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Transitional Justice's Revolutionary Potential

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 this new episode of Justice Visions. My name is Tine Destrooper.

Brigitte: And I'm Brigitte Herremans.

Tine: And today we will be starting a new miniseries of the podcast, namely on transitional justice and protest. And we'll be talking to a few people who really try to take us back to kind of the revolutionary roots, but also the revolutionary potential of transitional justice.

Brigitte: Yes. And there are many reasons for doing so. Firstly, because of the phenomenon of social protests and also because of the strong resurgence of authoritarian regimes.

Tine: Yes. And what we've been observing is that in that context a lot of people have been thinking in a way about the popular roots of transitional justice. So, we see a lot of critiques today about standardised transitional justice as being too formal, too stodgy, too removed from people's lived realities. But I think much of what we now call transitional justice is of course rooted in a practice, but also in a demand that really comes from below, if you want to call it that. That's really rooted in protest. And so of course it's typically that protest that leads to regime change. And that protest doesn't stop after a peace agreement is signed. And we've been interested in that dynamic of protest, of grassroots activism and how that has or has not been shaping transitional justice.

Brigitte: Yes. And it's quite interesting because that dynamic that's really underexplored in transitional justice research. And paying more attention to the dynamic of grassroots activism could give us a better understanding of how protests are really shaped to advance revolutionary objectives.

Tine: And I'm aware that to some extent that's a contentious position. But just to give one concrete example of the kind of dynamics that we've been interested in is that if you look, for example, at the Latin American context, let's say the *Nunca Mas* narrative in Argentina, but also the mobilisation of the Abuelas de Plaza De Mayo, what they have been asking was really, you know, information about the disappeared. And maybe neither of those actions or discourses were necessarily using the language of TJ that point, just because it was very nascent back then. But I think the way in which they shaped - or protested - their demands really had a big influence on the kind of trade that then consolidated TJ then consolidated of course, and kind of travelled back and also inspired, I think, some future like grassroots initiatives, which then for a variety of reasons did start to adopt that transitional justice framing. So there the question is: what does that do to their struggle? And so that interaction between that protest and that standardisation or consolidation I think is something really interesting to explore in more detail.

Brigitte: And indeed has been underestimated somehow, also because of the fact that the field of transitional justice has become so standardised.

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Tine: And I think the critique of standardisation is very justified, but it shouldn't lead us to also overlook which revolutionary potential is there in cases where people that have very kind of disruptive or transformative aims are relying on that discourse to do something else with it beyond kind of the normative objectives of standardized TJ.

Brigitte: Yes, it's true. And it's also what's happening in the case of Syria that I'm studying, where you see that, just as you described in Latin America, grassroots movements are really spearheading new initiatives that are serving innovative ways of dealing with the transitional justice toolkit and that are really combining both revolutionary goals and resistance and also shaping new ways to push forward justice and accountability aims in a very atypical setting. So, that is one dynamic of disruption which is super interesting.

Tine: It's true, and I think in itself a lot of your interviewees, for example, would be considering their mobilisation as a success to some extent or by some parameters, right?

Brigitte: Yes, they would, even if they push back against a more standardised field of transitional justice or especially the scholarship and the label of transitional justice, they still inscribe what they are doing into the field of transitional justice and they are using the toolkit. So they re-adopting it, accommodating it, and aspiring to push the boundaries of the transitional justice toolkit in a revolutionary way.

Tine: And I think that's really important because if we're not looking at those objectives or aspirations or the way in which TJ is mobilized in those concrete struggles by concrete actors, we're missing half the story. And so for me, it's really important not to say: it wise or is it not wise to be using TJ, but just to really be examining when people do mobilise that discourse, what does it mean for their struggle, but also what does it mean for the field of TJ, this expansion to a paradigmatic contexts? And so that's what we wanted to explore with the miniseries that we're introducing today.

Brigitte: Yes. And I think the adaptation of the transitional justice language and practices by protesters, we see it happening all over the world. And today we're starting in the MENA, but of course, we're going to be exploring other cases and causes as well.

Tine: Yes, that's true. We will also be talking about Peru in our next episode and we'll be talking about the United States. But, Brigitte, you introduced MENA now, so I'm going to let you introduce our interviewee for today.

Brigitte: Yes, happily so. So today we'll be talking to Noha Aboueladab, who is a professor of transitional justice at Georgetown University in Doha. And she is specialised in transitional justice in the Middle East and North Africa, but very specifically also zooms in her latest research on resistance and revolutionary aims of transitional justice. And she wrote two really interesting pieces that I would like to briefly introduce. One is in the International Journal of Criminal Justice on the revolutions in the MENA region, on revolution and transitional Justice. And another is a chapter in the edited volume that you've been working on, on transitional justice in aparadigmatic cases, looking into accountability as a tool for innovation in atypical cases in the MENA. Well, if I can start with a very broad question, why is it important to talk about transitional justice and protest or even transitional justice and revolution today?

Noha: It's a real pleasure to be able to talk about this, especially because my research on transitional justice and resistance is very much, you know, a you know, a developing thing. It's very much in progress. And I still struggle with a lot of questions. So it's a good

opportunity to talk to you about this. I would say the reason is that transitional justice and protest and revolution are important to talk about together is that transitional justice has a life that doesn't really end right? If we look at Argentina, Brazil, Uruguay, Spain, a lot of these countries are still struggling to address their past. Even Tunisia, when some thought: 'Wow, you know, it's the Tunisian case that is making great headway in truth seeking'. Which it was. It's now struggling to keep its head out of the water because of the draconian measures the president there has been taking to stifle dissent. So protest is similar in the sense that because of the structural complexities of injustices that societies around the world face, it is through protests that these issues are forced onto the agenda and hopefully eventually addressed. And transitional justice, I would say, is important for when that happens, because ideally, transitional justice actors seek to ensure that the way that these injustices are addressed is appropriate, legitimate, meaningful, transformative and just. But at the same time, I would say it's important to remember that because protest is integral to transitional justice, it's not necessarily something that only comes after or before sorry,- before transitional justice or perhaps, we can say that transitional justice itself is a form of protest and is a form of resistance, which, as you know, is an argument that I've been making in my work for a few years now on transitional justice and revolution. The aspirations of transitional justice, I would argue, are, by their very nature, revolutionary in the sense that transitional justice seeks revolutionary change. So, for example, the legislation that US Representative Barbara Lee introduced, seeks to achieve a number of things, and one of them is truth telling and historical accountability through a national commission, right? In order to be able to transform the future of the United States and to begin to meaningfully redress racism and inequality. And she says that the U.S. as a country needs to transform and reparations are going to be an important way for that transformation to happen. So here we see transitional justice being centred as an important means to achieve this. When when the anti-government protests broke out in Egypt in 2011, one of the prominent protest chants was, of course, bread, freedom, social justice: '*Aish, Huriya, 'Adalah Igtimaiya'*. Now, what is social justice? It's not just holding individuals accountable, right? It's definitely not something that happens overnight. It's about uprooting a system of injustice that affects millions of people and that takes time. But it also requires policies that will ultimately be revolutionary because they seek massive change that affects massive numbers of people. And of course, policies alone won't be able to do that. You need societal buying, right. And you need political will, perhaps even a new social contract. And these are all revolutionary objectives. And given the increasing sort of expansion of the field of transitional justice and what it means and what it seeks to achieve, I think that we can say that transitional justice can at least be a catalyst for such revolutionary change, because it is a form of protest and a form of resistance.

Brigitte: So you're describing contexts where atypical transitional justice models are being tested and less standardised approaches are being used. But how does that way of doing transitional justice coexist with the more managerial approach of doing transitional justice, which is of course an approach that doesn't seek to change the root causes of conflicts?

Noha: Yeah, I mean, this is an important question because justice in general and I would say transitional justice in particular can often be a battlefield, that can get pretty ugly. And what I mean by that is it's transitional justice isn't simply the realm of well-meaning activists and victims and lawyers. It is also the realm of, let's say, politicians who seek to clamp down on transitional justice efforts, or to advance a version of transitional justice that suits their political interests. It's also very much the realm of authoritarian governments, of elites, militaries, police forces, intelligence agencies, many of whom often prefer to protect the status quo. So; because the state is often in these contexts, in these ongoing sort of violent contexts, because the state is often the target of transitional

justice efforts, that battlefield of transitional justice becomes very fraught, very dangerous, very dark. And you can see this, for example, through transnational surveillance practices, where you have governments monitoring and surveilling their citizens abroad, especially the citizens who are seeking some form of transitional justice. And so you also see it through intensified crackdowns on political dissidents and their relatives through arbitrary detention, disappearances and torture. You see it through legislation, the stifling of civil society, of freedom of speech, of political dissent in general, through the passing of laws that suffocate all of that. So transitional justice, as resistance against injustice, often finds itself waging a battle against transitional justice as authoritarian rule to entrench injustice. And I think, you know, the what you mentioned earlier, you know, in your question about the context where there's this failure to address the root causes, it's that's on purpose, that is that is very much on purpose. And that, I think, is central to why you have this battlefield of transitional justice.

Tine: Another question that I just had Noha, and building on what you just said is that, of course, the argument that you're developing, I think a lot of the resistance to the injustices that you're examining really concerning justice is related to colonial legacies? And I think if we look at today, a lot of what that looks like is ongoing extractivism for example, economic crimes, socioeconomic injustices, which also corporate actors are involved and play a central role. And so I'm wondering if you could say a bit more about what you think that means for the direction in which TJ scholarship and practice are evolving? And then specifically, what do you think that means for TJ's quite a typical not obsession, but really looking at the state as kind of the central actor in transitional justice?

Noha: Yes. I think that a lot of the efforts to target corporate actors, they I mean, in a way they decentre the state. But I think at the same time we can say that the state remains very central in the sense that even where corporate actors are the perpetrators, you often find one or more states involved in those very corporate crimes, right? Whether it's banks or multinational corporations, etc. And corporations can often provide a nice shield, let's say, for governments to attempt to wash their hands off whatever violations they're involved in. And so one thing that I find somewhat interesting is that the pursuit of criminal accountability for Western corporate actions in the Global South has made clear that whatever happens domestically can often be found to be bolstered by complicit Western actors, whether they're governments or corporations. There's this web of complicity, you know, whether it's the BNP Paribas case in Sudan, SNC Lavalin in Libya, and let's not forget the arms industry as well and how closely tied governments and corporations are there and the obviously the enormous amounts of death and destruction that they're responsible for, or at least complicit in, especially in conflicts such as such as in Yemen. But I think what's perhaps changing a little bit is that the state is presented with little choice but to do something about the challenges it faces from transitional justice actors who seek, to especially those who seek to hold them accountable in courts like through universal jurisdiction. And the state has decided to do this through the language and the tools of transitional justice. And when it does something about these challenges, I think this is where it can get ugly. Passing repressive legislation to clamp down on accountability efforts, imprisoning people arbitrarily for their efforts to seek justice, torturing people, killing them. And then within the same breath, you see the same governments that do this also call for nice things such as reconciliation and transitional justice without really defining what that means. But their use of the language of transitional justice is an attempt to gain credibility, I think, in the eyes of certain actors, you know, whether it's in the international community, but also perhaps domestically. So it's like the state is saying: 'You want to play transitional justice. Well, we can play transitional justice, too.'

Brigitte: And relatedly, when we talk about opportunities in opening up new spaces for transitional justice, there are also limitations in his approach. And, of course, these are very much linked to repression by state officials and other forms of violence. Could you maybe shed a light on the limitations that you see in this new approach to transitional justice?

Noha: I think that, you know, I started off by saying that people who were people who protest and who resist and who seek revolutionary outcomes are I mean, they're driven by a struggle against injustice and a struggle for justice, which I think is a nice way to sort of describe this interconnectedness of time. It's not just backward looking or forward looking. It's both, all at the same time. Unfortunately, as the Arab uprisings at least have shown, these two struggles can be mutually exclusive. In the sense that there were a lot of struggles against injustice in these uprisings, but less so, struggles for justice. As in: what should come next? Who should come next and how should that happen? And there are, of course, big and complex and understandable reasons why the struggle for justice didn't exactly pan out as many had hoped. But I think that I think it's important that we ask ourselves as transitional justice practitioners and academics: are we overstretching transitional justice? Are we attempting to make it relevant in too many ways or to too many different issues? I don't believe we are, but I think it's very important that we continue to ask ourselves this question regularly. One, you know, on this issue of limitation, I think one significant limitation is knowledge production in transitional justice. It's mostly Western knowledge production that becomes mainstreamed. And this is, of course, a problem not just in transitional justice, but in so many other disciplines. But because transitional justice is such a policy heavy field, this limited representation, let's say, of the intellectual and practical material related to transitional justice is something that I think ultimately limits the strength of transitional justice policies to address these diversified contexts. And it's definitely something that that needs to that needs to change.

Tine: Related to that, I was also wondering, because of a focus that you have on resistance and revolution and protest, whether do you think that way of looking at transitional justice in practice will lead to kind of a rethinking of the pillar structure of transitional justice, either by kind of problematizing the pillars altogether or by making one pillar more prominent than another one? Do you have any insights on that?

Noha: Rather than changing the pillars of transitional justice as we as we have them, maybe just maybe shifting our understanding of their objectives through the lens of protest and resistance and revolution. I think that, reparations and apology. … I mean, it was really interesting, for example, to see, you know, with the transition in the British monarchy last year and the sort of momentum among the Caribbean countries to demand reparations from the British government for its colonial legacy there and its continued sort of legacies that they experience in the present. I think it was really interesting that the apologies were you know, “thank you very much”. But that’s really … At the end of the day, that doesn't mean anything. And they weren't they weren't really apologies. They were expressions of regret and sorrow from what I remember. But I think so I think that the pillars as they are perhaps are just fine. But what needs to perhaps develop a little bit is the way that we think about what their objectives are. And I think that we can say the same thing about the core objectives of transitional justice. I mean, if you were to ask me what are the core objectives of transitional justice? It's such a huge question. I don't think, you know, I mean, would be here forever to discuss that, but that's fine because every context is different, as we know, and protests and resistance and revolution is a nice lens. I think it's a very sort of effective way or framework to think about how you can adopt transitional justice to different contexts.

Tine: I mean, of course you're mainly studying the Middle East and North Africa, but whether you see that there's any lessons, these anti-government protests and maybe even especially the protests of 2011 and the lessons that they hold for the broader domain of transitional justice, and then especially when it comes to thinking about the future of transitional justice and resistance?

Noha: Gosh, I think that given the aftermath of the uprisings. In the Middle East and North Africa. I think we need to pay a lot more attention to the way in which transitional justice is weaponized by, let's say, since we're talking about revolution by counter-revolutionary forces. And it's it happens in both subtle and not so subtle ways. And I think we need to pay much more attention to the subtle ways that these sort of counter-revolutionary transitional justice forces and how they're operating. But I also think that because I think, because this issue, this limitation of knowledge production and what gets foregrounded as legitimate, meaningful knowledge in transitional justice is something that, you know, obviously needs to change. Because I think one of the casualties of this sort of non-representative or weakly represented intellectual and practical insight in the field of transitional justice, both in practice and in scholarship, is that a lot gets missed. A lot gets overlooked. There's a lot of innovative, … there are a lot of innovative practices that are happening on the ground that we don't know about. And so I think we need to .. That's another sort of lesson learned, I think, is we really need to take seriously how we produce knowledge and which knowledge gets taken, to take centre stage or at least is foregrounded in the field of transitional justice.

Tine: And so then maybe a very last question, a question that we ask of all our interviewees is where people are looking for inspiration? What kind of the trends are that make you hopeful, or to inspire your own work on transitional justice and where it's heading?

Noha: I think there's an interesting trend of leveraging criminal accountability to draw attention to, as a form of resistance, for broader objectives and sort of more longer term objectives. I think that grassroots movements in the region that I study closely in the Middle East and North Africa have always prioritised documentation and the dissemination of that documentation. But I think what's also really interesting is the use of the digital space in the current, especially in the current restricted, environment for civil society in particular, right? Civil society so suffocated legally, politically, you know, and in many cases even socially, there's a lot of distrust. And so the digital space has become so crucial for documentation, for resisting essentially the erasure of history. And so this battlefield that I was talking about earlier, is also a battlefield over narratives. And the digital space is one where you can continue that battle, whether you're still inside the concerned state or you're outside of it in the diaspora. And what's also really interesting, I think, about what these non-state civil society actors are doing is memorialisation, right? The memorialisation of physical spaces where crimes and atrocities have happened and using the digital space to memorialise that. You can find some really interesting examples, for example, with the International Coalition for Sites of Conscience, they're doing this whole digital mapping project. So for example, in Lebanon, they have these markers throughout the different cities where Lebanese people were disappeared, forcibly disappeared. So they you'll be walking down the street, a marker with a barcode that you can scan and then you can read more about what happened to this person. And so that's a really nice way of ensuring that these physical spaces where physical atrocities took place are memorialised through the digital space as well. And that is, I think, a very powerful form of resistance. You can't just walk into the Syrian government building and say: 'Hey guys, why don't we establish a truth commission and come up with the reparations.' But you can't do that right now, of course, in the current climate. But you can do all of these other things to resist this enforced collective amnesia, which is a huge problem, and has

been a huge problem for quite a while now, especially, at least in the region that I study closely, in the Middle East. And so the use of these other these transitional justice tools, both physical and digitally, I think is a very form of is a very powerful form of resistance to that collective amnesia.

Tine: So, thank you so much Noha for sharing these insights with us. And I think they give us really rich talking points to also discuss with the interviewees in the next episodes of this miniseries next month. That will be Peru. Right now, I am just going to thank you so much. And for our listeners, please stay tuned.

Noha: Thank you very much for having me. It's a pleasure.