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## Introduction: Rethinking Reconciliation and Transitional Justice After Conflict

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### ABSTRACT

The concepts of reconciliation and transitional justice are the foundations for a new body of connected normative meta-theories that address conflict transformation and peace-building. The articles in this special issue provide a comparative perspective on the concepts and their implementation. The articles are primarily focused on intra-state conflicts. A range of cases involving different types of conflict are included, including those driven by ethnic, racial, religious and ideological factors, and different regimes from authoritarian to democratic states, and cases where colonial legacies and mentalities endure. The articles offer critical reflections on the contradictory logics between external construction of norms and the efforts at their domestic imposition, adoption, and distortion and obstruction in conflict states and societies. These processes are not linear but vary over time. The ambiguities in the concepts are also often magnified by political considerations, which make the peace processes new stages in the conflict.

### KEYWORDS

Reconciliation, Transitional Justice, Peace-building, Reparations, Dealing with the past, Conflict transformation

Too much and too little memory of the past can both be unhealthy. The idea that social peace requires fixing boundaries to the memory of the past was formulated by Nietzsche, who feared that too much historical memory would be a “gravedigger of the present” (Nietzsche, 2010: 4). This special issue has been developed to focus on critical perspectives on the concepts of reconciliation and transitional justice. These are fields of social science inquiry and policy practice that are pervaded by normative impulses about how to deal with the past. If conflicts are generally rooted in past legacies, and if they are driven by constructed historical narratives, how can a conflictual past be managed to foster peace building in the present and for the future? The articles offer fresh

analyses and insights into the questions of how the past is to be dealt with in peace building, i.e. analysing the lived experience from a number of key cases to demonstrate how the past is being managed to achieve peace and reconciliation. The concept of reconciliation has been increasingly used since the 1990s in academic and policy discussions on peace building after violent conflict and about the processes involved in "transitional justice" both during regime transitions and in the aftermath of violent conflict. While studies of reconciliation have multiplied, the concept itself is persistently often identified normatively with highly ambiguous and ill-defined processes and end goals. Yet the enduring quality of the concept is that it continues to be universally promoted as the foundation for a durable peace, and as being essential for the move of any society that has endured a divisive and destructive conflict to a shared and constructive future. Yet it is a contested term with multiple meanings. Is reconciliation about the "self", inter-personal relationships, group relations, or relations to and between states, or all of these things? In thinking about the concept, how much attention should we pay to the future, the present, or the past? This special issue is dedicated to a critical reexamination of the key premises on which the debates in this field pivot.

The study of the concepts of reconciliation and transitional justice has expanded greatly since the early 1990s and has become inextricably linked with a new body of normative meta-theory that emerged to account for and to direct, in the main, two types of regime transformation and state-building: firstly, rebuilding society in the aftermath of violent conflicts that are generally fought around some deep cleavage such as ideology, or religious, ethnic and racial identity; and secondly, managing transitions by states from forms of non-democratic rule, where human rights abuses were systemic, to democracy. There are also cases involving colonial legacies which tend to straddle both aspects. These two forms of change are not always contiguous, coincidental, or causally connected. In the state of play in the scholarly studies in this field, certain processes have been generally understood to be paramount, whether in practice, or from a normative perspective. Among the most important are that reconciliation has a processual quality, though the precise pattern of sequence is indeterminate. Generally, it is expected that there will be institutional and society-led mechanisms for dialogue, truth recovery and narrative construction about the past of a conflict, combined with legal processes of settling accounts for past wrongdoings, and civil society-led production of intergroup bonding social capital, which will be often internationally funded and conditioned. The concepts and lived experience of the processes suggest that professional expertise is considered vital in two sectors: the legal aspects of retribution, and the mediation of intergroup contact and peace processes involving elites and society. Successful implementation of reconciliation and transitional justice is assumed almost universally to be a necessary precondition for the consolidation of peace and stability, and for delivering interrelated incentives and benefits, such as democratisation, nation-building and post-conflict economic and social reconstruction.

Over time two critical orientations have become increasingly salient in the field. Firstly, normative claims have been increasingly challenged and tested by a growing body of empirical scholarship on specific conflicts, which has illuminated the complexity and nuances at work. There is by now a sharp contrast between the starkness of decontextualized normative claims about how processes should be conducted and what they should achieve, and the murky realities of the gray zone of context, actual practice and lived experience. Secondly, the study of post-conflict processes of dealing with the past has become a multi-disciplinary exercise, moving far beyond the confines of historical debates about any particular conflict, and outpacing the initial premises of the 1990s that were rooted in a legal preoccupation with human rights abuses. The growth of multi-disciplinary studies of managing post-conflict states and societies has introduced methodological pluralism into the field.

At the minimalist end of the spectrum, studies of reconciliation stress coexistence. At the opposite end are the most deeply normative, where we find approaches are often informed by Christian teachings on the pursuit of salvation through forgiveness, and also by secular recognition of common humanity. Somewhere along that spectrum, we find transitional justice advocates, mainly lawyers, dealing in the pursuit of perpetrators, seeking justice-seeking, concerned with vengeance and reparations, and the stamping out of "impunity". This spectrum is replete with any number of complex questions, including how to eradicate prejudice and discrimination, and how to deal with the legacies of the past conflict, and what are the relative roles of agency and structure in these processes. It is not just the matter of reconciling competing narratives of the past and "truth recovery" (if such is possible), or reparations for "victims" (itself an ill-defined term), but also excavating the structural legacies of a deep past in which the conflict is or was embedded, and in particular in a colonial past, and finding ways to come to terms with the past (what Germans call *vergangenheitsbewältigung*, a term which signifies that this is a process). Most of the studies of post-conflict reconciliation included in this special issue are, in fact, conflicts that have roots in colonial pasts, and the power asymmetries, and prejudices, and structural legacies that have evolved out of colonialism. Challenges posed by historical legacies are further compounded by the contemporary institutional context and conflict resolution fads which set parameters for how reconciliation and transitional justice is supposed to take place. International conflict management theory and practice is overly focused on technocratic statist institutionalism, on top-down approaches such as elite agreements and cooperation to make governance effective, at the expense of thinking about divisions in society and the structural barriers to inter-group reconciliation. Many peace agreements to end conflicts, whether they are shaped mainly by internal parties or are externally-imposed, tend to be elite-led and top-down processes.

In some cases, conflicts have ended with a clear victor and that has often been followed by forms of exclusion, "victor's justice", and hegemonic state narratives. In other cases, conflicts have ended messily, with no clear winner, and in these cases often we see institutionalised structural ethnic divisions in forms of power-sharing being pushed on domestic elites by external powers, leading to the embedding of ethnic divisions in political structures. This outcome is usually starkly at odds with efforts aimed at promoting cross-ethnic accommodation at the societal level. Furthermore, while reconciliation and transitional justice as a package has become an unquestioned policy mantra internationally, as well as in most domestic contexts, often at the grassroots level among communities that are supposed to be the object of the process, the very terms reconciliation and justice have become at best sardonic references, and at worst dirty words. This is largely a reaction to the vague use and politicized imposition of the concepts by external peace-builders who rigidly adhere to combinations of interests and "global justice" norms detached from local context.

The articles in this special issue provide a comparative perspective on reconciliation in relation to divisive inter-ethnic relations in post-conflict states and societies. The articles are primarily focused on the question of inter-group reconciliation within a state, and this poses a different and more complex set of challenges compared to the question of reconciliation between states. The articles also cover a range of cases involving different types of conflict, including those driven by ethnic, racial, religious and ideological factors, and those where colonial legacies and mentalities endure. A broad range of different cases and approaches to the question of post-conflict reconciliation has been included. The articles offer critical reflections on the logic of external construction of norms that are then diffused into the post-conflict states and societies, often with limited normative resonance, recognition, or acceptance in domestic political and cultural environments. The local scope conditions in each case are analysed, querying the interaction of agency and structure in the processes, the nature and impact of violence, the role played by exclusivist ethnic, racial and other identities, the role of different actors (elites vs. civil society), and the construction of competing

narratives about conflict. The articles provide comparative perspectives on the ethnic, ideological, racial and structural divisions and attempt to systematically evaluate and understand their rootedness, and how they shape and constrain moving beyond conflict. Is it possible to have any meaningful reconciliation in a post-conflict society without tearing down some or all of these structural barriers? How would the restructuring of conflict societies be conducted? What is the relationship between societal and institutional/state-level and elite reconciliation? What is the objective in terms of reconstructing identities and narratives? On what basis can reconstruction occur, if it is to occur? What is the role of state power, or international power, or civil society in these processes? The contributions problematise the key concepts with which this field operates, such as dialogue and contact, victimhood, accountability, justice, reparations and reconciliation itself. We aim to critique and redefine the conceptual tools with which this field operates.

In the opening article, James Hughes critically reassesses reconciliation theories, discourses and policy practices, arguing that these have tended to prioritize agency over structure and are grounded in a paradox. Conflicts are generally seen as being driven by structural factors, yet theory and practice in reconciliation is focused on developing inter-personal contact between members of conflictual groups as the crucial tool for changing relationships and building peace. Hughes analyses segregation as a common structural factor in conflict societies that constitutes a block to making contact work in the way envisaged by theory. Nadim Rouhana tackles the hegemonic discourses on reconciliation in the Israeli-Palestinian conflict and argues that thinking about reconciliation in this case requires a paradigmatic shift in conflict analysis. According to him, a new paradigm (in the Kuhnian sense) needs to apply a settler-colonial framework to the conflict while also taking into consideration the national component. He therefore reframes reconciliation as decolonization within a transitional justice framework. Cyanne Loyle develops a theory of transitional justice adoption which focuses on the government use of transitional justice as a tool of establishing and maintaining political order. Within this framework reconciliation and transitional justice discourse and practices are instrumentalized to advance political interests in meeting security, resource, and legitimacy challenges in the postconflict period rather than to provide truth and reconciliation as is often ascribed. Through an examination of the gacaca courts, the article explores the way the transitional government in Rwanda has used international and domestic calls for accountability to frame its post-conflict consolidation of power. Denisa Kostovicova and Aude Biquelet address the question whether contestation over the norm of transitional justice prevents inter-ethnic reconciliation, operationalized by them as reconciliatory discourse. Drawing on empirical evidence from the study of debates conducted by a transnational advocacy network (RECOM), which proposes a regional fact-finding commission in the Balkans, they find reconciliatory discourse in those debates where there is norm contestation. They demonstrate that the spatial scale of a transitional justice process matters, with different patterns of discourse in national and regional debates. Rebekka Friedman investigates a transformative and contextual approach to transitional justice that addresses the root causes of violence in Peru. Focusing on Peru's major transitional justice effort with a truth commission, the *Comisión de la Verdad y Reconciliación* (CVR), she argues that more conceptual work is needed to link the drivers of conflict, reconciliation and transitional justice. Joost Jongerden critiques the transitional justice approach for its focus on peace through a strengthening of the democratic rule of law at the expense of investigating the injustices underlying conflict and the structural causes of abuse. His article looks critically at ways in which the state in Turkey applied a transitional justice approach to the Kurdish issue, and argues that the concept of self-administration as it emerged in the course of the struggle of the Kurdish movement may be considered as a form of "do-it-yourself" transitional justice.

Established democracies are not usually incorporated within the reconciliation and transitional justice paradigm, and the special issue concludes with two articles that examine reconciliation and transitional justice in relation to colonial legacies of race relations in developed democracies. Desmond King and Jennifer Page analyse the development of the demand for reparations for enslavement and Jim Crow in the United States as an example of a reparations movement that illustrates the commonalities between the goal of transitional justice and domestic redress movements. They show that a future democratic transition – the end of mass incarceration – could animate a renewed push for reparations and a formal investigation into America’s legacy of racial injustice. Mark McMillan and Sophie Rigney argue that it is appropriate to apply transitional justice practices to the relationship between the Australian state and Indigenous peoples. The article discusses the historical denial of the harm that the state of Australia has perpetrated against its indigenous peoples. They argue that a transitional justice framework, if adopted, may allow Indigenous voices to name the harm inflicted on them, and position the state as acknowledging the harm that they have perpetrated – bringing a fundamentally new process of reconciliation between the state and Indigenous peoples.

What emerges from these studies is a complex and diverse picture of how the issues of reconciliation and transitional justice are dealt with, and that even within cases the processes at work vary over time. The articles also illustrate that the use of the concepts spans a spectrum from minimalist to maximalist positions, and that in many cases both the normative scholarship and the lived experience are often contradictory. The ambiguities in the concepts are also often magnified by divergent external and local interpretations. Even if we assume that some form of reconciliation and transitional justice is required between groups after a conflict, violent or other, and the assumption is that these processes will advance the stabilisation of political and social relations in post-conflict societies, how exactly should we measure and evaluate the roles of the concepts? In sum, we are questioning the analytical usefulness of the concepts of reconciliation and transitional justice for being normatively too vague and often overly politicized.

Perhaps the most perplexing conundrum about reconciliation and transitional justice in conflictual societies is whether the processes that are envisaged by theory, actually have the purported beneficial effects of promoting stable, peaceful, democratic states. In fact, the processes involved in both theory and practice are so ambivalent and contradictory that they may often undermine the goals of peace and stability that they seek to promote. As Chief Justice Ismail Mahomed put it in his judgement on the test-case challenge to the Amnesty Law for South Africa: "If the Constitution kept alive the prospect of continuous retaliation and revenge, the agreement of those threatened by its implementation might never have been forthcoming" (cited in Tutu 1999: 26). The choice seems to be between a number of poisoned chalices, with no single process delivering a satisfactory outcome even within the parameters set by the normative claims of most scholarship. There is the option of “national amnesia” at one end of the spectrum, and at the other end there is a corrosive permanent state of contesting the past and prosecuting past behaviour, depending on the political balance of power at any given time. The danger for reconciliation and transitional justice approaches is that they do not help to end a conflict, but rather the processes themselves become instruments to continue the conflict.

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