

Accountability and redress for the injustices of displacement: Introduction

Megan Bradley

Brookings Institution and McGill University

Roger Duthie

International Center for Transitional Justice

Historically, displacement crises have often been seen as inevitable by-products of conflict, and displaced persons themselves as mute victims unable to contest the injustices inflicted on them. Yet in recent years these assumptions have been challenged through a number of developments in theory, policy and practice that reflect gradually growing concern with the justice dimensions of forced migration. These justice dimensions include the harm that displacement represents in its own right, and the exposure of refugees and internally displaced persons (IDPs) to human rights violations from the murder of family members to the razing of homes and systematic torture and rape, often in the service of ethnic cleansing. From the perspective of policy and practice, important developments include the implementation of large-scale property restitution processes, the inclusion of arbitrary displacement as a crime in the statute of the International Criminal Court, the investigation and commemoration of displacement through truth-telling processes, and the assumption of leadership roles by displaced persons themselves in the push for accountability in countries such as Colombia. These developments have sparked new dialogues between the fields of forced migration, transitional justice and reparations politics, a conversation reflected in an emerging body of recent scholarship.¹

This special edition seeks to continue and deepen this discussion. It brings together leading and new scholars of displacement and transitional justice, and broadens the discussion beyond transitional justice narrowly conceived to look, from an array of disciplinary perspectives, at the interconnected empirical and normative questions associated with the relationship between notions of redress and accountability and the injustices that characterize displacement. The contributions reflect the diversity of ways in which these questions may be conceptualized and navigated, ranging from political theory and legal approaches based in international human rights law to ethnographic perspectives rooted in individual life stories and community histories. Unsurprisingly, these approaches do not always mesh neatly with one another, or with the political and legal frameworks governing peace processes and the pursuit of durable solutions, generating theoretical and practical tensions that serve to bring the complexities of the pursuit of accountability and redress in contexts of mass displacement into even sharper relief.

¹ See for example Harris Rimmer 2010a and 2010b, Duthie 2011 and 2012, Souter 2013, Bradley 2012 and 2013, Haider 2009, Nalepa 2012 and de Alwis 2009. See also the extensive work on this subject undertaken by the Refugee Law Project in Kampala, Uganda, and through a partnership between the International Center for Transitional Justice and the Brookings-LSE Project on Internal Displacement, <http://www.brookings.edu/about/projects/idp/durable-solutions-to-displacement/transitional-justice>; <http://ictj.org/our-work/research/transitional-justice-and-displacement>.

Transitional justice may be an unfamiliar concept for many scholars of forced migration. Simply put, transitional justice may be understood as ‘measures that seek to redress the legacies of massive human rights abuses that occur during conflict and under abusive regimes, primarily by giving force to human rights norms that were systematically violated’ (ICTJ/Brookings 2012: 1). These measures often include prosecutions, reparations, truth-telling processes, certain kinds of institutional reform such as vetting or lustration, and apologies. The notion of accountability has in fact been the subject of extensive debate in the humanitarian field, with research and practical initiatives focusing on issues such as the professionalization of humanitarianism and the tensions between obligations to donors, governments and ‘beneficiaries’—but this debate has been concerned primarily with the accountability of actors working on displacement to displaced populations. This special edition takes a different approach, probing the theoretical and empirical questions raised by efforts to account for and redress the injustices of displacement, and the violations inflicted on—and sometimes by—displaced populations. As the contributors suggest, these injustices may be addressed in myriad ways and on multiple levels. Previous scholarship at the intersection of the fields of forced migration and justice has focused significantly on the ways in which displaced populations and displacement itself may be integrated into the work of ‘formal’ transitional justice processes, such as trials, truth commissions, and compensation programs.² The articles that make up this special edition, while not ignoring such formal processes, broaden the lens to consider how accountability and redress may also be advanced (or undermined) through, for example, support for the resolution of displacement and the ‘legal empowerment’ of uprooted groups; the unfolding of disarmament, demobilization and reintegration (DDR) processes involving displaced former combatants; and the reconstitution of inter-personal, familial and communal relationships. Through these contributions, four key themes emerge: 1) theorizing the harms of forced migration from a reparative perspective; 2) advancing justice beyond national borders; 3) recognizing the blurred lines between victims and perpetrators of injustice among displaced persons; and 4) understanding “everyday” efforts to negotiate past wrongs in communities shaped by violence and displacement.

Theorizing the harms of displacement from a reparative perspective

Concern with a lack of effective citizenship and the possibility of restoring or creating equitable, rights-respecting relationships between states and citizens is central to both forced migration and transitional justice scholarship. One of the key themes of this special edition is the potential contribution of applying a reparative justice lens to the harms associated with displacement. Souter’s opening contribution, for example, deepens the theoretical underpinnings of efforts to contend with the injustices of displacement by considering the ways in which attempts to support the resolution of displacement may have reparative value, potentially benefiting victims in concrete ways and serving as an expression of accountability on the part of actors involved in generating displacement crises. Ultimately, this involves ensuring that displaced persons can make effective claims as citizens for the protection of their rights, whether in their country of origin or in a host or resettlement state.

While the resolution of displacement has typically been seen as a humanitarian endeavour, pursued in relative isolation from political debates over accountability for the

² See for example the contributors to Duthie 2012.

generation of refugee crises, some researchers have explored the ways in which particular solutions such as voluntary repatriation (Bradley 2013) or resettlement (Walzer 1983) may serve as, *inter alia*, expressions of responsibility towards the displaced. Souter continues and broadens this discussion by considering the ways in which durable solutions more generally may in some cases ‘constitute a means through which states can discharge their special obligations towards refugees for whose flight they are morally responsible.’ Examinations of reparations have typically concentrated on one-time actions, such as the offering of apologies, the provision of lump-sum compensation or the restitution of lost property. In turning attention to support for durable solutions as a remedy for the unjust harms of displacement, Souter effectively challenges scholars of reparations politics to broaden their focus to consider a longer-term reparative act that may truly revolutionize refugees’ daily lives. Of course the resolution of displacement is not solely in states’ control: overcoming the personal, communal and national legacies of displacement is not simply a matter of signing a policy to make return, local integration or resettlement a viable option for refugees by conferring or restoring citizenship rights. Yet as the formal, institutional arbiters of legitimate residency and political membership, states do wield significant power in determining which durable solutions are accessible for particular refugee populations. If states were to approach this issue from a reparative standpoint, the landscape for research and practice on durable solutions would shift significantly. As Souter argues, it is not only states of origin that have a hand in generating refugee crises; understanding durable solutions as a form of reparation can help to de-centre return as the predominant solution to displacement in the context of the international refugee regime by demonstrating how enabling resettlement or local integration may help to address other states’ reparative obligations towards refugees. This approach may also strengthen the levels of attention and effort devoted to resolving displacement if, as scholars such as Pogge (2002) and Butt (2009) suggest, reparative obligations are morally weightier and more politically compelling than general, positive obligations such as humanitarian duties. Yet as Souter recognizes, while the proposition has some intuitive appeal, approaching durable solutions reparatively opens up a legion of complex theoretical and practical questions. For example, how might responsibility for supporting durable solutions as a form of redress be allocated? Which solutions have the greatest reparative value, and in which circumstances? In contexts of limited resources and great need for access to durable solutions, how should states prioritize responses to refugees whose situations they had a hand in creating, in comparison to other uprooted groups?

Perez deepens discussion of the tensions surrounding reparative approaches to forced migration, particularly in resource-strapped contexts. In the second article of this special edition, Perez considers the relationship between reparations—including for arbitrary displacement—and broader efforts to improve wellbeing and strengthen socio-economic rights. Under agreements such as the International Covenant on Economic, Social and Cultural Rights, and more general moral principles, states have an obligation to enable their citizens to access key services such as education, health care and shelter. Yet in countries undergoing or emerging from conflict, access to these services is often highly limited, particularly for displaced populations. Indeed, denial of access to these rights may be a critical element of the harm that displacement entails for many refugees and IDPs. To what extent can social policies intended to increase access to socio-economic rights, in accordance with states’ general obligations to their citizens, function as a form of redress? Is it acceptable to provide preferential or increased access to victims of particular rights violations, such as forced migrants? Perez suggests that while states’ responses

to their general and immediate obligations regarding citizens' socio-economic needs and rights do not represent reparative measures, policies focused on their progressive obligations with respect to the attainment of socio-economic rights may appropriately function as a form of redress if they are effectively tailored to respond to the particular concerns of key groups of victims, such as forced migrants, and specifically articulated as reparative measures. Perez illustrates his argument with examples of education policies that take on a reparative character by progressively strengthening displaced persons' access to schooling, in the context of the Colombian state's broader efforts to uphold the right of its citizens to education. Reflecting the need for theoretical discussions in this field to remain cognizant of often harsh realities, Perez underscores the complexities of attempting to take such an approach in contexts of ongoing conflict, such as in Colombia. Indeed, one of the upshots of the arguments advanced by Souter and Perez is that while it is increasingly well recognized that forced migration is at its heart deeply intertwined with questions of justice, a focus on remedial or reparative justice can only address a fraction of these concerns. As discussions of justice and accountability for forced migration continue, questions of the relationship between reparative justice and social and distributive justice as they relate to displacement will require further exploration.

Advancing justice within and beyond borders

Many of the initial discussions that have unfolded on accountability and redress for the injustices of displacement have focused on relevant processes involving IDPs and returning refugees in states of origin. Again, several articles in this special edition expand the scope of analysis to highlight the importance of processes unfolding in 'host' countries where refugees have established new lives, and may remain in the longer term, at the same time as they seek to (re)connect in different ways with their states of origin, including by contributing to justice processes through which refugees may recast their relationships with their former neighbours and governing institutions. As Souter suggests the potential for states to support durable solutions in acknowledgement of their responsibility as part of the external causes of displacement crises in states of origin, Purkey and Clark highlight how efforts to address justice and security issues in refugee camps and among former combatants across borders can facilitate or hinder redress and accountability upon return to states of origin.

Haider's article in particular sharpens conceptualizations of the role of diasporas created by conflict situations in transitional justice and reconciliation processes that unfold in the aftermath of these conflicts, of which to date there has been limited examination.³ Haider takes an important step towards addressing this gap by applying the lens of transnationalism to analyze various ways in which diasporas have engaged in such efforts, and the role of different 'homeland' and 'hostland' policies in shaping this engagement. In contrast to the caution of observers such as Steinberg (2010), Haider is optimistic about the potential of strengthened diaspora involvement, suggesting that this could help to address divisions within diasporas and improve the efficacy of transitional justice and reconciliation interventions by making them more inclusive and comprehensive. Whether diaspora engagement makes good on the potential contributions Haider identifies is a question that continued, future collaboration between forced

³ As one example see Young and Park 2009.

migration and transitional justice scholars may help to answer, building on the foundation Haider’s article provides for these future discussions.

Complexity and complicity: Displaced persons as victims and perpetrators of injustice

Much of the emerging body of literature on accountability and redress for the injustices of displacement is characterized by the assumption that the displaced are innocent, even uncomplicated victims of violence. In part this may be attributable to the legal definition of a refugee established in standards such as the 1951 Convention Relating to the Status of Refugees, which explicitly indicates that those who have committed serious crimes are not to be counted as refugees.⁴ Yet looking at forced migration not only in terms of legal definitions but as a broader social phenomena, as a number of contributors to this issue do, challenges binary distinctions between displaced victims and perpetrators. As Haider recalls, diaspora members may be implicated in human rights violations which can lead to divisions and tensions within and between diaspora groups, other communities and governments.

Combatants—willing or otherwise—are a particularly volatile group of actors who often find themselves effectively displaced at the end of a conflict, as complex questions surrounding their responsibility for abuses render many unable or unwilling to return to their countries and communities. Just as this special edition seeks to foster continued dialogue between the fields of transitional justice and forced migration, recent efforts have been made to bridge the issues of transitional justice and DDR on the one hand, and displacement and DDR on the other.⁵ In his contribution here, Phil Clark completes this circle by considering the challenges associated with harmonizing transitional justice and DDR processes in post-conflict contexts shaped by massive forced migration. Focusing on Rwanda and Uganda, where large-scale DDR processes unfolded alongside return movements and a range of formal and informal transitional justice mechanisms, Clark contends that attempts to coordinate DDR and transitional justice processes have been hindered by a range of difficulties that are reflective of the diffuse conflicts characteristic of the post-Cold War period, in which thousands of individuals are involved in perpetrating atrocities at the local level.

A lack of clarity and consensus about the objectives of transitional justice measures and DDR programs, for example, can undermine the effectiveness of both, particularly when perpetrators and victims of violence overlap within displaced populations undertaking large-scale returns at the same time as transitional justice and DDR processes are unfolding. In such contexts, the aim of upholding a degree of justice, however limited, has to be positioned in relation to other, sometimes incommensurable, peacebuilding, development and security goals—returning to a theme explored by Perez and Souter on the difficulty of setting priorities in environments replete with competing claims for scarce resources. Efforts to coordinate these concerns in Rwanda and Uganda have, Clark argues, been less successful than is commonly assumed. The consequences for displaced populations are significant: tensions emerge when returning populations—whether former combatants or civilians—are treated according to

⁴ Article 1(f) of the 1951 Convention states that “The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity... (b) he has committed a serious non-political crime... (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”

⁵ See Cutter Patel, de Greiff, and Waldorf; Lekha Sriram et al.

different standards in relation both to one another and to local community members. In the Great Lakes, as in many other regions, returning refugees and IDPs who were not involved in perpetrating violence received relatively little assistance in comparison to returning rebels. Tensions surrounding such inequality can evolve into full-fledged grievances if some perpetrators are held to account through punitive justice mechanisms, while others are given an amnesty in order to entice them to return from neighbouring countries or the bush.

Purkey's examination of legal empowerment in refugee camps also looks at displaced persons as not only victims but potential perpetrators of harms in a different context. The harms that refugees deserve to have addressed, she highlights, include those inflicted by government authorities as well as those committed by their neighbours and other members of the refugee community. Yet just as refugees and IDPs are often marginalized in transitional justice processes, they also often lack access to ordinary justice mechanisms and the opportunity to use legal systems to advance their rights and wellbeing. As Purkey argues, legal empowerment efforts in protracted displacement situations can 'enhance the accountability of powerful actors' within and beyond the gates of refugee camps 'for the protection and fulfilment of refugee and community rights.'

Displacement, justice and the 'everyday'

Previous examinations of displacement and transitional justice have tended to focus on 'official' transitional justice processes. However, most displaced persons still do not have the opportunity to participate actively in and reap significant benefits from formal accountability and redress efforts, despite the advances made in recent years. Rather, they draw on the relationships and resources that constitute their 'everyday' lives to try to make sense of the legacies of injustices, and undertake the social repair work that is an almost inevitable part of post-conflict life, particularly when displaced persons return to or otherwise re-engage with the communities they fled. The everyday is an increasingly important theme in the transitional justice literature, and a longstanding concern of forced migration scholars applying ethnographic methods to better understand the lived experience of displacement.⁶ The 'lens of the everyday reveals justice and social repair to be dynamic and perpetually in the process of renegotiation,' an undertaking shaped by tensions between local, national and international norms and practices—much like processes of central concern to forced migration scholarship, such as home-making, return and (re)integration; it is therefore unsurprising that some of the particularly insightful literature at the interface of these fields explores the everyday—that is, the 'lively yet elusive space in which emotions, interactions, tensions, power struggles, tactics of domination and resistance and small, big, ceremonial or routine events occur' (Alcalá and Baines 2012: 385, 387).⁷

Several contributions to this special edition illustrate the wide range of ways in which the notion of the 'everyday' may be understood and explored in terms of responses to the injustices of displacement. While violence can undercut people's 'sense of everydayness' it can also, in some contexts, be expected of broad swaths of the citizenry, rendering it disquietingly ordinary (Alcalá and Baines 2012: 387). It is against this backdrop that Clark considers the predicament of

⁶ On transitional justice and the everyday, see for example the 2012 special edition of the *International Journal of Transitional Justice* on 'Transitional Justice and the Everyday,' as well as Shaw and Waldorf (2010) and Hinton (2010).

⁷ See for example Ruiz Romero (2012), Prieto (2012) and Eastmond and Selimovic (2012).

uprooted ‘everyday perpetrators’ and the (often awkwardly) interlinked local, national and international responses to their return, while Haider examines how the transnational relationships that become an integral part of the everyday lives of diaspora community members contend with past wrongs. Taking a different tack, Purkey’s examination of legal empowerment is concerned with the extent to which refugees in protracted displacement situations can draw on the law to help navigate the violence—physical and structural—that they encounter in their everyday lives. As Purkey’s analysis suggests, there is no bright line between redress and accountability efforts during conflict and those in its aftermath. Rather, the capacity to draw on the law to address justice issues in the everyday context of protracted displacement may shape longer-term prospects for transitional justice in the context of return, resettlement or local integration. This is in part because refugees who benefit from legal empowerment efforts initiated in camps may apply the skills, resources and knowledge they acquire to other contexts, countering their legal and political liminality.

Deepening this exploration of the everyday, Baines and Rosenoff Gauvin explore the efforts of two sisters in Northern Uganda to ‘overcome their displacement from family networks, and seek to restore their status through the performance of Acholi notions of motherhood.’ Demonstrating how everyday acts of mothering can shape reconciliation and the restoration of relationships on the most intimate levels, Baines and Rosenoff Gauvin trace the sisters’ struggle to ‘hold their children’s lineages accountable’ to them, suggesting that post-conflict contexts such as Northern Uganda raise critical questions of accountability not only for aid agencies and political institutions such as the state, but also for fractured families who may enable a potent form of justice by legitimizing the status of mothers who gave birth to their children in the context of early or forced ‘marriages’ that occur in war. Through everyday activities of caring for their children and renegotiating their relationships with extended family members, the sisters resist their exclusion and insist on accountability to themselves, in part by being accountable to their children as ‘good mothers.’ As research at the intersection of displacement and transitional justice advances, everyday practices will continue to be an important source of insight into how survivors manage if not resolve lingering violence that formal mechanisms simply cannot address, but which come to the fore as displaced families reunite and plan for their futures.

Continuing conversations

As the articles in this special edition demonstrate, the intersection of displacement, accountability and redress is fertile ground for exploring, from a fresh perspective, longstanding concerns in the field of forced migration, from the question of ‘refugee warriors’ to the agency of displaced persons and the nature of citizenship.⁸ Although sustained interactions between scholars and practitioners working in these historically disparate fields have emerged only recently, it is already clear that continuing these promising conversations may yield increased insight into how landscapes and histories of displacement shape efforts to understand and address atrocities, and vice versa. Like the field of transitional justice, the study of forced migration is definitively shaped by ‘rights talk.’ Considering questions of accountability and redress for the injustices of displacement may be particularly beneficial in prompting productive reconsideration and deepened accounts of what ‘rights-based approaches’ to displacement entail,

⁸ For further examination of the latter issues, see for example Hovil (2012), Souter (2013), and Bradley (2014).

in theory and in practice. Considering questions of justice moves the conversation about rights-based approaches to displacement beyond examination of the delivery of aid to a consideration of displaced persons as rights-holding agents who must be treated with dignity—a proposition that requires taking seriously the violations that forced them from their homes and that hinder their efforts to reclaim or create new ones.

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