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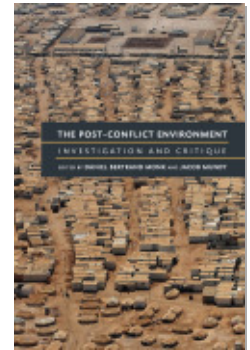
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CHAPTER 3

Transitional Justice

Algeria and the Violence of National Reconciliation

JACOB MUNDY

ABSTRACT

Transitional justice co-constitutes the space and time of the late post-conflict environment, as well as the subjectivities that populate it. Among the various strategies, techniques, and institutional forms of transitional justice today, the truth commission has become one of the premier technologies in the toolkit of Neoliberal post-conflict managers. Deviating from this trend, the Algerian polity has seemingly refused on several occasions to allow the enactment and deployment of a truth commission to promote national reconciliation after the intense violence of the 1990s. Algeria's reticence to follow standardized models of transitional justice has elicited criticism from post-conflict experts, human rights organizations, and governmental bodies. The basis of this criticism, however, is curious insofar as it is either highly speculative about Algeria's future or it is premised upon a limited understanding of the histories, contingencies, and inefficacies of the ensemble of post-conflict mechanisms we now call the truth commission. A fuller account of the emergence and functions of the truth commission within the late post-conflict environment reveals the extent to which it is not the violence in Algeria that necessarily warrants a truth commission. It is, in fact, the technology of the commission that manufactures the conditions of its own necessity. An important function of the truth commission is to render the late post-conflict environment as a space that is both intelligible and intervenable to those who would manage it as such.

INTRODUCTION

Algeria's approach to national reconciliation after the bloody decade of the 1990s stands in sharp contrast with the increasingly routinized practices of transitional justice that have been prescribed and deployed elsewhere in the wake of civil conflict and violent authoritarianism. Critics allege that the Algerian government, at the behest of a notoriously opaque and authoritarian regime, has chosen amnesty over accountability, indemnity over truth, appeasement over justice. Algeria's reconciliation policies have been strongly rebuked by actors in the international human rights, post-conflict mediation, and reconciliation communities,¹ not to mention domestic victims' rights groups. The putative architect of these policies, Algerian president Abdelaziz Bouteflika, has done little to assuage these concerns. When Algeria's national reconciliation policies began to take shape in 1999, the recently elected president justified them to *El País* in these terms:

The situation [in Algeria] is far more complex than it was in South Africa. [. . .] The Truth Commission would be justified in a relationship of colonizer to colonized, such as France to Algeria or Spain to Western Sahara. [. . .] And if my memory does not betray me, you [i.e., Spain] have never needed a commission to achieve democratic transition.²

At home, Bouteflika was more blunt in his praise of forgetting: "How are you going to leave this war behind if you don't forget?" he reportedly told a group of mothers of disappeared persons.³

While it is easy enough to find domestic critics of Algeria's reconciliation policies, there are those Algerians who also support these measures despite their drawbacks. In Raïs, the site of one of the conflict's largest massacres in 1997, the Associated Press spoke with a man in charge of a polling station during a 2005 referendum on a new national reconciliation charter. This poll manager told the reporter, "People who have been so hurt hesitate to pardon [. . .] It is so easy to say 'sorry' but in reality here it is difficult to swallow." Yet pardon is exactly what Algerians have apparently opted for in two national referenda held in September 1999 and September 2005. Both of these votes approved Bouteflika's reconciliation measures by convincing majorities. Though these plebiscites have elicited serious domestic and foreign accusations of fraud and weak turnout, together they suggest that not

all Algerians buy into the amnesty-versus-accountability, indemnity-versus-truth, appeasement-versus-justice tropes that frame the transitional justice paradigm today.

Key players in the transitional justice and human rights movement, as well as some academic observers, have nevertheless lambasted the Algerian government for failing to recognize the alleged necessity of a truth commission, for failing “to learn from the experiences from other countries.”⁴ The predicted⁵ or declared⁶ failure of Algeria’s national reconciliation initiatives is not only attributed to the continued existence of armed violence,⁷ albeit at levels far below the 1990s, but it is often attributed to Algeria’s stated and manifest unwillingness to follow the truth commission model of other countries. Algeria’s evolving and contingent experiment in national reconciliation has even been deemed unsuccessful regardless of its effects in the domains of peace (proper regulation of direct political violence), truth (the generation of an official history), and justice (accountability for all criminal acts). Yet these a priori dismissals of Algeria’s approach rest upon an assumption that previous models of national reconciliation have been successful and thus provide a desirable template. This assumption is, at best, a weak inference and, at worst, pure assertion.

The first goal of this chapter is thus to map the standard model against which Algeria is simultaneously being judged and advised to follow. What emerges is an account of the rise of a technology, the truth commission, whose broader functions in the post-conflict environment spread far beyond its institutional goals. This account begins with an exploration of the imagined geographies and histories of the truth commission, its emergence out of an unlikely ensemble of unique and contingent experiments in national reconciliation. A key inflection point in the genealogy that now legitimates the truth commission as the premier technology of transitional justice is South Africa, which has not only become the standard model but also the frame through which the past, present, and future of transitional justice is now understood and regulated. Looking beyond the ways in which post-conflict managers attempt to account for the role of truth commissions in the production of transitional justice, a more agnostic assessment reveals the extent to which the realization of truth, dignity, peace, and justice are ancillary to the broader functions of the truth commission. Like other transitional justice mechanisms, the truth commission works by affecting space, time, and subjectivities through its transient nature and the staged performance of constrained and simulated acts of justice. Algeria’s national recon-

ciliation initiatives have attempted to achieve the same ends (that is, to produce a post-conflict environment) but without adopting the internationally recognized technological form of the truth commission. Criticism of Algeria's approach to national reconciliation can thus be understood as a reflection of the extent to which the late post-conflict environment is only intelligible as such when it is managed by the self-legitimizing technologies and institutions of Neoliberal peacebuilding.

TRUTH, JUSTICE, AND RECONCILIATION IN THE LATE POST-CONFLICT ENVIRONMENT

The final quarter of the twentieth century witnessed the increasing deployment of semi- and non-traditional justice mechanisms into post-conflict environments. These environments, whether constituted by the experience of mass armed conflict or by excessively violent authoritarianism, span the globe. Attending to the epistemic and practical management of these mechanisms, the paradigm of transitional justice now claims sovereignty over seventy-five such instances, occurring in dozens of countries since the end of World War II.⁸ The vast majority of such initiatives have come into place after 1980, the exceptions being Idi Amin's 1974 Commission of Inquiry into Disappearances and the 1976 World Council of Churches' attempt to document the abuses of Alfredo Strössner Matiauda in Paraguay. Explicitly or implicitly, the Nuremberg and Tokyo tribunals after World War II nonetheless function as the touchstones for most of the thought and work that has gone into transitional justice over the past three decades.⁹

While the end of the Cold War has contributed to the florescence of transitional justice, the changing geographies of conflict since World War II also account for the changing shape of post-conflict management witnessed in these new approaches to national reconciliation. In line with Mary Kaldor's "new wars" thesis, there is no longer any meaningful distinction to be made between civil and international conflict in the age of global Neoliberalism.¹⁰ To this we might add the contention that there is no such thing as an exclusively domestic authoritarianism that does not benefit from foreign networks enabling its tyranny. Moreover, recent transitional justice practice has slowly corroded any distinction between internal, international, and transnational justice. Witness the indictment of former Chilean dictator Augusto Pinochet, the international criminal tribunals for the former Yugoslavia and

post-genocide Rwanda, and the establishment of the International Criminal Court.¹¹

Looking at the specific mechanism of the truth commission (the mechanism Algeria has been criticized for failing to adopt), there have been thirty to sixty such procedures adopted since mid-1970s depending on the operational definition used. These are then often divided into more ambitious truth commissions and less extensive inquiry initiatives.¹² One definition of a truth commission advanced by a prominent practitioner-theorist, Mark Freeman of the International Center for Transitional Justice (ICTJ), highlights the domestic, transitory, and advisory characteristics of truth commissions:

A truth commission is an *ad hoc*, autonomous, and victim-centred commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principle causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention.¹³

Priscilla Hayner, who likewise bridges the observer-advocate divide, claims that there are four shared attributes of truth commissions: They investigate previous events; they investigate patterns of abuse rather than specific events; they exist for a limited period; and they are granted powers by some authority that provides them with legitimacy and efficacy.¹⁴ It should come little surprise that these attempts to define truth commissions are at odds with the very history they claim to represent. Each case could be said to challenge these efforts to corral them into a generic category. After all, only that which has no history can be defined.¹⁵ But definition is not the primary process we need to witness here. More important than definition is the process of reification, the attempt to make real what must first be imaginatively constellated. The reality of transitional justice partially emerges out of the entirely technical discussions that occasion analyses of truth commissions.¹⁶

Looking more closely at the self-legitimizing genealogy of truth commissions, most of these mechanisms have tended to follow armed conflict, constitutional transitions, or a resumption of multi-party electoral processes. The majority of truth commissions fall in the latter two categories, patronizingly termed “fledgling democracies” in some accounts.¹⁷ Only five truth commissions were the apparent result of a negotiated agreement be-

tween warring parties: El Salvador, Guatemala, Sierra Leone, the Democratic Republic of Congo, and Liberia.¹⁸ Like the distinction between internal and international conflict, the distinction between transition to democracy and cessation of hostilities is another difficult bifurcation to maintain, as such sequences are often very intertwined or based upon unstable categories demarcating untenable borders between violent authoritarianism and formal armed conflict. Consider, for example, the four truth commissions Hayner classifies as paradigmatic. In El Salvador, its truth commission (1992–93) was one aspect of the peace agreement between the *Frente Farabundo Martí para la Liberación Nacional* (FMLN) and the government, signed under the auspices of the United Nations. Likewise in Guatemala, its commission (1997–99), inspired by El Salvador’s model, was the outcome of United Nations–led peace negotiations between *Unidad Revolucionaria Nacional Guatemalteca* (URNG) and the government. On the other hand, the commissions in Argentina (1983–84) and Chile (1990–91) followed the end of authoritarianism yet sought to address “dirty wars,” steeply asymmetric armed conflicts marked by intense state terror. The South African Truth and Reconciliation Commission, or TRC (1995–2000), similarly followed a monumental change in governance yet the TRC addressed what could be described as a long-running low-intensity conflict, if not outright civil war according to certain definitions of the term.

As the specific practice of truth commissions and the more general practice of transitional justice have expanded in recent years, so have the number of descriptive, prescriptive, and theoretical accounts. The literature on South Africa’s TRC alone represents a self-sustaining academic sub-discipline at this point. Yet the productivity of transitional justice’s knowledges issues not only from the increasing circulation of its constituent practices but also from putative theoretical impasses the genre generates for itself. One of the key drivers in the assembly of knowledges related to transitional justice is the alleged tension between the imperatives of peace, truth, and justice that form the stays of national reconciliation.¹⁹ Unpacking the term *peace*, we often find deference to notions of stability or the absence of violence and conflict. Truth and justice allegedly threaten peace insofar as either total histories or perfect justice (utopian and superhuman projects to begin with) do not create space for political compromise. This even puts democracy in jeopardy, according to some arguments, because the demand for perfect justice limits the space available for the deliberative political processes wherein the polity mediates its socio-economic conflicts nonviolently. An irony in such

critiques is their failure to acknowledge that non-prosecutorial truth commissions have been put on the table in internationally mediated negotiations to entice warring parties to peace.

Truth, on the other hand, represents the claims of aggrieved individuals and interest groups to establish certain narratives of violence and repression (often dubbed “remembering”) over the claims of others to alternative narratives (regularly dismissed as “forgetting”). In this fashion, truth allegedly threatens justice (or accountability) because it compels justice to act; if a crime is exposed, then the warrant for legal prosecution becomes unbearable to resist (hence the amnesty measures following El Salvador’s truth commission). The tension between these three stays of transitional justice is reproduced in Carlos Nino’s response to the demands of the Madres de la Plaza de Mayo, the mothers of Argentina’s “disappeared.” Nino, one of the intellectual architects of Argentina’s truth commission, thought the Mothers’ demand to see every culpable state agent held to account would bring their society to “the brink of dissolution.”²⁰ A more recent example can be found in arguments against the ICC’s indictment of Sudan’s President Omar Al-Bashir—vis-à-vis alleged war crimes in Darfur—on the grounds that the peace process in Southern Sudan would have been put in jeopardy.²¹

South Africa’s TRC famously attempted to dissolve the alleged tensions between truth, justice, and peace by aiming for a different conception of justice altogether, what the TRC’s chair Archbishop Desmond Tutu trumpeted as restorative justice. Tutu re-encoded the TRC in a Christian vocabulary of “repentance and forgiveness”²²—reconciliation over retribution. One prominent scholar saw such restorative measures as “welcoming the wrongdoer into the circle of humanity.”²³ But what exactly does restorative justice restore? Only an ahistorical account of South Africa could ever maintain that the TRC somehow restored the broken polity to some pre-conflictual state. Mahmood Mamdani’s more historical distinctions between “survivors’ justice” and “victors’ justice” are used respectively to legitimate apparent magnanimity of the TRC and to criticize the putatively neo-colonialist agenda of ICC, given its overwhelming focus on war crimes in Africa.²⁴ For Mamdani, who is normally keenly aware of naming politics, it never strikes him as rhetorically problematic to frame justice with such morally loaded terminology as *survivor* and *victor*. Much the same could be said for *restorative*, with all its positive connotations when specifically contrasted with the term *retribution*. The point here, however, is not to ask whether or not we can ever conceptually and practically reconcile truth,

justice, and peace. Rather, the simple point is to demonstrate the ways in which the play between and across each constituent term is an important basis for the astounding productivity of the literature on transitional justice and national reconciliation processes.

The political contingencies of each experiment in national reconciliation are another co-generator of transitional justice's self-knowledge and practices. To say that all processes of national reconciliation are negotiations between competing claims to truth, justice, and peace should not be a novel or provocative point by now. Truth commissions are as much processes of national reconciliation as they are manifestations of the politics of national reconciliation. Morocco's recent *Instance Équité et Réconciliation* (IER), which has received significant international praise—praise far more positive than Algeria's national reconciliation policies—by explicitly mimicking the performative aspects of other truth commissions, is illustrative. A report by the ICTJ celebrates what might be called the *positive* space of the IER's public hearings as “solemn” and “victim-centered”:

All public hearings were held in auditoriums and meeting halls. They were widely attended, in some cases by senior advisers to the King, government ministers, opposition party leaders, diplomats, international press, and representatives from the country's major human rights NGOs. Hearings were initially broadcast live on Moroccan television and radio, with highlights beamed throughout the Middle East by Al-Jazeera. Subsequent hearings were taped and excerpts televised afterward.

Typically, testifying victims sat on stage directly facing the audience, flanked in silent solidarity by roughly 30 additional victims and commissioners. Each witness was given approximately 20 minutes to speak. By design, commissioners refrained from asking questions of the witnesses during or after their testimonies. Anyone called to testify was asked not to invoke the name of persons deemed responsible for the violations in question.²⁵

The last sentence points to the *negative* space of the IER's public hearings: victims were not allowed to name their persecutors. The fact that the hearings were spatially victim centered (*vis-à-vis* the arrangement of audience and speaker) emphasized the testimonials of the victims by marking them as the focal point of the IER's transient space. What the IER's hearings lacked, but was certainly manifest in their negative space, was any resemblance to a courtroom. In South Africa's TRC, by contrast, the spatial configuration of victims, perpetrators, commissioners, and audience more closely resembled

that of a formal legal proceeding. In the case of Morocco, the pre-vetted victims, rather than commissioners, literally took centre stage. There they read twenty-minute pre-approved statements; no questions were allowed, and perpetrators were not allowed to be mentioned, much less seen. The current regime, as audience rather than judge or defendant, becomes a passive, self-silenced witness to select and censored narratives of the legacies it inherited. Such positive and negative spatial features helped to obfuscate any impression that the hearings amounted to an extra-legal process. They nonetheless reinforced the intended impression of transparency and accountability without actually offering a modicum of due process or even letting victims identify those that had tortured, imprisoned, disappeared, or killed, as such persons, particularly high-ranking officials, those who actualized the tyranny of the late monarch, King Hassan II, who continue to inhabit key positions within the regime or live in quiet retirement.²⁶

This aspect of Morocco's reconciliation commission earned Rabat much criticism for silencing the testifying victims' ability to offer a full account and to demand accountability. But it is arguable that there was a more profound absence in both the case of South Africa's TRC and Morocco's *Instance* (as with most truth commissions that hold public hearings): the vast exclusion of most victims. Less than 1 percent of the thousands of plaintiffs on record with the IER were actually allowed to speak at the stage-managed hearings. The criteria used to select public testimonies attempted to balance gender, the nature of the violation, its historical import, and the geographical distribution of wrongs.²⁷ Still, the IER's low percentage of public testimonials (compared to the number volunteered) is relatively within the practiced norm, though at the lower end of the spectrum. Truth commissions in Nigeria and Sierra Leone only offered public space to less than 5 percent of the victims on file; the well-financed South African TRC, though it held eighty hearings, allowed less than 10 percent to speak. The usual reason given for the absence of most victims from ostensible truth commissions is procedural; an alleged need to "balance" a country's "ethnic, racial and religious diversity," to achieve "gender parity," to screen out false accusations, and, in the case of Morocco, to make sure that personal narratives overlapped as little as possible.²⁸ In short, most truth commissions exclude the vast majority of victim narratives in their public hearings. This observation raises some questions as to what exactly is meant by any claim—espoused by the theorists, practitioners, and proponents of national truth commissions—of victim centeredness.²⁹

While public hearings are considered a finite space for select victim testi-

monials, final reports are often seen as the vehicle through which all narratives can find voice. Yet even in its six-volume report, the South African TRC could not re-print every victim's testimony verbatim. At best, actual and complete statements of victims (and perpetrators) are resigned to commission archives, if made public at all. Technical, logistical, and political efficacy, again, determine what testimonies can be committed to the public page. Amnesty International, for example, criticized the approach of the Liberian TRC for creating a "fragmented truth" in its focus on spectacular violence. From Amnesty's point of view, the problem was not that certain voices were being excluded but that, in focusing on famous acts of violence, Liberia had failed to follow Hayner's prescribed logic of the truth commission; it failed to "find patterns or common features."³⁰ Yet the balance between providing a global account versus the need to highlight exemplary cases is difficult to find. To avoid the "psychic numbing" of overly comprehensive commission reports, one theorist recommended the antidote of "carnivalization," borrowing from Bakhtin; that is, a process that weighs the voices of a small number of illustrative individuals over an anonymous and compendious narrator. Argentina's *Nunca Más* report is said to have taken this route with some success.³¹ The point being, however, that as with the public hearing, the truth commission report also raises questions as to what exactly victim centered is. For the most part, it seems that the majority of real victims must be de-centered for truth commissions to be "victim centered."

Despite these inconsistencies, elisions, and paradoxes in the constitution of post-conflict transitional justice vis-à-vis truth commissions, Algeria's policies have been judged as inadequate for not adhering to these best practices. Where then do these implicit best practices come from if the truth commission model is first made within techno-political discourse of post-conflict managers, and then found in an imaginative geography of post-conflict environments? Just beneath the surface of most criticisms of Algeria's approach to national reconciliation—as even Bouteflika acknowledged to *El País*—is the South African experience, which is now widely viewed as paradigmatic rather than extraordinary. Most truth commissions, after all, have proceeded soon after their instantiation and last, on average, no more than three years; a significant number have completed their investigative work in a year or less. South Africa's TRC took a year and a half just to negotiate its parameters; its mandate required intensive parliamentary debate; and the actual work of the TRC took three years to complete with two years of follow-up. Prior to South Africa, truth commissions operated in various

ways. El Salvador's *Comisión de la Verdad* functioned under UN supervision with an international staff component to help carry out its mandate of investigating only "serious acts of violence."³² It conducted private interviews with two thousand individuals and did not hold any public hearings. Its final report, however, was lauded for its willingness to "name names," particularly given that 90 percent of its recorded abuses were attributable to state agents.³³ The Salvadorian government then quickly passed amnesty measures.³⁴ Like El Salvador, Guatemala's post-conflict truth commission was one aspect of the UN-mediated settlement signed at the end of 1996. However, the *Comisión para el Esclarecimiento Histórico*, which held no public hearings, was designed so that it would not lend itself to judicial prosecution, particularly in that it could not name names.

The effect of South Africa on the practice of truth commissions is striking. It was not until Peru established its own *Comisión de la Verdad y Reconciliación* in 2001 that Latin America saw the first public hearings in a truth commission. Explicitly following the South African model, both Sierra Leone (2002–3) and Liberia (2008) initiated post-conflict truth commissions with public aspects, particularly as interface between perpetrator and victim in the case of the former. Sierra Leone even followed the South African model of having a leading figure in its church, Bishop Joseph C. Humper, chair its TRC. However, the final report, released two years later, only provided a non-partisan history of the conflict, directing attention away from culpability and instead towards the underlying conditions that gave rise to the war (e.g., corruption and bad governance) while making general recommendations to alleviate them. Needless to say, Sierra Leone's national reconciliation processes have been heavily supplemented by formal and hybrid domestic-international tribunals. First was the Special Court for Sierra Leone, established by the government and the UN Security Council in 2000; proceedings for its most high-profile target, former Liberian President Charles Taylor, eventually moved to The Hague for security reasons. Liberia's TRC, which took three years of political wrangling over its enabling legislation, perhaps became the first virtualized truth commission, insofar as the internet played a role in the diffusion of its hearings held in 2008.

The Democratic Republic of the Congo, however, possibly stands as a cautionary tale when it comes to the uncritical application of truth commission models, South African or not, to new contexts. *La Commission vérité et réconciliation* (CVR) was founded in March 2003, several months after the Sun City (South Africa) peace agreement attempted to end a half-decade of

internationalized armed conflict in the DRC that has left millions dead (and counting) and countless thousands of women brutalized by femicidal sexual violence, which is still ongoing as of late 2013. The CVR, however, collapsed in 2006—as a 2004 report of the ICTJ had warned—given the project’s structural, logistical, political, and financial problems.³⁵ The ICTJ likewise warned that proposals for a new CVR in 2008 face similar challenges because, in part, it had simply been “graft[ed]” from the South Africa mold.³⁶ Meanwhile, the DRC’s furtive efforts towards national reconciliation were being eclipsed by the trans-nationalization of justice, in which the ICC began investigating and even arresting suspected war criminals in 2005.

From this heterogeneous set of countries and experiments in truth commissions, it is difficult to see where either the practical or moral warrant for a truth commission issues from. The now routine prescription of truth commissions by international conflict managers and theorists takes as an article of faith the necessity of such procedures. Such is clearly implicit in the criticisms of Algeria’s recent experiments with national reconciliation, as when Dick Oosting of Amnesty International’s Europe office claims, “[N]ational reconciliation processes are difficult challenges but as we have seen in Chile and South Africa, they have to start by acknowledging the facts.”³⁷ Putting aside questions about what such an unproblematised conception of “truth” actually means (e.g., whose truth?), the basis of this imperative is a selective and even Pollyannish understanding of how truth commissions have evolved. Truth commissions often do not utter “truths,” insofar as perpetrators often go unnamed, public testimonies are pre-censored, or the majority of victims are excluded so that the hearings and the final report is not a boring or numbing catalogue of quotidian horrors and systemic violence. That Algeria seemingly prioritized peace over the other stays of national reconciliation—truth and justice—is not so out of the norm as critics allege. Moreover, the assertion that truth commissions produce more stable post-conflict or post-authoritarian systems is just that: assertion. Take, for example, Judge Richard Goldstone’s assessment of South Africa’s TRC: “It will take many decades for the effects of the TRC’s activities and recommendations to be appropriately analyzed and appreciated. In my opinion, however, it can safely be said that South Africa is a better country.”³⁸ Critics might suggest that such an assessment cannot be uttered so “safely,” insofar as there is a strong argument to be made that South Africa appears to have become a neo-apartheid state economically while barely becoming a post-apartheid state politically.³⁹ More generally, a correlative relationship—less causal—

between, on the one hand, truth commissions and, on the other, (non)recidivism, durable peace settlements, or transitions to democracy has yet to be scientifically demonstrated.

A LOGIC OF NATIONAL RECONCILIATION IN ALGERIA

The Algerian government began pursuing reconciliation measures at the height of the violence in the mid-1990s. Algeria's recent armed conflict escalated steeply in 1993 and 1994 following two years of mutually reinforcing acts of terrorism and repression.⁴⁰ Observers often located the conflict's trigger event in the military-led regime's decision to annul the impressive electoral victory of the *Front islamique du salut* (FIS, Islamic Salvation Front) following the first round of national elections in December 1991. The FIS had already taken over a large number of municipalities and provinces in the 1990 local elections, and seemed set to win a clear majority in the parliament in the early 1992 runoff. However, violence between supporters of the Islamist movement and state security forces had been present before the December 1991 vote, including acts and accusations of armed resistance and repression coming from all camps. A brief yet weak Islamist insurgency had already challenged the regime in the mid-1980s. Following the abrupt, and perhaps coerced, resignation of President Chadli Bendjedid in mid-January 1992, a coterie of high-ranking military officers and supporting political elites filled the void they had helped create. Anti-regime and pro-FIS demonstrations followed, escalating into a situation where the government declared a state of emergency, imprisoned hundreds (eventually thousands) of FIS activists and supporters, and then outlawed the FIS outright in March 1992. But locating the precise spark that set off the conflict is problematic because every possible event is contingent upon those that came before it; the criteria for designating any moment, choice, policy, or even a small series of these as constituting sufficient proximate causation will either deploy an implicitly partisan logic or engage in a gross and contestable decontextualization. Minimally, we can say that Algeria's brief experiment in multi-party democracy began with a new constitution in 1989, passed in the shadow of massive riots in October 1988 that had been violently repressed by the military. The global oil price collapse in 1986 had exacerbated an already troubled social, financial, and political picture in Algeria.⁴¹ Often depicted as regionalistic, oligarchic, and clientelist, as well as dominated by the military

and the intelligence services, the Algerian regime, with their easy access to hydrocarbon rents, ruled through the *Front de libération nationale* (FLN, National Liberation Front) as a kind of single-party state for almost three decades following independence from France in 1962.⁴²

Algeria's new yet internally divided insurgency of the 1990s seemingly waged *jihād* for a number of causes, whether for the restoration of the FIS as a legal party, for an Islamic republic, for the institution of full *Shari'ah* law, or for the reconstitution of the Islamic nation from West Africa to Southeast Asia. Just as often it seems that they fought for quotidian, personal, and economic reasons as well.⁴³ The regime, likewise, seemed internally divided on the question of whether or not the FIS should be allowed back into the democratic game or if a military solution was possible against the multiplying heads of the hydra-like insurgency.⁴⁴ There were often suspicions that elements within the state and those aligned to key players in it were exploiting and exacerbating the domestic and international opacity of the armed conflict for their own ends.⁴⁵ Given the multiple, obfuscated, interpenetrating, and interchangeable politics and subjectivities of the armed violence in 1990s Algeria, the motives and identities of violent actors and acts were frequently met with suspicion, cynicism, and counter-intuitive theorizations. In Algeria and abroad, this became known as the "*Qui tue?*" (Who kills?) or "*Qui tue qui?*" (Who kills who?) debate.⁴⁶ The assassination of interim president Mohamed Boudiaf in mid-1992, with its (still) contested accounts, was neither the first story in this genre nor the last. Boudiaf's assassination only added more fuel to the fire. While significantly less violent than the depths of horror witnessed in 1996–98, armed violence in Algeria continued into its third decade, most visibly with an international hostage crisis at a Saharan natural gas extraction facility in January 2013.

From early in the conflict, the Algerian regime launched several initiatives to end the fighting. After three years of sustained and increasing violence following Bendjedid's resignation in 1992, Algeria's president Liamine Zeroual—given the post by the interim junta—initiated the first national reconciliation policy in February 1995 with his Clemency Law (*La loi sur la rahma*), known as simply *al-Rahmah*. The framework of this law was later adopted under the *Concorde civile*, launched by President Bouteflika following his election in April 1999. Both the *Rahmah* and the *Concorde* provided amnesty for any insurgent that was willing to lay down his or her arms.⁴⁷ Exceptions were ostensibly in place for those rebels who had engaged more egregious acts (e.g., murder, rape, or bombings), though they were promised

reduced sentences. Rebels and sympathizers already in prison for lesser charges would be released. But the years following the initiation of the *Rahmah* actually witnessed dramatic increases in the levels and intensity of the violence, notably the wave of civilian massacres that began in late 1996, peaked in late 1997 and early 1998, and then subsided through the years 1999 to 2002. With the achievement of a truce between the regime and the armed wing of the FIS, the *Armée islamique du salut* (AIS, Islamic Salvation Army), in September 1997, the conditions for a more robust amnesty seemingly improved. Meanwhile, the more infamous *al-Jama'ah al-Islamiyyah al-Musallahah* (Armed Islamic Group or GIA) continued its dirty war against civilians, the government, and state-armed militias for several years to come, though it is now clear that the GIA, along with other insurgent groups, had been deeply infiltrated and manipulated by Algeria's military intelligence since their inception.⁴⁸

The *Concorde*, which was enacted in July 1999 as the Civil Harmony Law and overwhelmingly endorsed in a national referendum that September, was positively received across much of the political spectrum, most importantly by leading figures in the FIS.⁴⁹ Victims of armed groups and secularist opponents of the Islamists voiced strong feelings that the amnesty was too generous, was being applied in a blanket manner, and so was allowing killers and rapists to re-enter society. Indeed, a loophole in the Law allowed the president to make exceptions on a case-by-case basis. Under this provision, all members of the AIS and a smaller armed group were granted total amnesty in January 2000.⁵⁰ By the end of the initial six-month amnesty window (July 1999 to January 2000), the Algerian government claimed that over 5,000 guerrillas had surrendered.⁵¹ Whether these measures had an effect on the violence is undecided. In early 2001, an alleged secret report prepared by the Algerian military was leaked to the French press. It indicated that there had been 9,006 total casualties in the year 2000, including 1,025 insurgents, 603 government forces, and 117 civilian militia members. If true, the year 2000—the first full year after the adoption of Bouteflika's *Concorde*—had perhaps been one of the most violent of the conflict.⁵² The GIA continued for several years until collapsing in 2002; a rival splinter, *al-Jama'ah al-Salafiyyah li-l-Da'wa wa al-Qital* (Salafi Group for Preaching and Combat or GSPC) has continued to fight the government and reportedly became an official branch of the Al-Qa'idah network in 2007.

The persistence of armed violence beyond the scope of the 1999 *Concorde*, the continued pressure asserted by other stakeholders in the national

reconciliation process (e.g., families of the “disappeared,” pro-government militia members, victims of non-state terrorism), and the need to immunize state actors from domestic and international prosecution helped engender a second initiative. Talk of a more general, wide-ranging, and comprehensive amnesty and compensation measure surfaced in late 2004 following Bouteflika’s contested yet convincing re-election to a second term that April. The *Charte pour la paix et la réconciliation nationale* (Charter for Peace and National Reconciliation) passed a less enthusiastic national referendum in September 2005 than its predecessor, and was enacted into law by a special session of the Presidential Cabinet in February 2006 while Parliament was in recess.⁵³ The *Charte* not only updated the deadline for insurgent amnesty (from January 2000 to August 2006), it also amnestied all state agents, including government-armed militias (articles forty-four and forty-five),⁵⁴ and made criticism of government policy during the conflict a crime (article forty-six). Domestic and foreign monitoring groups warned that this latter measure would, in effect, render the work of victims’ advocacy and human rights associations a crime. While the Algerian government has refrained from excessively applying this clause, government relations with victims’ advocacy organizations remain troubled.⁵⁵ Another controversial provision seemingly provided the president with *carte blanche* powers to bring about reconciliation; that article, forty-seven, allows the president to take any measures deemed necessary to implement the *Charte* “by virtue of the mandate given to him by the 29 September 2005 referendum.”⁵⁶

Criticisms of Algeria’s reconciliation approach have also focused on the amnesties afforded by the *Concorde* (for insurgents) and the *Charte* (for state agents), which allegedly come at the expense of truth and justice for survivors victimized by state and non-state terror. What has received less scrutiny are the indemnity measures the Algerian government has used to entice rebel demobilization and to meet the claims of bereaved and victimized survivors. Paying restitution, as an aspect of national reconciliation, is not new; both Chile and Argentina, for example, offered compensation to the victims of state terrorism.⁵⁷ In Algeria, the *Charte* outlined compensation packages for the families of persons disappeared by state agents (6,146 government-recognized cases as of March 2005);⁵⁸ families of rebels killed by the government but only where such losses have left surviving immediate relatives destitute (roughly 17,000 cases); and for persons who lost their means of employment due to their alleged ties to either the FIS or other illegal opposition movements. Presidential Decree 06-93 set the rate of compensation for

these groups between US\$15,000 and US\$25,000, though in practice the average seemed to be €10,000.⁵⁹ Some families of the “disappeared” refused to accept the compensation; some took it but still demanded truth and justice.

One prominent constituency that was surprisingly not addressed in either initiative is civilians victimized by the armed opposition groups that fought the state. A special fund was created in 2008 to provide social assistance to the survivors of “terrorism,” though it also covered persons victimized during anti-government demonstrations in Kabylia in 2001. The latter would mostly consist of persons killed by the gendarmerie and police (local and national) during several weeks of intense clashes.⁶⁰ What is much less clear are the levels of compensation given to the “*repenti*” (penitent insurgents), which were frequently described as monthly stipends rather than single payments. According to one Algerian journalist, the payment is two times the national minimum wage or roughly \$300 US dollars per month (using 2008 exchange rates), though with higher-profile rebel leaders reportedly receiving more than the average insurgent.⁶¹ Some insurgents, however, have complained of never receiving any compensation for their surrender in 2000.⁶² According to government figures, as of May 2008, the *Charte* seems to have allowed some 2,226 “terrorists” to receive amnesty while 300 were referred to the courts for prosecution.⁶³ Accusations of insurgent recidivism marred the *Charte* though it nonetheless helped Bouteflika secure the right to a third term in 2008, and then an actual third term in 2009.

Given these policies (the apparent prioritization of peace and stability over truth and justice, to the benefit of entrenched elite stakeholders and to the detriment of victimized populations), it is not difficult to construct a cynical account of the master logic driving Algeria’s national reconciliation policies. The logic of national reconciliation in Algeria, however, shifts depending on the framework through which these policies are viewed. From an exclusively juridical point of view (the one often adopted by international human rights organizations and other critics of the regime), national reconciliation in Algeria has been a kind of “victor’s justice” designed and implemented to maintain an authoritarian regime at the expense of the general population’s right to truth and accountability.⁶⁴ But when viewed through an exclusively political lens (i.e., as measures adopted towards a political settlement between the government and the armed opposition), the logic of Algeria’s national reconciliation seems like a fairly routine, almost banal set of compromise measures on the part of the government: amnesty and compensation in exchange for a laying-down of arms and a guided re-

turn to democracy where certain Islamist parties are allowed to participate and others are not (the latter being the FIS or any perceived successor such as the Wafa Party). Instead of restorative justice, Algeria's policies could be described as a kind of restorative politics designed to end the mediation of social conflict through violent means. Nonetheless, the Algerian government's approach to reconciliation, as with most domestic political matters, remains within the well-understood authoritarian and rentierist mode: buy off and divide the opposition.

What is perhaps most remarkable about Algeria's experiment with post-conflict national reconciliation is that members of the outlawed Islamist opposition, those likely to be the natural enemies of these policies (as given by the assumptions of cynical critics), have not championed the cause of a truth commission with the same vigor or same numbers as either secular victims' rights group and, more importantly, foreign human rights and monitoring organizations. Given the apparent democratic blessing both the *Concorde* and *Charte* have received, not to mention the reelection of Bouteflika (both initiatives being the main pillars of his electoral campaigns in 2004 and 2009), the actual constituencies pressing for a truth commission in Algeria are quite small. This is not to build an argument against minority or victims' rights, or a utilitarian justification for Algeria's approach. It is to suggest that Algeria's national reconciliation policies cannot be understood as driven by cynical top-down imperatives exclusively.

An important consideration in any assessment of Algeria's national reconciliation policies has to be the nature of the violence in Algeria since 1988. If we assume that Algeria's civil war was composed of neatly bifurcated politics and clearly delineated actor-identities (as is assumed in formalist studies of civil war), then it is just as simple to construct a clear picture of victims, perpetrators, victors, and survivors (as is assumed in formalist studies of transitional justice). However, it is extremely difficult to render such an account of the Algerian conflict given the extent to which much of the violence is undetermined and possibly (and ultimately) indeterminate in terms of its agency, logic, or both. *Undetermined violence* would be violence whose actors and motives have yet to be sufficiently described though there are grounds to believe that an account can be constructed. *Indeterminate violence* means the idea that there are certain acts of violence where the motives and identities, particularly of the perpetrators, cannot be recovered. To make these claims is, of course, fraught with a series of problematic onto-political assumptions. These claims also seem to constitute a strong prima facie argu-

ment for a truth commission in Algeria. But the point is neither to present a definitive counter-narrative of the Algerian conflict nor to suggest that opaque violence undermines the warrant for a truth commission. Rather it is to entertain the idea that there are possibilities of violence that not only supplement our understanding of a potential bottom-up logic of national reconciliation in Algeria but also challenge the conceptual frameworks of identity that govern prevailing approaches to transitional justice.

As noted above, one of the constitutive domestic and international discourses of the Algerian violence is the *Qui tue?* (Who kills?) debate. In brief, this stood for the array of questions about the identity of killers and their motives that often followed acts of violence in Algeria, whether famous, quotidian, spectacular, or banal. It also found numerous modes and outlets of expression. Perhaps the most powerful comes from French scholar Luis Martinez, who had managed to get closer to the violence, albeit during its early stages, than any other researcher. In 1995, he admitted, "In the majority of cases, we no longer know who kills who."⁶⁵ More specifically, there is perhaps no clearer indication of the fact that much of the violence in Algeria since 1992 remains undetermined and possibly indeterminate than the questions of agency and politics surrounding the dozens of large-scale massacres of 1997 and 1998 where at least 50 people were killed in each episode. Never mind the much more frequent and numerous massacres of less than 50 persons that largely occurred between 1996 and 2002, that is, at a time when the political conflict was ostensibly subsiding.⁶⁶

We might also look to Algeria's contested casualty figures as suggestive of the as-yet-undetermined violence, and perhaps the impossible-to-determine violence, during the past two decades. Currently, the Algerian government has settled upon a figure of 150,000 to 200,000 conflict-related deaths since the beginning of the "national tragedy" in 1992.⁶⁷ Yet the reconciliation measures have, so far, only recognized some 17,000⁶⁸ claims of government responsibility for rebel fatalities, 25,000 claims from victims of terrorism (i.e., direct and indirect survivors of insurgent violence) and 8,024 cases of civilians "disappeared" by state agents.⁶⁹ The number of persons considered possibly "disappeared" by armed opposition groups ranges between 4,000 and 10,000.⁷⁰ Given that 25,000 cases⁷¹ were considered falling out the purview of the 2005 reconciliation measures, that still leaves a majority of casualties—if we accept the 150,000 to 200,000 range—unaccounted for; that is, roughly 75,000 to 125,000 deaths for which there is no accounting. As Algerian government figures are seemingly based upon claims for compensation

(either by victims or surviving relatives), it is possible that many victims were either formally or informally excluded by the provisions of the national reconciliation policies (beyond the 25,000 mentioned) or chose not to apply for compensation out of fear, shame, pride, what have you. But then how does the Algerian government know about these 100,000 additional deaths where there have been no other formal civilian inquiry measures and the military has suggested far lower figures?⁷² The exact number of soldiers, gendarmes, police, and pro-government militias killed in the fighting has never been clear, though disputed figures from Algeria's military do not suggest that more than 20,000 combined civilian and security forces were lost as of the year 2000. Regarding civilian casualties only, the most inclusive (and highly contestable) database of massacres and bombings can only account for roughly 8,000 casualties between December 1993 and December 1998.⁷³ As the violence seems to have peaked in late 1997 and declined since then, nobody is likely to maintain that Algeria has accrued 50,000 to 100,000 additional deaths since President Bouteflika claimed 100,000 in 1999. Certainly poor reporting on the part of the Algerian security forces and internecine fighting between guerrilla groups could account for more insurgent deaths. Yet the highest estimates for total armed opposition strength never surpassed 30,000. Other forms of privatized violence could also possibly account for this deficit but suggesting that they compose a significant portion of these missing thousands implies some knowledge about the basic extent of such violence. Privatized and parallel violence—violence that is partially or entirely disarticulated from the putative master logic of the conflict and instead derives its motives from intimate local, familial, and personal factors—remains the least understood aspect of the Algerian conflict, if not contemporary armed conflicts generally.

Though not necessarily, the Algerian conflict can be as much defined by the breakdown in clear categories of identity—civilian, combatant, insurgent, incumbent, guerrilla, militia—as it can be defined in the collapse of a coherent logic to the violence, whether political, personal, local, national, international, economic, or criminal. With this background, one marked by extensively undetermined, indeterminate, and privatized violence, it seems increasingly difficult to maintain strict categories such as victim, perpetrator, bystander, victor, and survivor. Yet such categories are necessary for the actualization of prevailing approaches to the implementation of transitional justice. Indeed, it is only with a clear sense of who constitutes a victim and who occupies the position of perpetrator that we can begin to have a process

of transitional justice in the first place. To speak of survivors' justice is to know already who are the survivors. So the processes of transitional justice have already been completed before the initial steps are taken. Algeria's national reconciliation policies are at least provocative in their refusal—regardless of the cynical or expedient politics of that refusal—to predetermine guilt and innocence in the name of restoring dignity to the nation. We can certainly question whether or not dignity has been distributed evenly across the spectrum of constituencies in Algeria's post-conflict environment, yet the same could and should be asked of more formal transitional justice practices, especially the truth commission. Functionally speaking, there is little difference between the effects of Algeria's approach and cases where more recognizable models of transitional justice have been adopted. So what then renders Algeria's efforts a failure a priori within the technological discourse of transitional justice? This is the question we will turn to next.

THE FUNCTIONS OF TRANSITIONAL JUSTICE

Truth commissions are ostensibly about victims. It has even been suggested that truth commissions restore the voice of the victim that has been robbed from them by repression and violence.⁷⁴ Dumisa Ntsebeza, a South African lawyer who worked as an investigator with the TRC, recalls how one of the testifiers later told the press that “she finally felt relieved. The TRC environment had been friendly. For the first time, she felt dignified and honored [. . .] The TRC seemed to believe her, which was a new experience.”⁷⁵ Others, however, have noted that truth commissions are often more exclusive than inclusive in their treatment of victims. Remarking on the South African TRC's narrative selectivity and partiality, Castillejo-Cuellar concluded, “The TRC was simultaneously a technology that rendered visible certain forms of violence while obliterating others.”⁷⁶ Here he is underscoring the TRC's focus on famous acts—for example, Biko's assassination, the Winnie Mandela football murder-conspiracy, St James Church massacre, the Gugulethu Seven, and Cradock Four—to the detriment of the generalized and structural violence of apartheid. Marlin-Curiel reminds us what is obfuscated: “With ‘victims’ and ‘perpetrators’ cast in the leading roles, everyone else became the audience. ‘Everyone else’ included bystanders of apartheid who had benefited from an unjust system.”⁷⁷ While the victim might seem central in the-

ory, in practice truth commissions, national reconciliation, and transitional justice more broadly de-center the victim in order to construct a post-conflict environment. This is not so different from Foucault's observation that the public execution of criminals had less to do with justice or the condemned and more to do with the evolving power of the sovereign state.⁷⁸ Truth commissions are not simply about the truth or victims; they are about the production of post-conflict spaces, times, and subjectivities. They work by working on the audience.

In so doing, these performances of truth and victimhood help constitute the space-time of the post-conflict environment.⁷⁹ The relationship between the spatial practices of truth commissions and the production of the post-conflict environment is acutely manifested along the temporal dimension. Truth commissions specifically and transitional justice more generally are, first and foremost, markers in time that delineate different periods. While the habits of war and authoritarianism might die hard,⁸⁰ the spaces of hope called peace and democracy can be partially constructed by erecting clear markers in time. Just as peace treaties and elections serve to bound space and time into discrete pockets, transitional justice mechanisms likewise play a role in the constitution of the post-conflict environment by inhabiting the non-space of the imaginary plane separating past (conflict, authoritarianism) and future (peace, justice). Transitional justice re-encodes space and time as peaceful by presenting itself as an institutional bulwark against the past. A tactic in transitional justice's production of post-conflict environments is its spatial and temporal transience. The limited existence and spatial impermanence of the transitional justice mechanism is dictated by its role as an institutional bridge between the alleged gap separating conflict and authoritarianism, on the one hand, and peace and democracy, on the other. It must be crossed and, once through, there is supposed to be no going back.

What is then curious about the criticisms of Algeria's approach to national reconciliation is that, functionally speaking, the various mechanisms put in place there since 1995 have all aimed at accomplishing the same effects as a truth commission (to delineate conflict/post-conflict space-time). Algeria's crime seems to have been the refusal of the government and the polity to adopt the institutional form of an internationally recognizable truth commission. From the accounts above of truth commissions and Algeria's national reconciliation policies, one could make the case that Algeria's approach is no more effective and no more flawed than any of the other con-

tingent experiments that now form the imagined, teleological history that produced the truth commission as an inevitable technological form. But this is exactly where the imperative for Algeria to adopt a truth commission comes from, from the technology itself, and not from the effects that it necessarily produces or does not. For the late post-conflict environment to be intelligible to the communities of managers whose careers are dedicated to regulating it, the late post-conflict environment must be one produced by specific technologies and institutional forms. That transitional justice and national reconciliation must take the form of a truth commission is not truly necessary except in the eyes of the technology itself and those who claim mastery over it.

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Notes

1. E.g., Amnesty International, “Algeria: Truth and justice obscured by the shadow of impunity” (Amnesty International, London, 2000). Human Rights Watch, “Impunity in the Name of Reconciliation: Algerian President’s Peace Plan Faces National Vote September 29” (Human Rights Watch, New York, 2005). Amnesty International and others, “Algeria: Amnesty Law Risks Legalizing Impunity for Crimes Against Humanity” (International Center for Transitional Justice, New York, April 14, 2005). Amnesty International and others, “Algeria: New Amnesty Law Will Ensure that Atrocities Go Unpunished” (Amnesty International, Human Rights Watch, International Center for Transitional Justice and the International Federation for Human Rights, London, Paris, and New York, March 1, 2006).

2. Juan Carlos Sanz, “Abdelaziz Buteflika, presidente de Argelia: ‘No soy un dictador,’” *El País* (July 28, 1999), 4–5.

3. Quoted in Human Rights Watch, *World Report 2000: Events of 1999 (November 1998–October 1999)* (New York: Human Rights Watch, 1999), 336.

4. International Center for Transitional Justice, *Algerian Charter Risks Reinforcing Impunity and Undermining Reconciliation* (New York: International Center for Transitional Justice, September 26, 2005), <http://www.ictj.org/en/news/press/release/275.html>, accessed August 2010.

Western governments, on the other hand, have appeared more tolerant of Al-

geria's national reconciliation policies. In the run-up to the vote on Algeria's 2005 Charter for Peace and National Reconciliation, the EU Commission said that it "hopes that the charter process will be conducted in such a manner that the final result will pave the way towards stability and renewed prosperity in the country" ("EU/Algeria: Amnesty International in Fresh Appeal Against Human Rights Abuses," *European Report* (September 3, 2005), retrieved from Lexis-Nexis).

Following the referendum the US State Department spokesperson said, "Each individual country has to find its own pathway [. . .] This is one particular pathway that, if the Algerian people approve it, will be one best suited for Algeria" (quoted in Elaine Ganley, "Algerian voters overwhelmingly back plan to end Islamic insurgency in boost for president," *Associated Press* (September 30, 2005), retrieved from Lexis-Nexis). Russia's Foreign Ministry seemed more enthusiastic: "We hope that the referendum will usher in an important stage in Algeria's progress towards eradicating all manifestations of terrorism" ("Russia sees Algerian referendum as step towards eradicating terrorism," *BBC Worldwide Monitoring* (September 30, 2005), retrieved from Lexis-Nexis).

5. Abderrahmane Moussaoui, "Algérie, La Réconciliation Entre Espoirs Et Malentendus," *Politique étrangère*, no. 2 (2007): 339–52.

6. International Crisis Group, "The Civil Concord: A Peace Initiative Wasted" (International Crisis Group, Brussels, July 9, 2001). Valerie Arnould, "Amnesty, Peace and Reconciliation in Algeria," *Conflict, Security & Development* 7, no. 2 (2007): 227–53. George E. Joffé, "National Reconciliation and General Amnesty in Algeria," *Mediterranean Politics* 13, no. 2 (2008): 213–28.

7. The 2010 US State Department global human rights report claimed that Algerian government forces had killed 518 "suspected terrorists," while armed groups allegedly killed 220 security forces and 66 civilians in 2009. This reportedly represented a 66 percent increase on the total for 2008.

8. According to the South African Centre for the Study of Violence and Reconciliation's "Justice in Perspective" website, <http://www.justiceinperspective.org.za> (accessed August 2010). The number could be much higher if one adds initiatives without government or international legal sanction.

9. Looking well outside of the twentieth century, Elster provides a historical reconstruction of transitional justice in Ancient Greece (ca. 2500 BP) and the French Restoration (1814 and 1815): Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (New York: Cambridge University Press, 2004).

For other historical perspectives, and the specific phenomenon of "historical" truth commissions (commissions whose focus is less contemporary), see John Laughland, *A History of Political Trials: From Charles I to Saddam Hussein* (Oxford: Peter Lang, 2008). Jeffrey K. Olick, *The Politics of Regret: On Collective Memory and Historical Responsibility* (London: Routledge, 2007). Alexander M. Karn, "Depolarizing the Past: The Role of Historical Commissions in Conflict Mediation and Reconciliation," *Journal of International Affairs* 60, no. 1 (2006): 31–50. Elazar Barkan and Alexander M. Karn, *Taking Wrongs Seriously: Apologies and Reconciliation* (Stanford: Stanford University Press, 2006). *Politics and the Past: On Repairing His-*

torical Injustices, ed. John C. Torpey (Lanham, MD, and Oxford: Rowman & Littlefield, 2003). Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (Baltimore: Johns Hopkins University Press, 2001).

10. Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era*, 2nd ed. (Stanford: Stanford University Press, 2007).

11. The recent trend in such practices has been towards “hybridized” domestic-international courts, as in Cambodia and Sierra Leone, which are currently prosecuting cases of gross human rights violations and crimes against humanity. In 2006, the Security Council also ordered another special tribunal for assassinations, including former Lebanese Prime Minister Rafik Hariri, to be based in The Hague. The United Kingdom’s 1998 detention of General Augusto Pinochet, and the threat of extradition to Spain for charges of genocide, became a watershed for the idea of universal jurisdiction and a broadening of the scope of transitional justice; see Kingsley Chiedu Moghalu, *Global Justice: The Politics of War Crimes Trials* (Westport, CT: Praeger, 2006).

Notably, there have also been Spanish attempts to apply this precedent to General Efraín Ríos Montt of Guatemala for similar charges (on the “Pinochet effect” see Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2006). *Prosecuting Heads of State*, ed. Ellen L. Lutz and Caitlin Reiger (Cambridge and New York: Cambridge University Press, 2009)).

Founded in 2002, the permanent International Criminal Court in The Hague is currently pursuing cases related to recent or ongoing conflicts in Uganda, Democratic Republic of the Congo, Sudan (Darfur), and the Central African Republic. The recent indictment of Sudanese President Omar al-Bashir by the ICC brought significant international attention to the court’s processes and politics.

12. As of 2007, according to Amnesty International, there have been a total of thirty-two truth commissions in twenty-eight different countries, starting with Uganda in 1974. The United States Institute for Peace, however, claims forty-one, dividing these into twenty-six truth commissions and fifteen lesser “commissions of inquiry.”

13. Mark Freeman, *Truth Commissions and Procedural Fairness* (New York: Cambridge University Press, 2006), xiii–xiv.

14. Priscilla B. Hayner, “Fifteen Truth Commissions—1974 to 1994: A Comparative Study,” *Human Rights Quarterly* 16, no. 4 (1994): 597–655.

15. Friedrich Wilhelm Nietzsche, *Basic Writings of Nietzsche*, ed. and trans. Walter Arnold Kaufmann (New York: Modern Library, 1992).

16. Still, within the normative literature, whether academic or non-governmental, comparative studies, procedural discussions, and ethical debates are most dominant: e.g., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* [3 volumes], ed. Neil J. Kritz (Washington, DC: United States Institute of Peace Press, 1995). Nicole Ball, “The Challenge of Rebuilding War-Torn Societies,” in *Managing Global Chaos*, ed. Chester A. Crocker, Fen Osler Hampson, and Pamela R. Aall (Washington, DC: United States Institute of Peace

Press, 1996). Priscilla B. Hayner, "International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal," *Law and Contemporary Problems* 59, no. 4 (1996): 173–80. John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, DC: United States Institute of Peace, 1997). *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, ed. Nigel Biggar (Washington, DC: Georgetown University Press, 2001). Andrew Rigby, *Justice and Reconciliation: After the Violence* (Boulder: Lynne Rienner, March 2001). *Reconciliation After Violent Conflict: A Handbook*, ed. David Bloomfield, Terri Barnes, and Lucien Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003). David A. Crocker, "Reckoning with Past Wrongs: A Normative Framework," in *Dilemmas of Reconciliation: Cases and Concepts*, ed. C. A. L. Prager and Trudy Govier (Waterloo, Ontario: Wilfrid Laurier University Press, 2003). *The Politics of Past Evil: Religion, Reconciliation, and the Dilemmas of Transitional Justice*, ed. Daniel Philpott, Kroc Institute series on religion, conflict, and peace building (Notre Dame: University of Notre Dame Press, 2006). *After Mass Crime: Rebuilding States and Communities*, ed. Béatrice Pouligny, Simon Chesterman, and Albrecht Schnabel (New York: United Nations University Press, 2007).

17. Crocker, "Reckoning with past wrongs." Teresa Godwin Phelps, *Shattered Voices: Language, Violence, and the Work of Truth Commissions* (Philadelphia: University of Pennsylvania Press, 2004).

18. Rwanda's National Unity and Reconciliation Commission (NURC) came out of the 1993 Arusha Accords but did not become operational until 1999; it is a permanent commission within the government rather than an independent ad hoc body.

19. And thus endless efforts to reconcile these tensions; e.g., Helena Cobban, *Amnesty After Atrocity?: Healing Nations After Genocide and War Crimes* (Boulder, CO: Paradigm Publishers, 2007).

20. Quoted in Greg Grandin and Thomas Miller Klubock, "Editor's Introduction," *Radical History Review*, no. 97 (2007): 1–10.

21. E.g., Julie Flint and Alex de Waal, "To Put Justice Before Peace Spells Disaster for Sudan," *The Guardian* (March 6, 2009), <http://www.guardian.co.uk/commentisfree/2009/mar/06/sudan-war-crimes>, accessed August 2010.

22. Annalise E. Acorn, *Compulsory Compassion: A Critique of Restorative Justice* (Vancouver: University of British Columbia Press, 2004), 10–11.

23. Martha Minow, "Breaking the Cycles of Hatred," in *Breaking the Cycles of Hatred: Memory, Law, and Repair*, ed. Martha Minow and Nancy L. Rosenblum (Princeton: Princeton University Press, 2003), 17.

24. For Mamdani's statement on survivors' and victors' justice, see Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton and Oxford: Princeton University Press, 2001), 270–73. For Mamdani's critique of the ICC's intervention in Sudan, see Mahmood Mamdani, *Saviors and Survivors: Darfur, Politics, and the War on Terror* (New York: Pantheon Books, 2009).

25. Veerle Opgenhaffen and Mark Freeman, “Transitional Justice in Morocco: A Progress Report” (International Center for Transitional Justice, New York, November 2005), 18.

26. Aboubakr Jamaï, “Les Survivants De Hassan II,” *Le Journal Hebdomadaire* (August 4, 2006), http://www.lejournal-hebdo.com/article.php?id_article=8960, no longer accessible; on file with author. The government closed down *Le Journal*—arguably the most important magazine of dissent in Morocco—in 2009.

27. Opgenhaffen and Freeman, “Transitional Justice in Morocco: A Progress Report,” 17–18.

28. Freeman, *Truth Commissions*, 227–28.

29. Another way in which victims are often spoken for (particularly by post-conflict experts) occurs in the exhumation of mass graves. One forensic anthropologist conceived of her work as having “helped [victims’] voices be heard in the courtroom and the history books”: Clea Koff, *The Bone Woman: A Forensic Anthropologist’s Search for Truth in the Mass Graves of Rwanda, Bosnia, Croatia, and Kosovo* (New York: Random House, 2004), 226.

As with the role of the truth commission, legal scholar Anne Orford notes that processes such as “the mass exhumation of bodies from unmarked graves” becomes “a performance that generates meaning and allocates guilt and innocence”: Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003), 195.

30. Amnesty International, “Liberia: Towards the final phase of the truth and reconciliation commission” (Amnesty International, London, July 2008), 21.

31. Phelps, *Shattered Voices*, 124–27.

32. Quoted in Hayner, “Fifteen Truth Commissions,” 628.

33. United Nations Security Council, “From Madness to Hope: The 12-year war in El Salvador. Report of the Commission on the Truth for El Salvador” (United Nations, New York, 1993), Annex.

34. See Priscilla B. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (London: Routledge, 2002), 38–40. Thomas Buergenthal, “The United Nations Truth Commission for El Salvador,” *Vanderbilt Journal of International Law* 27, no. 3 (1994): 497–544.

35. Federico Borello, “A first few steps: The Long Road to a Just Peace in the Democratic Republic of the Congo” (International Center for Transitional Justice, New York, October 2004), 14.

36. Laura Davis and Priscilla B. Hayner, *Difficult Peace, Limited Justice: Ten Years of Peacemaking in the DRC* (International Center for Transitional Justice, New York, March 2009), 21–22.

37. Quoted in “EU/Algeria: Amnesty International in Fresh Appeal Against Human Rights Abuses” (September 3, 2005), retrieved from Lexis-Nexis.

38. Richard J. Goldstone, *For Humanity: Reflections of a War Crimes Investigator* (New Haven: Yale University Press, 2000), 71.

39. E.g., Klein, *The Shock Doctrine*, 194–217.

40. For more background, recent narratives of colonial and post-colonial Algeria have been produced by Martin Evans and John Phillips: *Algeria: Anger of the Dispossessed* (New Haven: Yale University Press, 2008). Jonathan N. C. Hill, *Identity in Algerian Politics: The Legacy of Colonial Rule* (Boulder and London: Lynne Rienner, 2009). James D. Le Sueur, *Between Democracy and Terror: Algeria Since 1989* (New York: Zed, 2010).

41. On Algeria's economy and the economic aspects of Algeria's conflict, see Bradford Louis Dillman, *State and Private Sector in Algeria: The Politics of Rent-Seeking and Failed Development* (Boulder, CO: Westview, 2000). Abdelaziz Testas, "The Economic Causes of Algeria's Political Violence," *Terrorism and Political Violence* 13, no. 3 (2001): 127–44. Luis Martinez, "Why the Violence in Algeria?," *Journal of North African Studies* 9, no. 2 (2004): 14–27. Miriam R. Lowi, *Oil Wealth and the Poverty of Politics: Algeria Compared* (Cambridge and New York: Cambridge University Press, 2009).

42. A detailed examination of Algerian elites and structures of rule can be found in Isabelle Werenfels, *Managing Instability in Algeria: Elites and Political Change Since 1995* (London and New York: Routledge, 2007).

A shorter analysis of intra-regime dynamics can be found in Hugh Roberts, *Demilitarizing Algeria* (Carnegie Endowment for International Peace, Washington, DC, May 2007).

43. For an analysis of the insurgency's various motives, see Luis Martinez, *The Algerian Civil War, 1990–1998*, trans. Jonathan Derrick, The CERI series in comparative politics and international studies (New York: Columbia University Press, 2000).

More recent attempts to understand the conflict can be found in Abderrahmane Moussaoui, *De La Violence En Algérie: Les Lois Du Chaos* (Algiers: Barazakh, 2006), and Salma Belaala, "Ethnicité, nationalisme et radicalisation islamiste violente. Etude culturelle du djihadisme en Algérie (1989–2007)" (Institut d'Études Politiques de Paris, Paris, 2008).

An account of the insurgency from the Algerian regime's point of view can be found in Liess Boukra, *Algérie: La Terre Sacrée* (Lausanne: Favre, 2002).

44. For an analysis of Algerian politics at this precise historical moment, see Hugh Roberts, "Algeria's Ruinous Impasse and the Honourable Way Out," *International Affairs* 71, no. 2 (1995): 247–67.

45. For example, Fayçal Karabadjji, "L'économie Algérienne Menacée Par La Mafia Politico-Financière," *Le Monde diplomatique* (1998).

46. One account analyzes the "Qui tue?" discourse from the perspective of a specific and generic cultural propensity towards conspiracy theorizing: Paul A. Silverstein, "An Excess of Truth: Violence, Conspiracy Theorizing and the Algerian Civil War," *Anthropological Quarterly* 75, no. 4 (2002): 643–74.

47. While women were more often portrayed as the victims of the Islamist rebels only, two infamous cases in Algeria demonstrated that women also participated in the insurgency: Zohra "Nacéra" Ould Hamrane, a publicly accused par-

ticipant in the Bentalha massacre of September 1997, and GIA leader Antar Zouabri's sister, Nacera "Khadidja" Zouabri. See also the memoir of "Nadia," an anonymous and somewhat ambivalent female participant in the GIA: Baya Gacemi, *Moi, Nadia, Femme D'un Emir Du GIA* (Paris: Seuil, 1998). It is available in English with an Americanized title: Baya Gacemi, *I, Nadia, Wife of a Terrorist*, trans. Paul Cote and Constantina Mitchell (Lincoln: University of Nebraska Press, 2006).

48. See particularly Mohammed Samraoui, *Chronique Des Années De Sang. Algérie: Comment Les Services Secrets Ont Manipulé Les Groupes Islamistes* (Paris: Denoël, 2003). Abdelkader Tigha and Philippe Lobjois, *Contre-Espionnage Algérien: Notre Guerre Contre Les Islamistes* (Paris: Nouveau monde, 2008).

Martinez even jokingly calls the GIA the "Groupe infiltré armé" (Armed Infiltrated Group); see Luis Martinez, "Algérie: Les Massacres De Civils Dans La Guerre," *Revue Internationale de Politique Comparée* 8, no. 1 (2001): 43–58.

49. International Crisis Group, "The Civil Concorde," 6, 8.

50. Amnesty International, "Algeria: Truth and Justice Obscured," 4.

51. Mohammed M. Hafez, "Armed Islamist Movements and Political Violence in Algeria," *Middle East Journal* 54, no. 4 (2000): 572–91. Amnesty International, "Algeria: Truth and Justice Obscured," 4–5.

52. Florence Aubenas, "Plus de 9 000 morts cette année en Algérie," *Libération* (January 5, 2001).

Based on press accounts, the 2001 State Department's global human rights report only recorded 2,500 deaths in Algeria during the year 2000.

53. Taking issue with the vocabulary of "civil concord," Hadj Moussa criticized the Algerian government for not deploying the terminology of "national reconciliation" because the latter would imply an effort to give voice to the various narratives of suffering. While the majority of Hadj Moussa's argument still stands, the passage of the 2005 *Charte* perhaps shows that there is no essence to the term *reconciliation* that necessarily demands polyvocality. See Ratiba Hadj Moussa, "The Imaginary Concord and the Reality of Discord: Dealing with the Algerian Civil War," *Arab World Geographer* 7, no. 3 (2004): 135–49.

54. Algeria's pro-government civilian militias are another legacy issue of the 1990s that has received little attention internationally, particularly their possible role in any atrocities (e.g., disappearances and massacres). The number of self-forming and government-sponsored civilian militias in Algeria in the 1990s remains unclear; figures range between tens of thousands to half a million; see Salah-Eddine Sidhoum and Algeria Watch, "Les milices dans la nouvelle guerre d'Algérie" (Algeria Watch, Berlin, December 2003). The latter estimate would make self-defense, anti-Islamist and pro-government militias the most well-manned fighting force in the country, far ahead of the combined national army, intelligence, gendarmerie, police, and other security forces.

The alleged excesses of Algeria's state-armed and state-financed civilian counter-insurgency forces briefly came to international attention in April 1998 when two militia leaders were charged with committing serious crimes, includ-

ing a number of disappearances and summary executions. However, they were quickly released and never faced subsequent criminal proceedings; see Human Rights Watch, "Time for Reckoning: Enforced Disappearances in Algeria" (Human Rights Watch, New York, 2003), 27–28. Mohamed Smaïn, *Relizane Dans La Tourmente: Silence! On Tue* (St. Denis: Bouchène, 2004). Subsequent efforts to hold these militia leaders and their relatives accountable in French courts have also failed; see José Garçon, "La 'sale guerre' algérienne rebondit en France," *Libération* (March 31, 2004).

Unlike the contingent amnesty for insurgents, the 2005 *Charte* provided blanket amnesty for all pro-government militias, not to mention members of the security, intelligence, and defense forces, for crimes that they, of course, had never committed in the first place.

55. For a recent example of such state-society tensions, see Human Rights Watch, "Algeria: Stop Suppressing Protests" (Human Rights Watch, New York, May 3, 2010).

56. Quoted in Amnesty International, *Algeria: Briefing to the Human Rights Committee* (London: Amnesty International, October 1, 2007), 7.

57. Hayner, *Unspeakable Truths*, 328–32.

58. Due in part to the international pressure concerning the specific question of Algerians disappeared by state agents in the 1990s, the government launched a new initiative in September 2003 to address this issue. The *Commission d'enquête ad hoc chargée de la question des disparus* (known as the *mécanisme ad hoc*), headed by the national human rights monitoring body (attached to the presidency), was charged with an eighteen-month mandate to act as an interface between the government and the families of the disappeared, to gather all available information on each case and propose solutions to the issue.

See Human Rights Watch, "Truth and Justice on Hold: The New State Commission on "Disappearances" (Human Rights Watch, New York, 2003), 3–5. Fédération Internationale des Ligues des Droits de l'Homme, "Les commissions de vérité et de réconciliation: l'expérience marocaine" (Fédération Internationale des Ligues des Droits de l'Homme, Paris, July 2004), 53. Freeman, *Truth Commissions*, 19–20.

When the *mécanisme's* mandate expired in March 2005, President Bouteflika reportedly received its final report, though it was never made public. However, on national radio, it was publicly disclosed that the *mécanisme* had arrived at a figure of 6,146 persons disappeared by government forces and that its recommendation was to offer compensation, though without formal inquiries or accountability (Interview, SOS Disparus, Algiers, May 26, 2008). In March 2009, the Algerian government, at a meeting of human rights NGOs, gave a new figure for the disappeared: 8,023 (Agathe Duparc, "Les familles algériennes de disparus en quête de justice," *Le Monde* (March 11, 2009)).

59. Andrew England, "Algerians count cost of burying the past with their missing sons," *Financial Times* (July 3, 2007), accessed March 2011.

By the end of 2008, the Ministry of National Solidarity, which handles civil

compensation, reported doling out \$120 million in packages covering 12,000 cases “Réconciliation nationale: Plus de 12 000 dossiers réglés au 31 décembre 2008,” *Liberté (Algiers)* (February 26, 2009).

60. Samira Belamri, “Algeria: Government Creates Special Fund for Terrorism Victims,” *Echorouk (Algiers)* (May 15, 2008), <http://www.echoroukonline.com/eng/index.php?news=852>, accessed March 2011.

61. Interview, journalist with *El Watan*, Algiers, May 25, 2008.

62. Lamine Chikhi, “Algeria Ex-Rebels Say Cash Key to Weakening Qaeda,” *Reuters* (July 15, 2009), <http://www.reuters.com/article/idUSLF115023>, accessed March 2011.

63. Salima Tlemçani, “Application De La Charte Pour La Réconciliation Nationale: 300 Dossiers De Terroristes Ont Été Rejetés,” *El Watan (Algiers)* (May 11, 2008), <http://www.elwatan.com/archives/article.php?id=93925>, accessed July 2010.

64. For example, see Souâd Belhaddad, *Algérie, Le Prix De Loubli. 1992-2005* (Paris: Flammarion, 2005), and the collection of essays by Algerian dissidents, *Quelle Réconciliation Pour L’Algérie?* (Geneva, Switzerland: Hoggar, 2005).

65. In Simon Catherine, “Vertiges meurtriers en Algérie,” *Le Monde* (September 14, 1995), retrieved from Lexis-Nexis.

Martinez, it should be noted, published the only monograph on the Algerian conflict during the 1990s that was based upon extended field research: *Martinez, The Algerian Civil War*. That he came to this conclusion after interviewing several actor types (e.g., participants and profiteers) is highly indicative of the opacity of the violence.

66. The internationalized debate surrounding the questions of agency and motive behind the Algerian violence generally and the 1997–98 massacres specifically are examined in Jacob Mundy, “Expert Intervention: Knowledge, Violence and Identity During the Algerian Crisis, 1997–1998,” *Cambridge Review of International Affairs* 23, no. 1 (2010): 25–47; Jacob Mundy, “Deconstructing Civil Wars: Beyond the New Wars Debate,” *Security Dialogue* 42, no. 3 (2011): 279–95; Jacob Mundy, “‘Wanton and Senseless’ Revisited: The Study of Warfare in Civil Conflicts and the Historiography of the Algerian Massacres,” *African Studies Review* 56, no. 3 (2013): 25–55.

67. “Algérie: entre 150.000 et 200.000 morts depuis 1992 dans les violences (Ksentini),” *Agence France-Presse* (March 18, 2006), retrieved from Lexis-Nexis.

68. Nazim Fethi, “National Reconciliation Moves Forward in Algeria,” *Magharebia* (October 1, 2009), http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2009/10/01/feature-01, accessed March 2011.

69. Adlène Meddi, “Gouvernement-familles des disparus: La rupture” (March 26, 2010).

The highest official estimate for civilians who were “disappeared” by security forces and allied militias is 12,000. See Human Rights Watch, “Time for Reckoning,” 15.

70. Human Rights Watch, “Truth and Justice on Hold: The New State Commission on ‘Disappearances,’” 11–12.

71. Fethi, "National Reconciliation."

72. In 2002, General Abderrezak Maïza, then heading Algeria's primary military command, seemingly contradicted President Abdelaziz Bouteflika's 1999 claim of 100,000 (which has since become 150,000 to 200,000). Maïza stated that the conflict had claimed 37,000 lives between 1992 and 2000; of those, more than 15,200 had been insurgents: "Algeria: Army general says there are 650 terrorists 'all groups included,'" *BBC Summary of World Broadcasts* (October 27, 2002), "Fewer than 650 Islamic extremists active in Algeria: general," *Agence France-Presse* (October 27, 2002), both retrieved from Lexis-Nexis.

When asked about the higher figures maintained by Bouteflika, Maïza said, "100,000 dead, that's a political number. [. . .] Me, I have the names" (quoted in Huguex Vincent and Baya Gacemi, "Algérie: les généraux sabre au clair," *L'Express* (November 7, 2002)).

73. See Aït-Larbi and others, "An Anatomy of the Massacres," in *An Inquiry Into the Algerian Massacres*, ed. Youcef Bedjaoui, Abbas Aroua, and Méziane Aït-Larbi (Geneva: Hoggar, 1999): 13–195.

74. Phelps, *Shattered Voices*, 5–6.

75. Dumisa B. Ntsebeza, "The Uses of Truth Commissions: Lessons for the World," in *Truth v. Justice: The Morality of Truth Commissions*, ed. Robert I. Rotberg and Dennis F. Thompson (Princeton: Princeton University Press, 2000), 160.

76. Alejandro Castillejo-Cuellar, "Knowledge, Experience, and South Africa's Scenarios of Forgiveness," *Radical History Review*, no. 97 (2007): 11–42.

77. Stephanie Marlin-Curiel, "Re-Collecting the Collective: Mediated Memory and the South African Truth and Reconciliation Commission," in *The Image and the Witness: Trauma, Memory and Visual Culture*, ed. Francis Guerin and Roger Hallas (London: Wallflower Press, 2007), 69.

78. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1995).

79. To use Judith Butler's sense of the performative; see Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 2006), 34.

80. Brandon Hamber, "Living with the Legacy of Impunity: Lessons for South Africa about Truth, Justice and Crime in Brazil," *Latin American Report* 13, no. 2 (1998): 4–16.