraordinary measures in exceptional times, as well as different logics of the ordinary that envision the transition towards a just(er) future as a difficult, yet perfectly mundane affair. We argue that these entanglements of logics of the exception and the ordinary have a crucial bearing on the peculiar trajectories that the discursive and practical negotiations of 'justice' can take in particular settings. This is so because a certain incident or 'move' within such negotiations acquires variable connectivity, depending on the concrete logics of the exception and/or the ordinary, in which it becomes embedded. A focus on these two analytical dimensions in their interrelation is thus crucial for a deeper understanding of transitions to justice in specific African settings.

THE ARTICLES

Simon Turner's article on the repatriation from camp life to post-genocide Rwanda succinctly illustrates the dialectics between the two logics. Here subtle similarities and differences are at work between Hutu refugee camps under the UNHCR and Hutu re-education camps called *ingando* that are run by the Tutsi-dominated new Rwandan state as a specific transitional justice measure. While the refugee camps conform closely to the logic of exception, in which Hutu refugees (i.e. potential *génocidaires*) are reduced to the bare life of an a-historical humanity, the *ingando* camps make use of a profoundly historical logic of exceptionality, conceiving ex-combatants as 'bad life' in need of purification. Both camps aim for reintegration and new beginnings; yet whereas the UN invokes a logic of the ordinary that wants to turn Hutu refugees into universal citizens with no specified history, the Tutsi-dominated state seeks the production of 'good citizens' in terms of an ethnically

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cleansed Rwandan history. Given that *ingando* is only compulsory for Hutu ex-combatants, while Tutsis join separate solidarity camps (*itorero*) that merely enhance their elite careers, quite different ideals and practices of 'justice' emerge from these three spaces of exception and from the divergent transitional trajectories inscribed in them.

Marion Fresia's study of the official repatriation of Mauritanian refugees as both an act of transitional justice and as a prerequisite for further transitional justice measures equally focuses on the camp as an exceptional site where the terms of new beginnings are intensely debated. Her ethnography of refugee camps in Senegal shows how a dominant politico-humanitarian narrative about past human rights violations was co-constructed by both the refugee elite and human rights organizations, portraying the refugees based on humanitarian law as being in a state of exception in relation to the ordinary logic of the international law of sovereign states. However, these refugees were by no means a homogenous group. They comprised different subsets with divergent interests and Fresia further shows how the dominant narrative was also contested by counter-narratives, putting forward quite different understandings of new beginnings and desirable transitions to other forms of justice. Moreover, her analysis reveals substantial discrepancies between locals' discourses and their practices: on the one hand, many highlight the importance of the order of nation states underlying their predicament as 'refugees', while, on the other hand, deviantly disregarding precisely this order and thus the 'refugee'/'citizen' dichotomy in their everyday practices.

Police violence in post-apartheid South Africa also seems to be under the spell of two alternating logics of exceptionality, each one forming the background of the other. The first of these, as Jensen points out, refers to the need, immediately recognized and addressed with the end of apartheid, to profoundly transform the old apartheid police within the transitional justice measure of a security sector reform, in order to prevent further human rights violations (such as torture). However, in the mid-1990s, a second emergency moved to centre stage, namely the threat to national liberation posed by high levels of crime, apparently necessitating hefty police violence as a means to protect the citizens. While on the level of abstract ideals, these two exceptional logics seem complementary, Jensen shows how on the

level of messy everyday practices they actually clash: they end up giving preference to different notions of 'justice' — freedom from police violence *versus* freedom from crime — with each logic of exceptionality dismissing the concern of the other as 'ordinary'. In this sense, the first logic conceives police violence as requiring exceptional measures (and frames crime as ordinary), whereas the second logic sees excessive crime as justifying exceptional police violence (and treats security sector reform as ordinary). The transitional justice of institutional reform is thus left in a state of ambiguity, since — depending on which exceptional logic is activated — excessive police violence constitutes either an obstacle or a means to create a new beginning for South Africa.

Robins' discussion of the recent 'toilet wars' in South Africa provides another example of the relevance of different logics of the exception and the ordinary. In the run-up to the 2011 local government elections, the existence of open (i.e. unenclosed) porcelain toilets in Western Cape townships run by the Democratic Alliance provincial government was suddenly elevated to a public scandal by activists from the African National Congress Youth League (ANCYL). This was achieved by what Robins calls a 'politics of the spectacle', which — drawing on a logic of exceptionality — represented the 'anti-dignity toilets' as a high-profile incident of gross injustice. The spectacle involving the mass media, High Courts and the South African Human Rights Commission soon deteriorated into opportunistic politicking. By contrast, social movements such as the Social Justice Coalition (SJC) have engaged the sanitation problem for a much longer time through a 'politics of the ordinary'. Rather than using spectacular acts of resistance, such social movements have patiently deployed personal testimonies, protests, petitions, scientific reports, statistics and litigation to render politically legible everyday forms of structural injustice, thereby projecting a quite different avenue towards a more just society. Robins argues that the logic of exceptionality, underpinning both the short-lived politics of the spectacle and the narrowly conceived transitional justice mechanism of the Truth and Reconciliation Commission, is ultimately ill-equipped to deal with the structural inequalities still haunting post-apartheid South Africa; by contrast, in fighting structural violence,

the ordinary logic of slow activism stands a better chance of contributing towards a much broader 'transitional social justice'.

The justice of South African land restitution is also evaluated differently, and hence contested, depending on whether restitution is read in terms of a logic of the exception or of the ordinary. As a transitional justice measure of the state, aimed at restoring justice in the light of the exceptional condition of massive, racially motivated land dispossessions in the past, post-apartheid restitution law retrospectively transforms the conception of landed property on which past dispossessions had built. However, as Zenker shows, many former (white) landowners expect restitution to still operate as an ordinary process within an unchanged property system, whereas, in fact, it is driven by an exceptional process of a new transformative property regime. Rather than making restitution's instituted logic of exceptionality their own, such former owners end up reading the events in terms of an ordinary logic of 'victor's justice', in which the allegedly politically motivated transfer of land to Africans is interpreted as being merely dressed up as 'restitution'. In this way, the proclaimed ideal of bringing about justice and reconciliation through the restitution process is seen as being undermined, in practice, through an unjust and politically motivated implementation process. Zenker argues that if all parties in a claim had to interact face-to-face with each other and share their histories of (dis)possessions, there would be a better chance for the development of more 'common-sense'. Given the current institutional format, however, deeply entrenched differences regarding the justice of restituted lands remain. Under such conditions, agreements on the terms of a new beginning seem difficult to reach.

International criminal tribunals are based on the idea that exceptional circumstances justify interventions in countries where the national authorities are unable or unwilling to hold accountable the perpetrators of crimes against humanity and war crimes. This is what happened in Sierra Leone where the government requested the United Nations to set up a special tribunal to hold accountable those 'bearing the greatest responsibility' for war crimes and crimes against humanity committed during the civil war. This UN-backed tribunal was supposed to deliver justice and contribute to a peaceful new beginning of Sierra Leone but as Anders'

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analysis shows, this promise was never realized. Instead, the volatile transition period at the turn of the twenty-first century was characterized by a violent struggle over positions of power and influence that suggest the continuity of patterns of Sierra Leonean politics rather than a new beginning. Sierra Leone provides an illuminating case, as an international criminal tribunal operated in parallel to a truth commission. Moreover, the government had already declared a state of emergency in 1998 and used these powers to arrest and detain hundreds of former combatants in an attempt to remove the former rebels from the political arena.

Eltringham makes a similar point in his ethnography of lawyers and judges at the International Criminal Tribunal for Rwanda. The ICTR was meant to mark a new beginning both for Rwanda and internationally, by contributing to a global legal order. Over time, emphasis shifted from its contribution to Rwandan reconciliation to the idea of a new beginning for international criminal justice. At the court, however, lawyers and judges held different opinions regarding the tribunal's national and international impact. These differences and contradictions are particularly stark with regard to discussions at the tribunal about the failure to indict members of the Rwandan Patriotic Army for alleged war crimes in 1994 and accusations of 'victor's justice'.

The three articles dealing with the interventions of the ICC in Kenya and Uganda highlight the growing importance of this permanent international criminal tribunal for debates about the terms of new beginnings in Africa. Höhn's analysis of the impact the ICC investigations have had on the political arena in Kenya illustrate the growing salience of the ICC. The violence surrounding the 2007 elections were widely perceived as exceptional. Due to the failure of the Kenyan authorities to hold accountable those responsible for organizing the violence, the ICC stepped in as an extraordinary response to an exceptional situation. The ICC's intervention signalled the expansion of the scope of the tribunal's activities, which had been limited to civil wars, into a new domain. This development highlights the role the ICC is likely to play in expanding and consolidating a specific model of multi-party democracy promoted by the UN and other actors. According to Höhn, it is less clear whether the ICC's intervention represents a new beginning for Kenya. It seems

unlikely that the political elite will embark on the social and political reforms that would be needed to address the root causes of electoral violence.

Armstrong and Branch both address the debates about transitional justice and the intervention of the ICC in Northern Uganda. In many ways this case symbolizes the contradictions and tensions underlying the project of advancing global justice. The arrest warrants against five leaders of the Lord's Resistance Army issued in 2005 were the first to be issued by the ICC. Since then the investigation has entered a limbo as the Ugandan government, which originally had referred the case to the ICC, has removed its support for the ICC, considering various domestic options. As elsewhere, the debate in Uganda has been framed in terms of justice and peace, with justice serving as shorthand for a retributive justice mechanism and peace denoting amnesty and other non-retributive forms of restorative justice. Armstrong unpacks this debate and shows how supporters and opponents of the ICC have sought to relate to and adapt ideas about justice and peace in the negotiations about a new beginning in Northern Uganda.

Branch examines a localized model of transitional justice in Northern Uganda that has been promoted as an alternative to the retributive vision of transitional justice promoted by the ICC. This form of supposedly traditional justice, or what Branch refers to as 'ethnojustice', is said to represent African or more specifically Acholi concepts of justice and to be much better adapted to the local socio-cultural context in Northern Uganda than Western criminal justice. Branch's analysis reveals to what extent ethnojustice is shaped by essentialist ideas about African cultural authenticity that strengthen the claims to political authority advanced by traditional leaders who lost much legitimacy during the violent conflict. His evidence challenges the dominant official narrative of a new beginning in Northern Uganda. Branch argues that transitional justice in Northern Uganda did not bring liberal peace but instead has legitimized new and old forms of everyday violence and injustice.

The proposed perspective on 'justice' between the exceptional and the ordinary thus enables the contributing authors to explore issues and themes commonly deemed to fall outside the scope of analysis of transitional justice. They situate courts and other transitional justice mechanisms within wider debates about

justice, human rights discourses and humanitarian interventions. They combine analyses of the interventions of international criminal tribunals in Kenya, Uganda, Rwanda and Sierra Leone with studies of restitution and human rights in South Africa and debates about justice among refugees in Mauritania and Rwanda. These debates about the terms of new beginnings are key to the study of contemporary Africa and its place in a wider world. The various case studies show the considerable differences between divergent situations, fleshing out the wide spectrum of debates about justice and transition across Africa. All situations share, however, the prominent role played by foreign influences either in the form of institutions such as courts or globally circulating ideas about justice. In addition, foreign interventions have generally had profound economic, social and political consequences influencing African debates about a just order, whilst being shaped in often unforeseen ways by the local settings they are operating in. The case studies address these dynamics of localizing justice within settings shaped by transnationally circulating ideas, state-driven processes and variable place-based aspirations. In focusing on the discursive and practical negotiations of justice, situated within entanglements of logics of the exception and the ordinary, they thus ultimately aim for a better understanding of current debates about transition, justice and 'transitional justice' in Africa.

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