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Book Reviews

Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice, Naomi Roht-Arriaza and Javier Mariezcurrena. Cambridge University Press, September 2006, 358pp. ISBN: 0521677505 - paperback (\$36.99), ISBN: 0521860105 - hardcover (\$80).

Reconciliation in Divided Societies: Finding Common Ground, Erin Daly and Jeremy Sarkin. University of Pennsylvania Press, December 2006, 352pp. ISBN: 978-0-8122-3976-8 - cloth (\$65).

It took a long time to get there but, near the close of the last millennium, humanity embraced measured accountability – instead of the extremes of impunity or vengeance – as the appropriate fate for perpetrators of mass atrocity. This embrace has prompted the construction of institutions, such as the International Criminal Court and the various *ad hoc* international or internationalized tribunals, to actualize this accountability imperative.

But this institution-building is only the start of the justice matrix. It is not the end point. A newer second generation of scholars and activists presses on. Agreeing on the need for accountability does not mean that existing methods of accountability should become insulated from study or critical inquiry with regard to their progress toward justice goals.

Transitional Justice in the Twenty-First Century and *Reconciliation in Divided Societies* are bold trendsetters for this second-generation literature.

Edited by Naomi Roht-Arriaza and Javier Mariezcurrena, *Transitional Justice in the Twenty-First Century* revolves around the premise that truly effective responses to atrocity involve a complex blending of multiple mechanisms – not a zero-sum-game among mutually exclusive options. The editors actualize this premise through their assembly of studies of ten different post-conflict societies.¹ Contributors include lawyers, political scientists and human rights activists. Roht-Arriaza, Professor of Law at the University of California-Hastings, pens an introduction to the collection that provides a good organizational framework. Lutz offers an effective ‘lessons learned and the road ahead’ conclusion. Each chapter begins with a brief summary of the specific conflict, which increases the collection’s accessibility to readers.

Roht-Arriaza is wise to underscore the need to transcend debates over the false dichotomy of ‘truth versus justice.’ That said, the international community has not yet operationally done so. Modalities of justice and modalities of truth produc-

¹ Sierra Leone, Peru, Mexico, Colombia, East Timor (Timor-Leste), Rwanda, Iraq, Afghanistan, Chad and Argentina. These studies are arrayed in 13 chapters. Sierra Leone and East Timor benefit from two chapters, one of which focuses on courts and tribunals, the other on reconciliation and traditional mechanisms.

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tion, even when part of a 'package,' are not yet truly 'complementary' (p. 8). There remains a preference for justice – in particular, a narrow understanding of justice tethered to prosecution and incarceration following Westernized criminal trials.² *Transitional Justice in the Twenty-First Century* serves up some ideas for packaging improvements. Horovitz, writing within the context of Sierra Leone, suggests that the sequencing of various initiatives may hold promise. González Cueva, documenting Peru, underscores the need for common coordination on overall policy strategies. Sikkink and Walling explore 'truth trials' in Argentina. Guembe and Olea, discussing demobilization in Colombia, contemplate how alternate punishments, including community service and resocialization, may bridge different accountability goals but, in turn, may produce new tensions.

The preference for criminal trials calls for deeper interrogation insofar as it may deflect examination of the structural factors that facilitate atrocity – which Schabas discusses in the case of Sierra Leone – or the 'patterns of repression' that Acosta and Ennelin posit need to be understood in order for Mexico to 'undergo a real process of transitional justice' (p. 115). Moreover, when internationalized prosecutions, as Reiger notes was the case in East Timor, demonstrate an 'ambiguous relationship with political settlement efforts' (p. 151), they fall short of their goals. Stover, Megally and Mufti's case study of Iraq reveals the peril that arises when individuals who actually live in the war-torn society are treated as auxiliaries to, and not participants in, the process of transitional justice. A failure to ensure their involvement triggers democratic deficit concerns. On the other hand, sometimes distant foreign proceedings – however removed from the afflicted society – may be the only way to achieve some justice. Brody explores this phenomenon in the case of Chad. Stover, Megally and Mufti also raise the specter that too much lustration, and too much vetting, may sow the seeds for instability (e.g., the de-Ba'athification process in Iraq). That said, where to locate the balance? Gossman's chapter on Afghanistan reports that too little vetting also creates instability.³

Transitional Justice in the Twenty-First Century pushes the field in a new and challenging direction by inquiring how local, customary and indigenous methods of justice can be integrated into internationalized accountability norms. Longman's contribution on *gacaca* in Rwanda and Burgess' on *biti bot* in East Timor are gripping reading. Both contributors remain optimistic of the potential of these community events, although they candidly flesh out certain challenges. As the international justice paradigm expands, its effectiveness may be hampered to the extent that it contracts local approaches.⁴

² In *Reconciliation in Divided Societies*, Daly and Sarkin come to a similar conclusion. They note that criminal prosecutions 'occupy the main stage in any discussion about transitional justice' (p. 177) while observing areas in which such trials may fall short in the transitional justice process (pp. 174–176).

³ Gossman observes that '[a] significant number of leaders in senior positions of power in Afghanistan today ... have been responsible for serious war crimes' (p. 259).

⁴ See generally, Mark A. Drumbl, *Atrocity, Punishment, and International Law* (Cambridge: Cambridge University Press, 2007), 71–99 and 143–147 (discussing the incorporation of traditional justice mechanisms in Rwanda and Uganda).

Insofar as local mechanisms often represent a combination of ‘truth-telling, amnesty, justice, reparations, and apology’ (p. 11), Roht-Arriaza remarks that they may ‘give a new, more fulsome meaning to the concept of reconciliation’ (p. 12). She then observes, quite accurately, that ‘[d]efinitions of reconciliation are still contested and murky, and the individual, community and polity aspects of such processes are still not well understood’ (p. 13).

In *Reconciliation in Divided Societies*, Erin Daly and Jeremy Sarkin step up to fill this breach. Daly, Professor of Law at Widener University, and Sarkin, an eminent South African jurist, activist and academic, offer a breath-taking *tour de force* of the theory and practice of reconciliation. Their work is integrated and interdisciplinary. It moves effortlessly from law to literature, seamlessly from philosophy to psychology, and inclusively from art to history. All the while, *Reconciliation in Divided Societies* is dotted with vivid anecdotes.

Recognizing the relevance of the cultural particularities of each transitional society, Daly and Sarkin eschew one-size-fits-all approaches. They call for integration of local reconciliatory methodologies, in that ‘for many people around the world, their strongest loyalty is to the smaller community rather than to the state’ (p. 209). They also underscore the limitations of the presumption in favor of prosecution and incarceration in terms of promoting reconciliation. Although, when at their best, trials can promote some reconciliatory values, the problem – for Daly and Sarkin – is that ‘criminal trials are rarely at their best’ (p. 174). Daly and Sarkin are wise to underscore these limitations. After all, each of the major goals articulated by international criminal law – retribution, deterrence, and expressivism – is under-achieved by liberal procedural legalism. Even more problematic is the connection between criminal trials and reconciliation, whether between actual victims and actual perpetrators or between victimized collectivities and aggressor collectivities. That said, other transitional justice mechanisms, such as truth commissions, vetting, reparations and memorialization are no panacea. As a matter of course they do not provide magically cathartic reconciliatory moments. Far from it.

These shortfalls are understandable. After all, Daly and Sarkin set a high bar for what they define as a reconciled society. For Daly and Sarkin, reconciliation is about much more than stoic co-existence or grudging co-habitation. They conclude that:

[r]econciliation ... can be seen when companies and schools and social functions are integrated. Or when people who had previously stood on different sides of the chasm now agree with each other on some issues of public importance and agree on the importance of participating in the debate (p. 258).

Many polities, even those untouched by mass atrocity, do not share these qualities and, hence, their constituent members are not reconciled. Daly and Sarkin’s ambitious understanding of reconciliation is shared by Archbishop Emeritus Desmond Mpilo Tutu, who observes in his compelling foreword to *Reconciliation in Divided Societies* that, at its heart, reconciliation ‘is a way to look at perpetrators of human rights abuses and see brothers and sisters’ (p. ix). This presents great

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challenges for victims, which Daly and Sarkin recognize (p. 123). Archbishop Tutu's understanding of reconciliation also presents a challenge to the deontological denunciation of human rights abuses.

Reconciliation in Divided Societies refreshingly recognizes, and certainly does not shirk from, the 'serious questions that reconciliation programs raise' (p. 4). And, indeed, this volume raises as many issues as it resolves. In the end, however, it offers a spirited defense and assessment of reconciliation as both a principled response to atrocity as well as an output of the transitional justice process. By embracing the complexity of truth, justice, and transition in post-conflict societies, Daly and Sarkin adroitly guard against the allure of parsimonious or commodified solutions.

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