

Episode 6 (September 2020)

## Memory: securing the past and imagining the future

Welcome to *Justice Visions*, the podcast about everything that is new in the domain of Transitional Justice (TJ). *Justice Visions* is hosted at the [Human Rights Centre of Ghent University](#). For more information visit [Justicevisions.org](#).

**Tine:** Welcome to the *Justice Visions* podcast. For those listeners who are just tuning in for the first time I am Tine Destrooper and I'm a professor of transitional justice and human rights at Ghent University. And I'm also the coordinator of the *Justice Visions* research project.

**Brigitte:** And I am Brigitte Herremans PhD researcher at *Justice Visions*, and I'm studying how artistic productions can contribute to truth-seeking in Syria.

**Tine:** Brigitte, isn't that great to be back after a long summer break, and a summer break during which we went back to some of our previous episodes and listened for some of the topics that kept resurfacing.

**Brigitte:** Or topics that were also implicitly there, but that we didn't give due attention.

**Tine:** And I think we were really in agreement that one of the most important topics was how messy, how complex transitional justice can sometimes be. Because in previous episodes, we talked a lot about some of the formal transitional justice interventions, but it also became clear every time again, that what was happening on the ground in terms of dealing with the past, that that went well beyond those formal interventions, and I'm, for example, thinking about you remember this conversation we had with [Habib Nassar](#) of [Impunity Watch](#), the [episode on victimization](#). And Habib really shed a light on the agency and the activism of victims who are currently in the thralls of conflict.

**Brigitte:** And he talks very nicely about how justice means very different things for different people, how people have very different needs, and very often concrete ones, of justice processes. For example, for many victims, that's in the first place about knowing where loved ones are or getting restitution, and also the importance of having a voice.

**Tine:** I think the issue of voice is also one which we heard many interviewees talk about. I'm thinking, for example, of [Rudina Jasini](#), who talked about spending hours, just listening to survivors' stories and village stupas in Cambodia. Or I'm also thinking about professor [Evelyne Schmid](#) from Lausanne University. That I think must have been [episode four](#). And that I found so striking, who talked about victims of sexual violence at the International Criminal Court who are being interviewed and who wanted to talk about their livelihoods being completely wrecked, but not having any room within the existing formats to actually talk about that.

**Brigitte:** Yeah. It's nice to think of all these previous episodes and maybe we'll put a link to all of these conversations in the show notes.

**Tine:** I think in all these conversations, what was really interesting also, was this question that kept surfacing, what is voice and what does it mean to tell one's story, but also how do we listen?

**Brigitte:** And it also touches on the issue of storytelling and the role of narratives in establishing different forms of truth in acting against oblivion. And narratives can give a strong voice to demands for truth and justice and reparation in response to human rights violations.

**Tine:** So we thought it would be interesting in this episode to really look at how stories, how narratives open up new spaces for understanding, for truth-telling, and this is also important in your work, Brigitte, for truth-hearing and truth-listening right?

**Brigitte:** Indeed, facts matter, but they're not enough. They don't suffice. As we clearly see in the Syrian context where there's an excess of information and evidence of atrocity crimes. Yet, as [Lisa Wedeen](#) demonstrates in her research, this overwhelming amount of evidence does not stop the erasure of victims' narratives, quite on the contrary maybe, it could have facilitated the narrative warfare.

**Tine:** I found it very striking, this realization that this is one of the most documented crises of international norms, and yet despite the enormous amount of evidence and the enormous amount of victims' stories as well, there's hardly any room to address those experiences in judicial avenues. It's often the case that for transitional justice practitioners, there is an overload of information. There is an overload of issues. They have to prioritize: what crimes to prosecute first, what victims they can give the most prominent voice, but also what stories do we tell? What stories do we remember? And so this is a question that we talked about with [Lyndsey Stonebridge](#), who is a professor of Humanities and Human Rights at [Birmingham University](#) and who, in her work, very interestingly connects literature with history, with politics, with law. And she proposes this notion of a narrative truth, and narrative truth is one that relates to personal recollection and to memory.

**Brigitte:** By narrative truth she's opening this black box of truth and asking attention for the fact that there's more to truth than the forensic kind of truth that long dominated the domain of transitional justice. And that there's other ways of thinking about truth that could be more useful, and support a more ambitious transitional justice project that is more in line with the aspirations and realities of victims.

**Tine:** I think it's very useful how she's arguing for an understanding of truth that, and I love this term, that opens up the judicial imagination. And this is also the title of her wonderful book, *The Judicial Imagination: Writing After Nuremberg*, and in it, she explicitly makes this link between stories between narratives about trauma and the courtroom, which I think she does splendidly because she really breathes new life into

this law and literature debate that sometimes can be a bit stale, or that can get stuck in the question of what fictional narratives can mean in a courtroom, but that most of the time really ignores the importance of narrative action.

**Brigitte:** And I think this is the moment where we should dive in.

**Tine:** Yes. So what is the first thing that you asked her when you spoke to her?

**Brigitte:** So I just started by asking Lyndsey Stonebridge about how she thinks we can better accommodate competing stories of victims and the diversity of victims experience, and more specifically, what she thinks fiction can do to help foreground voices and also narratives of victims.

**Stonebridge:** That's a great question. And actually, there are two parts to your question, one is how can we deal with competing stories of victimhood or the outright denial of victimhood? And that seems to be very much where we are now, in terms of trying to stake notions of justice around competing narratives of victimhood. And it's got us into some quite tricky positions, legally, politically and morally. As I'm thinking about this, I was reminded of the former war correspondent's book, David Rieff's book on the memory of forgetting, which I'm sure you all know. And Rieff makes a really important point in there. He says, actually, when we're talking about remembrance and victimhood, what we do is we set up a kind of absolute victimhood that we pitch against another kind of absolute victimhood. So in some ways it's not that helpful. Actually in some ways, David Rieff would go further and say: you provide the context for more conflict by setting up absolute victimhood versus other absolute victimhood.

The classic case for thinking about this at the moment is, and has been for the last 70 years, Palestine/Israel. We have two very strong discourses of absolute victimhood, which as Jacqueline Rose once put it, cloud the horizon so that no one can move forwards. There's a whole question about what the law can do with that, or the law cannot do with that. International law obviously is proving itself incapable of doing anything with that. But your second part of the question is: what is it that literature might be able to do? What might fiction be able to do?

On one hand, not a lot; but I think fiction can give us hints into the kind of politics and kind of legal politics that we require to get beyond some of these impasses. Which is to say, the ability to tolerate not only the other or the other story, but to tolerate complexity. Narrative fiction, historically, has been an exercise in teaching and educating us to imagine, to tolerate, complexity.

**Tine:** And in this part, I think it's really great how she immediately moves on to this notion of complexity, because I think the arguments about how literature can contribute to legal proceedings are often about empathy, often about recognition, which are also important functions, of course, but it's also really nice to hear her put the emphasis on this need to tolerate complexity, especially because we're dealing

with these high levels of complexity in contexts of transitional justice, which are not always easily accommodated in, say, the more formal transitional justice interventions.

**Brigitte:** There are excellent examples of literature in transitional justice contexts that embraces complexity. I'm thinking, for example, of Antjie Krog, the celebrated South African poet and writer who wrote extensively about the legacy of apartheid and the possibility to voice victim's truths in the South African Truth and Reconciliation Commission (TRC). And actually, she does both. She engages with that complexity by using different literary genres, for example, in The Country of My Skull. But then she also makes what happened at the TRC quite tangible and draws the reader into the story. So, simultaneously showing the complexity of lived experiences and generating some form of empathy with a broader audience beyond what the TRC report itself could actually do.

**Tine:** It's very true. And at the same time, I've really appreciated the red flag that Lyndsey Stonebridge raised regarding empathy, based on her reading of Hannah Arendt.

**Stonebridge:** When Arendt taught courses in political science, she often taught novels and poetry, and she said, I don't want you to empathize with people. And she was trying to teach sort of Ivy League American white kids about totalitarianism in Europe. And she said, you know, this isn't your experience, you can't have it. But what I want you to do is imagine what the world looks like from a different point of view. And that is slightly different from a rather lazy form of empathy that thinks it's done all the work. Because from that position, you have to recognize that inequality is an injustice. It's just unfortunate and you're not going to fix them by feeling sorry for people. You're going to fix them by actually saying: this is intolerable and I am implicated. And this involves me changing, and me doing things differently.

**Brigitte:** And this also goes to the point she raised about where the very notion of empathy originates.

**Stonebridge:** Given that we're now living in a time where our political leaders rejoice in being un-empathetic, now is hardly the time to argue against empathy, but I'm really not alone here. The novel has been a source of empathy since the 18th century, and as literary theorists as James Dawes and others have pointed out, actually there's no link between, on the one hand, our capacity for empathy, our ability to share imagination, and our apparently plentiful, imaginative resources, and on the other, sharing political, economic or power resources. So that's a false correlation. Empathy, again, is always hierarchal. It's like when people say, especially when people go hunting for refugee stories around the camps and refugee communities: 'I'm giving voice to the voiceless'. What? You're not God. We've got no right to give voice to anybody. That's a position of absolute power. If you want to give voice, give up some institutional space. Or shut up. The best way to giving someone else voice, is to shut up and make sure that you're creating space for them to have their own voice.

**Tine:** She warrants here for those things that intuitively maybe make us feel better. But of which we might not be thinking systematically enough about their long term impact and that I also found quite interesting that, in another part of the conversation, she talked about these hierarchies, that's to say the massive disjuncture, which there is between those who are written about and imagined, and those who don't get to write their own stories or even have their stories written about, right? And about how hierarchizing those stories, those experiences is not something that just happens. It's representative of structural, political, institutional dynamics of who gets to grant access and who has to ask access. And so that to me was also very interesting.

**Brigitte:** At the same time, the issue of access of making people visible, is also tremendously important in her own analysis of Western literature. It became clear for example, when she talks about what historically literature has done in terms of representing women or people of color, at least in the West.

**Stonebridge:** The novel form in the West at least, historically, was helpful for this because in the novel form you have the first time you have a discourse which is about victims, about people who aren't privileged, who don't have voices. Lynn Hunt in her book on human rights, makes the point that in the 18th century the novel was all about sort of servant girls and other people who wouldn't usually get to speak. And certainly as the novel and testimonial forms of the novel -thinking also about Frederick Douglass in particular here in the 19th century- grew, you did have a medium to talk about the experience of those who are the victims, not the victors. The novel is also very dialogic. There are always competing dialogues in the novel. The novel is a very good way, as Kant put it, of training the imagination to go visiting -- because you're constantly having to look at other perspectives.

**Tine:** And is that notion of imagination also the one that we need to understand her thinking about judicial imagination?

**Brigitte:** So, professor Stonebridge explains that it is an old concept initiated by Kant and then further conceptualized by Arendt. And it starts from this take n-for-granted notion that on the one hand there is the law and it's perfect and it can do a lot of things. And then, on the other hand, you have ethics, which is just as necessary, but then there's also the crucial third element, which are politics. And so professor Stonebridge introduces the notion of the judicial imagination to think about that relationship between law, ethics and politics, and to think about what gets represented in the discourse on justice.

**Stonebridge:** What does it take to imagine those three things in play, those forms of justice, which always have to be in tension together, but as soon as you forget one you're in trouble: no ethics without law, no law without justice. But neither of them are possible without politics, the political ground. So that's what I was trying to do was to push politics back into the conversation. Law is always about imagination. Otherwise we wouldn't bother.

**Brigitte:** But then she's also asking critical questions about what that imagination can actually do.

**Stonebridge:** If you're doing law and you don't think you're humanizing, you're in the wrong business. And in terms of the politics of that, people need to believe that the law is working. It's not just a bit of social policy. Law goes back to what keeps us bound into a political community. The law in terms of the kind of things that hold us together, has to have meaning. And you can't make it meaningful if you just think it's [law] just social policy. There has to be a moment where the law comes in and says: it is not all right to break international law just because you find it politically convenient. That is so not alright.

**Tine:** I think with that notion of the judicial imagination, she also brings it back really nicely to our own interest, of course, in transitional justice. And then I'm particularly thinking about a conversation we had in a [previous episode](#) with [Zinaida Miller](#) who talked about how including or not, including certain crimes, certain violations and transitional justice interventions, renders them visible or invisible. If it renders them invisible, it pushes them off the moral radar, it pushes them out of the discourse of justice. And so there again, I think Lyndsey Stonebridge does this really interesting work by drawing on Hannah Arendt, to think about what we imagine justice to look like.

**Brigitte:** She also links this to the Shoa, which was really a crime of a new magnitude that international law, until then, could not deal with and that tested the limits of that system. So it challenged practitioners to think about the limits, and also the new concepts of law.

**Stonebridge:** I think we're still trying to do what Hannah Arendt and others identified as the real problem, which is to describe a kind of justice, or to invent a kind of legal system, that can cope with new forms of criminality. So, I think some of the conservatism of the law is a response to the fact that the law still hasn't caught up with new forms of modern criminality. This was Hannah Arendt's point about the Holocaust and Nazi genocide, but also, you know, totalitarianism *tout court*. What do you do with a system, which is both inhuman at its core and which has invented a crime, which as she said famously, seems to explode the limits of the law. Because we haven't seen a crime like this before. But what she also meant was that it was an administrative crime, a crime for which no one seems to be able to be blamed. So that was [her point about Eichmann](#): it wasn't that he was just a cog in the machine (who cares about Eichmann anyway? He was an evil man, she was a bit wrong about him). But what we haven't got, what we're still battling with is this: what you do with oppressive political systems which are designed to be thoughtless? Designed not to have anyone to blame? We've been living with this since the middle of the last century. Hannah Arendt was absolutely right about that. I mean, that's why I do come down on law. I mean, you have the stuff that lawyers are doing in order to grant immunity to their clients at this moment within the human rights landscape: it's extraordinary! And it's because they've understood, on the bad side, how to play the game, how to play the Eichmann

game. 'It just sort of happened, it was an accident'. Well, you might be able to construe it as an accident, but the decisions that were made were made on the basis that some people's lives were more important than other people's lives, whether it's refugee legislation, whether it's Lesbos, whether it's refoulement, the pushbacks in Europe, or Grenfell. That is what is happening.

**Brigitte:** So the judicial imagination points to the importance of narratives, because narratives allow us to see what would remain otherwise unseen. Like these administrative decisions that lead to structural injustice and then pave the way for graver violations. So I asked professor Stonebridge about this, when we're looking at contemporary conflicts, how can narrative practices kind of open up that judicial imagination? Because often we think of justice in difficult conflicts, where there's very little room to pursue justice through judicial avenues, we tend to narrow it down to criminal proceedings. Yet, there's also other justice needs. So what can narrative practices do in this context?

**Stonebridge:** My rather brutal answer to that is: yes, if there's a politics to back it up. Neither in a court nor in terms of narrative practice is justice going to be seen to be done if conditions of economic and social justice aren't seen to be done. That's the bottom line. I mean, that's why, you know, in terms of things like Northern Ireland, why we're so worried at the moment [in the UK]. Equality has grown in Ireland since the peace process. If that is threatened, then you will have the old injustices roaring up again. I think Black Lives Matter is axiomatic in this: no justice, no peace. But that can only happen, to my mind, with reparations, full reparations, whether it's educational, whether it's grants, whether it's whatever. Because as long as you've got systems of such economic and social inequality, you can have as many narratives, if you like [it won't make any difference].

And also, I think you have to be very cautious because I think that the powers that be find it very easy to have ideas of narrative practices around, because they're not actually a threat. There's this moment in the first meeting that was held after the Grenfell fire when after about two hours of witness testimony from people who had lost family, victims and survivors of the fire, when the person who was chairing that meeting (who was the mayor of Kensington and Chelsea council) literally turned around and said: 'well, thank you very much for sharing your stories. Now we're going to move on to the main business of the meeting.' She could quite easily assume that people's stories have nothing to do with democratic accountability or what else was happening [in the meeting].

**Tine:** And just to contextualize that, so the Grenfell fire, that's the block of flats in West London, right? Which burned down in 2017 and caused over 70 deaths.

**Brigitte:** The fire or the rapid spread of it, had everything to do with the very poor state of the building, because it was a social housing block and it hadn't been maintained and it didn't comply with fire safety regulations.

**Tine:** Of course, the way in which Lyndsey Stonebridge describes that use of victim stories, victim voices, as a nice-to-have, but which doesn't really change the further proceedings or the discussions in any significant way. I mean, that's a critique, which is also very recognizable to us, transitional justice folks, no? It's a critique that's been raised so often in the context of victim participation, this [add-victims-and-stir](#) argument, whereby we draw victims into the process, as a kind of legitimating add-on, raising their expectations, of course, but then not necessarily doing anything much with their testimonies.

**Stonebridge:** There's a sense of: if we can get our stories told, then we'll get justice. Yes, that will help, but what does that actually mean? And this goes back to the point I began. Without a political framework for justice to be done, you can tell your story as much as you like but for people who feel injustice, and people who feel justice, people who are injured -- and they're injured not just psychically and psychologically, -- these are historical injuries. But unless you actually have a politics that can address that, I think the opposition between law and arts and narrative again is missing the third term [politics].

**Tine:** This is beautiful. And again, I think really relevant to the domain of transitional justice as well, because I'm thinking about that conversation. We had in a [previous episode](#) with [Simon Robins](#) who underlined the need to also, and in the first place, talk about these historical injustices, about social and economic justice and not just about these what De Falco calls spectacular and recognizable crimes, but it's also almost about the inability within the current transitional justice architecture to do this.

**Brigitte:** Yeah. And it's the justice architecture itself that is better equipped for dealing with certain narratives and that sends a message in and of itself. But of course, Lyndsey Stonebridge's work is really focused on the justice discourse. And this brings us back once again to the issue of narratives and how we talk about justice.

**Stonebridge:** If you go back again to language and law, we've spent a lot of time analyzing language and paying attention to the language of victims and testimony since the Eichmann trial and the importance of hearing that. We've heard less about how the language of law develops and what it can and cannot do. And I'm thinking here about [Patricia Williams](#), the fabulous legal theorist, who published a [piece just after the murder of George Floyd](#), where she talked about the language of law being institutionally racist. And that goes actually back to Arendt's point: if you not only have a kind of modern system, which seems to have bought impunity into it, we also have developed legal language which (lawyers know how to do this they're brilliant at doing it) has evacuated all sense of agency. Because if your lawyer is not good at evacuating the sense of agency, when you're being charged with a crime, then you want a different lawyer, right? It's not your fault. There are other legal languages that do this: systematically racialized discourse is one example, gender is another example, when the language of the law itself is setting up terms that cannot produce justice. So I think maybe we need to go and look at the other side.

**Tine:** So that point about looking at the other side, does that now bring us to the last question we always ask of our interviewees, which is exactly that: where they are looking for inspiration and where they do see promising avenues for future research. What was that for Lyndsey Stonebridge?

**Brigitte:** Yes, she talks about how she's increasingly combining academic work, literature and journalism, which she does in a very nice way, saying that literature isn't just some sort of special kind of discourse with bells and metaphors on it to show us where injustice is.

**Stonebridge:** Good literature shows us where injustice is. It allows us to apprehend new forms of injustices for what they are, in ways that law is often very slow to catch up on. I sort of want literature to reclaim its normative role in legal and political culture. We've adopted on the one hand, this idea that literature teaches us about other people, but on the other hand, literature will always undo itself. And it can be deconstructed, which is a training I had. Because I think it is writers at the moment who are (the best writers) giving us new terms by which to imagine justice. Many are working, pushing for the arts and humanities to be taught, because they know about the intimate connections between justice, hope and memory and the importance of literary and artistic education.

**Brigitte:** After talking about the power of literature for half an hour, I could not not ask her about what she's reading now, especially because so many people these days are recommending Albert Camus' 'The plague'.

**Stonebridge:** What Camus suggests, is a kind of detachment: do the least harm you can, and don't be on the side of the plague, but very wary of big, big, discourses. And everyone was reading Camus when it first came out. A couple of friends suggested you must read Ingeborg Bachman's Malina which I'd never read. In her book, the plague is in language itself. And this is where she sees the plague. She's very much like Camus in some ways. They're both writing out of the Holocaust. They're both writing out of European occupation, the collapse of Europe. I argued recently that we need to pay more attention to the ways in which language is murderous.

The language of those with comorbidities dying of COVID, for example, those who are poor. Black and ethnic minorities who are working frontline of health service, those are not comorbidities, those are structural things. It's so structural, it's language, which is murderous.

**Tine:** So Brigitte, how did you feel about this interview with Lyndsey Stonebridge?

**Brigitte:** I really liked the fact that we closed our first season with narratives and the power of narratives. And I think it really allows us to dive into the second season, which is maybe a bit more hands on.

**Tine:** This was really nice to break open the kind of framework that we use to think about transitional justice. And I'm also looking forward to also talk more to

practitioners also in the global South to see how they are dealing with all these issues that we've been discussing now. And so I think that's what we will be preparing for now for the next season, right?

**Brigitte:** Yeah, and I think the colleagues in the team are also quite eager to bring in their experience.

**Tine:** That's our cue to wrap up this season and to start working on the next season. And to our listeners: if you have suggestions, if you have topics, we've been really pleasantly surprised by the input we've been receiving on the previous season. So please get in touch with us and let us know what you think we should be covering in the next season. And I look forward to that.

**Brigitte:** So do I.

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