RESISTANCE TO TRANSITIONAL JUSTICE

Introduction

Rethinking Resistance to Transitional Justice

Briony Jones and Thomas Brudholm

Transitional justice, as a process and set of mechanisms designed to address human rights violations of the past, is a project of transformation. Designed to deal with legacies of past wrongs, transitional justice ideally aims to address their root causes, to adjudicate social and institutional responsibilities, to transform the institutional contexts and power relations that enabled human rights violations to take place, to restore, repair, or facilitate new relationships and to promote national unity and reconciliation. Now an established policy response to the end of civil war, authoritarian regimes or occupation, transitional justice has been the focus of scholarly attention for long enough to have warranted a critical turn, both in terms of the way transitional justice is theorized (Corradetti, Eisikovits, and Rotondi 2015; Hirsch 2012) and the way in which it is implemented and experienced in practice. Examples of such critiques include accusations of imposition of western norms that are not culturally meaningful in some contexts, of the dominance of legal approaches to justice at the expense of the restorative and symbolic, of its instrumentalization by the powerful for the consolidation of authority or privilege, and of limited evidence that it actually has a positive impact on justice and peace (see, e.g., Iliff 2012; Leebaw 2008; Pouligny 2005). These critiques, and others like them, touch on a central issue, which is itself under-discussed: that of resistance to transitional justice. Whilst there is an increasing body of work which focuses on negotiations of transitional justice, contestations over its practice and the refusal of individuals and states to participate in transitional justice for a variety of reasons (see, e.g., Burgis-Kasthala 2013; Diaz 2008; Subotić 2009), very little of this work is dedicated specifically to investigations of the phenomenon and concept of resistance as such.

There is thus an absence of work that brings together given theories and studies of resistance (in other contexts) and transitional justice studies. This is a missed opportunity because such work can help us to understand and to analyze what happens when people disagree over the terms of transitional justice, when and how such disagreement might in fact constitute resistance, and what this can tell us about subjects such as power and legitimacy, which are currently at the heart of many studies in the field of transitional justice. While the objects, forms, and actors of resistance may differ between the articles, there is a series of crosscutting themes that enable us to reflect in greater depth on the phenomenon of resistance to transitional justice. Drawing on varied case studies on Bahrain, Cambodia, and Tunisia, and engaging with the-

oretical debates such as the role of power in resistance, how we can identify different acts as resistance, and the motivations of the actors who engage in such acts, the articles published in this section of *Conflict and Society*, each contribute to developing a new avenue for research in and on the field of transitional justice.

The collection of articles arises from a workshop held at swisspeace in Bern,¹ as part of a research project, “Resistance to Transitional Justice? Alternative Visions of Peace and Justice.” The project, and workshop, took as a starting point an assumption that transitional justice is a necessarily contested process (McEvoy and McGregor 2008), and that it will thus engender debate and disagreement over the norms it promotes, the discursive categories it constructs around “victims” and “perpetrators,” the design of mechanisms such as trials or truth commissions, and the expectations over what it can or should achieve in terms of social and political transformation. This now widespread agreement among scholars that transitional justice is a political and contested process has led to an increase in work that engages with resistance, albeit in a particular way. Where scholarship does engage with this question it tends to focus on resistance by powerful spoilers who fear that they have something to lose from transitional justice processes (Sriram 2012). There are of course important exceptions (Brudholm and Rosoux 2009; Hamber and Wilson 2002; Thomson 2011), but in general resistance is cast as a problem to be addressed or understood in order to ensure that transitional justice can work most effectively. We can think here of accusations of lack of political will, blocked transitional justice processes, cultural miscommunication, and bad timing—that is, technical concerns over the implementation of a specific mechanism or process. The lack of attention to the possibility of profoundly complex and morally or politically legitimate resistance has been clearly displayed where transitional justice has accommodated the advocacy of forgiveness. This is curious since forgiveness is conventionally imagined as a gift or a victim prerogative. Technically speaking, forgiveness is *elective* (Allais 2013), meaning, in part, that resistance or even a refusal to forgive should be approached, at least *prima facie*, as a legitimate or justifiable moral position (Brudholm 2008). Yet, where “forgiving” becomes part of an official transitional justice policy (e.g., South Africa, Rwanda, Sierra Leone), resistance to the advocacy of forgiveness often takes on the specter of a morally and politically impossible or irresponsible and irrational position. What might be called the moral marginalization of the possibility of resistance to forgiveness is empirically detectable not least in the Christian advocacy of forgiveness in post-conflict societies. For example, in the form of pathologizing conceptions of the unforgiving victim, in the form of reductive notions of anger as an inherently dehumanizing or asocial force, or in the form of a dichotomous rhetoric that allows people an exclusive choice between either forgiveness or hatred and revenge; no future, as Desmond Tutu, famously—but wrongly—put it, without forgiveness (Brudholm 2009). At its worst, the mobilization of forgiveness as a mechanism of transitional justice or a means of reconciliation becomes impervious to contestation:

If the unforgiving survivors understood more about the background of the perpetrators, or about what ideals and values really count; if they did not confuse forgetting with forgiving; if they were more capable of managing their anger; if they thought more rationally about their own good or the good of the nation, then they would try to forgive or let go of their resentment and engage more constructively in the process of reconciliation. Relentless, backward-looking resentment must be the sign of some kind of moral failure or irrationality on behalf of its holder. (Brudholm and Rosoux 2009: 35–36)

In the scholarship on other contexts, say studies of military occupation, colonial rule, or totalitarian domination, resistance has been granted much closer and normatively nuanced attention. Resistance, that is, as an alternative to collaboration, as heroic and defiant *quand même*, as a

matter of moral freedom and human dignity (see, e.g., Gottlieb 1983; Sebald 2003; Todorov 1996), or as a matter of the subaltern resisting a powerful oppressor and aimed at progressive change, in particular as part of a collective and public action (Fletcher 2001). Current scholarly interests in the phenomenology and topic of resistance is evident not only in the emergence of an interdisciplinary field of resistance studies,² but also in a rich and far-reaching anthropological literature that captures the subtlety of socially subdued or everyday and individual resistances, namely, “unlikely forms of resistance, subversions rather than large-scale collective insurrections, small or local resistances not tied to the overthrow of systems or even to ideologies of emancipation” (Abu-Lughod 1990: 41; see also Ong [2010] and the classic references by Scott [1985, 1990]). These studies of resistance by anthropologists have significantly influenced the way in which research on resistance has been, and is being, approached in general. Through such work the dichotomy between the subaltern/powerless and the oppressor/powerful has been disarticulated with analyses, *inter alia*, of resistance as discursive strategy (Jansen 2000; Lilja 2013) or diagnostic of power (Abu-Lughod 1990) and not least have served as the locus for rethinking agency unhinged from its liberal undercurrents. These analytical frames for the study of resistance(s) have been complemented by work in other disciplines, such as geography and international law, that examines the subjective nature of any definition of what counts as resistance, highlighting again a fluid set of lines between powerful and powerless and demonstrating how resistance itself can be co-opted and contain elements of that which it resists (see, e.g., Jones, Bernath, and Rubli 2013; Pile 1997; Rajagopal 2003).

Bringing such insights to bear on the literature of transitional justice we can begin to contrast the concern with “spoilers” of transitional justice processes with an appreciation, for example, of changing locations of power, fluid lines between the supposedly “powerful” and “powerless,” and many “resistances” that are difficult to clearly identify and capture. The scholarly promise of “rethinking” resistance along these lines formed the starting point of the workshop that brought these articles together. Each one is written from a different disciplinary perspective but common to all is an assumption that reflecting on resistance in contexts of political violence and transition, either following a war, authoritarian regime, or occupation, will provide an alternative entry point for analyzing and interrogating the politics and morality of transitional justice. Thus all the articles speak to a central question: what can we learn about conceptualizing and researching resistance when we take as an entry point experiences of violence and interventions designed to acknowledge, address, and repair such harms? This is made possible as a project by looking beyond the “standard” approach to resistance and transitional justice, which holds that those who have something to lose from the process will oppose it, toward other ways of understanding the presence of resistance and what it can tell us. This could be in terms of highlighting issues over the perceived legitimacy of the process (Julie Bernath and Sandra Rubli, this section; Mikael Baaz and Mona Lilja, this section), competing understandings of peace and justice (Briony Jones, this section), and modes of governance that aim to depoliticize and manage revolutionary contexts (Corinna Mullin and Ian Patel, this section; Ciara O’Loughlin, this section). Such frames nuance the discussion, which has been dominated by dichotomies between those who “buy in” to the transitional process and those who seek to “spoil” it (Sriram 2012). These articles point toward new avenues of disciplinary conversation—in these cases between political science, law, anthropology, and geography—which can make important contributions to the literature on transitional justice in and beyond the academy.

Each article complements this broader discussion with reference, in varying degrees, to theoretical debates and to empirical work on case studies. These cover questions such as: What is resistance? Who resists? Why do they resist? In order to answer these questions, the articles engage with a series of framing topics: the histories of resistance and how they interact with

or inform resistance to transitional justice (Mullin and Patel); how changes in power relations produced by a transition affect perceptions of resistance and the legitimacy of actors who resist transitional justice (Jones; Bernath and Rubli); the relevance of normative contestations and of contested norms of justice to resistance in times of transition (Bernath and Rubli); whether we should understand resistance differently in times of transition, on a normative and/or conceptual level (Jones); what sources and intentions can be tied to acts of resistance (Baaz and Lilja; O'Loughlin); and the methodological challenges and insights that are part of research on such a topic (all articles in this section). The section taken as a whole raises doubts over whether it is ever possible to define in an objective sense what we name as resistance. The eventual impossibility is perhaps not to be decried. At least, according to the philosopher Howard Caygill our thinking about resistance should itself “resist the pressure of concept-formation, of reducing the practices of resistance to a single concept amenable to legitimation and appropriation by the very state-form that it began by defying” (Caygill 2013: 6). Indeed, we see in the work presented here that it is difficult sometimes to identify what counts as resistance, and furthermore that we as researchers must be alert to understanding the position of the actor who labels another as “resistor.” This relationship (between the actor as “resistor” and the actor as identifier of “resistance”) is positioned in broader contexts of geopolitics, liberal triumphalism, and the micropolitics of the empirical cases discussed. Despite these theoretical and methodological challenges the collection argues strongly for a more developed research agenda on resistance and transitional justice. Through the prism of resistance we can understand the unfolding of the power relations that influence how transitional justice processes play out on the ground, we can learn more about the discourses that label certain actors and acts as “legitimate” in the transition period and beyond, we can learn more about how transitional justice may be used as a political tool rather than a technical exercise, and we can have a greater understanding of the different visions of peace and justice that may be present in a society undergoing transition.

The interdisciplinary conversation taking place in this section reinforces and adds to the already established critical turn of transitional justice scholarship. What it captures is not only a sense of the inevitability of resistance, but a heuristic position that such resistance may be valuable and legitimate as part of the negotiations over how to deal with a violent past, how to secure justice, and how to promote reconciliation. Despite the aforementioned recent “turn,” all the articles here argue that there is more to the phenomenon of resistance than transitional justice scholarship has been able to accommodate. Hence, we hope that the articles will inspire further research on resistance to transitional justice, such as historically contextualizing acts identified as resistance, asking whether the “spoilers” are really what they seem, and using resistance as an entry point to locating power relations and struggles over the legitimacy of transitional justice mechanisms and objectives. This is vital if transitional justice scholars wish to contribute in a meaningful way to debates over what interests and whose voices transitional justice processes serve. A focus on resistance to transitional justice refuses to take for granted the legal, moral, or normative claims of transitional justice entrepreneurs and thus has something unique and important to contribute.

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■ **NOTES**

1. www.swisspeace.org. This research project was funded by the Swiss National Science Foundation from 2012 to 2015.
2. Cf. <http://resistancestudies.org>.

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