Emotions, Truth and Justice: Shared and Collective Emotions in Transitional Justice

1. The Emotional Salience of Transitional Justice

Contemporary reports from the courtrooms of international tribunals and from truth commissions provide compelling examples of how both victims and perpetrators perceive Transitional Justice (TJ) procedures as spaces to express and share emotions. They address audiences within the courtroom as well as the wider public, their own as well as the group of the other. A woman who testified before the South African Truth and Reconciliation Commission (TRC) knowing that this would be broadcast stated: «I wanted the world to see my tears». At the International Criminal Tribunal for the former Yugoslavia (ICTY), a woman wanted to confront her neighbours: «I wanted to see (them) ... and ask them why they did it». Jeffery provides a haunting report of the expression of anger from the trial of prison commander Duch at the Extraordinary Chambers in the Courts of Cambodia (ECCC), when the brother of a victim and one of the civil parties to the trial addressed the defendant directly: «I have wanted to smash you ...» It caused uproar, when Biljana Plavšić, the former President of the Republika Srpska, who had been sentenced for crimes against humanity, later publicly retracted her expression of remorse and apology that she had given in court; it was seen as playing games with the emotions of victims. At a recent trial of a former guard and accountant in Auschwitz in Germany, one of the victims and civil parties present reached out to the defendant in a gesture of reconciliation, and offered forgiveness. Numerous reports from the International Military Tribunal (IMT) at Nuremberg, and later follow-up trials equally testify to the salience of emotions in these trials, perhaps best epitomised by US journalists like Martha Gellhorn, who covered the IMT at Nuremberg: she felt «shame as a human being» when she saw footage from liberated concentration camps.

There can be little doubt about the salience of emotions in transitional justice. The events and crimes elicit moral outrage. Victims express their experiences of trauma; individual emotions of victims and defendants during and as part of procedures include sadness, anger and hatred on the part of victims, and shame, guilt and remorse among the perpetrators. The change of status for formerly powerful perpetrators, who find themselves now in the dock, might elicit emotions of anger, shame and fear among them

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Susanne Karstedt

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and their group. The emotions of judges, lawyers and audiences present at these procedures, and of «sympathetic witnesses» and «listeners» add to the emotional dynamics of transitional justice procedures. Forgiveness as an «emotional practice» is part of contemporary transitional justice procedures, in criminal trials as well as in Truth and Reconciliation Commissions (TRCs). Finally, broadcasts and documentaries of procedures like «A long night's journey into day» on the South African TRC transport emotional images and content to the general public. During the Nuremberg IMT, documentaries of the mass atrocities and genocide committed in their name were used to legitimize the Tribunal among the German population, and to elicit collective emotions of guilt and shame.

Since the Nuremberg Trials the emotional salience and appeal of TJ procedures has been recognized. In his opening speech on 21 November 1945, Chief Justice Jackson famously declared: «That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgement of law is one of the most significant tributes that Power has ever paid to Reason». With this statement he established a triangle of emotion (vengeance), reason (law), and power (victors and vanquished), that reflected the in-built tensions of the Nuremberg Tribunal. In contrast, rather than being seen as a conflict between reason and emotion, contempor-ary transitional justice has been cast as a juxtaposition of two diverging emotions and the tensions «Between Vengeance and Forgiveness», thus the title of Martha Minow’s influential book on the South African Truth and Reconciliation Commission.

As the examples above demonstrate, sharing and communicating emotions take place in all types of TJ settings. Contemporary TJ procedures encourage the expression of emotions more than its predecessors in the wake of World War II not the least because of the presence of victim-witnesses and the explicit aim of providing justice for victims. Notwithstanding the considerable differences between contemporary TJ procedures, whether they are international, hybrid or national procedures, whether they are criminal procedures proper or truth and reconciliation commissions, or whether they are more formal or informal procedures, all give space to the expression of emotions, the open display of emotions, and to often highly emotional statements by victims and perpetrators. Since their inception at the IMT at Nuremberg TJ procedures are tasked with shaping individual emotions as well as collective emotions and the emotional climate in the wider transitional and post-conflict society. Contemporary TJ procedures are thus confronted with extraordinary expectations as to

10 The Nuremberg Trials were nearly exclusively based on evidence from documents and testimony from other perpetrators, and in hindsight they are criticized for the exclusion of victims. These criticisms often ignore the reason for this decision by the prosecution, and the constraining conditions under which the Nuremberg Trials took place. First, the Nuremberg Trials were trials of the elites of the Nazi state, who mostly had not directly participated in mass atrocities; the paper trail of orders and reports and the evidence from lower level perpetrators was thus decisive. Second, at the time of the trial immediately after the war the vast majority of survivors wanted to return to their home countries and not to the country of the perpetrators. Victims were and are present as civil parties in all major trials of Holocaust perpetrators in Germany since the 1950s, most prominently in the Auschwitz and Majdanek trials in the 1960ies and 1970ies. For a detailed analysis see Karstedt, Susanne: From Absence to Presence, from Silence to Voice: Victims in Transitional Justice since the Nuremberg Trials, in: International Review of Victimology 17 (2010), p. 9–50.
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10 Minow, Martha: Between Vengeance and Forgiveness, at p. 335.


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what they should achieve when dealing with individual as well as collective emotions.

This contribution will examine the emotion dynamics of TJ procedures, and the mechanisms of emotion sharing between individuals within TJ settings, and within collectives. This will help to enhance our understanding of the emotion dynamics in TJ. It might also shift debates away from a search for the »most victim friendly form« of TJ towards a detailed assessment of the particular features of different settings and procedures. To this purpose I propose a framework of »emotion sharing«. The social sharing of emotions functions as »an interface between individual and collective processes«. The framework thus captures both the supposed emotional effects of post-conflict and transitional justice on individual victims (and perpetrators), as well as on post-conflict societies. Such an approach implies a perspective on TJ procedures as settings, spaces and rituals with a diversity of emotion sharing processes: between victims and perpetrators, with »sympathetic« witnesses and listeners, with lawyers, judges and professionals in the (court) room, with the communities of victims and perpetrators, or with society beyond the confined space where the procedure takes place.

Evidence from a range of different TJ settings and procedures will be used, including the Nuremberg and Tokyo Trials, international and national criminal trials and tribunals, truth commissions and informal community procedures like the gacaca courts in Rwanda. All TJ procedures have in common that they are legal procedures, are based on law and proceed according to legal rules. Besides criminal procedures before national, hybrid, and international tribunals and courts, this applies to civil procedures to claim damages for victims, illustation, amnesties, and truth and reconciliation commissions. The United Nations Report of the Secretary General on Transitional Justice of 2004 confirms this legal character when it defines TJ 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«. If they are not outright court procedures, TJ settings in many ways emulate court procedures as e.g. truth and reconciliation commissions.

I will first give an overview over the evidence of the emotional impact of TJ procedures on individual and collective emotions, and then proceed with an analysis through the lens of emotion sharing mechanisms. This will be done with a focus on a) the legal setting as enabling and limiting emotion sharing; b) the problems arising from sharing trauma and guilt; c) emotional relief and recovery; and finally d) the impact on collective emotions and emotional climates.

2. Great Expectations and Continuous Disappointment

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19 Gacaca courts were installed after the genocide in Rwanda to deal with lower level and less serious perpetrators in their /their victims' communities, and based on a template of indigenous justice; Knust, Nandor: Strafrecht und Gacaca. Die Entwicklung eines pluralistischen Rechtsmodells am Beispiel des ruandischen Völkermordes, Berlin 2013.
spected impact of emotions on healing, reconciliation and forgive-
ness in contemporary transitional justice procedures can hardly be
overstated. This includes claims as to the »social and political in-
fluence« of emotions,22 or expectations for »catalys(ing) the emer-
gence of a democratic emotional culture«.23 DrumbI sees shame as
a »particularly effective device in the close-knit living patterns of
dualist post-genocidal societies« like Rwanda.24 Positive expecta-
tions regarding the beneficial emotional impact and potential of
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quences when emotions raised during procedures might fuel
further violence.25 Moreover, TJ procedures—whether interna-
tional courts or tribunals, truth commissions, domestic courts or
other more informal mechanisms—are cast in terms of healing
rather than justice, as Minow had observed early on.26 Truth tell-
ing, accountability and justice are seen as mechanisms that are
supposed to lead on to the emotional recovery of individuals as
well as of victim groups.27 Further, these mechanisms should ini-
tiate a change of the emotional climate and processes of healing
in post-conflict societies as these emerge from a history of mass
atrocities and human rights abuses.28

As the language of healing crowded out the terminology of
justice, the legal setting and constraints of TJ procedures were in-
creasingly deemed to be detrimental to the expression and sharing

22 Hutchison, Emma/Bleiker, Roland: Emotional Reconciliation: Reconstituting
Identity and Community after Trauma, in: European Journal of Social Theory
23 Mihai, Mihaela: Socializing Negative Emotions: Transitional Justice Trials in
131, at p. 113.
24 DrumbI, Mark: Punishment, Pogroms: From Guilt to Shame to Civis in
1232.
25 Lu, Catherine: Shame, Guilt and Reconciliation after War.
26 Minow: Vengeance and Forgiveness South Africa, p. 327.
27 Doak, Jonathan: The therapeutic dimension of transitional justice: Emotional
repair and victim satisfaction in international trials and truth commissions, in:
28 Mendeloff: Trauma and Vengeance, p. 398.

of emotions, and thus to the emotional recovery of victims and
victim groups. While Justice Jackson at the Nuremberg Trials sub-
jected emotions (as well as power) to the authority of law and thus
to »reason«, contemporary authors see legal procedures in interna-
tional courts and tribunals as well as in truth commissions as an
undue constraint on the expression of emotions and trauma; legal
procedures it seems thus thwart the potentially healing impact of
transitional justice procedures, and stand in the way of emotional
recovery. The widely observed lack of such emotional impact in-
deed seems to evidence the shortcomings of the legal context and
its characteristic formalities in giving space to and acknowledging
emotions.29

However, the claims to emotional recovery have turned out to
be mostly »article(s) of faith«,30 and based on anecdotal rather than
on robust evidence. Notwithstanding a growing body of re-
search, there is currently little empirical data that suggests that
such outcomes can actually be delivered by TJ procedures of all
types. Having conducted one of the most comprehensive reviews
of empirical studies on the topic Doak states: »Precisely, how (ita-
letics in original) the truth acts to transform negative emotions is
still unknown«.31 Starting with the first studies of victim-witeness
at the ICTY the results give little unambiguous support to the
impact of truth-telling, accountabilility and justice on the emo-
tional healing of victims.32 Similar results are obtained for the
South African TRC.33 For most victims, giving evidence and

29 Minow: Vengeance and Forgiveness South Africa, p. 327; Mihai: Socializing
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31 Doak: Therapeutic dimension, p. 275.
32 Biro, Miklos/Adjukovic, Dean/Coralko, Dinks/Dilipa, Dino/Milin, Petar/
Weinstein, Harvey: Attitudes toward justice and social reconstruction in Bosnia
and Herzegovina and Croatia, in: Stover/Weinstein (Eds.) My Neighbour, My
Enemy, p. 183–205; Stover: Witnesses and the promise of justice.
33 Kaminer, Debra/Stein, Dan/Mbanga, Irene/Zungu-Dirwayi, Nompumelelo:
The Truth and Reconciliation Commission in South Africa: relation to psychia-
tric status and forgiveness among survivors of human rights abuses, in: British
Journal of Psychiatry 178 (2001), p. 373–377; overview Mendeloff: Trauma and
Vengeance.
pected impact of emotions on healing, reconciliation and forgiveness in contemporary transitional justice procedures can hardly be overstated. This includes claims as to the »social and political influence« of emotions, or expectations for »catalys(ing) the emergence of a democratic emotional culture«. Positive expectations regarding the beneficial emotional impact and potential of TJ are juxtaposed with warnings of potential negative consequences when emotions raised during procedures might fuel further violence. Moreover, TJ procedures—whether international courts or tribunals, truth commissions, domestic courts or other more informal mechanisms—are cast in terms of healing rather than justice, as Minow had observed early on. Truth telling, accountability and justice are seen as mechanisms that are supposed to lead on to the emotional recovery of individuals as well as of victim groups. Further, these mechanisms should initiate a change of the emotional climate and processes of healing in post-conflict societies as these emerge from a history of mass atrocities and human rights abuses.

As the language of healing crowded out the terminology of justice, the legal setting and constraints of TJ procedures were increasingly deemed to be detrimental to the expression and sharing of emotions, and thus to the emotional recovery of victims and victim groups. While Justice Jackson at the Nuremberg Trials subjected emotions (as well as power) to the authority of law and thus to »reason«, contemporary authors see legal procedures in international courts and tribunals as well as in truth commissions as an undue constraint on the expression of emotions and trauma; legal procedures seem thus thwart the potentially healing impact of transitional justice procedures, and stand in the way of emotional recovery. The widely observed lack of such emotional impact indeed seems to evidence the shortcomings of the legal context and its characteristic formalities in giving space to and acknowledging emotions.

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25 Lu, Catherine: Shame, Guilt and Reconciliation after War.
26 Minow: Vengeance and Forgiveness South Africa, p. 327.
28 Mendeloff: Trauma and Vengeance, p. 598.
29 Minow: Vengeance and Forgiveness South Africa, p. 327; Mihai: Socializing Negative Emotions; Flam: Transnational movement.
31 Doak: Therapeutic dimension, p. 275.
32 Biro, Miklos/Adjakovic, Dean/Coralko, Dinks/Djipa, Dino/Milin, Peter/Weinstein, Harvey: Attitudes toward justice and social reconstruction in Bosnia and Herzegovina and Croatia, in: Stover/Weinstein (Eds.) My Neighbour, My Enemy, p. 183–205; Stover: Witnesses and the promise of justice.
truth-telling is experienced as involving considerable emotional pain; this applies to participants in the South African TRC\textsuperscript{34} as well as to those in local gacaca courts that dealt with the genocide in Rwanda.\textsuperscript{35} Brounèus reports a particularly negative impact on the emotional and overall well-being of women who testified at the local gacaca courts that dealt with the genocide in their community.\textsuperscript{36} Corroborating findings were obtained by Byrne for the South African TRC: 80\% found that the process involved »considerable emotional pain«, and only 20\% felt that they had »benefited from … shared reactions«.\textsuperscript{37} The impact of participation in the gacaca courts differed for survivors and perpetrators; while the emotional and psychological wellbeing of the former clearly decreased, signs of enhancement were observed for the perpetrator group.\textsuperscript{38} Victims in Guatemala, who had testified at a military tribunal against those who had participated in a massacre in their communities reported higher levels of negative emotions like loneliness, anger and fear.\textsuperscript{39} The most positive results are reported for victims, who acted as civil party in the trial of Duch, the governor of the notorious S21 detention centre, at the ECCC. Several factors might have contributed to the outcome, including the recognition as civil party, the size of the victim group at the court, and finally the time that had passed since the events took place in 1975 to 1979.\textsuperscript{40}


\textsuperscript{36} Brounèus: Truth-telling.

\textsuperscript{37} Byrne: Benefit or burden, p. 243.

\textsuperscript{38} Rime et al: Impact of Gacaca tribunals, at p. 703.


\textsuperscript{40} Stover, Eric/Balchard, Mychelle/Koenig, Alex: Confronting Duch: Civil party participation in Case 001 at the Extraordinary Chambers in the Courts of Cambodia, in: International Review of the Red Cross 93 (2011), p. 503–546.


\textsuperscript{42} Mendeloff: Trauma and Vengeance, at p. 596 and 614.

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O’Connell focussed on criminal trials and prosecution, and canvassed forensic psychological studies, interviews with therapists who counselled survivors and the scant evidence from TJ fora. He found conflicting and contradictory evidence for the psychological and emotional well-being of victims of severe human rights abuses (mostly torture) who were involved in criminal and civil claims against perpetrators, with some studies reporting initial relief, and also positive feelings like hope, in contrast to others which mainly found no or even a negative emotional impact.\(^{41}\) Mendeloff conducted the most extensive study using»direct evidence» from South Africa and former Yugoslavia. He concludes that the results show little impact on victims’ emotional well-being. Given that victims of massive human rights abuses suffer from multiple traumas, it is likely «that post-conflict truth-telling mechanisms ... have even less of a beneficial impact ... (and) psychological benefits».\(^{42}\)

In a similar vein, claims as to a positive and healing impact of TJ on collective emotions and the emotional climate of post-conflict societies get mixed support. The majority of survivors in former Yugoslavia were dissatisfied with the TJ process; however, their emotional responses to perceived impunity of the perpetrators were only weakly related to psychological and emotional well-being.\(^{43}\) Two related studies of the local gacaca courts in Rwanda show that both the victim-witnesses/survivors and the perpetrators who were charged with sexual and other violence, and property crimes like looting rated the emotional climate in their communities as more negative, which was most marked among the


\(^{36}\) Brounéus: Truth-telling.

\(^{37}\) Byrne: Benefit or burden, p. 243.

\(^{38}\) Rime et al: Impact of Gacaca tribunals, at p. 703.


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victim-survivor group. However, notwithstanding such negative perceptions, both groups participating in the trials developed a more individualised and personalised perspective and less prejudiced view of each other after they had attended the gacaca courts in their communities.\(^{44}\) In post-conflict Chile, both direct and indirect victims as well as non-affected members of the public mainly agreed that forgiveness could not be achieved for the violence that had haunted the country during the years of the Pinochet regime.\(^{45}\)

TJ procedures address both victims and perpetrators with different messages and appeals to emotions. In particular the Nuremberg Tribunal was cast in terms of sending a message to the German people; it aimed at instilling «collective guilt» and shame among the Germans for the crimes that had been committed in their names, in their faces and with their support and involvement.\(^{46}\) Collective guilt was never accepted by a majority during and after the trials.\(^{47}\) The screening of documentaries of the atrocities to the German public did not elicit the collective reactions of guilt and shame that the Western Allies had hoped for.\(^{48}\) In particular the Americans saw the «mobilization of feelings of guilt» as decisive for the impact of the films, and they sent out observers, took photos of the public when they left the cinemas, and conducted surveys. Notwithstanding individual and open reactions of shock and shame, the overall result was disappointing. »Almost nowhere can one find any individual acceptance of guilt,« nor did most of the attendants show visible shock.\(^{49}\) This equally applies to the screenings and the actual visits of the concentration camps. This failure was seen as indicative of a lack of insight among the German population into the crimes and outrageous wrongs that had been committed, and of the futility of re-education. For the Tokyo Trial, Dower suggests a »kaleidoscope (of) such responses« rather than uniform emotional responses in the public to which these procedures were addressed.\(^{50}\)

These results are surprisingly consistent across different TJ procedures: whether international or domestic trials, whether criminal trials or truth commissions, whether past or contemporary procedures, they do not seem to achieve what they are tasked and claimed to do, neither for individual victims and perpetrators, nor for the post-conflict society as a whole.\(^{51}\) The analyses point toward underlying processes and uniform mechanisms that are functional in generating the consistent and overall disappointing results. Getting a better and more systematic understanding of the emotion dynamics in these processes might give a firmer foundation to address and amend the problems of emotions in TJ procedures. Which expectations of TJ procedures are realistic, which emotional reactions can be expected and from whom? Where is the promise of emotional healing plausible and where not, and under what circumstances?


\(^{48}\) Weckel: Nachsitzen im Kino; Weckel: Disappointed Hopes; Weckel: Beschämende Bilder.

\(^{49}\) Quoted in Weckel: Beschämende Bilder, p. 444; Weckel: Nachsitzen im Kino.


victim-survivor group. However, notwithstanding such negative perceptions, both groups participating in the trials developed a more individualised and personalised perspective and less prejudiced view of each other after they had attended the gacaca courts in their communities.\textsuperscript{44} In post-conflict Chile, both direct and indirect victims as well as non-affected members of the public mainly agreed that forgiveness could not be achieved for the violence that had haunted the country during the years of the Pinochet regime.\textsuperscript{45}

TJ procedures address both victims and perpetrators with different messages and appeals to emotions. In particular the Nuremberg Tribunal was cast in terms of sending a message to the German people; it aimed at instilling »collective guilt« and shame among the Germans for the crimes that had been committed in their names, in their faces and with their support and involvement.\textsuperscript{46} Collective guilt was never accepted by a majority during and after the trials.\textsuperscript{47} The screening of documentaries of the atrocities to the German public did not elicit the collective reactions of guilt and shame that the Western Allies had hoped for.\textsuperscript{48} In particular the Americans saw the »mobilization of feelings of guilt« as decisive for the impact of the films, and they sent out observers, took photos of the public when they left the cinemas, and conducted surveys. Notwithstanding individual and open reactions of shock and shame, the overall result was disappointing. »Almost nowhere can one find any individual acceptance of guilt«, nor did most of the attendants show visible shock.\textsuperscript{49} This equally applies to the screenings and the actual visits of the concentration camps. This failure was seen as indicative of a lack of insight among the German population into the crimes and outrageous wrongs that had been committed, and of the futility of re-education. For the Tokyo Trial, Dower suggests a »kaleidoscope (of) such responses« rather than uniform emotional responses in the public to which these procedures were addressed.\textsuperscript{50}

These results are surprisingly consistent across different TJ procedures: whether international or domestic trials, whether criminal trials or truth commissions, whether past or contemporary procedures, they do not seem to achieve what they are tasked and claimed to do, neither for individual victims and perpetrators, nor for the post-conflict society as a whole.\textsuperscript{51} The analyses point toward underlying processes and uniform mechanisms that are functional in generating the consistent and overall disappointing results. Getting a better and more systematic understanding of the emotion dynamics in these processes might give a firmer foundation to address and amend the problems of emotions in TJ procedures. Which expectations of TJ procedures are realistic, which emotional reactions can be expected and from whom? Where is the promise of emotional healing plausible and where not, and under what circumstances?


\textsuperscript{48} Weckel: Nachsitzen im Kino; Weckel: Disappointed Hopes; Weckel: Beschämende Bilder.

\textsuperscript{49} Quoted in Weckel: Beschämende Bilder, p. 444; Weckel: Nachsitzen im Kino.


3. Transitional Justice: Through the Lens of Emotion Sharing

3.1 Emotion Sharing: Theoretical Approaches and Empirical Results

The field of «emotion sharing» provides a theoretically rich and empirically promising framework for understanding these processes as they emerge within the spaces of tribunals and court rooms, and reach beyond these. Emotions have long-lasting cognitive and social consequences in individuals, and TJ procedures are confronted with these. TJ procedures are thus one of the many spaces and situations where people share emotions: the social sharing of emotion is a natural condition of social life. People share emotions independent of age and gender, education, status, and cultural practices. Emotion sharing is initiated early after an episode, however the need for sharing lasts as long as the memory of the emotion maintains its impact. Emotions are mainly shared within close social circles, but spread beyond their origin as people share. Sharing affects the individual who experienced the emotion and those who are the recipients (»targets«) of the shared emotion.

Individuals share all types of emotions, both positive and negative emotions. Negative emotions are elicited by loss, threats and other negative experiences, and include anger, fear, sadness, but also shame and guilt; anxiety, and depression are also in this category. Sadness, vengeance, and anger are shared as much as happiness and joy; further, the experience of sharing even very negative emotions is not perceived as uncomfortable or painful by a majority of subjects; consequently, traumatic emotional experiences are frequently shared, and victims also express a need to do so.

The social sharing of emotions links an individual's closer and more distant social circles, and leads on to emotional reactions among the listeners, the »targets« of sharing. Two types of reactions from listeners are observed. »Socio-affective« reactions are often non-verbal, and offer emotional support like comfort, consolation, empathy and bonding; they convey a sense of recognition and validation of the suffering and emotional experience. Emotion sharing initially favours socio-affective responses, and the expectations of the person sharing and the responses of the listeners converge. Listeners respond with more socio-affective reactions the more intense the related episode and emotions are, in particular with non-verbal responses. »Cognitive responses« in contrast aim at helping the narrator to understand their emotional experience. This includes a (re-)framing and (re-)appraisal of the episode which ultimately should lead the narrator to adapt expectations, goals and actions in the process of coping with the emotion. They thus elicit cognitive responses to the emotional distress in the narrator: efforts to cope with and address the situation, and to regain control over the emotions and the situation.

In particular the initial socio-affective responses to shared emotions have an immediate impact as they generate stronger bonds between the narrator and the listeners; they thus convey a sense of belonging, and can enhance a person's social integration into groups and wider social circles. People thus feel spontaneously relieved after sharing their emotions, and generally benefit from sharing, as feelings of insecurity, loneliness, and helplessness...
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56 Rime: Emotion Elicits Social Sharing, p. 62, p. 75-76.

57 Rime: Emotion Elicits Social Sharing, p. 75-76.

ness are alleviated. Sharing thus has the potential to reduce distress caused by emotions through both socio-affective and cognitive responses from the targets of sharing: it addresses immediate needs of the person experiencing (negative) emotions for comfort and consolation, validates negative emotions, enhances the understanding of and adaptation to emotional experiences, and thus protects individuals from the emotional impact of situations and can promote long-term recovery.

Application of this general model of emotion sharing focuses on issues of critical importance for TJ settings: the type of emotions and traumatic experiences shared between victims, perpetrators and audiences; the mode of reaction—whether socio-affective or cognitive; and the impact of TJ procedures and settings on emotional recovery and healing.

### 3.2 The Legal Setting: Limiting or Supporting?

In principle, the framework of emotion sharing largely supports the role that contemporary TJ assigns to the presence of victims, their statements, and their expressions of emotions. The examples given above, from the courtrooms of international tribunals as well as from truth commissions provide compelling insights into how victims or perpetrators perceive TJ procedures as a space to share emotions, and actively engage in the process. They demonstrate how victims are motivated by the search for emotional support like meaning, recognition and validation. The mostly negative emotions shared in TJ procedures nonetheless instigate social interaction by story-telling and conversation. The legal setting of a criminal trial is not by default inimical to the recognition and validation of victims’ suffering; to the contrary it actually legitimized such suffering within an institutional and authoritative context and thus for the affected communities. The framework of emotion sharing generally corroborates the initially high hopes and optimism of victims who look forward to sharing their stories in courts as well as in truth commissions, and accounts for their reports of initial relief, as Gobodo-Madikizela found for the South African TRC. The social-integrative function of emotion sharing might instigate a change in mutual perceptions between victim and perpetrator groups, with a more individualised rather than group-based perspective, as was observed for participants at the community gacaca courts in Rwanda.

However, the legal setting constrains socio-affective modes of responses, and thus disappoints victims’ expectations. In all courts, but even in truth commissions, judges, chairs, and other legal personnel are restricted with regard to the expression of emotions. Victims who testified in international courts and tribunals mostly felt that their initially high hopes had been thwarted, and sharing their emotions was not met with appropriate responses or fell on deaf ears. Often their testimonies and stories are only vaguely related to the case. Transcripts of victim-witnesses’ testimonies at the ICTY include incongruous reactions from judges, which even if obviously well-meant as a socio-affective response failed to recognise the suffering.

TJ fora ostensibly differ with regard to the space and encouragement they give to emotion sharing. Thus, the South African TRC was exemplary in encouraging the sharing of emotions, partially facilitated by the fact that an amnesty could only be granted

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60 Rimé: Emotion Elicits Social Sharing, p. 75.

61 Rimé: Emotion Elicits Social Sharing, p. 62, p. 75

62 Gobodo-Madikizela: Remorse, Forgiveness.

64 Kanyangara et al: Collective Rituals, emotional climate.


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In contrast, the audiences in the gacaca courts represented divided communities, with non-sympathetic and inimical listeners from the perpetrator group creating a situation in which the sharing of emotions became a negative emotional experience for the victim. Women who testified in local gacaca courts were utterly distressed, angered and scared by negative and stigmatizing reactions from the audience, and the denial of recognition of their plight. The women reported: »The most difficult is that they sabotage the testimonies. When we give testimony, they do not listen.« Others spoke of harassment during the gacaca, and the ensuing psychological crisis: »When I gave testimony, the other survivors with the same problems supported me. ... but the génocidaires, they are still angry. « They said derogatory remarks of women.«

3.3 Disjunctions: Emotion Sharing between Victims and Perpetrators

In TJ settings, perpetrators who committed horrific crimes and were involved in massive abuse and atrocities, meet and encounter victims who suffer from multiple traumatic experiences. Victims come with anger, sadness and memories of traumatic emotional experiences, while perpetrators feel anger, shame and guilt. TJ fora are defined by the extremely negative emotions and distressing emotional experiences that are shared between members of antagonistic groups, and with equally divided audiences. What are the specific qualifications and limitations for sharing intense traumatic experiences and guilt and shame in TJ fora?

Research on emotion sharing confirms that traumatic emotions are frequently shared, and there are no differences in sharing between those who have experienced intense trauma and those who have not. However, those with the most intensive symptoms of Post-Traumatic Stress Disorder (PTSD) were more reluctant about sharing all emotional aspects of their experience, and in particular did not want to share the most distressing ones. Consequently, victims feel unable to express their extraordinary experience, and »they fear not being understood, or not being believed and validated by the people they talk to«. These sentiments are echoed in the interviews with women who testified at gacaca courts, or by members of a Maya community in Guatemala attending a trial of the soldiers who had committed mass atrocities in their communities. Direct victims of political violence in Chile thus felt more inhibited to express their emotional distress and trauma experienced during the period of violence.

These sentiments reflect what actually can be expected from listeners to such distressing events. The socio-affective mode of response is suspended for such situations. When listeners are confronted with extreme trauma, atrocious events or severe illness, they tend to react with less empathy and even attempt to constrain the victim in the expression of emotions. Bystanders and non-victims severely underestimate the victim's situation, react with anxiety and respond with simplistic interventions that cannot do justice to the complex consequences of the negative emo-


68 Rime: Emotion Elicits Social Sharing, p. 68.
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Experiences of Holocaust survivors and victim-witnesses at courts and truth commissions are representative of these processes. As both Hondius and Danieli report for Holocaust survivors, survivors experience this as a »conspiracy of silence« that extends to all realms of society, and even includes mental health, justice and other professionals. Survivors in Guatemala report that in their small community they received little support and empathy even from their own group. Brouneus reports several cases of women who, after having given highly emotional testimony of their trauma in gacaca courts, were neither visited nor looked after by their neighbours or other community members who had been present. This general mechanism of emotion sharing might also account for the incongruous response of a judge at the ICTY.

Perpetrators are even more restrained in sharing their emotions of shame and guilt. Both emotions are defined as »self-conscious emotions«, based on the observation that they make individuals wish to hide and disappear. Individuals tend not to share events that elicit feelings of shame and guilt, and in particular they keep those experiences secret that involve a greater responsibility for the event. Perpetrators therefore should be inhibited to actually share these emotions and be very reticent in expressing them.

These limitations of sharing traumatic and self-conscious emotions on both sides of the divide between victims and perpetrators seemingly account for the general and widespread disappointment among victims and survivors, whether participating in TJ fora or not. The overall lack of socio-affective responses might drive the strong and nearly universal feelings of anger and disappointment with which many victim-witnesses walk away. For victims who suffer from high levels of trauma, feelings of anger, loneliness and loss often prevail. Victims might be particular disappointed at the perpetrator's reluctance to show or share emotions of shame and guilt; they interpret the invisibility as a lack of such emotions, even if perpetrators experience them. Such disappointment might also translate into the widely reported perceptions of leniency and impunity for the perpetrator, which for victims in a way and in hindsight corroborate the lack of validation and recognition of their traumatic experiences by TJ.

These discrepancies and disjunction in the sharing of emotions between victims and perpetrators are the root causes of what Jeffery describes as the »forgiveness dilemma«. When victims are reticent to give voice to the most distressing traumatic experiences, and perpetrators withhold expressions of shame and guilt, forgiveness is difficult to achieve. Victims demand that expressions of guilt, remorse and shame are authentic and represent true emotions. Rituals of apologies are rejected, as are purely instrumental apologies. Victims of gross human rights violations in South Africa, whether they had participated in the TRC proceedings or not, and whether they had given public or closed testimony to a TRC investigator, were not willing to forgive when only guilt was admitted, or an apology made by the perpetrator. They requested to see signs of »true sorrow« from the perpetrator. Those who had given public testimony and had been pre-

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72 Rimé: Emotion Elicits Social Sharing, p. 76.
75 Brouneus: Truth-telling, p. 70
78 Mendelof: Trauma and Vengeance, p. 605.
79 Bayoglu et al: Effects of War.
80 Bayoglu et al: Effects of War; Stover: Witnesses and justice.
81 Jeffery: Forgiveness dilemma.
83 Subotić: The cruelty of false remorse.
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3.4 Emotional Relief and Recovery: Can It Be Achieved?

As has been outlined above the claim that participation in TJ procedures, truth telling, and testimony, i.e. the sharing of traumatic emotional experiences, leads to emotional relief, long-term emotional recovery and healings of victims has found little empirical support. In light of theory and research on emotion sharing such claims indeed turn out to be unsustainable. Research within this framework provides consistent evidence that merely talking about or sharing an emotional experience does not resolve it or lead to emotional recovery. Narrators expect and initially feel relief when sharing emotions. Notwithstanding a sense of spontaneous relief, there is no evidence that initial sharing starts a process of recovery or healing nor does repetitive sharing. A longitudinal study showed that actually the »prolongation of sharing of emotions is a maladaptive outcome and a poor recovery is a direct consequence of self-perpetuating sharing«.

It is therefore highly unlikely that truth telling and testimony can contribute to the long-term emotional recovery of victims. This applies to those who participated in TJ procedures as well as to survivors in post-conflict societies generally, as evidence from the ICTY demonstrates. Further, the emotional reactivation of the episode might elicit negative emotions in participants. Fear, sadness and anxiety considerably increased for both perpetrators and victims after they had participated in a gacaca court trial in their community. For victims, a sharp increase in symptoms of trauma rather than recovery was observed. In sum, there is no foundation for the assumption that a »single-shot expression of emotions« can contribute to long-term emotional recovery. This applies to perpetrators as well as to survivors who participated in post-conflict societies generally, as evidence from the ICTY demonstrates. Further, the emotional reactivation of the episode might elicit negative emotions in participants. Fear, sadness and anxiety considerably increased for both perpetrators and victims after they had participated in a gacaca court trial in their community. For victims, a sharp increase in symptoms of trauma rather than recovery was observed. In sum, there is no foundation for the assumption that a »single-shot expression of emotions« can contribute to long-term emotional recovery.

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85 Kaminer et al: Psychiatric status and forgiveness.
89 Rime: Emotion Elicits Social Sharing, p. 77–79.
90 Zech/Rime, Is talking helpful?
92 Mendeloff: Trauma and Vengeance, p. 605.
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65 Kaminer et al: Psychiatric status and forgiveness.

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Susanne Karstedt

emotions« can contribute to the diminishing of emotional trauma, neither in a legal setting nor elsewhere.\textsuperscript{94}

Importantly, it is the mode of response, rather than the mere expression of emotions, that is decisive for emotional recovery.\textsuperscript{95} Besides socio-affective responses, narrators also expect cognitive responses that help them to re-frame and re-appraise the emotional event, in particular if it has been distressful, and can set them on the road towards emotional recovery. A comparison of socio-affective and cognitive modes of responses found that »sharing situations which prompt cognitive responses can produce the recovery effect« that mere social sharing by the narrator and a predominantly socio-affective response by listeners fail to generate.\textsuperscript{96} Emotional recovery can best be achieved by a sequence of responses that starts with socio-affective responses followed by cognitive responses.

Victims of human rights abuses who participate in TJ procedures express a demand for »understanding« the violent events, often in highly emotional language. The witness at the ICTY wanted to understand why their neighbours, with whom they had lived in peace, did this to them. Most of the victim-witnesses at a military tribunal in Guatemala wanted to understand the causes of the massacre that had taken place in their community, and the motivation of the perpetrators. Expectations are directed toward the legal setting to provide such responses of explanation and framing, which could hardly be obtained otherwise, at least not without the cachet and authority of legal and quasi-legal procedures. The legal setting and the language of justice create a unique environment that is capable of delivering the cognitive responses that victims strive for. Procedural justice, i.e. the extent to which victims have a voice and are recognized in courts, tribunals and truth commissions, facilitates the validation of suffering that victims expect as socio-affective responses, and thus might also fulfil these needs.\textsuperscript{97}

3.5 Collective Emotions: Moral Outrage, Collective Shaming and Guilt

Contemporary TJ procedures are tasked to reach out to their audiences and initiate change in the collective emotions and climate in transitional and post-conflict societies: restraining vengeance among the victim groups, promoting reconciliation and forgiveness, and thus contributing to the »healing« of whole societies. The notions of establishing a sense of collective guilt and instilling a sense of collectively felt shame in groups of perpetrators and bystanders seem to be less important today than they were for the Nuremberg Trials after World War II. Nonetheless, criminal trials in particular convey strong messages and powerful images to the public when perpetrators—whether formerly high-ranking members of powerful groups or lower ranks who collectively committed violence—appear before courts and have to account for their deeds. The previously powerful emerge as the »defeated«, whilst the formerly powerless victims are now the »defended« group.\textsuperscript{98} Such change of status elicits strong emotions of anger, shame and fear in those who are now »defeated«, and sends messages with high emotional content to both groups.\textsuperscript{99}

Social sharing of emotions propagates beyond initial targets, as these start sharing their emotions about an episode with others, and emotions thus »expand broadly in time and space«, and beyond the social relationship where they were initially shared. Waves of propagation confer to the emotional episode a particular salience, and thus in the long-term create an »emotional climate« that affects how people see the state of their group or wider society.\textsuperscript{100} Emotional climate and collective emotions are thus at

among victims of serious violence who gave a statement in a domestic court; Lens et al: Victim impact statement, p. 29.


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\textsuperscript{94} Lens et al: Victim impact statement, p. 29.
\textsuperscript{95} Rimé: Emotion Elicits Social Sharing, p. 79–80.
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\textsuperscript{97} Perceptions of procedural justice were found to reduce anger and anxiety among victims of serious violence who gave a statement in a domestic court; Lens et al: Victim impact statement, p. 29.
\textsuperscript{100} Rimé, Bernard: Social sharing of emotions.
tuned to a collective's situation and reflect divisions between groups and intergroup emotions.

Contemporary post-conflict and transitional societies are deeply divided; victims and perpetrator groups widely differ in their emotional memory and their collective emotions; intergroup emotions are dominated by anger, hatred, and fear. TJ procedures, in particular courts, tribunals and truth commissions aim at providing «collective rituals» that are capable of achieving changes both within the victim and perpetrator group and thus of creating a more positive emotional climate throughout society.\textsuperscript{101} However there is little evidence that this actually can be achieved by TJ procedures. Rime and his colleagues probed into changes of the emotional climate and intergroup emotions within a community after a local gacaca court had taken place. They found that the «social ritual ... elicits an emotional communion» between all participants; however, the overall level of negative emotions increased considerably among both the victim and perpetrator group, as trust and solidarity between the groups declined after procedures, most markedly among the survivor group. However, as participation was also associated to positive changes in intergroup emotional climate, the increase of negative emotions seems to be an important mechanism in TJ that does not by default inhibit more positive developments.\textsuperscript{102}

Since both guilt and shame are significantly less shared than other emotions, and presumably even less in public, the emergence of collective emotions of guilt and shame seems to be highly improbable. In contrast, moral outrage at the crimes committed—expressed as contempt, anger, and disgust—seems to be widespread and highly visible.\textsuperscript{103} The failure of the efforts of the Allies to instill a sense of collective guilt and shame in the German population after World War II can thus be attributed to the very nature of these emotions as more hidden and secret ones. There is little indication that emotions of guilt and shame were actually shared among social circles, and ostensibly not in public. To the contrary, being «doubly shamed» by being observed after visiting the screenings of atrocity films elicited angry reactions among the Germans. As this opened up routes for defiance and rejection of guilt, it might actually have been counterproductive.\textsuperscript{104}

4. Lessons for TJ Fora: Complex Processes and Achievable Aims

The framework of emotion sharing has proven to be highly relevant to understanding the emotion dynamics in TJ fora. From an emotion-sharing perspective, strong claims as to the impact of participation, truth telling and testimony on emotional relief and healing for victims cannot be sustained. For the process of sharing emotional trauma, shame and guilt between victims, perpetrators and audiences, disjunctions in mutual sharing were found to account for the widespread feelings of anger and disappointment among victims in all TJ fora, and to be an obstacle on the road to forgiveness. Responses from legal professionals, bystanders and non-victims hardly do justice to the complex trauma of victims and thus add to their feelings of loneliness and rejection. Here, universal processes of emotion sharing shape the outcomes of TJ procedures, and they need to be acknowledged and carefully navigated in such fora. The justifications, objectives and promises of TJ need to become more realistic.

In contrast to prevalent assumptions, it would be wrong to hold the justice model responsible for the absence of palpable success in the recovery of victims. The framework of emotion sharing lends support to the importance of the legal setting and features of TJ proceedings, and thus more generally to the validity of the justice model in transitions. The framework supports the presence

\textsuperscript{101} Kanyangara et al: Collective rituals, emotional climate.
\textsuperscript{102} Kanyangara et al: Collective rituals, emotional climate, p. 398; Rime et al: Impact of Gacaca tribunals.
\textsuperscript{104} Weckel: Beschämende Bilder, p. 445.
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and participation of victims, and the encouragement of expressing emotions. The unique features of the legal setting, such as testifying, giving evidence, and examination of perpetrators, address victims' cognitive needs for re-framing and re-appraisal of traumatic events. The rules of procedural justice as realized in TJ fora and the authority of the law give recognition and validation to the victims' suffering and thus address their socio-affective needs. Taken together the legal setting has a potential for generating the very response modes that might foster emotional recovery; this potential needs to be better harnessed and developed.

The emotion-sharing framework allows for identifying those TJ settings that have comparative advantages for sharing emotions. Criminal trials and truth commissions do not significantly; rather specific features are important. The presence, space and size of victims' groups seems to be critical for victims' satisfaction. Sharing of emotions seems to have particularly detrimental effects in local and "grass-roots" community settings with a divided and partially hostile audience. Here the framework lends support to the often castigated model of higher level and even international TJ proceedings. In a paradoxical way, seeing TJ through the lens of emotion sharing salvages its justice model.

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