
Review

Transitional justice in established democracies: A political theory

Stephen Winter

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Transitional Justice in Established Democracies is a timely and necessary addition to the transitional justice literature – one that emerged in the aftermath of the South African Truth and Reconciliation Commission and has come to include the study of the wide variety of responses to mass atrocity including truth commissions, war crimes trials, memorials and reparations. The term ‘transitional’ in scholarship on transitional justice has conflated both the transition to democracy that accompanies most of the cases and the transition to peacetime that is desirable in the aftermath of conflict. While these two meanings of transition can be mutually reinforcing, this is not always the case, and Winter’s book challenges scholars to interrogate the assumptions about democracy and justice that have governed the topic. By focusing on established democracies, Winter moves away from the democracy-building themes of transitional justice as well as the human rights discourse that often animates movements for apologies and reparations for past crimes. In their place, he offers a framework for understanding the Anglo-Saxon tradition of liberalism and its conceptualization of the legitimacy of the state. Redress for past wrongs committed by the state can be understood as already emergent in the tradition, and even more importantly, part of the vital process of strengthening state legitimacy. The book provides a foundational approach for thinking about the concept of legitimacy in ways that enhance the expressive theory of transitional justice and membership theories of political rectification (his terms). His focus on established democracies, the actions of the state and descriptive approach are all much needed additions to the scholarly literature and will be influential as the topic undergoes its own period of transition.

By constructing a theory of legitimacy without relying on the contemporary arguments often marshaled for transitional justice goals, Winter effectively demonstrates the value of redress for the state, even from a canonically liberal perspective. As he writes: ‘By enacting legitimating values, state redress both improves the historical congruency of state actions with legitimating values and satisfies outstanding rectificatory demands. In doing so, it removes burdens from political



legitimacy and thereby extends and strengthens political authority' (p. 214). The descriptive portion of the book focuses on three examples of redress as a way to show similarities between the four settler societies in question and also to illustrate administrative justice (resulting in changes in state policy), corrective justice (focused on claims against the state for damages) and restorative justice (rectification through narrative). He deftly shows how the legacy of Anglo-Saxon civilization, and its correlating Enlightenment and ecumenical ideals, co-existed with historical advances to establish racial hierarchies and further the capitalistic extraction of resources. Social and political changes of the 1960s gave way to a focus on individual rights, and it is these rights, he argues, that have marked the single biggest ideological shift in support of claims of redress in liberal democracies. Although I was familiar with the case of Japanese–American internment and what Winter calls corrective justice, I found all three cases (United States, Canada and Australia) to be illuminating and think they would make excellent additions to course syllabi. As an example of *attempted* administrative justice, Winter recounts the experiences of Canadian veterans who had been Japanese prisoners-of-war in World War II after the defeat at Hong Kong. They had spent over 1300 days as slaves of the Japanese Army (p. 130) and would fight for over 50 years to receive compensation beyond a pension and a modest lump sum for undue hardship.

Winter terms this type of redress 'administrative justice', and he argues for its value in the strengthening of the ideals of liberal democracy. He rightly notes that the fact that the claimants in this case are white men who have performed military service makes them a very different category of claimants than is usually at the center of transitional justice claims. Their status as citizens worthy of equal protection by the state was never doubted, neither was their loyalty to the country. I would be curious to know how the bounded concerns of the veterans (that is, the lack of a need for greater political and legal recognition) affected the move for administrative justice at the heart of the case. However, in the end, Winter thinks that the state did not ultimately make the significant rectificatory changes necessary to achieve the standard of administrative justice. Its failures lead him to argue for the moral significance of apology and for the significance of such acknowledgment on the character of previous administrative reforms. While this case deviates from the models of transitional justice mentioned earlier, the claim for reparations parallels movements in those situations and is, for Winter, a way to isolate the political, moral and psychological factors that compel a state to provide restitution.

The case of Forgotten Australians has been a powerful one for the public and scholars of transitional justice. The scope of the violations, most notably the forced removal of 500 000 Aboriginal, disabled and poor children from their homes in the hope of assimilating them to white Australian norms (known as 'care leavers'), has catalyzed important investigative and analytical treatments. Unlike in the other cases, the state response to these violations incorporated some of the practices of truth commissions. For example, the Australian state encouraged a narrative focus in the

public inquiries it conducted around the country as well as in the national print and online archives. He notes that the opportunities for participation in these processes are varied in ways that extends the reach of the administrative and corrective mechanisms discussed above and that such participation speaks to questions of well-being that are salient in his model of legitimacy. Yet, his concerns about the ontology of restorative justice, including its move from resolving interpersonal conflict to conflict at the level of the state, prevent him from fully celebrating its efficacy. His concerns include its potentially exclusionary definitions of victims, limited basis for further political participation once the restorative justice mechanisms have ended and a problematic use of the term 'healing'. All of these concerns have been explored in detail elsewhere, but Winter is right to include their discussion here because of their influence within the transitional justice literature.

When reading the introduction, Winter's imagined critics seemed to be those who did not think that redress by the state is desirable because of the attention it takes away from more pressing concerns and its discordance with the immanent values of a perpetual liberalism-to-come that can perfect the future but not the past. An argument for state redress, such a critic might say, is based on an erroneous conception of responsibility. Yet, as the manuscript progresses, this line of critique from the right disappears, and it is less clear what is at stake in the argument. Winter seems to see himself in an adversarial relationship with those who think primarily about bottom-up processes or engage in processes of truth and reconciliation outside the state, but scholars in these camps are, to my mind, likely allies. Winter shares with them a commitment to the integral value of apologies and redress, but there are times in the book when it seems that these other strategies, and even the way these scholars write about transitional justice, are to blame for stalled agendas. Over the course of the book it would have been fruitful to read a sustained engagement with true adversaries, perhaps including those who oppose movements for redress (often with the excuse of having other priorities) in ways that suggest bias, fear and insecurity about the status of the ruling elite during moments of crisis.

While an interest in established democracies connects the case studies, the particular mechanisms and patterns of democratic political life are not integral to Winter's understanding of the movements or the types of justice that are possible. I was hoping to read his observations about how the processes for state redress would be affected by the particular workings of elected representatives, freedoms of speech and association and the role of media, for example. His argument that transitional justice does not just happen in transitional societies but also in settler societies is a provocative one and he clearly sees the discursive differences between the two schematic models, and there is room for more scholarly work on this topic. It is interesting to note how the term 'established democracies' differs from 'settler societies', with the latter conveying a skepticism about legitimacy not salient in the former. The case study of the Forgotten Australians made plain that it was not just an aberration of the democratic state at issue, but the fundamentally illiberal orientation



of the state toward certain groups. In this way, transitional justice in so-called established democracies does not differ much from transitional justice conventionally understood. Nonetheless, I learned a great deal from Winter's careful elucidation of a theory of the state that sees redress as critical to the process of legitimation as well as his treatment of three paradigmatic cases. By focusing on movements for redress in established democracies, he is challenging nothing less than the category of transitional justice as an epistemically coherent area of study.

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