Unintended Consequences in Transitional Justice: Social Recovery at the Local Level

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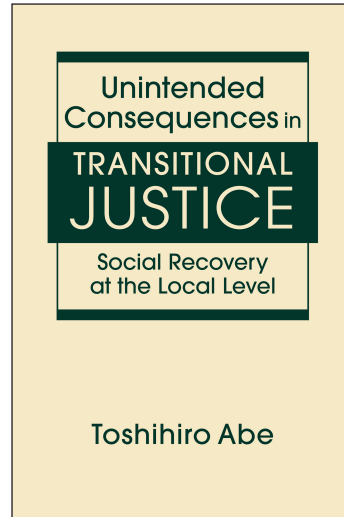
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in Transitional Justice

The people surrounding me were complaining in angry tones while a man on the stage was desperately refuting the commissioner's interrogation. Interpreters at a microphone booth had abandoned their duty to translate the proceedings into English, escalating the dispute in Zulu. The chairperson was begging the increasingly agitated audience to display order and discipline. I strained forward, making my best attempt to understand this chaos, but it was hopeless.

This was a public hearing by South Africa's Truth and Reconciliation Commission (TRC), held in Duduza, a small suburb of Johannesburg, in February 1997. The hall, the size of a school gymnasium, did not have enough space for everyone. If you were lucky enough to find a seat, you had to stay put for the next few hours. Six large, old fans were stirring the wet and sticky air. Over the din, I shouted to the man sitting next to me, "What are they fighting about?" "The man may have told a lie, or something similar to a lie!" he shouted back. According to the transcript of the proceedings, which I obtained later, the speaker had been interrogated by the commissioners regarding his exaggerated story and had repetitively offered lame excuses.

The hearing went on into the afternoon. The temperature rose so high the six old fans couldn't cope anymore. The beginning of February in Johannesburg is midsummer. My back itched, perhaps because my sweaty shirt was clinging to my skin. The mixed body odors in the close air dimmed my brain while my ears caught the sad, sometimes absurd stories.

The commissioners' cross-examination continued for a while, and then one speaker stopped answering. After a moment, she burst into tears. This mother was telling the story of her son, who had just begun attending meetings of the smallest unit of an anti-apartheid organization. According to her testimony, he had been shot dead. The mother had not been present at the

time of the incident and wanted to know the truth about her son's death. She was a victim, too. The hundreds of people in the audience fell silent. The awkward noise of the old fans echoed in the hall. I could hear quiet sniffling in the audience. The chairperson announced a short break.

In October 1998, TRC chairperson Desmond Tutu handed five volumes of official reports to South African president Nelson Mandela amid a blaze of flashbulbs from jostling journalists. Although the TRC activities were still ongoing, the completed reports, containing specific episodes from the lives of victims and official data, were published. The photo image from the event at which the reports were released—comprising one Nobel Peace Prize laureate who had supervised the project and another who had supported the project—was widely circulated, becoming a visual icon of the apparent success of national reconciliation in South Africa.

However, the public event at which this photograph was taken received scant attention from other political actors in South Africa. More precisely, the representatives from all the main political parties boycotted the launch of this publication. Even the African National Congress (ANC), headed by President Mandela, did not send anyone to the venue. Foreign media paid little attention to this backstory. As such, the media's coverage of the public release of the TRC reports actually worked as what Daniel Boorstin (1961) called a *pseudo-event*. When the commission initially embarked on its work, Chairperson Tutu declared, "We, South Africans, will reconcile with each other." But now Tutu had changed his assertive tone to one of suggestion, saying that the TRC would promote reconciliation among the citizenry. In a survey conducted by Market Research Africa in 1998, two-thirds of South African respondents said that the TRC had worsened racial relationships rather than promoting national reconciliation. The ex-president of the apartheid era, P. W. "Crocodile" Botha, had completely refused to cooperate with the commission when summoned, and the court could not execute persuasive justice in this matter. In such an atmosphere, Mandela said the following in his speech at the ceremony: "Many of us will have reservations about aspects of what is contained in these five volumes. All are free to make comment on it and indeed we invite you to do so. . . . The Commission was not required to muster a definitive and comprehensive history of the past three decades."[1]

What does this message mean in essence? How should we accept its meaning? Is it an indirect expression designed to cover or explain away undesirable outcomes? When Mandela passed away at the end of 2014, many media outlets named his main political accomplishment as achieving national reconciliation in post-apartheid South Africa. However, none of the people applauding this purported achievement made any reference to his nuanced speech at the ceremony in October 1998.

In August 2007, almost ten years after the above episode, I was a passenger on a motorbike taxi in Phnom Penh. It was moving fast in the wrong

lane. The roads in Phnom Penh at that time still had no median dividing the two directions of traffic, so motorbikes traveled in both traffic lanes. I was so nervous about crashing that I couldn't stop sending eye signals in vain to the drivers coming at us from the opposite direction. I was on my way to the office of a nongovernmental organization (NGO) headed by a Cambodian returnee lawyer from the United States. The NGO had scheduled a public hearing the next day in a town several hours away by car from Phnom Penh. The hearing was obviously related to the Khmer Rouge Tribunal (the Extraordinary Chambers in the Courts of Cambodia or ECCC), which was in its preparatory stage, and some officers such as prosecutors, lawyers, and persons in charge of public relations (PR) at the court had been invited as special guests. The session provided an opportunity for local attendees to question those official figures, raising even such fundamental issues as why the former cadres needed to be tried, at great public expense and while the social infrastructure remained inadequate, and why those foreign actors who had unquestionably served as proponents of the Khmer Rouge (KR) regime were not being dealt with in the court process.

I was surprised to witness these straightforward interactions among participants in a social context where political matters had always been treated in a sensitive manner. The court officials, in my view, answered the questions sincerely. The court had adopted a hybrid system that included both domestic and foreign elements in terms of legal regulations and participants. Many foreign observers expected that this application of an international judiciary would be a model case of the embodiment of the concept of local ownership. Foreign resources had been donated not only to the court body but also to the various local NGOs, which had spontaneously proceeded with their agenda of outreach activities to raise local awareness of this justice event. The staff gathered at those organizations were mostly young people enrolled in university studies. They were attempting to lift the heavy lid off Cambodian history by using their English competence and information technology skills to cooperate with foreign staff, as well as calling on their fieldwork research skills learned through university courses. All these were new elements in the local context as the project sought to generate information about the past. The young people's passion was intermingled with the institutional uniqueness of the court; in combination, the two factors caused observers to expect a new perspective on the transitional justice project. The fact that more than 50 percent of the local population was under age thirty supported such an expectation.

Ten years have passed since my first experience of traveling fast in the wrong lane in Phnom Penh. Medians have recently been mushrooming in towns under the strict eyes of "diligent" police. The urban landscape has been visibly improving, moving away from the memory of the past conflict. But the same level of improvement in the justice field has not been visible. During my successive visits to Phnom Penh, I have realized that the number of

local newspaper articles on the court and its activities has decreased. I will never forget the scene that confronted me in the ECCC courtroom one day in August 2016. The afternoon session was scheduled to resume at 1:30 p.m. at the court venue, located in a former army base. I caught a ride on a tuk-tuk (auto rickshaw) on schedule, but I was detoured by the attractive smell of high-quality durian fruit from Kampong Cham, which is found exclusively during this season, and then an unexpectedly escalated traffic jam ended my hopes of reaching the session on time. I stood in front of the court building at 2:15 p.m., with the strong smell of durian still on my moustache. When the security guard stopped me as I tried to enter the courtroom, I regretted my surrender to olfactory temptation, remembering a sticker often witnessed in Southeast Asia that reads "No durian." But the reason for the guard's action was simply that the court proceeding would be adjourning in a few minutes for the next break.

There was seating provided under the tent outside the court building, and many high school students, who must have been brought there by their teachers as part of their social studies or history class, were chatting and idling their time away. After a while, the time came for them to leave and they pleasantly departed the court premises as if birds had fled from a cage.

When the break began, I entered the courtroom—and I was shocked to discover that there were no spectators inside the auditorium. Numerous lights in the ceiling were shining brilliantly, reflected in the bulletproof glass designed to guard against a terrorist attack. The auditorium of 482 seats felt tranquil. I was caught in a momentary illusion that I was the late-comer to the concert hall. It seemed like I must have missed the perform-ance on the stage. Then a dim figure on a corner seat moved and got up from a crouching position. That hippie-like man seemed to have sunk into an unintentional nap, in keeping with the mood in the auditorium. Two guards were watching us intently; they had nothing else to do. When the chimes announced the resumption of the session, one woman who was monitoring the court process for an NGO rushed in. The invited judges filed into their observation room with its bulletproof glass, and the stage became active. I was again shocked in that desolate auditorium because I remembered how the local crowd filled the seats with expectations for, and serious disputes with, the ECCC. I could see those hopes and disputes were already part of the past, just floating around the auditorium as a sort of afterimage, even though the court process was still ongoing.

Destined to Fail?

I have thought back on my memories of watching the transitions in South Africa and Cambodia while seeking to develop a framework or paradigm

by which I can arrange the bulk of the data, episodes, and information on past instances of transitional justice (TJ). South Africa adopted a truth commission (TC), whereas Cambodia used international tribunals. The two were quite different in form, yet they shared a common character, especially in relation to the social reactions that they aroused.

What is this commonality? Is it the significance of victim empowerment? Or perhaps the need to create cooperative networks with local NGOs? Is it the perils of scarce resources? The need for substantial local ownership and international support? One could justifiably propose any of these as plausible answers. Without doubt, all these elements compose the main difficulties that any TJ attempt must face.

However, there is still another way of answering the commonality question. Both cases present the cycle of an initial stage of elation and expectation, often amplified by the media, followed by the appearance of unpredictable obstacles, frustration, and fatigue in prolonged programs, and then disappointment and despondency at the final stage, with unfinished business remaining at numerous impasses. Is this answer too pessimistic when reviewing a currently popular area within post-conflict policymaking? It is restricted, mainly, by what I have observed and experienced in South Africa and Cambodia. However, considering that the essence of this answer is the gap between the initial expectation and the perception at the end of the program, transitional justice literatures on other regions suggest that this retrospective picture seems to be shared not only by locals but also by other fieldworkers who have engaged in researching TJ for a substantial length of time. Both the truth commission and the international judiciary have been typical options in the field of post-conflict social rebuilding. If these options from the past are observed retrospectively as illustrated, what assessment then needs to be provided? Should another new option, besides TJ, be invented? Alternatively, can a different understanding of past cases still be submitted? This book adopts the latter standpoint.

TJ is a dynamic process. Each TJ project is unique and contextually different from another TJ program in another region. Factors of both space and time affect how a particular institution is formed. TJ may change its approach over several years of operation in the face of local political challenges. People's reputations and observers' evaluations may change in the course of diverse and unexpected responses by locals. In such unforeseeable circumstances, the greater the expectation of goal attainment, the deeper the resulting despondency when the goal is not attained.

The literature on TJ cases, particularly the studies that most keenly observed locals' reactions, suggests that TJ efforts seem destined to be criticized as failures, regardless of the context in which they are implemented. Critical analyses have not been limited to the South African Truth and Reconciliation Commission and the Cambodian special tribunals.

Reports from Latin America, West Africa, and Southeast Asia have all described incomplete achievements and unexpected obstacles arising in the course of official activities.

As far as adopting an analytical approach to the framework of the success-failure debate, it is easy to reach the conclusion that TJ efforts are destined to fail. Am I too critical of institutional efforts to reconstruct a society in political transition?

I have walked over to a bookshelf to look for past works with which I can compare my experiences. Séverine Autesserre's *Peaceland* is before my eyes.

Autesserre, who worked in Kosovo, the Democratic Republic of Congo, and Afghanistan for fifteen years on various peace-building missions, looked for explanations of ineffective peace building. Peace building is a different field from transitional justice; however, a scheme that enhances local conditions of social order and stability through international intervention may well be compared to transitional justice, particularly in the case of internationally supported TJ projects.

Autesserre raises the thorny question, "Why do peace interventions regularly fail to reach their full potential?" She answers it by examining the standard but counterproductive patterns of international peace builders' initiatives in their "practices, habits, and narratives that shape international efforts on the ground" (Autesserre 2014:3). The vast majority of foreign interventionists "arrive with little to no understanding of their locale of deployment" because they "usually value technical proficiency." When hired, they are selected on the basis of their prior experience or related knowledge in the field of international intervention. However, they need to make the environment for their mission comprehensible, so "they tend to use prevailing but overly simplified narratives as substitutes for more nuanced explanations of dynamics on the ground" (Autesserre 2014:3). Based on such biased and distorted knowledge, the following undesired outcomes are predictable:

> They regularly misunderstand the phenomena they are trying to address, such as the causes of and potential solutions to violence. As a result, although some projects eventually better the lives of local people, others fail to bring about significant improvements, and some even compound the problems that the interveners originally sought to address. (Autesserre 2014:3)

Although Autesserre's field is international peace building, her observations about interventions that have insufficient influence on local conditions or even counterproductive results are logically applicable to any other context characterized by tension and friction between a global, universalistic mode of humanitarian goodwill and local complexities. An international judicial initiative is akin to a peace-building mission in this regard.

Autesserre's insight is highly instructive for related international operations in exploring why interveners perpetuate even those modes of operation that they know to be counterproductive (Autesserre 2014:5), an issue that we will visit in greater detail in Chapter 3. Institutional conditions surrounding and affecting the interveners' modus operandi are pressured by a requirement, basically from donors—the underwriters of such projects, for example, the United Nations (UN) or leading states such as the United States and Germany to demonstrate positive local change in a limited time span. This naturally leads an operation to pursue an efficient blueprint—one that contains the seeds of future confusion and fosters the ebb and flow of expectations as observed in past TJ cases. Autesserre's probe provides a theoretically critical question about how to assess the consequences of such an intervention, which began with a misunderstanding and was directed by requirements made, for the most part, by the international community. Put differently, such recognition tells us that even a seemingly positive outcome in the local context might have resulted from factors other than the intervention itself. A proper analytical orientation in such a context should not be asking how the result relates to the officially appealed objective of the program but, instead, should be focusing on the process of interaction between interventional initiatives and local reactions. Taking this position even allows us to consider ironically positive outcomes, despite the program starting with a misunderstanding of the local situation.

There is another useful guide on my bookshelf. The theme of inevitable failure of an official project at the macro level has been more widely explored by James Scott in *Seeing like a State* (1998). Although Scott makes no reference to any TJ cases, the instances covered in the book all share the basic intention to create a new society or, at least, to restructure the essential meaning of social life at a macro level. In the implementation process of such a state project, the society is placed in a state of political transition. TJ is comparable in that way to the state projects in Scott's book.

In the framework of a "high-modern state project," which aims to sweep out a local context and replace it with a desirable social space, Scott traces urban planning in Brasilia, the Great Leap Forward in China, collectivization in the Soviet Union, and compulsory villagization in Tanzania, Mozambique, and Ethiopia. The progress of these state projects has historically followed the same trajectory, from spectacles of elation at the beginning to unexpected diversion at the end. Scott notes that although all these "great utopian social engineering schemes of the twentieth century" (1998:4) had "quite genuine egalitarian and often socialist impulses" (1998:346) and carried "the banner of progress, emancipation, and reform" (1998:343), they have failed, even qualifying as tragedies.

The sense of tragedy resonated with my mood after my visit to the empty courtroom at the Khmer Rouge Tribunal. Scott chose the term

tragedy to describe an unfortunate encounter between a "genuine desire to improve the human condition" and "a fatal flaw" (1998:342). The fatal flaw is recognized as embedded in the framing of a utopian picture drawn by a designer of a state project from the beginning, as well as in the steps of implementing a social-engineering project. Valuing the *simplification* and *legibility* of an object (forest, urban space, large-scale farm, or people at large) from a supervising position with faith in scientific and techno-logical solutions, these social-engineering projects have excluded local practical skills, diversity, buffers against uncertain environmental and human change, and, in general, local knowledge. Historically, the end of these projects has always been divergence from the planned goal—in other words, failure.

Just skimming the surface of this argument could give the impression that Scott has merely repeated the general criticisms of modernism, or mod-ernization in general, while prioritizing the people's narrow-sighted contex-tual needs or their irrational orientation toward their accustomed lives. How-ever, his insight goes much further. He inquires into the complex and mutually dependent relationship between a state project and local responses. He contemplates what will appear after a "tragedy" has occurred. Even though "the planned 'scientific city' in Brasilia was experienced as a social failure, . . . paradoxically, the failure of the designed city was often averted . . . by practical improvisations and illegal acts that were entirely outside the plan" (Scott 1998:309). Scott then adds an abstract observation about the nature of the modern social order: "Formal order, to be explicit, is always and to some considerable degree parasitic on informal processes, which the formal scheme does not recognize, without which it could not exist, and which it alone cannot create or maintain" (1998:310).

As I read, the fog in my memory started to lift. A planned goal may not be achieved, but an unplanned mending could occur through informal initia-tives. This possibility implies that one should not be unduly pessimistic about a state project's negative appearance or surface messiness in the pub-lic space. Rather, we should embrace a more complicated reality. Despite my critical observations on past institutional TJ cases, I have not been able to abandon an overall sense of the positive influence of TJ on the affected soci-ety. The explanation, I believe, is that the formal "failure" of a state-planned social-engineering project has often been compensated by unplanned infor-mal practices that are not officially recognized for their own identity or political legitimacy, but these informal engagements have brought the pub-lic arena into an unexpectedly stable status.

Scott makes significant use of the word "often" here. Such a strange harmony cannot be expected or calculated in *any* circumstances where a modern state project has been executed. And the conditions or specific mechanisms that lead to such an unplanned and unexpected cooperation or

continuity between a state project—or even a perfect ruin of the project—and the positive work of local actors cannot easily be prescribed.

My contemplation goes on. The passages cited above from *Seeing like a State* remind me of a conversation with a South African journalist who had worked for the TRC in the late 1990s as an investigating officer.

After my visit to Phnom Penh, I flew to Cape Town to meet this journalist, arriving after an eighteen-hour flight, my head blurred with jet lag. Our main reason for meeting was to discuss the racial and ethnic issues in post-apartheid South Africa, especially in the post-TRC period. I have known this journalist since the time of the TRC in the late 1990s and knew him to be a constant critic of the organization, even though he was once a staff member.

I had in mind a question about public engagement with the TRC and was concerned that he would dismiss the question as outdated. Contrary to my concern, he nodded and began describing a series of people's autonomous actions aimed at social rebuilding that had been unexpectedly spotted in the previous few years. He gave the following examples: a civil-society organization had caused the government to open the confidential documents of the TRC; a victim-support group, organized to accompany the work of the TRC, had filed lawsuits on the responsibility of foreign actors in the apartheid era, despite the former Mbeki government's official refusal to support it; a unit of local government had begun exhumations, even though the local branch of the ruling party was opposed to this; and a university archive had proceeded independently with research on the various stakeholders of the TRC and had made the information widely available. These were, in his words, totally unforeseen movements arising from TRC activities. I even caught a slightly positive tone in his voice.

The TRC has been criticized before, during, and after its work. Critics have included South African locals, foreign observers, and even organization insiders such as this journalist. Having aroused great expectations, the TRC would naturally be criticized for not fulfilling its promise. Yet this journalist's comments illustrated an unexpected conversion of the multitude of criticisms of the TRC into a source of ideas for local self-recovery initiatives. Few South African locals express unconditional agreement with the notion that the TRC has promoted national reconciliation. Given such local responses, a critic could possibly add the TRC to Scott's list of state project failures. However, the above examples vividly resonate with the other aspect of his insight: unplanned informal reactions may transform the failures or insufficiencies of social-engineering projects, bringing about a new balance in public order. Still, these local reactions were unplanned by the TRC, so it is not precisely proper to call them effects, outcomes, or consequences of official projects. Yet they are not unconnected to the institutional initiative, so an influence can be recognized, even though they were

not planned and have only gradually been recognized in the years after the end of the official program.

Scott's phrase "planning for the unplanned" (1998:142) will be the compass for this book, which raises questions such as the following. Is planning for the unplanned possible? How can we recognize an unplanned result? What is a positive sign of the unplanned? With these tricky questions to guide us, we will move beyond the simple evaluative dichotomy of success or failure when considering the local influences of a TJ project.

What Is Transitional Justice?

The TJ field is expanding. As mentioned above, I have maintained a comparative view of TJ cases, especially with regard to the cyclical ebb and flow of changing expectations and evaluation of official activities through the course of establishing an organization, implementing programs, and reflection after the work is done.

Yet even this flexible approach, which takes into account the dynamic nature of the TJ phenomenon, does not exactly fit the trend in TJ studies, concerning the options the term *TJ* designates. Hence, the use of the term in this volume needs to be clarified.

Like any other term that identifies fields of practice or academic disciplines that are still developing, TJ remains ambiguous in character. For example, if you ask several scholars or practitioners when a transition can be considered complete, you will receive different answers. Therefore, the direct question "What is TJ?" is inevitably changed into the indirect question "How have scholars and practitioners used and defined the term so far?"

It is generally agreed that the epithet "transitional" refers to a state moving away from a nondemocratic, violent political status involving armed conflict or an authoritarian dictatorship, but the direction in which the transition is supposed to be moving remains contentious (Dancy 2010:370–371). Consequently, scholars and practitioners have offered various interpretations of the term *transitional state*.

According to Ruti Teitel's classical definition, TJ is "the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes" (Teitel 2003:69). Such a definition excludes the Truth and Reconciliation Commission. On the other hand, a 2004 UN report defined TJ, including the TRC, as the

> full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice, and achieve reconcilia-

tion. These may include judicial and non-judicial mechanisms with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof. (United Nations Security Council 2004)

The International Center for Transitional Justice (ICTJ) in New York City, the leading international NGO in this field, which has been engaging TJ efforts in several countries, endorses this definition.[2]

Between these two poles, there are variations of TJ programs. The narrowest definition of TJ is restricted to the contents of the term within the scope of legal sanction. This strictly legal *retributive* approach holds that TJ is intended to "hold violators responsible for their actions and punish them accordingly, after a rigorous process of determining their guilt before a neutral decision maker" (Ohlin 2007:52).

Broader terminology in line with the UN definition opens up space for several programs combining legal and nonlegal options. Some scholars set the baseline as consisting of trials and truth commissions (Kent 2012:3; Subotić 2009:18; Thoms et al. 2010:330). The middle-range application adopts some essential elements such as commissions of inquiry, trials, vetting, and restitution or reparation (Kritz 1995); truth-seeking, reparations, and institutional reform (Boraine and Valentine 2006:17–27);[3] or trials, truth commissions, vetting, institutional reform, security-sector reform, and reparations (Mani 2007:2).

The list of TJ options can be even longer. David Crocker (1999:60) proposes that a TJ program should incorporate at least some of the following: the official acknowledgment of harm done; official apologies and other official gestures; the promotion of public fact-finding or truth-telling forums, including a platform for victim reparations or restitution; justice in the form of trials or lustrations; the establishment of the rule of law; public gestures of commemoration through the creation of monuments, memorials, and holidays and other educational and cultural activities; institutional reform and long-term development; and public deliberation. Elizabeth Cole (2007:121) adds didactic materials for schools to this list. This trend of enriching the list of TJ options can be extended to include any mechanism that tackles general negative heritages from past conflicts.

Reflecting on this trend, one scholar has looked at the history of TJ as the expansion of the application of the term to various circumstances (Duthie 2011). Adding new elements, in a snowballing manner, is seen as legitimate. According to Duthie, since the 1990s, when the term *transitional justice* emerged, "the measures associated with transitional justice have been increasingly applied both in post-conflict contexts (in addition to post-authoritarian contexts) and in countries that have not undergone

significant political transition and those that are still experiencing conflict" (p. 243). In this trend, disarmament, demobilization, and reintegration (DDR) need to be integrated into the TJ framework (Dwyer 2012; Campbell and Connolly 2012). Furthermore, TJ "should address corruption in terms of both theory and practice" (Robinson 2015:33).

Dustin Sharp (2015:154) describes this tendency as dissolving the borders between neighboring fields by "looking at potential linkages between peacebuilding and transitional justice, in particular with respect to specific initiatives like security sector reform (SSR) and disarmament, demobilization and reintegration (DDR)." This contemporary understanding of TJ—expanding the category—has inevitably become interdisciplinary while being viewed as a consequence of "the political project of attempting to decolonize law's hold on the discourse, and even colonize transitional justice within other disciplines. . . . The call for interdisciplinarity is in part a call for transitional justice to cut free from its roots in law" (Bell 2009:21).

This expansion of the field has reached an apex with the field now having its own encyclopedia (Stan and Nedelsky 2013). Yet this expansion in both theory and practice may also lead to reservations, doubts, and even surprises in relation to the criteria for selecting eligible institutions (de Greiff 2013:549–550). Offering too many options may blur the idea of what TJ is and how TJ manages those options: "Transitional justice may tell us that victims want everything—retributive and restorative justice—but it gives us no generic principles for deciding how to prioritize these demands" (van der Merwe and Fletcher 2014:3).

In addition to the decolonization of the TJ field from domination by legal concerns, there is another contentious dichotomy in the effort to categorize options: institutional versus noninstitutional activities. This axis can be translated into another standard: state-level or non-state-level. For instance, an international tribunal is positioned in the former category, whereas a sociopolitical movement of local actors is in the latter. Several important examples of relevant work by local initiatives can be recalled from Latin America: Mothers of the Plaza de Mayo in Argentina; a Brazilian investigation project on torture in the military regime operated by civil society groups, which published the report *Brasil: Nunca Maís*; the Uruguayan NGO Servicio, Paz, y Justicia, which published *Uruguay: Nunca Más*; and the Human Rights Office of the Archbishop of Guatemala, which provided documentation for the use of a future truth commission.

On the other hand, the localization of TJ, or admitting a local initiative as a TJ case, has been among the recent agendas in the field of TJ. From this perspective, any social or political movement that expresses the intention to redress social injustice or to pursue public accountability might be identified as such a TJ initiative. Examples are the Greensboro Truth and Reconciliation Commission, which conducted investigations into the 1979

Greensboro massacre by the Ku Klux Klan and the American Nazi Party, and the Canadian Truth and Reconciliation Commission, which dealt with the forcible assimilation of indigenous children.

However, the TJ programs covered in this volume will not include those types of movements. More precisely, some such movements will be discussed (and favorably evaluated) in the following chapters, but not as a direct example of TJ initiatives. Rather, they will be depicted as local responses to the officially established TJ programs or other related official policies, and as playing a more significant role in a local context than an official program. The TJ cases to be discussed in this book are as follows:

- truth commissions in South Africa, Sierra Leone, Peru, Kenya, and East Timor;[4]
- international tribunals in the former Yugoslavia and Rwanda:
- internationalized (hybrid) tribunals in Cambodia, East Timor, and Sierra Leone;
- some cases and programs in the International Criminal Court (ICC); and
- other truth-seeking official entities such as the gacaca court in Rwanda and the Commission of Truth and Friendship in Indonesia and East Timor.

I call these official initiatives examples of institutional TJ and place them at the center of the empirical description in the following argument. All these cases have been operating since the 1990s and, as I will discuss in detail in the next chapter, can be identified as belonging to the era of "normalized transitional justice" (Teitel 2003:91).

Overview of the Book

This book will explore the institutional TJ cases listed above with particular attention given to local responses to those programs. Bearing in mind the phrase "planning for the unplanned," while describing the patterns of locals' various ways of accepting and digesting an official program and considering whether they appear in an overt or covert manner, I will also search for signs of local self-recovery from a fragmented social and political situation. Sociological thoughts will be incorporated within this entry into what Alexander Hinton calls the "messiness" (Hinton 2010a:15) of local TJ reality.

Chapter 2 draws a theoretical map of this volume, particularly showing the linkage to sociological analysis. I have already established in this introduction that a residual space for unexpected and informal, but occasionally supplemental, local reactions to a TJ program may remain through the course of institutional implementation. The background of that tendency can

be attributed to the basic character of a transitional society, in which multi-directional distrust, even toward the justice system, is pervasive. Thus, a TJ project's essential dilemma and inevitable paradox consists in the fact that a justice initiative must be implemented in a context in which justice norms no longer work. In addition to that dilemma, we need to consider that "normalized" contemporary TJ projects have proceeded in circumstances where knowledge and information about TJ have been well arranged and pervasive in international human-rights regimes. Policymakers and donor entities have plenty of documents about past TJ programs, whereas tactically skilled governments have learned that a TJ program could be used as a front for their own political purposes, disguising their unwillingness to change the country's human-rights conditions. In such a normalized or mature context with a flood of information and discourse surrounding TJ, I approach contemporary TJ characteristics by considering external expectations as well as the organizational or internal justifications of a TJ program. I do this rather than scrutinizing the sincerity of a local government's desire to reform human-rights conditions or a local society's degree of democratization through a TJ program. A scenario of current institutional TJ programs might constitute the following series of collective activities or events:

- public announcement and enlightenment;
- mobilization of locals at a symbolic venue;
- providing a spectacle to be shared among locals; and
- arranging a collective identity in the form of social integration, typically expressed as national reconciliation.

Although discourse among practitioners and scholars in past studies has stated repeatedly that a one-size-fits-all manual would not fit all cases, it may actually be difficult to neglect these particular elements when designing and planning a TJ project in a present-day context. All these elements directly reflect the *official expectations* of most external actors—foreign donors—who need to confirm that their resources have been spent effectively to promote democratization, ensure protection of human rights, and establish the rule of law through a proper mechanism reflecting the ideal of local ownership. How could one verify the presence of local influence if a TJ institution has no such elements in its objectives or its activities? Moreover, these elements constitute a means for a local TJ entity or government to justify its activities, first, for the local participants (including dissidents), and second, for the international inspectors who look for evidence of positive influence of the project on the local society.

However, the following chapters will offer empirical data and episodes of past TJ cases that illustrate that such an expected scenario has not necessarily been realized in actual context, just as Autesserre and Scott have

shown in other contexts of idealistic (and sometimes international) institutional endeavors. The concept of *unintended consequences* has been used to designate such conditions not only by these two scholars but also by other scholars in TJ studies. Chapter 2 examines the logic of that term by referring to past works of sociological theory, to clarify what local responses can be grasped by the term and to further articulate a subcategory of the concept.

Chapters 3 through 6 address empirical data and episodes from various TJ contexts based on the above understanding of the term *unintended consequences* with additional sociological input. The stages where failures of institutional TJ on the surface have been witnessed are translated into terminology such as the following: politics of discourses, repertoires of mobilization, dramaturgy and performance on the political stage, and nationalism and social cohesion. In this way, these chapters are designed to arrange the concepts and terms around informal local practices to achieve a better understanding of TJ with closer attention on the surrounding circumstances in a transitional society.

An institutional TJ project begins its work in a barren landscape where few people actually know what TJ can be or how it works in society, because it is new and different from other standard and permanent official institutions in a modern society. A society has no established image with which to compare or in which to contextualize a TJ policy. No shared image of an organization exists. Therefore, a TJ entity's first task should be to disseminate an official image of the organization with an explanation of its activities. In this sense, a TJ entity represents itself as a pedagogic mass medium based on goodwill, promoting the ideal of serving a traumatized new nation and facilitating future national integration. In inspiring and stimulating an audience's moral receptors, a TJ entity attempts to elicit spontaneous support from locals. But it faces unexpected responses. Chapter 3 thus deals with the question of why and how these audiences challenge and dismiss the types of formal goodwill and ideals of a new society. The chapter sketches two critical episodes:

- A highly strategic political maneuver that the Serbian government executed in the course of cooperating with the International Criminal Tribunal for the Former Yugoslavia (ICTY).
- Cambodians' perception of justice, which showed a fundamental dissonance with Extraordinary Chambers in the Courts of Cambodia (ECCC) technical and procedural inclinations, requiring a reconsideration of the term *local ownership*.

The context for understanding these issues will be framed by the concept of agenda setting in media studies, Michel Foucault's discourse analysis on knowledge production in the public arena, and arguments on the politics of victimhood.

Chapter 4 focuses on outreach and mobilization. As Chapter 3 shows, a pedagogic mass medium cannot easily earn support from skeptical audiences that stand in pervasive distrust by simply making an official statement of goodwill and ideals at a head office in a capital city. More direct communication is needed. Outreach thus becomes the next obligatory operation for a TJ body. Staff members travel the country, town by town and village by village, with leaflets, pamphlets, booklets, T-shirts, and short movies for screening. They explain what TJ is and how people can participate in the programs, and they invite people to testify before the TJ organization. Following these preparative stages, a TJ entity expects to mobilize nationals to TJ venues, such as court hearings or truth commission forums.

This method would seem to properly address locals' complaints about the lack of a consultation process, which Chapter 3 discusses. But concern about a *too-perfect mobilization* has emerged because it can be perceived as similar to the forced mass mobilizations that occurred during the very conflict with which a TJ entity is dealing. Testimony from Rwanda and East Timor demonstrates societal pressure to attend TJ gatherings and suggestions that absence would be regarded as subversive to a collective value of national integration. Additionally, the chapter challenges TJ entities' claims of seemingly successful mobilizations by referring to C. Wright Mills's (1940) idea of vocabularies of motive, a term that describes the behavior of tailoring expressions so as to acquire or maintain social acceptance. Further, foreign donors have increasingly required mobilization as well, as they want to confirm the actual influence of TJ programs in the society and to assess the objective evidence of a long-term, costly operation. Data showing that *something has been constantly increasing during a certain period* support these foreign donors' assessments. Such data also help a TJ body, particularly a court, to demonstrate "ongoing success" while a few actual judgments are rendered.

On the other hand, after recognizing the limitations of an official body, some local initiatives have diverged from the main body and deployed their activities to supplement insufficient aspects, or the unfinished business, of TJ. Official mobilization has occasionally remained a residual space for diverging mobilization by other local entities. Chapter 4 also introduces some unplanned but continuous divergences from TJ bodies, while offering reservations about the typical assessment of current forms of outreach and mobilization in TJ activities. In doing so, this chapter illustrates the complex linkages that connect social pressure, vocabularies of motive, and alibis among various mobilized people in the global human-rights regime.

Even though locals do not necessarily accept a TJ body's announcements and mobilization in the desired manner, the body's next task is to establish an official theater in the form of a court or truth commission hearing. Chapter 5 explores the official drama that an institutional TJ body stages at this official theater. This rhetoric, which identifies a court as a theater, has been legit-

imized by a functionalist understanding of the court as a process that provides collective memories and shapes a sense of unity among audiences. The judiciary's efficacy and role are seen as not limited to findings of guilt or innocence. This role is clearly rooted in Emile Durkheim's argument (Durkheim 1960) that society needs evil and punishment for solidarity, or that an authentic gathering secures the renewal of collective identity. The term *expressivism* partly shares this line of understanding, leaving a space for potential victim healing through a series of dramatic performances at a TJ venue. Victim participation and public testimony have thus become standard TJ methods. However, as the previous chapters suggest, a TJ body's official drama is also not immune to challenge, confusion, disorder, divergence, or covert action by participants. A TJ body may have its own script for an official drama, yet different interpretations and meanings appear on the stage. Triggers for the rupture of an official drama include:

- a staff member's neutrality being suspected;
- officials' prioritizing their authority over a victim's dignity;
- a pervasive impression that such drama is a closed game for political elites; and
- the image of a "put-up job."

A TJ body stands at a difficult point that requires a balance between demonstrating authenticity and taking people's needs into consideration. But a TJ body's failure to maintain a front in the public arena might inspire participants to create and perform a different drama on a parallel stage. Such unexpected dramas have occurred in Rwanda, East Timor, Sierra Leone, and Cambodia. Some actors boldly challenge an official script and fail. Others recognize the limitations of an official stage, yet still attempt to utilize the scenario for their own purpose. The cases recorded in Sierra Leone may cause readers to experience vertigo from the actors' complex, highly strategic, and confusing performances. Secrecy, calculation, cautious cooperation, and the misunderstanding of implicit rules of communication in court involved the actors in a strange drama of deciphering, bringing all of them to the point where goodwill and the ideals of justice and reconciliation began to ring hollow.

As Erving Goffman (1959) teaches us, a person performs not only for his or her own benefit but also to maintain order within the public space. Yet at the same time, an actor may commit an error in recognizing the situation or may misunderstand the signs of other actors. Chains of such factors can make participants' experiences on a TJ stage complicated, but they need to be thoroughly considered if we wish to understand the substantial or raw meaning of TJ in a local context. Otherwise, local actors, who covertly perform a parallel scenario on the same stage, and foreign experts who commit

to the TJ project with enlightened motivation will not truly encounter each other, *living together separately*.

A main reason that governments have established institutionalized TJ bodies is to build a reconciled nation to prevent the recurrence of abuse. A transitional society cannot presuppose an already constructed, collective identity that indirectly serves as a hidden basis for ordinary justice without the epithet "transitional," because having a sense of "us" implies the existence of a shared set of social norms. Chapter 6 examines the TJ body's main assumption that its activity can lead to national reconciliation. Does a TJ body function as a medium of nation building? Does it promote positive nationalism within the new nation? These questions might face immediate opposition. Those opposed might assert that TJ as a nationalistic policy does not benefit victims, because it forces them to be subject to a nationalistic, totalitarian story that has no sensitivity to personal victimhood. This is a fundamental dilemma. A TJ project needs to remedy a fragmented collectivity, but such an orientation cannot cause various disparate positions to become aligned. Thus, many have criticized the attempt to create a national identity through TJ activities.

However, other discussions of possible social integration through TJ initiatives have opened up a different path from those that start from the assumption that people are unified through shared public memory, symbols, or sense of identity. Incorporating the notion of social cohesion into this issue, to balance continuous conflicting relationships and sustainable communication, leads to a further argument on the collective status of social constituents in a post-conflict or transitional context. Chapter 6 therefore juxtaposes classic works, such as those of Lewis Coser and René Girard, with contemporary political thought on deliberative democracy, along with the latest TJ arguments on this topic, such as Leigh Payne's concept of "contentious coexistence" and Will Kymlicka's "substate nationalism." A shift in viewpoint thus appears in Chapter 6, toward considering the status of social cohesiveness as a model of *dynamic equilibrium in a certain range of interactions*, including interactions of conflict, instead of a collective model of subjects who share the common marker of "us." This chapter offers a preliminary case study on post-TRC South Africa, specifically focusing on the relationship between Colored—or Khoisan—people and black South Africans. Both groups were racially categorized as non-European in the apartheid classification. Yet in a new political landscape, they have been competing for an authentic South African-ness, developing a rivalry rather than peacefully sharing a common identity.

Chapter 6 concludes by returning to the question posed at its beginning: Is planning for the unplanned possible by a TJ project in order to assist social recovery? As Chapters 3 through 6 illustrate, the official justification of TJ as a producer of the rule of law and democracy is question-

able. Yet the assessment of TJ as simply a failure in light of official slogans and objectives should also be dismissed. The various episodes related in this volume reveal the *by-products* of TJ: forms of divergence, tactical negotiations, and unintended consequences. If people's reactions have been recognized within a certain range of interactions—keeping or developing interactions of meaning-making—they can be retrospectively assessed as forming a dynamic equilibrium. Continuous meaning-making has significance in two important ways. First, I hypothesize that the recovery of the affected society happens only when local stakeholders engage in the process of meaning-making spontaneously. The term *social recovery* thus connotes the status of managing the process of meaning-making by local constituents. Second, I propose that when such meaning-making occurs in several different contexts during/after the TJ implementation, TJ demonstrates its potential to indirectly elicit active commitment from various actors. A TJ body might function as a catalyst for the realization of such a commitment, although that function is never formally guaranteed.

A remaining question concerns what conditions prepare for and promote such a situation. One relevant factor centers on exactly how the TJ project is perceived as inadequate or improper. A particular type of blank space may induce an external motion to fill it, because nature abhors a vacuum.

An institutional TJ program will likely face increasing pressure to demonstrate its achievements in challenging circumstances. What could result from that demand? The gap between maintaining international standards of justice, or procedural fairness, and reflecting an idea of local ownership in more substantial ways will be a perpetual aporia under the given condition of scarce resources. The approach taken in this volume will offer hints for the consideration of that situation.

Sociological Implications

Although I explain in detail in the next chapter the sociological approach taken in this volume, I want to briefly illustrate here the purpose and motivation of sociological settings. In this volume, a starting point for inquiry is the premise that people cannot completely control their living circumstances, yet people cannot help being involved in their circumstances if they want to improve their situation. Because people invariably have insufficient knowledge of the mechanism and conditions of the surrounding situation, they can deploy their plans only imperfectly, and further unexpected events and errors will follow their involvement. The societal results of people's collective input, in a strict sense, have always been unpredictable. Nonetheless, people destined to be caught in such a contingency have been and will be driven, or obliged, to act in or react to any social setting with their utmost effort.

This nuance can also be observed in TJ experiences. Colleen Duggan described the features of TJ policy based on unavoidable contingencies rather than features of the programs:

> Interviews with those involved in such commissions—commissioners, staff, witnesses, and victims—all attest to the fact that these processes never follow a linear pathway. They elicit unexpected and unanticipated divergences and upheavals, and they involve a high degree of creativity and constant adaptation of general principles from previous truth commissions to fit the new context. (Duggan 2010:327)

In a more abstract sphere, from the micro dimension of our personal communication in everyday settings, which George Herbert Mead depicted as a series of trial-and-error attempts, to a macro dimension such as the state projects that Autesserre and Scott have critically reflected, human actions are always being derailed from the planned scenario, generating derivatives, some of which are perceived to be undesirable, while tackling or coping with these unexpected, unforeseen happenings. Some of those derivatives will turn up in our lives to accommodate the new context; however, we are often not aware of the fact that the present impasse is caused by our own past engagements. Continuous collective responses to such unexpected outcomes have been retrospectively recognized as a form of history or the continuity of a society.

However, sociological arguments have not abandoned such derailments or derivatives as matters of random appearance. Those unexpected outcomes rest on the assumption that the derailment of collective behaviors may be conceived within a certain range, threshold, pattern, or frame. Human collective behaviors and their results may not be linked completely with each other in a cause–effect scheme, but neither are they buried in total randomness and contingency. Incorporating a sociological framework to interpret the complex reality of a transitional society rests on the idea that focusing on unplanned reactions might well contribute to our understanding of a TJ program, including its "failure" on a surface level.

Notes

1. Nelson Mandela's speech can be accessed at www.mandela.gov.za/mandela _speeches/1998/981029_trcreport.htm, accessed on January 12, 2018.

2. See the ICTJ's definition at https://www.ictj.org/about/transitional-justice.

3. Boraine and Valentine (2006:5) posited five factors as part of their "holistic approach": accountability, truth recovery, reconciliation, institutional reforms, and reparations.

4. East Timor's TRC (Comissão de Acolhimento, Verdade e Reconciliação, or CAVR).