Chapter 2

Stay the Hand of Justice

Whose Priorities Take Priority?

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> There's bound to be a sense of tremendous sort of feeling of being cheated by the victims. But even more important, the Serbs who are beginning to realize that they were responsible for this, needed this verdict. They saw the television film of this massacre in Srebrenica, involving Serb soldiers, and a guilty verdict would, in my view, have made them face reality.
>
> *—David Owen on the death of Slobodan Milosevic (Besheer 2006)*

> It is not the first time we have had such incidents, even if these were horrible. It is not the first time that things were done and families came together. Often you gave a cow or a beer and families shared together, and the conflict was regulated in that way.
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> *—Elderly man interviewed in Rubengera, Rwanda, June 12, 2002*

The Challenge

The 2004 report of the Secretary-General of the United Nations on rule of law and transitional justice strikes to the heart of the major dilemma of transitional justice: "We must learn as well to eschew one-size-fits-all formulas and the importation of foreign models, and instead, base our support on national assessments, national participation and national needs and aspirations" (United Nations 2004a:1). Missing from this assessment is recognition of the dynamic interplay of international power and ambitions, and in particular the role of the United Nations in muddying the waters of accountability. This chapter focuses on two critical factors that should be considered in instituting transitional

justice interventions: first, the interrelationship between international and local politics and the impact of domestic politics on the choice and implementation of any particular transitional justice mechanism; and second, the gap that may exist between international norms and expectations for justice and the attitudes, beliefs, and goals of the people whose lives were negatively affected by policies of the prior regime or the mass violence that may have erupted. In this section, we begin by reviewing how power and politics shape justice mechanisms and by examining the discrepancy between idealized goals and on-the-ground realities in recent implementations of transitional justice.

After more than a decade of contemporary international responses to criminal justice, the world community is still left with questions about the validity and utility of the mechanisms that we have initiated. Debates about domestic, international, and mixed tribunals (Chesterman 2002; Posner and Vermeule 2004; Roper and Barria 2005), the role of punishment and forgiveness (Aldana 2006), the value and limitations of amnesties (Sarkin and Daly 2004), the morality of truth commissions (Bhargava 2000), and the relationship of these concerns to the social reconstruction of societies are found in the literatures of several disciplines. While we recognize that international criminal law has evolved and created new standards of accountability, we raise questions in this chapter about beneficiaries, priorities, and the reactionary if not parochial nature of the human rights field, and propose a challenge to those who see transitional justice as the first and perhaps most important step in protecting the security of those whose lives are threatened by violence and terror. While we cast a critical eye on transitional justice in this chapter, we are aware that these processes do not occur in a vacuum: there may be conflicting political agendas; resources may be allocated to competing programs; expectations may be unrealistic, and coordination nonexistent. Ultimately, despite the evolution of what is entailed in transitional justice, considerable questions remain, and it is not clear whether, to what extent, or under what conditions transitional justice is capable of fulfilling its prophetic ambitions.

In his 2006 report titled "Indifference and Accountability: The United Nations and the Politics of International Justice in East Timor," David Cohen illustrates the vagaries and limitations of international criminal justice (2006:7). He describes a "lack of political will" to provide resources and support; "failure to establish clear ownership of the process between the UN and East Timor"; failure to meet basic international standards of operation; failure to

address the needs of victims, witnesses, and communities; lack of competent judges; failure to provide a clear mandate for the prosecution; and, tellingly, a country left without an operating judiciary at the end of the process. The study findings reveal how East Timor was abandoned by the world community (Nevins 2005) and how international attempts at transitional justice are hampered by the real world of international politics and by unrealistic goals and expectations.

In February 2006, the Sierra Leone Working Group on Truth and Reconciliation released its preliminary study of the performance of Sierra Leone's Truth and Reconciliation Commission. While acknowledging that some progress had been made in operations, they noted: "It has been a deeply flawed and problematic process from its birth in 1999, when the peace agreement was signed" (Sierra Leone Working Group on Truth and Reconciliation 2006, Introduction). Two areas of great concern loomed large: first, many believed that the arrival of the Special Court "effectively relegated the TRC to 'second class status' in the hierarchy of accountability mechanisms and that donors increasingly deserted the TRC." Second, the report raised the question of whether the "official view" at the international level would deem the concurrent processes as a success and that the combined approach would be recommended as best practice. This was not the view of Sierra Leoneans, especially since many reported a lack of a "genuine partnership" with local civil society organizations.

The report surfaces the lack of attention paid by transitional justice mechanisms to those whose lives are directly affected by war, repression, and human rights violations. Its authors note: "It is particularly important that Sierra Leonean voices are heard at the international level, where criteria for assessing the successes and failures of the 'experiment' may be different from those locally and where different agendas may shape the conclusions reached. People have a right to know the truth about the Truth and Reconciliation Commission" (Sierra Leone Working Group on Truth and Reconciliation 2006:1.3).

Critiques of the Sierra Leone process have been echoed from outside as well. James Cockayne confronts the impacts of international politics and societal dynamics around the "under-resourcing, politicization[,] complex operational challenges . . . and . . . unrealistic expectations" that the Special Court for Sierra Leone faced (2005:674). However, the assumption made here is that criminal prosecutions are the essential first element of transition and that they bear a direct relationship to peace and stability. The challenges for transitional

justice are more complex and must confront international and local politics, questions about reconciliation, and democracy (Cobban 2006:22–28). Complicating these concerns is the naïveté that underlies the imposition of specific models of justice in nonwestern societies.

Rosalind Shaw's 2005 report on the Sierra Leone Truth and Reconciliation Commission for the United States Institute of Peace raised different but related questions, the foundation of which lies in cultural practice. Shaw noted that "there was little popular support for bringing such a commission to Sierra Leone, since most people preferred a 'forgive and forget' approach" (2005:4). Further, she describes how, in this country, "social forgetting has been a cornerstone of techniques of reintegration and healing for child and adult ex-combatants. Speaking of the war in public often undermines these processes, and many believe it encourages violence" (2005:9). To many, this startling conclusion flies in the face of the now-popular juggernaut of truth telling—a confessional approach to confronting past events that presupposes that "revealing is healing" (Hamber 2001:4).[1] No one has yet demonstrated that this approach is relevant across cultures or nations.

And yet the idea of culturally relevant alternatives to transitional justice is fraught as well with controversy and risk. The Rwandan solution of utilizing a supposedly traditional mechanism of conflict resolution, the *gacaca* courts, has shown once again how politics and justice can become inextricably linked (Longman and Des Forges 2004a; Oomen 2005; Reyntjens 2004; Waldorf 2006). Barbara Oomen describes how the government of Rwanda has manipulated the international community with phrases like "transparency" and "good governance," while setting up a judicial process that prevents any examination of human rights violations committed by the regime itself (2005). Gacaca has led to scores of accused seeking safety outside the country, and the government imposed mandatory attendance at gacaca hearings as the empty promises of reconciliation became apparent. Oomen notes that "this particular form of justice has been made subservient to the government's political mission" (2005:905). Meanwhile, human rights organizations have been shuttered, and the government works hard to discredit any opposition.

Recently, the *Economist* lauded the capture of Liberian accused war criminal Charles Taylor and his transfer to The Hague (Anonymous 2006). As the President of Liberia grappled with the rebuilding of a country that was left in ruins, international pressure mounted on her to demand that Taylor be tried. Clearly, this posed a dilemma—where should he be tried? Would a trial in

Sierra Leone disrupt rebuilding plans? What priority should the costs of a trial assume among the widespread economic needs facing Liberia? The *Economist* notes that "the former Liberian president's trial may herald the end of impunity for Africa's 'big men,' traditionally regarded as too powerful to punish. It also marks a step forward for international justice" (Anonymous 2006). But what does "the end of impunity" mean in practice? And is the "step forward" the most critical step to take for Liberia?

We suggest that part of the problem in assessing the benefits of the approaches now subsumed under the term *transitional justice* lies in an expansion of these purported benefits. We need to calibrate our expectations. Many scholars and practitioners assume that transitional justice will lead to reconciliation and forgiveness, deter further abuses, combat impunity, promote social reconstruction, and alleviate the effects of trauma.[2] The expectations of the international community for trials should be limited to an agreement that retributive punishment is appropriate and sufficient in and of itself; that reconciliation processes may be of another order entirely, and that the relationship between justice and reconciliation remains unclear. While truth commissions, trials, vetting, memorials, and reparations may all play some as-yet-undefined role in the social reconstruction of societies, the contributions will vary depending on context and on the priorities assigned to them by those affected. The voices and opinions of those whose human rights have been abused must be heeded.

This poses a challenge to human rights organizations that have fought long and hard for judicial interventions. Yet, given the findings of those who study transitional justice, we suggest that it is time to open up the dialogue and to stop falling back on poorly crafted rationalizations for traditional (primarily western) conceptions of what is moral and right. The involvement of Africans, Asians, and people from other cultures and communities, including indigenous peoples, in dealing with these egregious abuses raises the possibility that we should revisit the transitional justice "toolkit" and reconsider the established paradigm.

Historical Perspective

Gary Jonathan Bass, in his 2000 book, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals,* introduces the text with a quote from Justice Robert Jackson's opening statement at the Nuremberg Trials: "That four great nations, flushed with victory and stung with injury, stay the hand of vengeance

and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason" (2000:147). However, as Ruti Teitel notes, the mechanisms for responding to violations of international humanitarian law have evolved considerably since the Nuremberg trials: "The genealogical perspective situates transitional justice in a political context, moving away from essentializing approaches and thereby illuminating the dynamic relationship between transitional justice and politics over time" (2003:94). Jack Snyder and Leslie Vinjamuri (2003–4), in evaluating the successes of international justice, suggest that the international community has achieved minimal success in the area of prevention. They conclude that "legalism, focusing on the universal enforcement of international humanitarian law and persuasion campaigns to spread benign human rights norms," has been minimally effective. They find "little support for the central empirical assumptions that underpin this approach. Trials do little to deter further violence and are not highly correlated with the consolidation of peaceful democracy" (2003–4:43).[3]

We are at a stalemate on how best to respond to atrocity crimes. Despite the increased recognition that trials are limited in their effects and may have untoward consequences, they still remain the privileged response of the international community—Iraq, Cambodia, and Uganda being the most recent examples. Tension has emerged around the indictment by the International Criminal Court (ICC) of five leaders of the Lord's Resistance Army in Uganda, while the government of Uganda and many of its people argue for peace negotiations and amnesty (International Center for Transitional Justice and U.C. Berkeley Human Rights Center 2005). The stakes are high and disagreement runs the risk of polarization. How do we value the cost of a tribunal? Do we abandon victims if we argue for a response that addresses the greater good of a community? How do we know what victims want? Is there such a category as "victims" or should we recognize the variability in the category? We place this inquiry in historical context, relating it to the "expectations gap" and the political challenges of transitional justice.

Origins of Transitional Justice

The concept of transitional justice is relatively new and still evolving. Since its debut in the late 1980s, as dictatorships fell in Latin America and the end of the Cold War brought independent states in eastern Europe, the concept has been used to refer to the challenges faced by new regimes as they put the past

behind them and transitioned from authoritarian or repressive rule to democracy. World events overtook this original idea of transitional justice as civil wars and regional conflicts unleashed widespread bloodshed and human rights violations on a mass scale. Nevertheless, transitional justice absorbed these new developments and continued to be invoked as a necessary ingredient in any peace process. This suggests that the elasticity of the term may be stretched beyond its usefulness. Addressing the harm of the past is a *process* that may unfold over the course of years, if not decades, and the nature of the response may take multiple forms.

One of the earliest and most influential developments in the field of transitional justice was the 1988 Aspen Institute conference titled "State Crimes: Punishment or Pardon" to consider the "moral, political and jurisprudential issues that arise when a government that has engaged in gross violations of human rights is succeeded by a regime more inclined to respect those rights" (Henkin 1995:184). The conference participants identified the primary fault lines and factors that confronted new regimes brought into power after authoritarian or repressive rule: whether there is a moral duty for successor regimes to punish human rights violators under the former regime or whether states should emphasize measures to foster national reconciliation; the nature and extent of international legal obligations of successor states to prosecute wrongdoers; what duties successor states had to investigate and publicize the truth of the violations that took place under the prior regime; and the extent of political discretion new regimes could exercise legitimately to address the past, taking into account the political, social, and economic vulnerabilities that threaten emerging democracies (Aspen Institute Papers 1988).

These dilemmas endured and proliferated with the fall of the Berlin Wall in 1989 and commanded the attention of increasing numbers of diplomats, scholars, and advocates. By the time Neil Kritz published his work on transitional justice in 1995, the term had unquestionably entered the lexicon of international law and relations. There was consensus that the past could not be ignored. Rather, it must be addressed in an intentional manner, lest stability be purchased on the cheap, grievances left festering, and violence simmering just below the surface—arguments that are hypothetical in nature, since there is no evidence to support these views. Kritz's book documents the rich debates and proliferation of policy choices regarding transitional justice measures. In the book, the decision to seek criminal sanctions continues to occupy center stage. Whether to prosecute, whom to prosecute, legal barriers to prosecutions,

their political feasibility, alternatives to criminal sanctions, and how to respond to victims presented a thicket of questions with no clear answers. However, there was recognition that universal claims of human rights and the rule of law are often in tension with the exigencies demanded by the specific context of a particular transition.

Transitional Justice and Mass Violence

The conflicts in the Balkans and Rwanda in the early 1990s introduced a new dimension to transitional justice. Pursuit of accountability for the atrocities committed during these wars linked the cases of the former Yugoslavia and Rwanda conceptually to those of emerging democracies, a development that has changed the field. In 2000, the Ford Foundation spearheaded an effort to establish the first international organization devoted exclusively to supporting transitional justice. The mission statement of that group, the International Center for Transitional Justice, announced that the organization "works in societies emerging from *repressive rule or armed conflict,* as well as in established democracies where historical injustices or systemic abuse remain unresolved."[4] Broadening the conceptual framework of transitional justice strengthened the momentum of the field but also served to obscure possible distinctions between types of transitions.

Accountability for past abuses has remained the galvanizing principle behind transitional justice for many in the international community, and criminal sanctions continue to be the privileged option. Human rights advocates pressed the case for prosecutions of political leaders and military architects of repression and mass violence, arguing that international law permitted—if not demanded—an end to impunity, and that a legalized response strengthened the rule of law in societies emerging from repression. While debates around these issues continue, a moral and political consensus has emerged within the international community to prosecute serious violations of international criminal law. The institutional expression of this commitment began with the ad hoc criminal tribunals for the former Yugoslavia and Rwanda in 1993 and 1994, continued with support for internationalized courts for Sierra Leone and East Timor, and culminated with the establishment of the International Criminal Court in 2002. Since the discussions within the international community tended to be led by lawyers, it is not surprising that the focus has remained on retributive justice with underlying rationales based on moral justifications for the primacy of law. While this view relies upon principles of morality, legal

theory, conceptions of democracy, and theology, there has been little room for consideration of broader or alternative approaches, especially those that might emerge out of different or non-western conceptions of justice.

Truth Commissions as an Alternative to Trials

Given the normative shift toward prosecutions, the simultaneous acknowledgment within the field of transitional justice that truth commissions are an acceptable—if not in some instances preferred—alternative to criminal sanctions has been particularly striking. South Africa's choice in 1995 to address the abuses of the apartheid regime through a truth commission became a watershed event in transitional justice. The South Africa Truth and Reconciliation Commission (TRC), with the authority to grant amnesty for political crimes if the perpetrator made a full disclosure of the events and to compensate victims, disrupted several paradigms of transitional justice. First, the South Africa case challenged conventional wisdom that amnesties necessarily buried the truth about the past. Second, subordinating prosecutions to a truth commission in which perpetrators had to testify publicly about their crimes and victims had the opportunity to confront wrongdoers tested the notion that truth commissions necessarily trade justice for truth. Finally, South African supporters of the TRC defended the commission as a preferred mechanism for transitional justice on the basis that it was consistent with cultural values (*ubuntu)* that prioritize social harmony and reconciliation over retribution. Thus the TRC constituted a natural extension of the restorative justice principles that framed the political agreement enabling a peaceful transition to majority rule.

Synthesis and Evolution of Transitional Justice

The influence of these two trends in transitional justice—international promotion of prosecutions and integration of local priorities and conditions—continues. The next wave of initiatives has been marked by hybrid or internationalized tribunals that integrate international law and judges into domestic adjudication of war crimes committed in the conflicts in Cambodia, East Timor, Kosovo, and Sierra Leone. Similarly, Rwanda's decision to adapt a "customary" dispute resolution process—gacaca—to pursue accountability expanded the transitional justice lexicon. East Timor also incorporated a customary dispute resolution mechanism into its efforts to respond to the wave of violence that accompanied the vote for independence. And in Sierra Leone, while controversial, the country witnessed the simultaneous operation of a truth

commission and an internationalized court. Currently, transitional justice might be characterized as a menu of options for mechanisms—driven by principles of accountability—from which countries may pick and choose to craft a considered response to a period of widespread violence or repression. However, an important question is whether we remain too fixed in our perspective, and whether we have limited our array of options, prematurely becoming closed to other interventions that might be dramatically different.

An examination of transitional periods across countries points to the messy, incomplete, or continually contested nature of transitional justice (Fletcher and Weinstein, 2009). In some countries, implementation of alternatives to prosecutions does not resolve the demands by some for accountability. Decisions to amnesty perpetrators, even with a truth commission, as in Argentina or Guatemala,[5] do not staunch efforts to find justice in other venues. Or in the case of Cambodia, efforts to hold accountable the Khmer Rouge leadership for the genocide spanned decades after the group was forced from power. These extended periods of activity to implement justice raise questions about whether there are outer limits to what might reasonably be termed a period of transition and when such a transition ends.

It is time to reconsider whether the term *transitional justice* accurately captures the dynamic processes unfolding on the ground. There may be a discrete political episode during which the regime change takes place, yet the term *transition* denotes a temporary state in which movement occurs, transporting a country from the past (violence/repression) to the future (peace/democracy). However, progress toward social reconstruction may be halting, and marking the end of a "transition" by the first free elections is a poor metric to determine a lasting peace. Broadening the aims of transitional justice tc support social reconstruction reveals some noteworthy limits of current approaches. Looking beyond the initial outburst of hope that often accompanies the end of a violent or repressive period, a review of how transitional justice interventions unfold over time in different political contexts and cultures raises a number of questions. Despite the emphasis on the importance of trials, wha evidence is there that justice is more than a rhetorical talisman for social trans formation? In fact, the focus on trials leads us to question whether the emergence of criminal accountability for mass atrocities has dislodged or obscured the importance of other processes and interventions needed to create an en during platform for social stability after protracted, state-sponsored violence How should we conceptualize the relationship between prosecutions and thes

other interventions? What consideration should we give to the timing or sequencing of these events? Has our rhetoric outstripped the evidence?

Finally, while some transitional justice policymakers reject the notion that "revealing is healing," many remain wedded to the idea that justice will alleviate the pain of traumatic experience. Yet, as Kirsten Campbell so eloquently reveals, "the trauma of law is that it cannot represent justice. The trauma of justice is its juridical impossibility. . . . [Justice] requires a fundamental change to the social order which made possible the originary trauma of crimes against humanity. In this sense, justice remains the event yet to come" (2001:6). While we would prefer the easy answer that trials and punishment will assuage the grief of trauma, the ideal of closure remains that—just an ideal.

The Ongoing Challenge

Over the past decade the eruption of identity-based conflicts has made apparent several critical dimensions of post-conflict reconstruction, with important application to the concept of transitional justice. First, conceptions of justice vary among individuals, communities and cultures; second, how communities respond to these violations may reflect mechanisms that differ considerably from western models of justice; third, timing is a critical factor. When is the appropriate time for which kind of intervention, recognizing that priorities change over the months and years after overt conflict has ended? Fourth, responses are context-bound and heavily influenced by the relevant political dimensions; and finally, while community consultation is a key component of determining the appropriate response, how does one best make that determination? We must ask whether and when local desires should trump international law, or indeed whether the universal application of international humanitarian law is paramount.

What Do We Know About Attitudes Toward Justice? Evidence from the Field

We must ask those rebuilding their societies after mass violence what they want. However, this is not a straightforward process. For example, whom do we ask? If we survey people in a certain village or town, will their answers be representative of all those who have been victimized? If we ask elites, politicians, journalists, or NGO officials, how will we be certain that their perspectives are not simply unique to their positions? These are critical concerns, as peace building and social reconstruction depend on the motivation of those affected

to commit to working across former enemy lines and where issues of betrayal and trust are paramount. Most investigations have employed interview techniques to gather data. Yet these investigations are always open to the critique that the informants or the questions asked were biased in some specific manner. Interviews may illuminate aspects of the violence or responses to it, but they may be less helpful in delineating broad patterns of victimization or other impacts in a society. Our research team has incorporated several methods to examine the complexities of mass violence and the processes that have emerged to cope with the consequences of that violence. To the traditional interview, focus group, and ethnographic methods, we have added cross-sectional surveys.

Survey methodology allows us to do several things: first, to examine broad patterns of experiences, attitudes, and responses across geographic and socioeconomic boundaries; second, to look at the influence of demographic differences; third, to look at important associations of factors that may influence attitudes; and finally, to minimize biases that may distort our understanding of events by random selection of respondents. Surveys have limitations, including the quality and validity of the questions asked, and do not allow the respondent to explore, associate, and provide the richness that intensive interviews allow. However, as a human rights tool, surveys do much more than reflect popular opinion. They allow us to formulate a pattern of factors that may inhibit or promote social reconstruction. This broad perspective offers valid and representative information that can inform the peacebuilding processes.

Over the last decade, our population-based data raise questions about the goals of trials, the beneficiaries of trials, motivations for justice, and the ongoing tension between rich and poor countries. We focus specifically on the range of attitudes toward justice and types of judicial mechanisms, and what we can learn about how these attitudes may relate to post-conflict social reconstruction. We look across five different countries (Bosnia-Herzegovina, Croatia, Rwanda, Uganda, and Iraq) to see how attitudes reflect differences in culture, geography, war experience, and type of intervention. We examine four issues of importance to local communities—attitudes toward justice, attitudes toward reconciliation, the importance of identity groups, and the effects of trauma. In each case, we look at how local responses may differ from those put into place at the national or international level and thus promote tension between universal responses to international crimes and uniquely contextual responses.

Such tensions may have the untoward effect of heightening animosity among former protagonists and thus inhibit social reconstruction.

Attitudes Toward Justice

Our findings suggest that how people feel about judicial mechanisms is strongly influenced by experience of the violence, prior experiences with those on the other side, beliefs in retributive justice, access to accurate information, cultural beliefs and practices, and identity group membership.[6]

In Bosnia and Herzegovina, attitudes toward the International Criminal Tribunal for the Former Yugoslavia (ICTY) were related to identity group, war experience, postwar geography, and the ability of a group to acknowledge the deeds of its own war criminals. These influences changed over time as refugee returns occurred and the Office of the High Representative asserted control over the media reportage that promoted ethnic hatred. Our ethnographic studies revealed that justice is not always defined as "trials" or legal interventions. For some: "The greatest justice for me would be to let me live and die in peace there where I was born"; for others, "Punishing criminals would bring satisfaction." However, many were suspicious as to whether local courts had the capacity to provide justice that was untainted by political interference and corruption. We concluded that it was important to recognize that we could not make sweeping statements about what "victims" want; that view in itself diminishes the agency of those who have lost so much.

In Rwanda, we examined more closely the attitudes of Rwandans toward specific legal interventions—the International Criminal Tribunal for Rwanda (ICTR), domestic genocide trials, and gacaca (Pham, Weinstein, and Longman 2004; Stover and Weinstein 2004:206–25). As in the Balkans, our findings suggested that attitudes toward legal interventions are not straightforward but are influenced by social, demographic, and economic factors. Ninety-two percent of respondents supported the use of trials to punish the guilty, but they often espoused different goals, such as rebuilding trust or recognizing the suffering of survivors. At the time of the study, there was significantly greater support for gacaca than the other two forms of legal intervention. Another important dynamic was that the more educated were significantly less supportive of any of the approaches.

In Iraq, we examined attitudes toward transitional justice mechanisms three months after the U.S.-led invasion of the country. Primarily because of security issues and the difficulty in finding local partners, our study employed

a qualitative methodology. In July and August 2003, we conducted interviews and focus groups with representatives from a broad spectrum of the Iraqi population. We polled 395 people through thirty-eight individual interviews and forty-nine focus groups in north, central, and southern Iraq. Respondents included members of all ethnic, religious, and political groups, victim groups, members of civil society organizations, and leaders of religious and political organizations.

Our research showed that for Iraqis, concepts of justice focused on what constituted a just society, the antithesis of the old order. There was common agreement that perpetrators should be held accountable through fair trials, transparent and Iraqi-based with international support. There was a profound distrust of United Nations involvement and great support for the United States to distance itself in favor of international input. While many believed strongly in retributive justice and even vengeance, Iraqis expressed a hierarchy of who should be tried and supported the death penalty for those found guilty. Many recognized and encouraged a process of memorialization, education, and other forms of recording historical memory, but there was little knowledge of truth commissions or more formal mechanisms of remembering the past.

In northern Uganda, controversy has marked discussions among local communities, the state, and the International Criminal Court. The focus of controversy is whether members and leaders of the Lord's Resistance Army should be held criminally accountable for the more than twenty years of abductions, displacement, mutilations, rapes, and killings. The crux of the question is peace (including the possibility of amnesties) versus criminal prosecutions. In December 2003, President Museveni of Uganda asked the ICC to take up the problem. At the same time, the government of Uganda has pursued a peace process mediated by the government of South Sudan that would involve amnesties in the search for a way to end the conflict (Shukla and Martin 2009).[7] The intervention of the International Criminal Court sparked controversy among civil society organizations in northern Uganda. There were conflicting reports about what the Acholi (the major population group) and others in the north wanted as an outcome and what process would best meet their priorities and contribute to peace. Some argued that traditional reintegration and reconciliation mechanisms involving ceremonies such as the *mato oput* and "bending of the spears" were best adapted to deal with perpetrators. Further, it was argued that the involvement of the ICC and the threat of prosecution and trials would jeopardize peace talks between the government of Uganda and the LRA.

We asked 2,550 northern Ugandans, "Is it important for you that persons responsible for abuses in northern Uganda are held accountable for their actions?" More than three-quarters of those surveyed responded "yes." We also asked what they would like to see happen to the LRA leaders who were responsible for the mass atrocities. More than one-half (66%) wanted punishment in the form of trials, imprisonment, and execution. To add to the complexity, 71 percent stated that they would accept amnesty if it were the only road to peace, but if there were peace, 54 percent would prefer peace with trials over peace with amnesty (46%). Surprisingly, Acholi respondents, generally considered the principal victims of the LRA, were more willing to accept amnesty than were the Lango and Teso (the response pattern between districts also confirmed this finding). Finally, when asked to define justice, only 31 percent defined justice as trials, and this varied across districts. In other districts, reconciliation was offered as a definition (in one district, 35% chose this option).[8]

Attitudes Toward Reconciliation

In epidemiological surveys, it is essential that terms be conceptually defined so that we are measuring valid indicators. A term like *reconciliation* is open to many definitions and interpretations, and the more specific we are, the clearer our understanding of this concept as an outcome. In Bosnia and Herzegovina, the "Readiness for Reconciliation" scale was defined by three variables—readiness to accept the presence of members of the "opposing" nationality in eight different situations, readiness to be reconciled with the conflicted nationalities, and readiness to accept interstate cooperation. In Rwanda, the "Openness to Reconciliation" scale consisted of eighteen questions that represented four factors—social justice, nonviolence, community, and interdependence.

In the Balkans, we learned that reconciliation is a multidetermined process heavily influenced by individual, interpersonal, and societal factors. Those who were not ethnocentric, nationalistic, or authoritarian were more likely to support reconciliation. Those who believed in the value of trials and the importance of the ICTY were also more likely to be open to reconciliation. Finally, those with positive prewar experiences across ethnic lines were more positively influenced toward reconciliation. In Rwanda attitudes toward reconciliation were not clear-cut. Trials in another country or at the ICTR were seen as least contributory to reconciliation, while there was more support for Rwandan trials and gacaca as making a significant or very significant

contribution, 69 percent and 84 percent respectively. However, when we statistically analyzed the responses of the participants using our specific definition of reconciliation, we found little relationship between attitudes toward the various trials and openness to reconciliation.

In Iraq, shortly after the release of the country from dictatorship, rage and pain suffused the populace. Yet most had an understanding that revenge would only recapitulate the violence of the past. On the specific question of reconciliation, however, the results of our study were not definitive. Across different ethnic groups, participants understood reconciliation in terms of the concept of unity and trust. However, there were differences in how the groups applied the term, and so there was no agreement on the topic. Some believed that with the end of the Hussein era, unity now existed and that divisions had been promoted by the prior regime. Many felt that the history of injustice united all the Iraqi people; the Kurds saw it as opening the possibility of improving Kurdish–Arab relations. We found different interpretations of reconciliation that varied with geography, ethnicity, minority status, and focus on individual versus societal need. There was universal support for accountability, yet little relationship existed between legal justice and reconciliation.

The survey in Uganda also suggested that definitions of reconciliation are not straightforward and varied with geography and ethnicity. When asked, "What is reconciliation?" 52 percent associated the concept with "forgiveness," 62 percent in non-Acholi districts and 43 percent in Acholi districts. Twenty-four percent associated reconciliation with confession, but only 6 percent associated reconciliation with justice (however, 18 percent associated justice with reconciliation). Only 9 percent associated reconciliation with "traditional" ceremonies. The latter finding is inconsistent with those reported in other studies (Hovil and Quinn 2005; Baines 2007). These kinds of discrepancies can reflect such problems as wording of questions, variability in concepts (although the questions are pretested), and differences based on who is asking the questions. Such discrepancies can be minimized by utilizing multiple methods of inquiry.

Influence of Identity Group

The identity group to which one belongs influences attitudes toward any form of transitional justice. In each country studied, ethnic identity surfaces as a critical dimension that must be considered in social reconstruction. In Bosnia-Herzogovina, our findings suggested that attitudes toward the ICTY were

viewed through a nationalist lens. The Bosniaks, acknowledged by the international community as the principal victims of the war, felt very positively about the ICTY; Serbs and Croats felt negatively because of their belief that members of their group were being singled out for prosecution. However, our studies indicated that over time (one to two years), following the initial survey, attitudes were changing in a positive direction in some groups and negatively in others. Attitudes toward a contested institution are bound to change as more information becomes available; they will also be influenced by the political climate, and the actions of the institution itself. Those who were less ethnocentric and nationalist were more likely to believe in reconciliation.

In Rwanda, our study found significant differences between Hutu and Tutsi on a variety of attitudes and beliefs. These differences were found in expectations of trials: for example, while a majority of Tutsi strongly agreed that trials should punish the guilty, a majority of Hutu merely agreed. On the other hand, Tutsi showed stronger support for reparations. Differences were found in attitudes toward the three types of trial possibilities—ICTR, Rwandan trials, and gacaca. For example, 37 percent of Hutu held positive views of the ICTR, and 14.3 percent negative, compared to 21.9 percent of Tutsi who held positive views, and 35.1 percent negative. We also found that a larger percentage of Hutu felt more strongly that members of the Rwandan Patriotic Front who committed crimes should be tried. A small difference was found between Hutu and Tutsi in their support for social justice (a factor in the reconciliation scale), with Tutsi being somewhat more supportive. But on the whole, openness to reconciliation was found in both groups, although it was modified by such factors as education and symptoms of exposure to trauma.

As the Iraq study employed a qualitative design, ethnic differences are not quantified. However, our data indicate that at the time of the study, each group shared attitudes born out of a common experience of human rights violations, and each group was aware of how those violations affected the other. Iraqis were united in their hatred of the Saddam Hussein regime. They pled common cause with their countrymen in their rage against the arbitrary nature of the violent regime: "Saddam did not succeed in killing the Iraqi person, but he succeeded in terrifying the Iraqi spirit." However, at the same time, each ethnic group focused on what specifically had been done to their people.

The Uganda study demonstrated that ethnicity, specifically Acholi versus non-Acholi identity, influenced attitudes toward trials, amnesty, peace, and the relationship between peace and justice. For example, those from non-Acholi

districts were twice as likely to want "peace with trials and punishment" than "peace with amnesty." In Gulu, where the population is primarily Acholi, the majority of respondents believed that pursuing justice would threaten a peace process. Similarly, respondents from the Acholi districts were three times less likely to want trials than were respondents from non-Acholi districts. How much these differences emerge from cultural beliefs and values, from fatigue after a twenty-year history of horrendous violence, or from a lack of faith in a British-developed judicial system is unclear. However, these data do indicate that identity-group membership is a critical determinant in attitudes toward justice in northern Uganda.

Exposure to Trauma

In the Balkan countries we found no correlation between the level of traumatic experience and the desire for war crimes trials or with positive attitudes toward the ICTY. One respondent stated: "I have nothing out of this belated justice. . . . Things lost will not be returned to me, nor will this ease my suffering." Trauma experience was negatively associated with readiness for reconciliation if respondents had experienced negative prewar interactions with members of the opposing group. On the other hand, we also heard: "Punishing criminals would bring us satisfaction." These kinds of discrepancies demonstrate once again why multiple methodologies are useful. In this study, exposure to trauma was measured by a scale developed in Croatia weighted to account for severity of exposure, and while a validated instrument, it may not be capturing the dimensions of trauma effects that would influence attitudes toward justice. However, it also is possible that the qualitative responses do not accurately capture these relationships at a population level.

In Rwanda, the association of traumatic experience with attitudes toward trials was also unclear—the more the respondents had been exposed to traumatic events, the more negative they were to domestic trials, especially gacaca, and the more positive they were toward the ICTR. If respondents reported symptoms of post-traumatic stress disorder (PTSD; a proxy for emotional effects in our study), the more negative they were toward classical domestic trials. The experience of trauma appeared to influence attitudes toward trials, but not in any clear-cut manner. In addition, both exposure to trauma events and symptoms of traumatic experience, as determined by a scale that measures PTSD, demonstrated a relationship to openness to reconciliation. Greater trauma exposure lessened support for three of the reconciliation dimensions, and

PTSD lessened support on two of the factors. We conclude that while support existed to hold trials within Rwanda and even outside, this support was influenced by politics, war experience, the type of legal intervention proposed, lack of information, ethnicity, education, and traumatic exposure. Relationships were far from clear, and when looked at in relation to their contribution to reconciliation, the association was murky indeed.

We did not specifically examine trauma exposure in Iraq as we did in the Balkans, Rwanda, and Uganda. However, participants in the interviews and focus groups did volunteer much about the impact of the Hussein era on their lives. Thus a Shi'a woman told us, "Our life was full of lies and fear," and a Kurdish woman lamented, "We spent our lives crying tears of pain and suffering and we became really fed up or disappointed and we gave up." Our data indicated that the prevalence of trauma exposure had been extremely high and that these experiences led to widespread fear, cynicism, and mistrust. These attitudes manifested themselves in a strong desire for accountability from all groups, as well as distrust of the international community for their prior support of the Baathist regime. While they welcomed international support and resources for Iraqi trials, they felt strongly that the trials must be held in Iraq, with Iraqi judges.

The levels of exposure to trauma in northern Uganda were among the highest that have been formally reported. Respondents answered whether they had been exposed to eleven major violent events, such as abduction, killings, mutilation, and sexual violation. Some 40 percent reported that they had been abducted, 58 percent that they had witnessed a child abduction, and 45 percent that they had witnessed the death of a family member. The greater the exposure to trauma, the more the respondents wanted to have accountability and trials. The only exception to this relationship was that exposure to more trauma was associated with the belief that former enemies could live together. Further, those who had been exposed to at least one of the traumatic events were more likely to support amnesty. Finally, responses were modified by ethnicity.

What these studies show is the complexity of the relationships among justice, peace, and reconciliation. Attitudes were modified by ethnicity, geography, education, and exposure to traumatic events. The data offer further evidence for the importance of considering a range of solutions and for understanding not only the nature of the conflict but also the characteristics of the populations affected by the violence.

Discussion

Each of these countries was examined at a particular point in time, and the events that led up to the "transitional period" were quite different. In the Balkan countries, an internationally supported peace agreement set out a political mechanism to assure peace and stability; in Rwanda, a victorious army assumed power in 1994; in Iraq, we interviewed our respondents three months after an international invasion had ended decades of human rights abuses; and in Uganda, the survey was carried out in the midst of ongoing atrocities. There are distinct similarities and differences among the countries that we studied. In all, one's identity group strongly influences attitudes toward trials, as does local politics. Lack of information about legal structures and alternatives influences attitudes in Rwanda, Iraq, and Uganda. In these countries, the legal institutions suffer from a profound lack of confidence in their fairness and capability to administer justice.

Time is an important dimension—as we saw in the Balkans, attitudes toward trials, the ICTY, and the former enemy changed over time. In Iraq, at the time of the survey, there appeared to be a commitment to a unified country—a belief that clearly has changed in the intervening time. In Rwanda, the initial and overwhelming enthusiasm for gacaca has been tempered by its one-sided approach to justice. In all of these settings, the involvement of the international community is viewed with ambivalence. Definitions of justice vary by country, although retributive justice appears to be very important to some groups in all. How, when, and by whom it is meted out remains an open question. While in the Balkans there was no clear relationship between trauma experience and desire for trials, there were some associations in Rwanda, particularly to the type of trial. In Uganda, there is a relationship between exposure to trauma and desire for trials, but this is not clear-cut: the Acholi most supported amnesty.

Finally, local politics—the legacy of the Dayton Accord, the RPF victory and government in Rwanda, the U.S.-led invasion in Iraq, the relationship between President Museveni's government and the people of northern Uganda—profoundly shape the responses of identity groups to whatever form of transitional justice is proposed. And these attitudes are influenced, in turn, by cultural practices and historical experience. These data illustrate the futility of simplistic responses to mass violence. Each country and culture must be considered separately, and interventions must be developed that make sense for the populations of concern.

Closing the Gap: Transformative Justice for Survivors of Human Rights Violations

In this chapter we question the established rhetoric about transitional justice. We raise these issues to highlight their importance and to emphasize the need for further study, discussion, and theory. If we do not attend to these challenges and see them as opportunities, the efforts of the international community to respond to the needs of post-conflict societies may be seriously undermined. We end by summarizing seven important challenges faced by the field of transitional justice.

First, we cannot assume that legal justice is desired or the highest priority in all countries after periods of repression or violence. Culture and history may lead to different definitions of justice and to different paths for achieving it; justice can be defined broadly, and retributive justice is only one part of that definition. Second, we find that attitudes toward legal justice are influenced by trust in the preexisting legal institutions and the political dynamics in the country. Third, the primacy of western legal systems and thinking over that of other forms of legal intervention must be examined. Fourth, international justice that is isolated from the development of a competent domestic judicial system sabotages an important dimension of building a democratic society. Fifth, we must broaden our conceptions about victims and their needs. There is no unitary concept of victimhood—there are many types of victims, and they may not think in the same way about the meaning of justice; the equation of justice with some ethereal conception of psychological catharsis must be challenged. Sixth, our analysis suggests that many involved with international justice have lost sight of its goals in favor of developing and maintaining an international system of criminal law over and above what might be the needs and desires of the victims of abuse. Positive effects that might emerge may be undermined by UN policymakers and bureaucratic procedures, insensitive and inexperienced lawyers, and systems that are out of touch with events on the frontlines. Finally, we must stop the equation of justice with reconciliation and acknowledge that many steps may be taken to rebuild societies. At this point, we do not know which are most critical or even if there is any universal program to implement.

Our studies in the Balkans, Rwanda, Iraq, and Uganda reveal that priorities for post-conflict justice vary with identity group, type of violence and human rights abuses, country, culture, and time. If transitional justice is indeed

to become transformative, then the "toolkit" that has become the menu of transitional justice options must be expanded and evolve into interventions that reflect a broadened view of responses to human rights violations. Dilemmas abound—what do we do with perpetrators for whom trials may be put off to another time? What about those for whom trials are the most important next step? How do we judge the moral choice—trials for individual victims versus the greater good of a peaceful society? Is there "no peace without justice" or "no justice without peace"? We suggest that the lessons of the last twenty years have put us in a better position to reframe the questions and to explore new options. The ultimate challenge will be our ability to test assumptions and hear what the beneficiaries of justice believe to be important.