INTRODUCTION

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As we finalize this volume on transitional justice in April 2011, a historic transition is taking place across North Africa and the Middle East. In Egypt, a democratic uprising has brought an end to thirty years of dictatorship under President Hosni Mubarak. Senior officials in the Mubarak regime are already facing criminal prosecution, and there are visible steps toward the prosecution of Mubarak himself. Citizens are demanding the ouster of officials from leadership positions in the state bureaucracy and universities. A democratic referendum has approved a new interim constitution for the military caretaker regime, and free elections have been scheduled. The transition to democracy from Mubarak’s dictatorship appears to be well under way, relying almost entirely on domestic institutions. Meanwhile, Libya’s Muammar Qaddafi has refused to step down in response to protests and is using the full force of his military to suppress popular rebellion. The International Criminal Court has mounted an investigation into Qaddafi’s role in possible crimes against humanity, and a United Nations–approved no-fly zone is being aggressively enforced by NATO forces. Should the rebels succeed in toppling Qaddafi, the work of transition will take shape swiftly and with the heavy involvement of international institutions.

As Egypt and Libya play out two starkly contrasting possible futures for dictatorships facing popular uprisings across the region, events in Ivory Coast remind us that there is no bright line between transitions from authoritarianism to democracy and transitions in the wake of civil conflict. There, former President Laurent Gbagbo refused to yield power after losing a democratic election
to Allassane Outtara. Instead of a peaceful change of government, the country descended into violent civil conflict, ending finally in Gbagbo’s capture and arrest. Outtara has already promised that Gbagbo and his core military leaders will be tried in domestic courts for crimes against humanity and that he will establish a Truth and Reconciliation Commission to examine crimes on both sides of the conflict.

These signal events raise a range of questions that has become familiar from political transitions across the global stage over recent decades. What are the proper roles of criminal trials, commissions of inquiry, and evictions of state officials from positions of influence in securing a successful transition to democracy? Does the threat of prosecution for human rights violations cause dictators to use even greater repressive force to hold onto their power? Should transitional authorities focus on building new institutions for rights-respecting democratic order or on rectifying the wrongs of the dictatorship? What is the proper balance between the role of domestic institutions and that of international institutions in bringing about a successful transition?

It has never been clearer that the nature of a transition matters. The successful transformation of authoritarian or war-torn regimes into more-or-less democratic, rights-respecting ones depends on myriad factors, many of which appear beyond the control of any particular political actor. Yet, transitional periods call upon leaders to take responsibility for the history they will inescapably make through their actions in an uncertain present. Recent experience has generated a growing consensus that successful transitions require a societal effort to come to terms with the wrongs of the past. This experience has yielded a rich repertoire of institutional innovations upon which political actors can draw in crafting a more just society and increasingly refined normative criteria by which to judge their success or failure.

The dilemmas associated with regime change have been around at least since ancient Athenians sought to secure political order, restore legitimacy, and deal with the abuses of the prior regime when democratic orders twice overthrew oligarchic ones.¹ The term “transitional justice,” however, is of quite recent vintage,² and it was not until the last decades of the twentieth century that it came to denote a distinct field of politico-legal practice and of
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scholarly inquiry. The stage was set in the late 1940s by the wave of criminal prosecutions for atrocities committed during the Second World War, most famously in the International Military Tribunal at Nuremburg. While war crimes tribunals were not an invention of this postwar period, the Nuremburg trials played a critical role in establishing international human rights norms as standards for judging the wrongs of past regimes. For a few decades, there was little theoretical or practical concern with transitional justice. In the 1980s, this began to change. The wave of democratization that swept through Latin America was punctuated by cries of “Nunca mas!”—“Never again!”—demanding accountability for human rights abuses under authoritarian regimes in Argentina, Chile, and elsewhere. The post-1989 transformations of Central and Eastern Europe emphasized lustration (the vetting or purging of public officials who served in pro-Soviet regimes) and restitution as means of dealing with past abuses and easing transition to more rights-respecting forms of government.

Lessons from the Latin American experience spread to democratic transitions in other parts of the world. Following Chile’s example, in particular, the use of truth commissions as substitutes for or complements to criminal prosecutions became widespread. Post-apartheid South Africa’s Truth and Reconciliation Commission, created in 1995 under Nelson Mandela’s leadership, built upon the Chilean experience by envisioning truth-telling as a method of societal reconciliation. The South African TRC set a new standard for the aspirations of transitional institutions as resources not only for redressing past injustices but also as laying the foundation for forward-looking or restorative justice in a renewed democratic community.

While deeply influential in encouraging the global proliferation of truth commissions, the South African model did not displace the central role of criminal prosecutions as a key instrument of transition. The International Criminal Tribunals for the former Yugoslavia and Rwanda (the ICTY and the ICTR), established in the 1990s to respond to ethnic cleansing and genocide, underscored the continuing importance of prosecuting criminal liability for gross human rights abuses. At the same time, they also revealed the limitations of an exclusive focus on prosecutions at the expense of more victim-centered forms of justice. Increasingly,
a multipronged approach that includes international and/or domestic criminal trials, truth commissions, and reparations constitutes the transitional justice “toolkit.”

The role of international institutions in transitional justice has also evolved since the mid-1990s. Increasingly, as in the case of Rwandan *gacaca* courts, populations demand that justice be delivered in forms that are recognizable from the standpoint of local norms and practices. Nonetheless, local forms of justice have not simply replaced international courts. To the contrary, the creation of the International Criminal Court (ICC) institutionalized an ongoing international role in transitional justice in lieu of ad hoc courts such as the Nuremberg Tribunal, the ICTY, and the ICTR. Viewing transitional justice through this narrative of recent historical experience enables us to identify a cluster of common challenges and common responses across transitions from authoritarianism to democracy, from civil war to peace, and from state-sponsored extralegal violence to a rights-respecting rule of law. Yet, the flow of ideas and of institutional patterns through time and across cases raises difficult normative and empirical questions. What are the normative criteria that appropriately guide the design of transitional institutions? Do the various normative goals of transitional justice cohere, or do they conflict? Is it realistic to expect that political actors will cleave to the normative aspirations of transitional justice given the practical or prudential calculations they must make as they seek to establish order, manage the competing interests of powerful social and political actors, contain violence, and secure the economic resources necessary to sustain the new order? The challenges for our empirical understanding of transitional justice are no less complex. Given that each transitional context is unique, is it possible to make valid generalizations about the effectiveness of specific institutional devices in different conditions or about the most effective combinations of devices overall? Are there empirically sound measures by which we can judge the success or failure of specific transitions? What are the conditions under which transitional institutions succeed or fail? While the essays in this volume do not answer these questions univocally, they go a considerable distance toward clarifying the terms of debate over the theory and practice of transitional justice.
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**Dilemmas of Transitional Justice**

Political actors in transitional periods often face stark trade-offs, even when their clear and dominant motivation is to do the morally right thing. Against the backdrop of a recent memory of violence and lawlessness, they must give special importance to securing peace and order. In doing so, they cannot avoid calculating the stakes that significant social groups or factions will have in supporting the new order—or in resisting it. At the same time, the brutality of the predecessor regime, which may have been stable for a considerable time, makes equally clear that order without justice is neither morally nor politically sustainable. A prudential modus vivendi among competing factions will not restore citizens’ trust in government. To last, the new order must persuade its citizens that it will not repeat the wrongs of the past and that it has laid the foundations for more legitimate government in the future. This work of persuasion is a defining task of transitional orders and of the transitional justice mechanisms they employ.

The complex politics of transitional moments is mirrored in the complexity of the normative standards by which we judge them. Transitional institutions are expected to deliver justice to the perpetrators of past wrongs, recognition and reparation to their victims, a truthful and common public narrative of past wrongdoing, and the conditions for lawful order and societal peace. One of the core questions in the theory and practice of transitional justice is whether it is possible to achieve all these ends simultaneously or whether, instead, there are inescapable trade-offs among them. Thoughtful observers of South Africa’s Truth and Reconciliation Commission, for example, expressed concern that in emphasizing the goals of truth, forgiveness, and reconciliation, it sacrificed the goods served by criminal justice. These lines of argument suggest that political actors in transitional moments may have to make difficult, even potentially tragic choices among the goods at stake, trading off peace for justice or justice for truth.

Drawing on a wide range of cases of transitional justice, Pablo de Greiff argues that the dilemmas of transitional justice need not, in principle, result in such tragic choices. De Greiff’s project here is guided by a reconstructive method by which he reads out of the interaction of different transitional mechanisms an account of the
moral purposes they can serve *in tandem* that none, taken alone, can perfectly fulfill. Through this process, de Greiff distills four goals of transitional justice. Two of these are “mediate” in the sense that they are not direct causal outcomes of aims of particular institutions but are partially caused by them: *recognition* of the agency and suffering of victims of wrongdoing and *civic trust,* the capacity of citizens to rely on public institutions to act in accordance with shared values and norms, including the rule of law. Two other goals of transitional justice are “final” ends in the sense that their attainment depends on a great number of factors that are beyond the impact of particular mechanisms but that nonetheless can be served by them: *reconciliation,* understood as trust between citizens (as contrasted with the trust of citizens in the institutions of the state), and *democracy.*

In tracing out the ways in which different transitional mechanisms (e.g., truth-telling, criminal prosecutions, reparations, memorializations, vetting) serve these four goals, de Greiff makes the case for a holistic approach to the design of transitional institutions. No single mechanism can do all the work of transitional justice. Individual mechanisms are much more likely to meet with success if layered with complementary mechanisms carefully designed to work with each other to advance the immediate, mediate, and final goals of transitional justice. Even then, of course, there are numerous factors exogenous to transitional institutions that will intervene to condition their success or failure, and institutional designers need to attend to these as well. It is equally clear that a holistic approach to transitional justice does not mean that more institutions are necessarily better. As is painfully clear from the experience of East Timor, meticulously laid out in the chapter by David Cohen and Leigh-Ashley Lipscomb, the haphazard addition of under-resourced and multifarious transitional institutions can do more to undermine than to advance the larger goals of transitional justice. De Greiff’s argument holds out the hope that, when well-designed, the institutions and purposes of transitional justice can work in harmony with one another.

On de Greiff’s view, then, there is no deep incommensurability among the normative aspirations of transitional justice; there is no reason in principle why careful institutional design cannot create mutually reinforcing relationships among them. At their most robust, such virtuous circles can support the formation of
strong, just, rights-respecting democratic societies. De Greiff’s account of the moral principles for judging transitions sets high aspirational standards.

Jon Elster tells a more cautionary tale about the possibility of reconciling the plural ends and means of transitional justice into a unified scheme. Sometimes all good things do not and cannot go together, and such is regrettably the case with respect to the primary goals of transitional institutions: justice, truth, and peace. Each of these can be viewed through the lens of their instrumental or intrinsic value as goods. Justice (understood in both retributive and distributive terms) has intrinsic value derived from its demonstration of respect for the moral worth of citizens. But it also has instrumental value as a support for peace and stability. Certainly its denial can have destabilizing consequences. Of the three goods, only peace (Elster argues) is of purely intrinsic value, even if it is a condition of possibility for the other goods.

Elster enumerates both positive and negative relationships among these three goods in transitional contexts. On the positive side of the ledger—the terrain where he and de Greiff can agree with one another—both truth and justice can and often do serve civic peace. But we should not be overconfident that things will turn out well. Sometimes the anticipation of retributive justice forestalls peace, as wrongdoers try to delay the day of reckoning. Such was the case in Uganda, where the ICC’s pursuit of justice in the midst of violence and negotiations became a stumbling block on the final road to peace. Sometimes truth produces injustice, if vigilante vengeance unleashed against alleged perpetrators in truth commission testimony becomes a substitute for the due process of criminal trials. Although these conflicts between goods may not emerge in every transitional context, they might reasonably lead us to lower our expectations of transitional institutions. It may be that partial justice, partial truth, and relative peace are the best we can expect in many contexts. If that is right, we should not be content when transitional institutions fall below certain thresholds, but if we demand too much of them we may risk delegitimizing the modest achievements they are actually capable of delivering.

Justice may conflict with truth and peace, then, but different understandings of the kind of justice that should be served by transitional measures may also stand in some tension with one
another. Scholars of transitional justice have often noted its Janus-faced quality. Moving a society from a rights-abusing to a rights-respecting legal-political order requires backward-looking justice that acknowledges the wrongfulness of past actions and seeks to correct wrongs through punishment, reparation, or both. Addressing the wrongs of the past, however, is not sufficient to create the conditions for a stable political society whose members have confidence that they will be treated fairly. Transitional orders need a forward-looking or prospective account of justice, as well as a backward-looking one.

As Jeremy Webber argues in his chapter, the difference between retrospective and prospective justice is a matter of focus and purpose, rather than of subject matter. Practices of forward-looking justice also reckon with the past, but in a manner different from that of retributive or corrective justice. Retrospective justice in both its retributive and its reparative forms seeks to approximate a reversal of the wrong, a restoration as far as possible of the status quo ex ante, as Debra Satz also points out in her chapter. It is an unattainable ideal, but we judge the success of retributive and reparative practices according to how closely they approximate it. In contrast, Webber notes, forward-looking justice reckons with the past “not primarily to correct a transaction but rather to adjust the parties’ relations so that their interactions now take place on a sound foundation” (p. 104). This contrast between a transactional and a relational emphasis enables us to see that common techniques of transitional justice—reparations payments, official apologies, memorials—can be simultaneously backward-looking and forward-looking. In some cases, these practices may satisfy both understandings of justice; in others, serving prospective justice may entail a less rigorous pursuit of corrective justice.

Webber further deepens our understanding of the plurality of conceptions of justice by delineating a third conception that scholars of transitional justice have generally overlooked. This third form of justice concerns whose norms should govern in adjudicating disputes, in contexts where multiple cultural or religious normative orders are in play. Webber gives the example of Iraq, where consolidating transition has required structuring institutions for power-sharing among Shi’a, Sunni, and Kurdish populations and for reconciling these communities’ differing understandings of
the appropriate place of religion in public law. Bringing in examples from other transitions in vastly different contexts, Webber argues that fairness in reaching an adjustment between contending legal and political orders constitutes a distinct form of justice. Like retrospective and prospective justice, this third type is not unique to transitional settings but is often an important source of disagreements over what justice requires in transitional moments.

Webber’s three conceptions of justice are not substitutes for one another. Each discloses a different angle of vision on what justice requires, and each accords a different significance to events of the past. Nor can they be subsumed under a more general or abstract account of justice. Although it may be possible and desirable to combine all three in a given context, they are not at root commensurable with one another. At the same time, Webber’s account of justice is not minimalist or “thin.” Each of the conceptions of justice offers an aspirational ideal that transitional institutions can seek to approximate, but in particular contexts they may prove to conflict with one another, quite apart from the constraints of realpolitik that condition transitional decision making.

The dilemmas of transitional justice do not disappear even if we narrow our focus to a single institutional device for realizing it. This becomes clear in Debra Satz’s careful analysis of financial compensation as a measure for countering or repairing the wrongs of the past. Under what circumstances is it appropriate to use reparations payments to redress grave injustices of the past?

On a welfare economist’s view, monetary compensation payments constitute a form of corrective justice to the extent that they leave a wronged person as well off as if the wrong had never occurred. This can work well enough in many individual cases. Money cannot replace nonmonetary losses or restore circumstances to what they were before the wrong was committed, but people are often willing to accept financial compensation as the best possible approximation of justice in such circumstances. Even in individual cases, however, money may not be an acceptable form of redress. Satz gives the example of the spouse who is unwilling to accept a cash payment as a means of repairing the damage caused by an extramarital affair.

The appropriateness of reparations for long-standing historical injustices on a societal scale is significantly more complex than in
individual cases. Satz addresses four serious philosophical objections to compensation as a form of repair for past wrongs. First, the history of injustice affects not only how well people fare but what people exist. Second, when injustices are in the more distant past, it is difficult if not impossible to trace their harms to those who are living now. Descendants of victims may not themselves be victims. Third, the moral weight of claims for redress may fade over time, whether because the class of people harmed by an injustice eventually recovers or because more pressing claims of justice have since emerged. And, finally, even where a class of persons quite clearly suffers an ongoing systemic harm from past injustices, the passage of time makes it virtually impossible to arrive at a calculation of fair compensation that parties can agree upon. In some contexts, these arguments against compensation for historical injustice may have some force; in others, they can be met. In many cases, though, Satz argues that such objections are simply beside the point. Where historical injustice on a societal scale is at issue, the purpose of compensation is not to restore wronged groups to a position on an imagined indifference curve, as welfare economists would have it, but to express a shared public recognition that a serious wrong has occurred.

Like Webber, Satz emphasizes that, in moments of political transition or in cases of societal injustice such as slavery, apartheid, genocide, or the destruction of indigenous lifeworlds through colonization, monetary compensation has a forward-looking purpose and not only a corrective one. Compensation can be coupled with other measures to acknowledge and reaffirm the dignity of victims, repair social relationships, and promote trust among citizens. Monetary compensation, especially when added to other expressive practices such as public apologies, criminal prosecutions, and memorials, serves an important expressive function, conveying a society’s willingness to bear real costs in order to repair the damage done by historical injustice. To be sure, a forward-looking rationale for compensation does not wholly invalidate the arguments against its use as a measure of corrective justice. Further, compensation can fail to meet its forward-looking purposes, as when the amounts are too paltry or the systems of distribution too arbitrary to convey the message that the society takes past injustices seriously. Economic redress is one part of a toolkit through
which societies can lay the foundations for a more just future, but it is unlikely to do this work all by itself, and whether it succeeds will depend on how well it is designed and implemented and on what other measures are instituted alongside it. In this way, Satz’s argument reinforces and adds depth to de Greiff’s defense of a holistic approach to the design of institutions whose larger purpose is to enable a break with an unjust past and to create the conditions for a more just future. But as Elster, Webber, and Cohen and Lipscomb remind us, in various ways, the world in which transitional justice operates is at best complex and is often messy, uncoordinated, and under-resourced.

REALISM, IDEALISM AND NON-IDEAL THEORY

Contexts of transitional justice present stark examples of the gap between *is* and *ought*, between the facts on the ground and what we might wish for from a moral point of view. Frequently, the background of transition is a history of grave violations of the most basic moral principles of human dignity. The transitional moment is one when conscientious political actors are seeking to lessen the moral distance between what has been and what should be, at the level of broad social and political institutions.

In doing so, they confront a second set of challenges, different in kind from the dilemmatic choice among potentially conflicting moral goods: should their aspirations for transitional practices aim at the highest imaginable moral ends, or should moral aims be tempered by prudential attention to what is possible under the specific limitations of the circumstances they are in? What are the moral standards that the rest of us should use in judging their actions? Should we insist on the most demanding ideals of justice, based on the principles developed through high-level philosophical inquiry? After all, as Joseph Carens notes in a different context, “[w]e do not want to build the flaws and limitations of existing arrangements into our moral inquiry.” Alternatively, perhaps aiming too high is a recipe for failure, leading people to reject transitional measures because they do not live up to an idealized account of justice and, in so doing, to abandon imperfect but genuine gains.

In addressing these complex questions, the contributions to the
present volume span a spectrum from realism to idealism on matters of ethics. Though none are unaware of the myriad constraints on transitional justice in practice, our authors offer a range of understandings about what it means for justice to be done. It might be tempting to frame their contrasting positions as mediating the tension between the poles of justice and expediency, a binary often reproduced as between “legalists” (who insist on full justice) and “pragmatists” (who prioritize democratic consolidation over justice).11 But such a framing misses how justice comes in various forms, some of which (as Webber argues) tend to be lumped in with expediency. Or, as Sreenivasan’s account of non-ideal theory shows, expediency itself might be understood as a part of justice. How we position justice in relation to real-life circumstances is, for all our authors, a matter of nuance, rather than a set of binary choices. Nonetheless, even our most “realist” contributors are clear that justice of some sort must be rescued from the grip of bare expediency. There is no such thing as an amoral view of transitional justice.

Returning to the example of compensation for past wrongs, we find that, in practice, schemes of reparation often fall egregiously short of what any theoretical account of justice would tell us is morally required. In an extended commentary on Satz’s essay, Adrian Vermeule relates the actual performance of programs of compensation as they have played out in both transitional and non-transitional contexts. “Viewed in the concrete,” he concludes, these programs and awards are often “disastrously unprincipled” (p. 163). Whereas any theory of corrective justice will tell us that compensation should come from the pocket of the wrongdoer and be paid into the pockets of those who were directly wronged, in practice compensation has often been paid by third parties to individuals who were only distantly related to the victim of injustice or to organizations established for the purpose of receiving the payments. Principles of proportionality dictate that those who were most responsible for the injustice should pay more than those who were less responsible, and those who were most harmed should receive more than those who were less harmed. In practice, the relationship between awards and harms inflicted or suffered is undeniably arbitrary. In principle, careful, fact-based judgments of liability and compensation should be the basis of awards. In
practice, compensation is often the result of political compromise and backroom bargaining.

It is not difficult to explain the gap between the theoretical requirements of justice and the actual performance of compensation schemes. One reason, as Satz, Vermeule, and others note, is that the claims of justice are but one category among many of the demands on the public purse. Even if it were possible to arrive at a noncontroversial figure for a just scheme of compensation, the odds are that doing full justice to victims of past wrongs would come at the expense of other important public obligations. Another is the historical and political contingency of which claims of historic injustice gain a sufficient public following to pressure public officials to undertake measures of redress. As Vermeule notes, it is unjust that Japanese Americans who were interned during the Second World War received (very modest) compensation, while German American internees did not.

If reparations are such a flawed mechanism for redressing historical injustice on a societal scale, why are claims for reparations such a persistent political phenomenon? Vermeule’s answer is that, even though these schemes are indefensible according to any principled theoretical account of what justice requires, they nonetheless constitute a form of rough justice, which is often better than no justice at all. There may be cases where attempting to approximate a first-best account of justice within prevailing constraints is morally worse than doing nothing at all. But there is no reason to suppose, in general, that a second-best attempt at justice is worse than doing nothing. The persistence of claims for historical redress is based on the sound intuition that it is better to do what justice we can, however imperfect, than to allow injustice to stand wholly unaddressed.

People accept rough justice when they have no real prospect of receiving justice properly so called. Perhaps true justice cannot be done because real-world conditions mean that too many sacrifices would have to be made to other public ends, including other claims of justice. For some wrongs, though, justice cannot be done because there simply is no human action that could even approximate a repair of the harm. Gary Bass focuses our gaze on the irreparability of genocide, mass atrocities, and war crimes. These demand punishment and retribution, but, even if every perpetrator
in a genocide were punished (as never happens in history), it would not be enough. No conceivable punishment could balance the scales. Nor can reparations compensate for what was lost, even if they add expressive weight to public acknowledgments of the crimes’ enormity.

Justice cannot be done; it is unseemly to pretend otherwise. And yet we do pretend otherwise, Bass tells us, just insofar as we rely on reparations, punishments, memorials, or apologies to stand in for moral repair. Societies cannot stand still. Somehow, there must be a way to pick up the pieces and move beyond the atrocities. National political leaders bear a distinctive role in ensuring that this happens, and in playing it they cut ambiguous moral figures. Bass draws our attention, in particular, to the moral dilemmas in which leaders of democracies are caught when past atrocities obstruct their ability to address realpolitik concerns of security and economy. Such situations make for fascinating variations on the theme of dirty hands in politics, as emerges from Bass’s comparison of two such moments in twentieth-century history.

Bass’s core example is Israel’s decision to normalize relations with West Germany in 1952. Israel needed this as a way of building alliances and establishing itself as a normal state. West Germany needed it in order to regain international legitimacy. Bass’s story centers on the public distortions of truth that both David Ben-Gurion and Konrad Adenauer deployed in order to produce West Germany’s public apology and reparations for the Holocaust. Without these acts, the Israeli public would never have accepted normalization. The reparations program functioned as a sort of “noble lie” through which these leaders succeeded in getting their publics to accept it as a measure of justice. It was a lie because of gross misrepresentations of truth, of the leaders’ motivations surrounding the apology, and of the proximity of reparations to justice. But it was noble because it enabled both leaders to serve their nations’ longer-term interests in security and, arguably, set them on a path toward a more-or-less decent politics.

Can it be morally praiseworthy for the leaders of a democracy to lie to their citizens? Bass’s answer echoes Machiavelli’s: history is the ultimate judge. In the Israeli case, it is plausible to argue that Ben-Gurion and Adenauer acted from an ethic of responsibility for their countries’ well-being, and their deceptions around
the apology and reparations proved able, in the end, to get them past a critical impasse. It was better for both nations that relations between them were normalized, and the pretense of doing justice made that possible. Their actions look much more defensible than those of Japanese and Korean leaders, who also used public apology and reparations to try to normalize relations in the early 1960s. In that case, neither public was coaxed into thinking that even minimal justice was being done for the horrific cruelties inflicted by Imperial Japan on the Korean people. The apology may have served the United States’ Cold War agenda, but the history of atrocities is still an unresolved strain on Japanese-Korean relations.

David Dyzenhaus’s chapter also centers on the moral standards we should use to judge political leaders’ efforts to overcome their nations’ past wrongs and on the moral psychology through which we can make sense of their actions. His historical example is the actions of F. W. de Klerk and Nelson Mandela in bringing about the transition to democracy from apartheid in South Africa. What made transition possible, on Dyzenhaus’s account, is that both leaders put aside a narrowly realpolitik focus on the course of action that would most advantage their respective factions in the short or medium term. Instead, both acted on the basis of a certain understanding of justice. De Klerk made the first move by unbanning the African National Congress and releasing Mandela and other ANC leaders from prison, effectively giving up his power. Mandela reciprocated by leading the ANC into negotiations to create a multiracial, rights-respecting democratic order instead of pressing the momentary advantage to seek the ANC’s total political domination of white South Africans.

Dyzenhaus’s analysis presses us toward the judgment that an uncompromising commitment to certain fundamental principles of justice is a condition of successful transition and away from the realist position that moral compromise is necessary. Counterintuitively, his theoretical account of the kind of justice that transition requires is drawn from Hobbes, a figure whom many regard as an arch-realist in matters of politics and morality. Dyzenhaus offers an avowedly “non-Hobbist” reading of Leviathan in order to bring out Hobbes’s value as a theorist of transitional justice. On the standard reading of Hobbes, there is no pre-political standard of justice. It is the sovereign who determines what is just and unjust, permissible
or impermissible. For Hobbists, in the pre-political state there are only interests vying for supremacy over one another. Against this view, Dyzenhaus reinterprets Hobbes’s laws of nature to generate a moral psychology of the person who has a “relish of Justice,” where Justice consists in the performance of promises made toward the end of establishing a stable civil order. Whoever first performs their part of an agreement aimed at peace and civil order generates a moral obligation in the other to respond in kind. The escape from a cycle of violence depends equally on the first performer’s willingness to risk vulnerability and on the second party’s willingness to forgo momentary advantage for the sake of longer-term peace. This, on Dyzenhaus’s reading, is precisely what played out between de Klerk and Mandela, and this is what makes them exemplary political leaders.

What is innovative—and controversial—in this reading of Hobbes is that it puts forward a prepolitical account of morality as reciprocity and of justice as rule following. The lesson for political transitions is that there need not be a well-established civil order in order for justice to be done; what is required, instead, is that leaders follow the rule of reciprocity when others perform a peace-promoting action. The central task of transition, on this view, is to achieve legality, the stable following of recognized rules even where power-holders have the opportunity to sacrifice the rule of law for the sake of enhancing their power. This requires not only the actions of leaders but also the spread of a culture of legality through the general population—no mean feat in a society where a history of violence has sown deep-rooted mutual distrust. To bring it off requires a campaign of educating the public in an “ethos of justice”\(^\text{13}\)—or, in Hobbesian terms, a “publique conscience of law.” South Africa’s Truth and Reconciliation Commission was a program of just this sort.

Transitional justice, for Dyzenhaus, is nothing other than the rule of law. This might appear deflationary to those, like de Greiff, whose aspirations for transition reach to the achievement of retributive justice, reconciliation, or democracy. But, on Dyzenhaus’s view, it is “the kind of justice that has to be in place before order becomes something worth having and that also makes it possible for a society to decide other kinds of political issues in a civil fashion” (p. 202). This is a minimalist account of transitional justice,
but it is still an idealist one. The real-world constraints and conflicting interests that have to be negotiated in the process of transition may entail sacrifices to corrective justice, but, if they compromise on the goal of establishing a rule of law order, they are almost certain to fail.

In his thoughtful commentary on Dyzenhaus, Eric Posner argues that moral theories and ideals, including those of legality, offer only limited guidance for transitional contexts. If retrospective justice requires that human rights violations be punished but principles of legality prohibit the retroactive designation of actions (which may have been sanctioned in positive law) as crimes, where does that leave us? What will prove the most just outcome in a particular context cannot be read off from one or another theoretical account of justice. Instead, the just outcome will consist in a compromise between conflicting understandings of justice, tempered by a due regard for the practical constraints that political and legal actors confront. The content of the most just outcome will vary according to context, approximating one ideal of justice in one instance, a different ideal in another, and some sort of middle path in most. “Local conditions, beliefs, and mores,” Posner argues, “determine what is just and practical in any given case” (p. 219).

Posner’s account of transitional justice falls closer to the realist end of the realist-idealist spectrum than does that of Dyzenhaus, de Greiff, or Webber. Countering Dyzenhaus, he argues that there is nothing in de Klerk’s and Mandela’s actions that requires us to conclude that they acted from a sense of moral obligation, rather than from a shrewd calculation of the rational self-interest of their factions. De Klerk could see that the white minority could not sustain its power by force for much longer; Mandela calculated that a violent revolution could not succeed. Both were exemplary leaders not because they sacrificed self-interest for moral principle but because they were able to overcome the irrational forces of racist ideology and the thirst for vengeance that drove de Klerk’s predecessor and many of Mandela’s comrades, respectively. On this reading, both were exemplary political leaders from a narrowly “Hobbist” point of view, but the virtue they exhibited is prudence, not justice: they are admirable for the psychological strength that enabled them to see beyond their passions, rather than for their willingness to sacrifice interest for principle. Their “transitional
prudence” led them, it is true, to support the emergence of a po-
itical system that the people could affirm as just and not merely
ordered. This sort of prudence is one other transitional leaders
would do well to emulate.

Posner is critical of Dyzenhaus’s account of legality as a theoret-
ical principle of justice, in part on the ground that it is too abstract
to provide much guidance as to what steps should be taken and
what institutions should be created in a particular transitional con-
text. There is a parallel line of criticism against what we are here
calling the “realist” approach. It calls for pragmatic compromise
between alternative or conflicting ideal principles of justice, bal-
anced by considerations of resource or other constraints on politi-
cal actors. Yet, in arguing that some sort of balance must be struck,
this method may not yield a determinate critical standard by which
to assess the actual choices of decision makers. How are we to
judge whether they have achieved the most just outcome available
in the particular circumstances?

Gopal Sreenivasan, in his contribution, turns to the philoso-
pher John Rawls’s distinction between ideal and non-ideal theory
as a resource for yielding more determinate moral judgments in
circumstances where the demands of ideal justice cannot be met,
of which the circumstances of regime change are a telling subset.
Rawls’s theory of distributive justice is advanced in the realm of
ideal theory, that is, the specification of what justice would require
under the best possible conditions. Rawls fully acknowledges the
role of what he calls non-ideal theory for circumstances in which
these conditions do not hold, and he distinguishes two branches
—partial compliance theory, which adjusts ideal theory for cir-
cumstances in which individuals do not fully comply with justice
(and so includes, for example, principles of criminal justice), and
“transitional theory,” which addresses circumstances in which a
society’s background (or historical) institutions are unjust—and
asks how to transform institutions so as to bring them closer to the
requirements of ideal justice. Each of these branches offers some
determinate guidance on questions of moral obligation under less-
than-ideal circumstances.

While the two branches of non-ideal theory are analytically
distinct, thinking through what justice requires in real-world cir-
sumstances usually requires both. Giving an innovative twist to the
concept of “transitional justice,” Sreenivasan argues that theorizing about the aftermath of regime change is an interesting and useful site for the joint application of the two branches of non-ideal theory. Sreenivasan complicates Rawls’s view of non-ideal theory in two ways. First, he argues that we should understand partial compliance as a common feature not only of individuals but also of institutions. This way of thinking of partial compliance theory helps us to make sense of, for example, war reparations as a performance between collective rather than individual wrongdoers and victims. With respect to the second branch of non-ideal theory, and like Webber and Satz, Sreenivasan distinguishes forward-looking and backward-looking moments in the reform of previously unjust institutions. While Rawls’s argument highlights the forward-looking obligation to establish just institutions, Sreenivasan adds the notion that the successful implementation of forward-looking measures may require other measures that express the wrongfulness of past actions and institutions.

What emerges from this analysis for theoretical accounts of “transitional justice” understood as justice in the context of regime change? Most important for the present volume, Sreenivasan clarifies our intuitions about the dilemmas of transitional justice by showing that they may include trade-offs not only between justice and other goods (as in Elster’s argument), or between alternative conceptions of justice (as in Webber’s piece), or even between ideal theory and real-world constraints, but also between the two branches of non-ideal theory or even the subparts thereof.

To illustrate, Sreenivasan examines the choice between criminal prosecutions and truth commissions that has been the mainstay of so many debates in the transitional justice literature, showing that partial compliance theory affords three different interpretations of a choice in favor of truth commissions. On the first interpretation, truth commissions are preferable because, in general, retributive justice is not a morally defensible response to wrongdoing. On a second interpretation, criminal punishment (retributive justice) is the most desirable reading of partial compliance theory, but punishment happens to be unavailable within existing circumstances. The first two justifications of truth commissions fall within partial compliance theory alone. In contrast, a third interpretation of the choice of truth commissions arises from a combination of partial
compliance theory and transitional theory. On this view, partial compliance theory taken alone would recommend criminal punishment. A forward-looking account of transitional theory, taken alone, would require simply that the society “move on” from its unjust past and establish a just constitutional order. A truth commission does not fit either bill but is nonetheless justifiable if we bring in the backward-looking component of transitional theory (i.e., the need to reckon with the past in order for the people to accept new institutions). On this account, the choice of a truth commission makes sense only if we understand victims’ sacrifice (forgoing the punishment of wrongdoers) as a necessary condition for the creation of new, just institutions. Here, he writes, “the trade-off takes place specifically within non-ideal justice, either between its partial compliance branch and its transitional branch or, perhaps better, between the backward- and forward-looking moments of transitional theory” (p. 239).

Sreenivasan goes on to deepen his analysis of the much-neglected transitional branch of non-ideal theory, arguing that we do not need to reach agreement on an ideal theory of justice in order to arrive at a judgment of what justice requires in less-than-ideal circumstances. Developing what he calls “anticipatory theory” as a third branch of non-ideal theory, he argues that the gap between real-world circumstances and the requirements of justice is often so wide that there will be convergence across ideal theories on a minimum next step in the general direction of justice. While his own examples focus on questions of global distributive justice, we might read Dyzenhaus’s account of transitional justice as the rule of law as an example of what Sreenivasan calls an “anticipatory” non-ideal theory of justice. We need not agree on an ideal theory of just constitutional order or of distributive justice to agree on the establishment of the rule of law as a duty of justice whose performance is a condition of possibility for the realization of any more ambitious ideal.

Is Transitional Justice Special?

A standard view of transitional justice is that it comprises extraordinary, special-purpose institutions applied on a time-limited basis to facilitate the shift from a now-defunct authoritarian or rights-
abusing regime toward a rights-respecting liberal democratic constitutional order. Within this view, the period of transition is understood as an interregnum period between the two regimes, in which neither the laws and standards internal to the old “bad” regime nor those internal to the new “good” regime apply in full. The time-limited character of transition has both pragmatic and normative significance. From a pragmatic point of view, transitional institutions should be time limited because they may place extraordinary demands on resources that are not sustainable over the longer run. From an ethical perspective, transitions should be time limited because they impose moral obligations and sacrifices that are inconsistent with the demands of justice in ordinary times. This supposition lies at the root of understandings of transitional justice as entailing moral compromise. If justice demands that all wrongdoers be punished or that all victims be compensated, the political constraints of a transitional context may require that justice be sacrificed for the sake of stable, relatively decent, political order—but it would be a moral mistake to “normalize” such compromises. Such is the logic of Gary Bass’s account of political apologies. Sreenivasan’s account of transitional theory as a branch of non-ideal theory gives the point a different twist: the work of bringing just institutions into being where they have not existed before may impose heavier duties of justice on actors than they would be asked to bear within the ideal theory of justice.

Taken as a whole, however, the contributions in this volume deeply challenge several of the assumptions that underlie the view that transitional justice is “special,” fundamentally different from “just justice” or “justice in ordinary times.” As Dyzenhaus makes explicit in his essay, three assumptions of this standard view are subject to doubt: first, that the problems of justice in transitional times are substantively different from the problems of justice in “ordinary” times; second, that transitions are radically discontinuous both with the prior bad regime and with the future good regime; and third, that the holy grail of transition is liberal constitutionalism such as we find in Western democracies.

All of our authors disagree with the first assumption, that the problems of justice in transitions are substantively different from those that we find in stable, “normal” times. Indeed, two contributors, Posner and Vermeule, jointly wrote a seminal piece some
years ago whose purpose was to debunk this view.\textsuperscript{15} Their argument, which they reaffirm in their present contributions, is that, while it is true that transitional justice sometimes requires moral compromise or compromises between principles and expediency, the same is true of justice in ordinary times. Plea bargaining, retroactive justice, opportunistic criminal prosecutions, and incomplete or unprincipled victim compensation schemes have all been features of ordinary justice even in the most well-established liberal democracies. This is not to say that they are justified, but the task of justifying these and other practices is not substantively different in transitional settings. Drawing an overly sharp contrast between transitional and non-transitional contexts obscures the fact that all legal-political orders have to manage change, face hard choices, and make compromises, including moral ones. And all of them are subject to critical moral judgment as to whether the compromises they make are the right ones. As Dyzenhaus sums up the point, “there is no problem that a transitional society presents that is not found in stable liberal democracies” (p. 183).

Even though our authors agree that the moral standards for evaluating institutions are not different in transitional and non-transitional contexts, they do not claim that there is no difference between transitions and “ordinary” times. The difference is one of degree rather than of kind: the same dilemmas of justice arise in greater number and with a greater intensity in transitional moments than stable political orders usually have to confront all at once. De Greiff cautions that eliding this difference between transitional and non-transitional moments is risky because it obscures the ways in which transitions establish new rules of the game for “ordinary” institutions of justice and politics. As responses to the utter failure of principles of justice to order law and politics, de Greiff argues, transitions do not require distinctive principles of justice, but they do address distinctive contexts: not just the imperfect world to which all accounts of justice must respond (e.g., through non-ideal theory) but “a very imperfect world” in which noncompliance takes the form of egregious human rights violations and the effort to enforce compliance entails enormous costs.

For Webber, too, it is important to acknowledge that, while the substantive content of justice does not differ across transitional and non-transitional contexts, the relative weight of the three forms of
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justice does. In transitional moments, Webber’s second and third conceptions of justice—prospective justice and justice between contending normative orders—have a more pronounced salience. Whereas in ordinary times these forms of justice become obscured or marginalized, transitional periods throw them into sharp relief. Like de Greiff, Webber suggests that transitions are significant because the balance they strike among different forms of justice may become “hardwired” into the new institutional order (p. 102).

The second doubtful assumption of the “standard” view of transitional justice, that moments of transition are radically discontinuous with both the predecessor and the successor regimes, is also directly challenged by a number of our contributors. In highlighting the formative impact of transitions on the successor regime’s political and legal order, Webber and de Greiff do want to insist that what happens during a transition constitutes a break with the past order and a moment of foundation-laying for the new one. Nonetheless, they could both agree with Dyzenhaus that the break between past and future is not a once-and-for-all affair, as the “standard” view represents it. The work of transforming an order from a rights-abusing to a rights-respecting state does not end once the new constitution is ratified, and it is dangerous to indulge the illusion that the work of reform is ever complete or, once achieved, irreversible. As Satz and Webber emphasize in their chapters, instances of historical injustice and egregious human rights violations occur in well-established liberal democracies, as well as in authoritarian regimes, and we need look only to the experience of indigenous peoples in settler democracies or of African Americans to remind ourselves of this fact.

The third assumption of the “standard” view, that Western-style liberal democracy is the appropriate aspiration for transitional orders, is rejected by some of our contributors and accepted by others. Dyzenhaus is most explicit in rejecting this standard by emphasizing the rule of law—nothing more and nothing less—as the substantive content of transitional justice. In this, he provides a ground for criticizing theorists of transitional justice for their chauvinism on behalf of Western liberal democracies on two points. The first is that they understate the universal and fundamental importance of the rule of law as the precondition of any more ambitious understanding of just legal-political order. The
second line of criticism is that privileging the institutional forms of Western liberal democracy blinds us to just forms of political order that have emerged and that might be developed in other parts of the world. This position is most clearly staked out in Webber’s piece, in which the third form of justice enables us to see that the institutional forms of Western democracies contain cultural and philosophical biases that can impede justice as it is understood in other ethical traditions or under political circumstances that diverge from the Western model.

The Impact of Transitional Justice Institutions

One point of agreement among all of our contributors is that no single institutional practice is likely to be able to realize all the normative ambitions of transitional justice. We may understand the moral goals of transitional justice holistically (as in de Greiff’s argument), as a pragmatic trade-off between competing goods of justice, truth, and stability (as for Elster and arguably for Bass, Vermeule, and Posner), or as a balance across multiple readings of justice (as for Webber and Sreenivasan), but all of these views converge on the judgment that some combination of institutional mechanisms is necessary. Even Dyzenhaus, who alone among our authors propounds a unitary account of transitional justice, emphasizes the plurality of institutionalized practices needed to bring it about: a truth commission without accompanying programs of public education and judicial reform is unlikely to instill the “publique conscience” of law that undergirds rule-of-law orders. While Satz’s focus is on a single institutional mechanism, she too argues that compensation schemes must be coupled with other means of countering past wrongs (e.g., truth seeking, memorials, prosecutions, apologies) in order to have their most beneficial impact.

Moreover, our authors agree that it is impossible to state in the abstract what combination of institutions will do most to advance the goals of transitional justice. Such judgments are inescapably contextual, and they vary according to diverse factors on the ground: the structure and intensity of political cleavages, state capacity, the motivations of the elite, the role of the military in past conflicts, the ethnic composition of the population, the severity and scale of past human rights abuses, and so on.
Advancing our knowledge about the capacity of transitional justice mechanisms to advance its moral goals, therefore, requires focused empirical analysis of the interplay between such variables and the actual performance of institutions. It is for this reason that the present volume includes two major empirical studies of transitional justice mechanisms as implemented in very different contexts: East Timor and the former Yugoslavia.

On the basis of extensive field work, David Cohen and Leigh-Ashley Lipscomb offer a thorough analysis of the East Timorese experience. Following the fall of Suharto’s dictatorship in Indonesia, in 1999, Indonesian authorities occupying East Timor committed gross human rights violations to obstruct its independence. Over an eight-year period beginning in 2000, a dizzying array of transitional justice mechanisms were devised and implemented by the UN, the government of Timor-Leste, and post-Suharto Indonesia. These included independent public investigations of crimes against humanity, criminal prosecutions in regular and special courts, and Timorese and joint Indonesian-Timorese truth commissions.

Tragically, and despite the high caliber of early investigations of human rights violations, these institutions failed to achieve the core normative aspirations of transitional justice in East Timor. Using Elster’s criteria of justice, truth, and peace, Cohen and Lipscomb argue that justice was ill served in that few cases were prosecuted and even fewer resulted in convictions. Despite the early efforts of the UN prosecutor, egregious sexual violence (including politically motivated rape) never resulted in criminal charges. Truth was better served by the reports of several commissions of inquiry and truth commissions, but these came at the heavy cost of the re-traumatization of witnesses, the failure to provide adequate support for victims, and the lack of an effective education campaign to disseminate findings among the general populace. Peace, which they here interpret as societal reconciliation, was frustrated by the opportunistic use of witness immunity programs by perpetrators.

While the case of East Timor does not tell against a holistic approach to the design of mechanisms, it does caution us against a lax interpretation of that approach in which simply adding more institutions is taken to represent commitment to transitional justice. The effective function of any single institution and of the
coordination of different kinds of institutions (in particular, crim-
inal prosecutions and truth commissions traversing national, trans-
national, and international spheres) requires factors that were
notably absent in this case: the careful design of the full array of
institutions at the outset, rather than “ad hocery”; the commit-
ment of adequate financial resources to carry out sound investiga-
tions, translate and disseminate reports, and provide meaningful
victim support services; protections against the manipulation of ei-
ther prosecutions or truth commissions by self-interested factions;
and staffing the institutions with appropriately trained personnel.
Cohen and Lipscomb sum up these factors in terms that resonate
with the political psychology of transitional justice as highlighted
in the contributions to this volume by Dyzenhaus and Posner.
In the absence of elite actors’ strong political will to achieve the
ends of transitional justice, it matters little how many transitional
mechanisms are put into place. Whether the motives of the elite
are justice or self-interest, without their leadership and disciplin-
ning support of transitional justice institutions, those institutions
are unlikely to attain their putative goals.

Monika Nalepa’s study of transitional justice in the case of the
former Yugoslavia focuses on just one institutional form, that of
criminal justice. Like Cohen and Lipscomb, she raises the ques-
tion whether the implementation of transitional justice achieves
the goals of justice, truth, and peace as reconciliation. But, like
other contributors, notably de Greiff and Elster, she resists the
earlier tendencies in the literature to identify criminal trials with
the good of justice. Recognizing that criminal trials can serve truth
and peace as well as justice (just as truth commissions can serve
some forms of justice and contribute toward the establishment of
peace), she asks the focused question of how criminal prosecu-
tions can contribute to what is arguably the highest moral end of
transitional justice—peace understood as societal reconciliation.

One of the methodological challenges Nalepa confronts in her
study is how to operationalize the normative aspirations of transi-
tional justice so as to render them amenable to rigorous empirical
analysis. What are the observable phenomena by which we judge
whether reconciliation, in particular, has been advanced? In the
case of the former Yugoslavia, she notes that, although the cities of
Prijedor and Srebrenica suffered a comparable scale and extrem-
ity of human rights abuses during the war, generating large-scale population migrations away from these regions, the rate of return of refugees to Prijedor was significantly higher than that to Srebrenica. The return of refugees to a conflict zone, she argues, is a minimum condition for full-blown societal reconciliation understood as a restoration of social trust and a renewal of cooperation across group lines. Refugee returns, then, are a reasonable proxy for first-stage reconciliation.

Nalepa further notes that the prosecutorial strategy adopted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) was somewhat different across different municipal zones. In some locales, the emphasis was on establishing a richer factual record of the chain of command through plea bargaining, whereas, in others, the strategy was to secure as many convictions as possible. Nalepa’s empirical puzzle, then, is whether this difference between prosecutors’ strategies is systematically related to differences in the rate of refugee returns and, hence, in the possibility of reconciliation. Using a combination of qualitative and quantitative methods, Nalepa arrives at the conclusion that, contrary to the inference we might draw from the cities of Prijedor and Srebrenica, in general a plea bargaining approach is associated with higher rates of refugee return than is an approach that maximizes the number of successful prosecutions. Plea bargaining, she argues, generates a more robust record of atrocities through the accumulation of testimony from a larger number of low-level perpetrators. In the process, it serves the goal of truth: establishing a common public narrative of the wrongs of the past. A higher number of convictions does represent the good of justice, for it is unjust for human rights violations to go unpunished. Yet, over all, Nalepa’s evidence supports the conclusion that truth is more central than retributive justice to the possibility of reconciliation.

To this degree, the case of the former Yugoslavia reinforces the intuitions of political actors in contexts such as Chile and South Africa who favored truth commissions over criminal trials as the most salutary instrument of transitional justice. At the same time, Nalepa’s argument undermines those variants of the “truth versus justice” debate which suppose that truth is best served by commissions and justice by criminal trials. Criminal trials, too, produce truth value, and it may turn out to be even more significant than
the justice value they produce. Though Nalepa does not examine whether the truth produced by trials has greater efficacy with respect to reconciliation than that produced by truth commissions, her research opens up this question as one worthy of further empirical exploration.

A key strength of both of these empirical studies is that they explicitly engage propositions from the normative theory of transitional justice in seeking to assess the impact of different transitional justice mechanisms. Since the putative purpose of transitional justice institutions is to serve ends that are inescapably normative in their content, evaluating the actual performance of those mechanisms requires that scholars undertake the daunting task of translating abstract goods such as justice, truth, and reconciliation into terms that are susceptible of empirical analysis. This challenge does not distinguish transitional justice from any other field of inquiry that involves normatively laden concepts, but it is particularly daunting in a field where there is such deep contestation over the content of the moral purposes of political practices. One way in which Cohen and Lipscomb square up to this challenge is, for example, to understand the truth-producing value of commissions of inquiry in terms of the dissemination of reports in languages that are accessible to the mass of the population. Nalepa does so by interpreting quantifiable refugee returns as a partial measure of reconciliation. We are a long way indeed from being able to make strong claims about the causal mechanisms by which particular transitional justice institutions advance or fail to advance the goals they purportedly serve. But works like these, which give specific content to abstract ideals, postulate causal relationships, and critically examine the evidence, are an indispensable step in that direction.

The normative aspirations of transitional justice, whether conceived in terms of peace, truth, or varying interpretations of justice, will always be “essentially contested concepts.” Although continued engagement between normative theorists and empirical social scientists will not resolve the conflict among alternative interpretations of these terms, a key task of such engagement is to clarify the categories of analysis by which we identify, interpret, and analyze political phenomena. As research on transitional justice continues, we hope that the engagement between normative
theorists and empirical social scientists will be fully bidirectional, enriching the normative theory of transitional justice through novel operationalizations of its goals and enriching empirical study through the more precise articulation of the normative content of observable phenomena or institutionalized practices. We further hope the reader will agree that, taken as a whole, this volume contributes significantly to the deepening of this sort of engagement.

NOTES


9. See Adam Branch, “Uganda’s Civil War and the Politics of ICC Intervention,” *Ethics and International Affairs* 21, no. 2 (2007): 179–98. Though the indictments might have brought the Lord’s Resistance Army to the negotiating table, they never signed the final peace agreement and have since migrated north, wreaking havoc and destruction in the Democratic Republic of Congo.


