

Episode 6, season 3 (February 2022)

## How do we talk about historical commissions as instances of transitional justice?

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](https://www.justicevisions.org).

**Tine Destrooper:** Welcome to this new episode of *Justice Visions*. My name is Tine Destrooper, and I'm the regular host of this podcast and the director of the *Justice Visions* research project. Today we'll be talking about historical commissions and a relationship with transitional justice. We are having this conversation. Not so much, because the historical commissions themselves are a new phenomenon – they are not; but we are having the conversation because the commissions have increasingly been framed as instances of transitional justice using the logic, using the rhetoric of transitional justice, and that is new. We felt it was time to think and to talk a bit more about what that framing does, both for how these commissions operate and what their normative objectives are, but also for what it means for the field of transitional justice that these commissions are now drawn into that TJ [*transitional justice*] orbit. So, there is a lot to talk about and with us today to have that conversation are set up by [Cira Palli-Aspero](#), who is a member of the *Justice Visions* team. Welcome, Cira.

**Cira Palli-Aspero:** Thank you, Tine.

**Tine:** Cira, you just finalised the manuscript of your book on historical commissions, which is an excellent occasion to dive into that subject with you and with our second guest. Who is [Dr. Alexander Karn](#) from Colgate University. Alexander, welcome to you too.

**Alexander Karn:** Oh, thank you so much for the invitation.

**Tine:** Alexander, you worked extensively on the politics of history and contemporary societies and on understanding historical dialogue and justice in transitional regimes, but also in established democracies and on the role of historical commissions and conflict, mediation and reconciliation. That's a wonderful background to explore the link between historical commissions and transitional justice, and especially how these operate and consolidate democracies. I think as a starter to the conversation, it probably makes sense to take off with a very general question to use it out to just frame the discussion. If you can give us some more background about what are these historical commissions?

**Cira:** Yes. So historical commissions are investigative bodies, which are established to clarify the historical facts that are surrounding injustices or crimes committed in the distant past. They work mainly, although not exclusively, with archival sources, and they seek to understand the underlying processes and contextual conditions that have contributed to the development of the facts that they are investigating.

**Tine:** And you're saying in your book that these are not new phenomena, right?

**Cira:** No, they are not new. They were established throughout the 20th century, but they got a new interest throughout the 90s, coinciding with the end of the Cold War. These commissions have operated in different regions of the world and in very different social and political context. I explore this in detail throughout my book. For example, in Western European countries, such commissions were said to explore crimes of the Nazi regime and the collaboration of the occupied countries with the Nazi regime, which up to that time they it hasn't been explored. In central European countries, for example, and in Baltic Countries, the commissions were tasked to investigate both crimes of the Nazi and the Soviet regime to the population. There are other cases, for example, in Northeast Asia, where the commission's work to contribute to better diplomatic relations. Others, for example, have worked in conflict or post-conflict cases. For example, in Colombia, where the commissions kind of work to understand the origins and causes and consequences of the conflict. And finally, as you were pointing out, these commissions have also worked in settler nations and more recently in post-colonial states to examine the legacies of colonialism and the impact that these have on structural inequalities in the present.

**Tine:** That is a very diverse range of contexts that you're talking about. What makes this commission so appealing? What do they do?

**Cira:** They are very appealing because they have a variety of functions that are very suitable to different contexts or different demands or needs of the context. So they work in many dimensions. They can work towards debunking ill-informed historical narratives, correcting the historical record, if you will – in the case is that it hasn't been investigated accordingly or fostering diplomatic relations, addressing responsibilities for crimes and violations of human rights. Acknowledgement of the past wrongdoing redressing historical injustice, recognition... All of these dimensions of the work of historical commissions can be adopted and can be tailored, if you will, to different contexts and different needs. But ultimately the goal of these commissions is to work towards the recognition of moral and political accountability to achieve social change in the present.

**Tine:** Could you give us an example of, for example, a recent historical commission?

**Cira:** Yeah. One of the most recent examples we can find it in Belgium, for example, with the Belgian Special Parliamentary Commission, which was set up in the summer of 2020 to investigate the impact of colonialism in Congo, Rwanda and Burundi. It's important to note that, although in this first reached out to experts the commission carried out a historical investigation using the methodological approach of historical commissions, it was never called the historical commission. Instead, it was framed within the language and the logic of transitional justice,

**Tine:** I'm actually happy that you give that example because it's also a commission that we talked about for a few weeks or months ago now with Dr. Liliane Umubyeyi in a previous episode of this podcast, and I recall that she was also explaining that even if the initial push to formally call this a truth commission, in that case, that did not happen. But in practice, the work of this commission is still being framed very much within the logic of transitional justice. So it's, for example, in the public discourse of newspapers, it is going to be called that a truth commission. The logic of transitional justice is in the commission's mandate; it is in the outreach to experts, which will follow this kind of classic or logical for transitional justice pillar structure. A truth, justice, reparations, and guarantees of non-recurrence.

**Cira:** Exactly. And this may have consequences for the work of historical commissions as they are expected to address or to fulfil these four pillars associated with the field. For example, through thinking processes within the logic of transitional justice, they are often associated with truth telling of survivors, perpetrators or bystanders. Within these understanding, within this logic, it may be expected as well that a truth-seeking process is carried out by a historical commission also involves the collection of testimonies, even though that is not necessarily a standard procedure of these commissions.

**Tine:** That brings us to the question of the implications of framing these historical commissions in consolidated democracies as instances of transitional justice, and especially the implications for the field of transitional justice. I would say because just to be clear, these historical commissions, there are mechanisms that originated outside of the field of transitional justice. And so, Alexander, I wanted to ask you what you make of that, what you see as the logical connection between these historical commissions and, let's say, the broader field of transitional justice?

**Alexander:** Yeah, you're right that these commissions, they originated outside of the T.J. the transitional justice framework. Some of the earliest commissions can be traced back to the beginning of the 20th century. But with the rise and popularity of the of the historical commission model, with their return to prominence, I think we're starting to understand and see a fair bit of overlap with the transitional justice toolkit. You mentioned the four pillars of transitional justice, and I think there's a great deal in there that encompasses what the historical commissions aim to accomplish. These commissions they are, they are backward looking, they are a kind of a retrospective undertaking, looking back to the past to see what happened there and who is responsible; but they are also strongly oriented to the future. They look forward as well. When these historical commissions think about the past, they are interested in clarifying the history, seeing if there is more we can learn about past violations, past violence, who is responsible? But it is not simply or purely a documentary undertaking. In addition to building this record, this documentary record, the commissions are concerned with what potential exists for repairing the damage and enacting justice where these violations and these instances of violence can be documented. I think one of the principal reasons that the historical commissions are now sometimes framed in terms of transitional justice is that, in a similar way to transitional justice, there is an effort to sort of link scholarship to advocacy. They are working to recognise patterns of violence and structures that have made past violations possible. But at the end of the day, I think these commissions are also about leveraging those insights for the purpose of reform and for change and for the enactment of justice.

**Tine:** What I find particularly interesting is that you are referencing these ideas of recognition, even guarantees of non-recurring, social change... What I did, I did not specifically hear you mention is the idea of accountability, right? Which is also very much at the heart of. A lot of what transitional justice initiatives are doing, and in a way, I have the core normative objective of transitional justice is, right? And so I'm wondering: what kind of accountability is that a historical commission can contribute to. Maybe to ask question a bit more explicitly? Would you argue that the search for historical truth can be seen as part of the struggle for accountability?

**Alexander:** I think that it is. But with the historical commissions, accountability may mean something slightly different. It is an aspect of their work, but it needs to be kind of it needs to be understood differently. I think because the historical commissions, normally they are engaged with histories that are more distant than what truth and reconciliation commissions might be examining. We are talking about, you know, events that transpired decades, if not centuries ago. In these cases, it is not always possible to hold perpetrators directly accountable, even if these individuals can be identified. Instead, what the historical commissions can do, I think, is clarify what structures enabled these individuals to act unjustly to undertake and initiate unjust programmes of violence. But they can at the same time, they highlight what legacies these actions from the past have left and what enduring legacies remain to be reckoned with. They can show us, for example, how state authorities have facilitated intergroup justice in the past. While they do not always provide us the opportunity to prosecute or hold accountable the individuals responsible for those programmes, they can help us understand how these violations have produced long standing inequalities of wealth and power. They can help us to think about how we might intervene in these cases to produce a kind of justice that would offer victims certainly a sense of accountability and acknowledgement.

**Tine:** I want to come back to that point about intervening in a structural manner in a moment, but for now, I actually want to pursue a bit further that notion of accountability because it is really interesting to me is and I fully agree with you that these historical commissions indeed they tend to deal with cases where the actual wrongdoer is no longer around, only their institutional after knives. Even if that were the case, very often these commissions, they do not have a mandate to ensure that any kind of prosecution or negative repercussion large would actually take place; and that is an essential part, I think, of most of the working definitions of accountability that you have that information that then leads, of course, to a negative consequence for the perpetrator, if you want to call it that. Is there, in your opinion, a risk in even using the notion of accountability when we're talking about these commissions? Are they, in other words, about something completely different?

**Alexander:** I'm sure there are differences worth exploring, but I think my version of accountability is only a small distance away from the notion of accountability that you are talking about holding perpetrators accountable. When I think of accountability, I am thinking of a line from Plato about the meaning of justice. Plato says in The Republic that justice is speaking the truth and giving each his or her due, giving what is due to each individual. That can mean on the perpetrator side punishment for those who are responsible for wrongdoing. But the other side of that coin, I think, is giving to victims

what is their due. That is the version of accountability that I think the historical commissions address particularly well. A good example here is from the American context as the Tulsa Race Massacre from 1921. I will not get into the full history of that event, but it is an important event in U.S. history and one that was not well understood or well known. Even until the 1990s, the state of Oklahoma, the state legislature in Oklahoma, launched a commission to research what happened in 1921, and how and why that event had sort of faded from public memory. The commission worked for several years, there was a report that was published in 2001, and the report was truly important for helping us to see and understand how city and state officials had mobilised and empowered a white mob to attack Tulsa's historically black Greenwood district. This was, you know, at one time referred to as a race riot, but it was more than that. And the report that the commission provided in 2001, it covered all of this. It showed how state officials had mobilised a mob. It showed also how those same officials had introduced policies after the attack. That made it impossible for many Black Tulsans to rebuild the properties that were destroyed in this massacre or to recoup what losses they had suffered. The commission, historically speaking, it provides us a clearer understanding and glimpse into this event. But accountability today, right? This is an event that took place 101 years ago already; accountability today, I think, means looking at survivors, their descendants and what is due to them, what is owed to them. So in this case, the Tulsa Race Massacre Commission [*Oklahoma Commission to Study the Tulsa Race Riot of 1921*] was crucial for facilitating reinvestment and development initiatives to rebuild and invigorate the African-American community in Tulsa that continues to feel the impacts of this event. That's a kind of accountability that I think the historical commissions offer and facilitate well.

**Tine:** So this is so fascinating to me because what you are describing in a way also that's very well within this whole paradigm shift that we have seen within the context of transitional justice and a move towards transformative justice. It is also about changing the structures that have led to the violence. I am actually going to use that as a steppingstone to move on to another question. But I wanted to ask you about this topic, about paradigm shifts in the domain of transitional justice and how those also kind of affect how we see historical commissions if they are now framed as transitional justice. One thing I was thinking about specifically is the issue of victim participation because I feel that as these historical commissions increasingly become framed as instances of transitional justice, they implicitly or explicitly they also adopt the values, the operational models, the paradigms in the field of transitional justice. I think victim participation is very much one of those values, if you will, or models that has gone to really shape or characterise the field of transitional justice. And I feel that when it comes to victim participation, there is really a tension there, right? When we talk about historical commissions or at least a potential tension in the sense that these historical commissions don't necessarily engage with the victims themselves. For example, through collecting testimonies, they might; but they do not always. I wanted to pick your brain about how would you assess this, whether historical commissions are apt places for victim participation, or whether we should strive for more victim participation, and how you assess that debate?

**Alexander:** Well, a lot depends on which events we are talking about and how distant or how proximate these events are to the present. It also, I think, really will depend on who we count as a victim. Returning to the U.S. context again, thinking about my own country in the U.S., there has been a lot of discussion recently about. How we teach the

history of slavery, whether a historical truth commission in the U.S. could facilitate racial reconciliation or racial justice. Of course, you have some, you know, in in this debate who argue that slavery was abolished a long time ago. What happened in the past ought to remain in the past that the victims are no longer alive, so why should we be concerned with this history in any case? But if we shape that enquiry a little bit differently, and I think this is something that the historical commissions are really apt at, really do well, if they reshape the enquiry, if they broaden the purview a bit to think about other events before and after the main event. For example, where slavery in the US is entailed, if you start to think about events later, like the failures of Reconstruction in the 19th century or what policies the federal government introduced in the ninth in the 20th century, rather policies which build wealth for white Americans, but denied the same to black Americans. Or if you think about what racial inequalities are evident in today's criminal justice system. if you expand the purview in this way and broaden the enquiry, then I think that we can start to see how the enduring legacies of past choices, past failures, past injustices, how these legacies remain and how there are still today victims of these enduring legacies. That can be done through personal testimony. In some cases, you can. For example, in the earlier case, I mentioned the Tulsa Race Massacre. There was testimony taken from survivors, but it can be done also through a blend, a mixture of personal testimony, survivor testimony and through scrutinising of historical records, archival documents. I think, you know, some of the best commissions have combined both approaches, and I think that is a very good model for historical commissions going forward to think about how they can involve victims, where they are alive and accessible, and how they can speak to a different kind of victimisation, where we are dealing with long legacies enduring legacies of past injustice.

**Tine:** I would maybe want to zoom out a bit from what you are saying and also zoom out a bit from my last question, basically and ask a rather broad question to both of you, which is whether, and in which ways you think in that sense, these historical commissions and the mixed methods or the different methods that they adopt, how those might be changed in the field of transitional justice? how or whether even they might be leading to a new paradigm shift in the field of transitional justice?

**Alexander:** Something that I think transitional justice has sometimes struggled with is just the messiness of the past and the way that episodes of peace and conflict bleed into one another. Transitional justice tools often want to frame past injustice with very concrete start and end dates. In the mandates of Truth and Reconciliation Commission, for example, these commissions are often instructed that you should start in year "X" and your enquiry should end by year "Y". That this interval and only this interval are of concern here. What the historical commissions do, I think, is to broaden the enquiry and they take an interest in antecedents and in precursors to the violations that TRCs (Truth and reconciliation commissions) might focus on narrowly. As I was saying just earlier, they also are good ways to think about what reverberations and what legacies these events have. I think what the historical commissions may help the field of transitional justice to understand is that you do not have sort of hard and fast dates that can be used to cleanly bracket injustice. There needs to be a willingness to think about how the conditions of injustice evolved and what legacies the injustice leaves going forward.

**Cira:** I agree completely with Alexander, here. I think, to tease a bit more his argument, I think historical commissions do offer transitional justice these tools to address temporalities different. Investigations of historical commissions signal the unavoidable

distance in between the present and the past, but they do work towards identifying these lines of continuity that have contributed to the unfolding of a specific social, political, economic and cultural junctures of today.

**Tine:** That's very interesting, and it actually also reminds me of an episode that we did on Chile just a couple of months ago saw a link to that in the show notes, which was also about this temporality and a need for longer temporal mandates. I think it's a shift that you do see happening within the field of transitional justice as well. The correlation between these two evolutions, I think, is very fascinating. We are approaching the end of this episode, so I am just going to ask you to one question that we ask. All our interviewees are towards the end of a conversation, which is which solutions you see happening around you that you think are promising in terms of how the field is evolving. I think, Alexander, you already hinted at this combination of various methods being used. But I want to put it back there for the two of you, if you have any evolutions that you think are promising for the field of transitional justice as it relates to the use of historical commissions.

**Alexander:** The one interesting thing that may be worth mentioning here is what historical commissions and what transitional justice tools more generally can mean in the context of what we call sometimes consolidated democracies. I think that we are seeing recently signs that consolidated democracy is never fully consolidated, and that the enactment of justice and the recovery of truth matters at all times, not just in so-called moments of transition in the immediate aftermath of violence or political oppression; but it matters at all times. I think that exercises like the ones historical commissions facilitate this clarification exercise, these exercise in accountability, they are important for maintaining the functionality and the legitimacy of democracies. Where we see states that are backsliding, where we see states losing traction on the democracy index, let's say, historical commissions can really provide an opportunity to engage with past injustices in a way that I think really articulates and reinforces democratic ideals and in a way that marks and commemorates instances of failure when the state has failed to deliver what it's promised and in ways that help us envision a programme of repair. I think that is important in all democratic contexts, not just in the context of transition.

**Cira:** I will take more of a practical or methodological approach to my answer. As we have discussed today, consolidated democracies are increasingly turning to transitional justice to address the legacies of the colonial past. However, the context in which the transitional justice discourse and mechanisms are invoked is vastly different from those of post-conflict or post authoritarian settings for which the transitional justice strategy was first developed. I believe that within this paradigm shift, there might be an opportunity for the field of transitional justice to turn to disciplines that might not have been part of the initial toolkit and adopt other methodologies that might fit better the demands of the context. For example, by turning into the work of historical commissions.

**Tine:** I really like that both the kind of more paradigmatic thing that underlines the migration that you see of transitional justice to other fields that are not transitional, if you will, or not transition into paradigmatic sense of the word. But then indeed also how we need to rethink our transitional justice toolkit, right? Because that thing has pretty

much remained the same for a long time and everything that didn't fit the paradigm, we moved into the category of guarantees of none returns. But I think indeed, talking about these historical commissions, it also gives us a way to think about how within each pillar you better logical innovations and deviations have, if you will, that are possible that make the toolkit more complex specific. I think that's a very relevant thing to keep in mind and to keep exploring.

I'm going to just end by thanking you so much for this conversation. I really enjoyed it a lot. We will be back next month with a new episode, and until then, for our listeners, they can reread show notes for this episode on JusticeVisions.org, where we will also link to the different resources that were mentioned during the conversation. You can also follow us or like us on Spotify, Apple Music at Anchor. Alexander, Cira, thank you so much.

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Justice Visions is made possible through a generous funding of the European Research Council.