

# Book Review/Compte rendu

## *The Conceptual Foundations of Transitional Justice*

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Claims of justice are contested even in the context of a settled political order, where laws are generally observed and the government's legitimacy is not in dispute. When such conditions do not obtain, it may be doubted whether talk of *justice*, as opposed to power and interest, makes any sense at all. If we face a moral imperative in this terrifying scenario, so the story goes, it can only be to do whatever it takes to establish the peace and order on which justice depends. Against this view, theorists of transitional justice maintain that we can and must assess the justice of measures (e.g., the punishment of human rights abuses; the offering of amnesty, forgiveness, or reparations) taken in the transition toward a stable and legitimate political order. In *The Conceptual Foundations of Transitional Justice*, Colleen Murphy proposes "a basic structure for theorizing about transitional justice," and argues for her own substantive version of such a theory (195). Writing with clarity and rigour, she cuts a path through several decades of scholarship on themes emerging from Truth and Reconciliation Commissions and other similar attempts to steer conflict-ridden societies toward a better future.

In Murphy's view, a theory of transitional justice involves more than the application of an already familiar concept, justice, to a less familiar field of practical questions. Although "shared features" of justice (20), such as a concern with human dignity, govern problems as diverse as the distribution of wealth, the punishment of criminals, and the proper resolution of civil conflict, Murphy holds that "the truth value of a justice claim is context dependent" (21). There are conceptually different "kinds of justice," each characterized by unique circumstances and aims (20). In Chapter One, she identifies and examines the circumstances of transitional justice: "pervasive structural inequality, normalized collective and political wrongdoing, serious existential uncertainty, and fundamental uncertainty about authority" (41). In Chapter Two, Murphy argues that the problem of transitional justice is mischaracterized by the more familiar theories of justice (retributive, corrective, distributive), and needs to be understood in its own terms, as the challenge of "how to justly pursue societal transformation" (84). Chapter Three deals with "the ultimate end or reason" (117) that justifies our pursuit of

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societal transformation. According to her, the ultimate end is to establish “relationships predicated on mutual respect for agency and reciprocity” (160). Chapter Four concerns the manner in which transformation is pursued. Drawing effectively on the case of the Amnesty Commission in Uganda (172-179), Murphy argues that the approach to transitional justice must be “holistic,” and this in two senses: responses to wrongdoing must deal fittingly with specific requirements of justice for victims and perpetrators; and responses to cases of wrongdoing are not to be taken in isolation from each other but as a whole (161-162). The distinction between the *end* aimed at by societal transformation and the *means* by which that end is sought is compared to the distinction in Just War Theory between the justice of resorting to war (*jus ad bellum*) and the justice of conduct in war (*jus in bello*). Beyond drawing attention to the familiar difference between evaluating ends and evaluating means, the analogy with Just War Theory perhaps complicates more than it illuminates, but the substance of Murphy’s careful and detailed discussion is not greatly hindered by this.

Although she traces her method of emphasizing the background circumstances of justice to Hume (33), Murphy’s moral outlook is essentially Kantian, stressing agency, reciprocity, and the “basic, irrevocable, and equal dignity of individuals” (21), and it assumes a framework of universal human rights possessed automatically by humans simply in virtue of their humanity (50). She is aware of the difficulty of striking the right balance between the contextualist and universalist elements of her theory, but believes that what she offers is as context-sensitive as one can hope for while avoiding the norm-undermining excesses of “radical contextualism” (81). The question is whether Murphy’s moderate contextualism winds up treating the contingent preoccupations of a particular society as a matter of universal human rights. Examples of claims worthy of critical attention in this regard are that transitions should culminate not merely in peace but in democracy (156-158) and that infringements of cultural rights require redress (51). On the whole, however, Murphy’s mix of Kantian deontology with Humean sensitivity to context is on the right track, and yields some unexpected and plausible results, including her rejection of *restorative* justice for transitional contexts, on the grounds that encouraging forgiveness where people do not, as a matter of fact, display mutual respect risks exposing victims of abuse to further “oppression and injustice” (23).

Despite Murphy’s emphasis on different kinds of justice, her methodological contextualism, and her view that justice is a “scalar concept” (12), the book’s guiding vision is that of the liberal democratic society toward which all societies should ideally be transitioning. This powerful idea probably owes more to Kant and Hegel than it does Hume, and will arouse the suspicion that the supposedly new theory of transitional justice is already heading down the old and well-worn path of exporting a particular strain of Western liberalism to the rest of the world. However that may be, it is to Murphy’s credit that she begs no questions about the merits of any particular existing political order, admits that “[a]ny country, the United States or Canada included, may be or become pervasively structurally unjust,” and claims only that “the role of the circumstances of transitional justice is to provide the theoretical resources needed to categorize a given society” (78). The suggestion that transitional justice is not uniquely concerned with the well-documented struggles of Africa or South America, but also offers a stance from which states normally taken as paradigms of justice may be criticized, is among the many interesting features of this fascinating and important book.