Ioana Cismas, "Reflections on the Presence and Absence of Religious Actors in Transitional Justice Processes: On Legitimacy and Accountability", in Roger Duthie and Paul Seils, eds., Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies (New York: ICTJ, 2017), pp. 302-343.

CHAPTER 10

Reflections on the Presence and Absence of Religious Actors in Transitional Justice Processes: On Legitimacy and Accountability

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The image of a teary-eyed Desmond Tutu at a public hearing of the South African Truth and Reconciliation Commission is emblematic of the transitional justice process in that country. Examining the work of the commission without recalling the archbishop's role in promoting (restorative) justice in South Africa is a scholarly faux pas. Yet it has also become something of a cliché—which begs the question, are there other religious actors out there championing transitional justice mechanisms?

One possible answer is provided by Daniel Philpott, who documented the involvement of religious nonstate entities in state-led transitional justice initiatives. He found, using a sample of fifteen cases, that such actors were influential in eight out of ten "moderately strong" and "strong" truth processes and in two out of four punitive processes.[2] Other works similarly indicate an important presence of religious nonstate entities in various transitional justice initiatives.[3] Taken together, this evidence is curious if one assumes that transitional justice is built on the same pillars as its sister discipline, international law—namely, secularism and state-centrism.

To probe this curiosity, this chapter relies on a parallelism between international law and transitional justice and their respective relationships to religion and nonstate actors, and is guided by three research questions. First, it asks why religious nonstate actors are called on to participate in state-sanctioned transitional justice processes. For the purpose of this study, religious nonstate actors are defined as those individuals, churches, religious organizations, and political parties which present several of the following characteristics: a religious organizational structure, religious doctrine, religious motivation, religious overarching goal, or predominately religious discourse. Their claim to have the legitimate authority to interpret religion differentiates religious actors from secular[4] actors. In making this claim, they tap primarily into traditional or charismatic sources of legitimacy, which confers on them what can be called a "special" legitimacy.[5] The chapter shall argue that the potential to lend their special legitimacy to transitional justice processes is what makes religious

actors particularly valuable allies for governments, international organizations, and nongovernmental organizations (NGOs) in post-authoritarian and post-conflict settings.

Second, the chapter explores why religious entities are at times absent from transitional justice initiatives in situations where they would otherwise be societally relevant and visible, while at other times they act as spoilers or, on the contrary, as enablers of transitional justice. A number of variables may explain a religious actor's silence or spoiling, or indeed enabling attitudes: past conduct (whether a religious actor was responsible for or complicit in rights violations during the period of authoritarianism or conflict), past treatment (whether a religious actor was a target of abuse perpetrated by other actors), and accountability (whether the religious actor and other actors have been held accountable for their past conduct). In this study, the term accountability denotes "the relationship whereby someone is held to explain and justify their behaviour to someone else;"[6] it, therefore, can include criminal responsibility but it is not limited to it.

The link between legitimacy and accountability is examined in five case studies of religious actors in Romania, Rwanda, Solomon Islands, and Tunisia and Libya (explored jointly). While the findings may have relevance beyond the four examples, in a similar vein to other works that rely on case studies, this chapter does not assume that extrapolation to other cases follows automatically.

Whilst the first two questions addressed in this study are explorative in nature, the third is normative; it asks whether religious actors should be involved in state-led transitional justice initiatives. The answer is outlined by means of a critical assessment of the legality, neutrality, and denial/distortion of justice arguments.

RELIGIOUS ACTORS AND LEGITIMACY

Given the significant role that international law plays in transitional justice,[7] examining the relationship between the former and religion helps to shed some light on the relationship between the latter and religion. This parallel may provide some important insights into why religious entities are courted by governments, intergovernmental organizations, and NGOs, and specifically why they are called on to take part in state-led justice initiatives in the aftermath of repression and conflict.

An earlier study examined in detail efforts by legal scholars to unearth

the religious roots of international law and, in particular, those of human rights and humanitarian law.[8] Such narratives posit that major constitutional documents, such as the French and the US constitutions and the Universal Declaration of Human Rights, are reflective of the philosophy of natural law; insofar as natural law can be seen as an extension of religion, the claim made by religions to have played an important role in the development of human rights law would not be amiss.[9] Also noteworthy are attempts to rebut the exclusivity or predominance of Western, Christian thought in the evolution of human rights and humanitarian law, showing how other religions have contributed to it,[10] and how they are "asserting their values as relevant factors to be considered in its continued evolution."[11]

Attempts by legal scholars to analyze and actualize the role of religion in the evolution of international law may be seen as an exercise in historical accuracy or one in political correctness. They may also be seen, as is evident from many writings, as efforts to strengthen the legitimacy of human rights and humanitarian law within different religious and cultural traditions by appealing to the special legitimacy that religious actors often enjoy. For instance, Daniel Thürer recognizes that "law as such is powerless if it is not backed by forces beyond the legal system, such as customs, public opinion or—religion."[12] In a conscious and strategic effort, Thürer validates appeals to religion, in particular in times of armed conflict, with the aim of unearthing and putting forward its positive elements that can support the law and rebut those that endanger it.[13]

The question that emerges is what the special legitimacy or the special legitimate authority of religious actors should be taken to mean. Drawing on Max Weber's *Idealtypen* of legitimate authority it has been shown elsewhere that the legitimacy of religious actors is primarily ascribed on traditional or charismatic grounds, as opposed to legal-rational ones.[14] On this account, the followers of a religious actor respect "commands" due to "an established belief in the sanctity of immemorial traditions and the legitimacy of those exercising authority under them"[15]—the actor thus assumes a traditional authority. A religious actor can also act as a charismatic authority, drawing on emotions and faith that sanction a type of conduct, whereas followers show a devotion to the "exceptional sanctity" of this actor and "the normative patterns or order revealed or ordained by him."[16] By comparison, the legal-rational authority that corresponds to most secular actors, and indeed international law itself,[17] draws primarily on the "belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands."[18] With this

framework in mind, the narrative that explains the authoritative pull of human rights and humanitarian law not only through their grounding in legal-rational arguments but also through their emergence from the "distillation of religious and cultural traditions" is interesting for transitional justice initiatives,[19] which aim to redress violations of precisely such rights.[20]

Reliance on local religious elements as a strategy to lend special legitimacy to transitional justice measures may carry particular weight in transitional contexts, where claims are often made regarding the importance and need for foreign resources and international structures, on the one hand, and local ownership, on the other. Post-authoritarian and post-conflict states are often characterized by "severely underdeveloped economic and social institutions, widespread scarcity of resources, and myriad competing needs;"[21] hence, foreign funding and a certain reliance on international institutions are often necessary to implement transitional justice mechanisms. At the same time, scholars and practitioners of transitional justice have repeatedly emphasized that local participation in and ownership of these processes are key to a society's prospects of coming to terms with its past.[22] Thus, religious actors' support for and/or involvement in truth commissions, domestic and international criminal prosecutions, vetting programs, and institutional reforms that could be perceived as foreign—at a conceptual level or due to external institutional and financial backing—can prove instrumental. Indeed, Aaron P. Boesenecker and Leslie Vinjamuri suggest that, in addition to civil society organizations, faith-based actors can act as "norm adaptors" and are thus of crucial importance to embedding an international (criminal) accountability norm in various contexts.[23]

At the same time, one must be careful not to fetishize context—not least because few contexts are untouched by outside influences, as "the forms of lives we find around the world are already products of long histories of interactions."[24] It would also be objectionable to accept cultural relativist demands that misuse the discourse of contextuality to essentially deny certain rights to victims or reject certain modes of accountability because they are "alien," thus bereaving victims of adequate redress. But does religious actors' involvement in transitional justice result in such scenarios, and, if so, should they be involved? These are questions to which we shall return.

RELIGIOUS ACTORS AND ACCOUNTABILITY

Having previously focused on the *religious* in the expression *religious nonstate actors* the analysis will now utilize the parallel between international law and transitional justice to contrast their respective accounts of the *nonstate* element.

The role of the state in international law, and in transitional justice, is central. Yet, in recent years, the role of nonstate actors has occupied the minds of many international lawyers—and appears as a trend in transitional justice literature as well. Why so? In international law, pragmatic considerations have led to a reassessment of entities that are not states. Whereas it is generally accepted that states remain the "fundamental or primary" legal subjects, because they control territory in a stable and permanent manner and exercise legislative and executive functions,[25] legal scholars also acknowledge that today "there is not a single area of international law where law-making and law-enforcement . . . has not been affected by . . . [nonstate] actors."[26] In other words, as nonstate actors appear to be everywhere, it is necessary to grasp their doings and account for their growing importance in norm creation and implementation.

A number of strategies have been pursued to include nonstate actors within the framework of the international legal system. "Relativizing the subjects or subjectivizing the actors"[27]—one of the tried strategies—has proved difficult. A subject of international law or an international legal person[28] is that which possesses international rights and obligations and has the capacity to bring international claims to maintain such rights and to be subjected to claims for breaches of its obligations.[29] The state, which conforms closely to this definition, has historically been portrayed as the sole subject of international law; today it is regarded as the sole *full* subject.[30] Indeed, some commentators have critically noted that subjectivity is nothing more than the description of the attributes of statehood.[31] While intergovernmental organizations, such as the UN, have been accepted as subjects,[32] this has occurred due to their strong links with states, which set them up in the first place.[33] Hence, when other actors are forced into the schemata of subjects (read: the schemata of states), unsurprisingly they never quite fit.

Alternatively, Andrew Clapham has developed the "capacity approach," a method that extracts the capacity of nonstate actors to enjoy human rights and carry obligations from treaty and customary international law and jurisprudence.[34] This approach bypasses any discussion about an entity's subjectivity and the symbolism this status attaches[35]; the aim is to ensure an entity's accountability by parsing out its rights and obligations under international law. Complementary to this pragmatic method is the reconceptualization of international legal personality by Janne Nijman, who traces the initial use of the concept to Gottfried Wilhelm Leibniz (1646–1716) and his intention to accommodate the participation in international affairs of German princes (as relative, not full sovereigns) in order to hold them accountable to positive and

natural law.[36] In effect, Nijman unearthed the original meaning of international legal personality as one which does not correspond to subjectivity as preeminently embodied by the state; this latter meaning is a construction of later legal positivist thought. As such, the reconceptualization or recuperation of the original meaning of international legal personality may provide a theoretical underpinning for the capacity approach.[37]

Regardless of which of the above-discussed paths is chosen, one has a strong sense that the driving force behind such efforts to include nonstate entities in international law stems foremost from the need to clarify the accountability framework of these actors, specifically in contexts where they exercise power and affect guarantees of human rights. This is usually predicated on an understanding of accountability in a wide sense, certainly not limited to criminal punishment and not necessarily involving judicial proceedings.[38]

Is the accountability motive mirrored in transitional justice literature and practice? Criminal law scholarship on nonstate entities—in particular, works dealing with armed groups—is abundant and relevant to transitional justice, given that criminal justice is one of its important components, alongside truth seeking, reparation, and initiatives aimed at ensuring non-recurrence. For example, Fionnuala D. Ní Aoláin and Catherine O'Rourke capitalize on precisely such scholarship in proposing alternatives to a state-oriented transitional justice framework that fails to satisfactorily address the accountability of nonstate actors for gender violence in Colombia.[39] A number of studies have explored the topic of armed groups and reparations,[40] and a recent volume edited by Sabine Michalowski examines the accountability of corporations.[41] The concept of accountability that this last publication promotes is—rightly—a broad one, not restricted to holding corporations to account solely through criminal prosecution but also through reparation programs, truth processes, and UN human rights mechanisms.

Beyond this, with regard to the field of transitional justice and its treatment of nonstate actors, two observations can be made. First, the focus on nonstate actors in transitional justice is at an incipient stage. In and of itself, this is not surprising: the traditional approach to transitional justice developed largely as a response to transitions in the Southern Cone of Latin America and was mostly aimed at redressing gross human rights violations committed by an authoritarian state—hence, it was generally acknowledged that the state with its existing institutions could and should repair these violations through transitional justice measures. Much of the literature and practice, therefore, concentrated on improving state action. Yet even in such transitions, nonstate actors, including religious leaders and organizations, were instrumental.[42]

In post-conflict and conflict settings, where today transitional justice measures are frequently called on to operate, one would expect the presence and role of nonstate actors to be heightened. Such contexts are often confronted with state institutions that are weak or corrupt, with populations experiencing mass poverty and marginalization, which in turn create the space for or, rather, require the action of entities beyond the state; moreover, perpetrators tend to be numerous and to involve an array of nonstate actors that will need to be held accountable.[43] In such settings, the state-centric approach to transitional justice appears somewhat frustrated; hence, while increasing the capacity of the state remains vital, it may be insufficient in today's reality.

Second, transitional justice literature on nonstate actors, while not vast, does attempt to provide a more holistic picture of these entities by exploring the roles they play in supporting or shaping the processes of redress of violations and the motivations for their actions. To illustrate, Elin Skar and Eric Wiebelhaus-Brahm propose a multilevel framework for analyzing how domestic and international actors operate within local, national, and transnational environments; they argue that the type of actors that promote or obstruct transitional justice significantly influences the type of initiatives adopted and shapes their impact.[44] The suggested framework avoids an obsessive preoccupation with retribution and provides valuable insights into an "agentic constructivism"[45] of transitional justice. With regard to religious actors, scholars identify a variety of roles they have played in transitional justice, including those of capacity builders, peace builders, legalists, pragmatists, and traditionalists,[46] as well as norm adaptors, norm makers, norm facilitators, and norm reflectors.[47]

Returning to the issue of accountability, post-authoritarian contexts in which transitional justice is implemented raise questions as to whether and how to hold nonstate actors accountable through truth commissions, reparations, and vetting, in addition to criminal prosecutions for past violations. Post-conflict or mixed (post-conflict and post-authoritarian) contexts certainly increase the pressure to find answers to these questions. While some important work exists, research remains scarce when the panoply of nonstate actors is considered—spanning, in addition to armed groups and corporations, international organizations, private military companies, NGOs, media outlets, and, indeed, religious actors—and when accountability measures beyond criminal prosecutions are considered.

A holistic understanding of the roles of nonstate actors in transitional justice would presumably benefit if these entities' actions during the transition were to be linked to their actions during the period to be redressed—ultimately

this means that research will examine their roles in transitional justice through the prism of their conduct and victimhood experience in the past and their accountability (broadly understood). Likely, a more complete understanding of the role of nonstate actors in transitional justice would be gained, including their preferences for one mechanism over another or, contrarily, their silence in the midst of such processes or obstruction thereof.

LINKING LEGITIMACY AND ACCOUNTABILITY: PAST AND PRESENT ROLES OF RELIGIOUS ACTORS

To inquire whether and how the past roles of religious actors in periods of repression or conflict have a bearing on their roles in transitional justice processes and their motivations to pursue such roles, four case studies are examined. The selection of cases attempts to ensure a balance between older and newer transitions, between post-authoritarian, post-conflict, and mixed contexts, and among geographical regions. The first case depicts churches in Romania in a post-authoritarian context: while the regime change occurred in 1989, various transitional justice initiatives of relevance for religious actors are ongoing. The second looks at religious actors in post-conflict Rwanda, one of the more mature transitions. The case of Solomon Islands offers an illustration of a less explored transitional justice process in which religious actors played an important role. Finally, having emerged from the Arab Spring, the cases of Tunisia and Libya—examined here together—can be considered "newer" contexts, where transitional justice measures are currently being implemented. While the entities examined here are diverse—churches, religious (women's) organizations, and political parties with a religious message—they have in common a number of religious features and are united in their claim of special legitimacy anchored in tradition or charisma; these common features justify their treatment under the umbrella-term religious actors.

ROMANIA

The communist regime in Romania, installed in the aftermath of World War II, initially subjected the Romanian Orthodox Church to harsh repression. In various episodes, clergy were arbitrarily arrested, imprisoned, sentenced to forced labor, and at times killed; monasteries and monastic seminaries were closed; and churches were demolished.[48] However, the self-proclaimed atheist regime eventually recognized that the legitimacy of the Orthodox Church (the

denomination of the vast majority of the population) could be instrumentalized to its benefit, and it proceeded to appoint directly in 1948 the head of the church from among its own "faithful."[49] The result was, as Lavinia Stan and Lucian Turcescu recall, "a *modus vivendi* which allowed the Church to be enlisted as an unconditional supporter of communist policies in return for the government's toleration of a certain level of ecclesiastical activity."[50] The report of the Presidential Commission for the Study of the Communist Dictatorship in Romania (the Tismaneanu Report) confirms that the connections of the Orthodox Church with the communist apparatus involved the patriarch's "collaboration" with the Securitate, the regime's repressive secret police.[51] Some studies portray this collaboration as having been pervasive, with one estimating that 80 to 90 percent of the Orthodox clergy were recruited by the secret police.[52]

Among the other religious actors that suffered persecution by the communist regime in Romania was the Greek Catholic Church.[53] The church was formally dismantled in 1948, with hundreds of its priests and its entire leadership arbitrarily imprisoned and its properties, including churches, nationalized and then transferred by means of a legislative act to the Orthodox Church.[54]

After the 1989 regime change, transitional justice demands in Romania centered on three elements: disclosure of the names of informers and collaborators with the former Securitate; condemnation of the communist past; and restitution of property. The Greek Catholic Church became an agent of transitional justice insofar as it placed itself at the forefront of efforts of property restitution. Faced with unwilling and incapable domestic legislative and justice systems, and with failed negotiations with the Orthodox Church over the restitution of churches and other properties, the Greek Catholic Church sought redress by appealing to the European Court of Human Rights. Norman Doe estimates in a 2011 publication that more than 300 Romanian church property claims were outstanding in Strasbourg,[55] several of which were introduced by the Greek Catholic Church as applicant.

At the other end of the spectrum, the Orthodox Church opposed the transitional justice strategies pursued in Romania and, to the extent that it was expected to deal with its own past, acted as a spoiler.[56] Some illustrations are in order. The 1997 legislative project that provided partial restitution of property to the Greek Catholic Church and alternating services in some parishes with the Orthodox Church was rejected by the leaders of the latter church; reportedly, some Orthodox clergy "threatened civil war" if the bill were passed.[57] In 1999, the Orthodox Church vehemently opposed a law ensuring access to the

files of the former Securitate.[58] In addition to permitting individuals to ask to see their own files, the law provided that a government agency was to investigate the files of public officials and other categories, including religious leaders. A legislative amendment passed in later years that removed the agency's competence to review the files of religious leaders—hence effectively ensuring, if not an amnesty for its members, then an amnesia regarding the role of the Orthodox Church—was welcomed by the religious actor.[59] In 2006, upon the publication of the Tismaneanu Report—which prompted an official "condemnation" of the Romanian communist regime by the Romanian president—the Orthodox Church charged that the study's chapter depicting church–state relations during the communist period was biased, unscientific, and not in accordance with historic truth.[60]

One avenue for exploring the reasons and logic behind the actions of the Greek Catholic Church and the Romanian Orthodox Church during the transitional period is to analyze their respective roles in the transition in relation to those during the authoritarian period. In other cases, it has been suggested that the extent of a church's autonomy from a repressive regime explains, to a large measure, its role in the transitional period.[61] Additionally, religious actors' actions in transitional justice are said to be animated by a "political theology," most often that of reconciliation, which may be expressed as pleas for forgiveness.[62]

It is submitted here that autonomy (or lack thereof) is insufficiently precise as an explanatory variable, and the logic of reconciliation or forgiveness may obscure a number of other interests. This chapter will examine instead past conduct and accountability for such conduct as explanatory variables and acknowledge that a host of other factors—which may conform to a logic of forgiveness or may take the shape of more mundane interests—can be responsible for an actor's actions and positions toward transitional justice measures. Furthermore, the chapter will explore whether a link may exist between the accountability of religious actors and the legitimacy they can bring to transitional justice processes.

The Greek Catholic Church in Romania, it should be recalled, was dismantled, and its leadership was arbitrarily detained and ultimately physically obliterated[63]; hence, strictly speaking, one cannot refer to its autonomy as a variable[64]—instead, its involvement in transitional justice efforts was driven by its past victimization. At the same time, the church must (also) have been cognizant of its economic interests, which were to be restored through property restitution. Reconciliation may have been on the agenda of the Greek Catholic

Church, and the church's participation may well have been inspired by a logic of forgiveness. Nevertheless, the championing role this actor assumed in property restitution leads to the conclusion that, in its understanding, reconciliation was viewed as a complement to—not a substitute for—redress of the violations it had suffered and accountability of the Romanian authorities that had perpetrated such abuse.

As for the Orthodox Church, its lack of autonomy fails to capture adequately the complexity of the actor's positions during the period of Romanian authoritarianism—that of a victim of repression at the hands of the communist regime, beneficiary of the spoils of human rights violations (through the transfer of property confiscated from other denominations), and possible accomplice in violations given the extensive collaboration of its clergy with the regime. Just as important, it fails to account for the triadic role the church played during the lengthy transitional period in Romania, as memorializer-opponent-spoiler. After 1989, the church was ready to memorialize its own victimhood episodes in an attempt to explain or legitimize its accommodation with the regime; yet it was reluctant to engage in property restitution, likely due to the real harm this posed to its economic interests. It also objected vehemently to the Tismaneanu Report's disclosure of the extent of its collaboration with the former regime—its fear may have been a loss of legitimacy.

Since 2006, when the Tismaneanu Report was released, the Orthodox Church has not addressed its past wrongs at an institutional level (by, for instance, vetting clerics who had been collaborators of the Securitate), nor has it asked for forgiveness or expressed repentance as an institution. On the whole, few individual clerics have confessed their collaboration with the former regime or subsequently asked their followers and the wider society for forgiveness—despite the Orthodox dogma encouraging the confession of one's sins.[65] That it colluded with repressive tactics of the communist regime and was not held accountable for such past conduct, in addition to its economic interests, may explain the opposition of the Orthodox Church to transitional justice initiatives.

It is interesting to note that opinion polls in Romania that show high levels of trust in the church also portray a strong opposition to its "involvement" in politics.[66] Anecdotal evidence supports a positive correlation between this societal opposition and the past unconditional support the Orthodox Church gave to the communist regime. It could be that in the Romanian collective memory, the church lacks the legitimacy to influence political life due to its failure to deal with its own past.

RWANDA

In considering the role of religious actors during the Rwandan genocide of 1994, the jurisprudence of the International Criminal Tribunal for Rwanda (ICTR) can serve as a starting point. In 2004, a pastor of the Seventh Day Adventist Church who transported militias to a complex where they killed hundreds of Tutsi refugees was sentenced to ten years' imprisonment for aiding and abetting genocide and for extermination as a crime against humanity.[67] In 2006, a Catholic priest was found to have actively participated in the destruction of his own church by means of a bulldozer; at least 1,500 Tutsi who had sought refuge in the church were killed. He was sentenced to life in prison after being found guilty of committing genocide and extermination as a crime against humanity.[68]

Beyond these illustrations depicting the involvement of some religious leaders in the conflict, studies suggest that churches have played a deeper, structural role in the Rwandan genocide. Timothy Longman emphasizes the churches' colonial roots and that their missionaries imposed patterns of racial and ethnic discrimination. Over the years, they have promoted a model of obedience to authorities, be they the churches' own agents or government authorities[69] which, in the words of David P. Gushee, amounted to an "unquestioning submission."[70] Missionaries, it is asserted, "showed through example that Christianity allowed Machiavellian manipulations in the struggle for influence and accepted ethnic discrimination."[71] Longman submits that it was not only the strong cooperation between church and state in Rwanda that explains why religious actors became involved in the genocide, but also a never resolved conflict within the churches between conservatives expounding a discriminatory vision seeking to preserve personal benefits and progressive voices aiming to democratize the institution.[72] Reverend Roger W. Bowen has confirmed this with reference to the Anglican Church:

> Within the Church itself the mutual fears between Hutu and Tutsis were not faced up and dealt with . . . It was hard for Tutsis to advance in leadership while the hierarchy remained solidly Hutu. The issue, which in the past in times of revival had been addressed so powerfully, was allowed to remain unresolved . . . By and large, however, the Church had allowed these ethnic tensions to continue unresolved, often below the surface, until conditions occurred where the issue exploded beyond their control in horrific violence. What happened in Rwanda is a salutary reminder that the fear and pain preventing the Church from addressing a painful tension within itself needs to be overcome if one is to avoid the far more horrific consequences of not facing it.[73]

Since the genocide, Rwanda has pursued a number of transitional justice measures, including prosecutions through the ICTR (established in 1994 by the UN Security Council) and the *gacaca* courts (a traditional, community-based court system reestablished by the government in 2005).[74] In addition to the judicial response, constitutional reform and a series of other legislative measures were adopted, and in 1999 the National Unity and Reconciliation Commission was established to elaborate various programs aimed at reconciliation.[75] What roles did religious actors play in these initiatives? One author notes that the Catholic, Anglican, and Presbyterian churches—all established churches in Rwanda and otherwise powerful societal actors—have exercised "starkly . . . little influence on state-level efforts to deal with the past," with their involvement occurring mainly at the grassroots level.[76]

One means of understanding this apparent inconsistency is by approaching it through the prism of the involvement of Rwandan churches in the genocide, linking their roles in the conflict with those in the transition. Along these lines, then, religious actors were present in state-sanctioned transitional justice efforts in the country but, often, on the bench of the accused. This was the case, as we have seen above, with the ICTR proceedings as well as with the gacaca system. Legislation regulating the gacaca courts designated leaders within religious denominations as "Category I" defendants, alongside leaders from political parties, the army, and militia who had committed genocide or crimes against humanity, with the highest penalties reserved for them.[77] Such emphasis on religious actors suggests that their deeds during the genocide were perceived as both grave and pervasive; hence, the importance attached by the state to establishing their accountability. Some of the actors themselves felt it necessary to take responsibility for acts committed during the genocide; the archbishop of Canterbury offered an apology on behalf of the Anglican Church, and the Pope called for Catholic clergy "to have the courage to face the consequences of their crimes."[78] A certain introspection in the Catholic Church is said to have occurred, but the lack of a public assessment of the institutional accountability or an official apology may indicate, arguably, a "seamless continuity"[79] from its actions during the genocide to its behavior afterward.

Outside state-sanctioned transitional justice measures, religious actors made numerous efforts to promote reconciliation at the grassroots level. An illustration is the Interfaith Commission of Rwanda set up in 2003 by Anglican Archbishop Emanuel Kolini and Sheikh Saleh Habimana, the mufti of Rwanda. Among other things, the Commission entrusts development projects to genocide survivors, victims' families, and released prisoners in order to

enable cooperation among them and contribute to poverty eradication.[80] The Catholic Relief Services and other NGOs have trained "justice and peace volunteers" to assist communities in trauma healing and conflict transformation.[81] Also noteworthy is the work of religious actors with individuals who had been convicted of or charged with genocide crimes, the focus of such projects being on "repentance, confession, and facing criminal responsibility with a clear conscience."[82] These grassroots efforts may well support state-led transitional justice efforts and function as catalysts for reconciliation in Rwanda.

Be that as it may, the involvement of established churches in the genocide appears to have eroded their legitimacy, in particular, that of the Catholic Church. Some reports claim that the number of followers of Islam grew after the genocide, because "Muslims seemed to have given a good account of themselves during the massacres."[83] Further, one factor said to have contributed to the decline of the Catholic demographic (overwhelmingly predominant before the genocide) and the important growth of new churches (Protestant, in particular Pentecostal) has been the return of Tutsi refugees,[84] who have reportedly refused to "associate with the traditional church, which they said aided the genocide."[85]

Along these lines, the deficit in accountability for past conduct and erosion of legitimacy may explain the disinclination of the state to call on religious actors to assume any visible position in the establishment or functioning of transitional justice mechanisms in Rwanda. Illustrating the link between accountability (or lack thereof) and legitimacy (or lack thereof) is the legislation establishing the gacaca courts, which explicitly excludes members of "leading organs of . . . a religious confession" from membership in their organs.[86]

SOLOMON ISLANDS

In 1998, a violent conflict known as the "Tensions" erupted in Solomon Islands. A British protectorate since 1893, Solomon Islands gained independence in 1978. Colonial policies had contributed to massive migration from Malaita and other islands to Guadalcanal, where development investment was concentrated, a trend that continued after independence.[87] A set of political, social, and economic grievances by Guadalcanal natives related to land distribution and registration remained unaddressed.[88] In 1998, armed groups, initially known as the Guadalcanal Revolutionary Army and later as the Isatabu Freedom Movement, started a campaign of "threats and intimidation" that included forced evictions of Malatian settlers in Guadalcanal.[89] In 2000, the Malaita Eagle Force was formed and retaliated, allegedly with the support of

police forces.[90] Reports note that "civilians suffered abuses by all sides," including killings, abduction and illegal detention, torture and ill treatment, rape, the recruitment of child soldiers, looting, and the destruction of property.[91] An estimated 35,000 individuals (out of a total population of 408,000) were internally displaced by the conflict.[92] In July 2003, the Regional Assistance Mission to Solomon Islands (RAMSI), an Australian-led peacekeeping force, entered the country at the request of the Solomon Islands government; the date represents the official end of the conflict.[93]

During the conflict, churches and women's groups that typically conducted their activity through church groups had shown, in the words of Amnesty International, "an enormous capacity for providing practical help and emergency relief to victims and their families."[94] These activities sometimes exposed their members to harassment by militants and led to their victimization, including killings.[95] Drawing on their strong organizational networks, these groups filled a void left by a frail and corrupt state, providing social services, including in the areas of education, health care, and food provision.[96] Service provision was used as an instrument of mediation while drawing on customary practices. Examples include the efforts of the Catholic Daughters of Mary Immaculate Sisters, which brought food to fighters of opposing factions and attempted to persuade them to stop fighting.[97]

Their efforts in the aftermath of the conflict can certainly be seen as a continuation of their support and mediation roles during the Tensions. Provision of services by church and women's groups continued, alongside grassroots efforts for reconciliation and transitional justice. Elizabeth Snyder notes that "the inadequacies of the state judicial system have intensified grassroots efforts to deter violence, resolve conflict and enhance human rights" with women's organizations centered around church groups (such as the National Council of Women, Women for Peace, and the Guadalcanal Women for Peace) being at the forefront of these efforts.[98] Their activities aimed to bridge community, state, and international efforts. For instance, women assumed leadership roles in disarmament initiatives and served on weapons collection committees under RAMSI.[99] The Solomon Islands Christian Association (SICA), an umbrella nongovernmental organization of Christian churches, championed the establishment of a truth commission and held public consultations in 2002–3 to that effect.[100] However, with the arrival of RAMSI in 2003, the "law and order" agenda, which it sought to pursue foremost through criminal prosecutions, took center stage.[101]

Church groups in Solomon Islands blended strong and reliable

organizational structures with Christianity—"one of the few shared values in an otherwise diverse, and frequently divided society"—creating an agenda that focused on human rights and rule of law and a societal perception of women, in particular, as truthful custodians of custom.[102] Importantly, their conduct during the Tensions left them with an unblemished accountability record. These cumulated characteristics maintained their strong perceived public legitimacy during and after the Tensions and should have positioned them, according to Louise Vella, as natural allies for the truth commission. Although the truth commission was born from domestic church efforts, it failed to enlist these groups as ongoing supporters—this created a perception that the commission was "an arm of the government" (which was regarded as corrupt) and divorced from civil society efforts.[103] In turn, this situation led to a lack of local ownership by victims and the wider society. In the end, Vella suggests, the commission failed to capitalize on the legitimacy and capacity of churches, relying solely on the state for legitimation and implementation purposes.[104]

It is interesting to note that, faced with the failure of the government to make the truth commission's final report public and, indeed, to implement its recommendations, it was Terry Brown, a bishop, who released it to the press, commenting, "It is not good enough to forgive the perpetrators and forget the victims, which seems to be the approach of the government."[105]

TUNISIA AND LIBYA

During the Bourguiba and Ben Ali regimes in Tunisia and the Gaddafi regime in Libya, individuals said to espouse Islamist ideologies were victimized and their organizations largely excluded from political processes.[106] In Tunisia, attempts by the Mouvement de Tendances Islamiques (MTI) to enter politics in the 1980s were thwarted through arrests and imprisonment of its members.[107] During the Ben Ali era, although MTI changed its name to Ennahda to comply with the law prohibiting political parties from having religious names, it was not granted recognition as a party to stand in the 1989 elections.[108] Monica Marks notes that during this time "the threat of '*terrorisme*' became a frequent excuse for targeting political opponents, most commonly Islamist sympathizers," many of whom were arbitrarily imprisoned and tortured in detention and faced persecution on their release.[109] Ennahda members reported the brutal tactics employed by the police against them, including sodomization with glass bottles and the rape of their wives, which they were subsequently forced to watch on tape.[110]

While Tunisia's women's rights legislation was considered progressive in the region and beyond,[111] veiled women (who were perceived to embrace Islamist ideologies merely because they wore the veil and irrespective of their actual political views) were subjected to de jure and de facto discrimination. Circular 108 of 1981 introduced by Bourguiba and enthusiastically enforced by Ben Ali's regime "prohibited access of those wearing a 'sectarian dress' (a reference to the veil, known as *hijab*) to government services."[112] As a consequence, veiled women were deprived of educational and professional opportunities and suffered violations of their socio-economic rights, in addition to violations of their freedom of expression and their right to manifest religion.[113]

In Libya, reports of arbitrary arrests and imprisonment abound for the period of Gaddafi's rule (1969–2010). A 2009 press release by Human Rights Watch, for instance, recalls that the trials of members of the Libyan Islamic Fighting Group, a rebel group, were unfair for, among other reasons, a lack of adequate access to lawyers.[114] Torture and ill treatment in intelligence centers and detention facilities as well as extrajudicial executions are said have been widespread.[115] One of the "most notorious attacks on Libya's Islamists" occurred in June 1996 at the Abu Salim prison in Tripoli, a facility run by Gaddafi's Internal Security Agency.[116] Amnesty International collected a number of accounts from former prisoners and reported that riots had broken out due to horrific detention conditions; despite ongoing negotiations, security forces shot at some inmates who had been freed from their cells but were trapped within the prison gates.[117] Sources estimate different numbers of those killed in the riots ranging from tens to hundreds to over 1,200.[118] According to the journalist Lindsey Hilsum, it was a protest staged by relatives of Abu Salim victims in Benghazi that sparked the Libyan revolution in February 2011.[119]

In the aftermath of their revolutions, both Tunisia and Libya considered and embarked on a number of transitional justice initiatives. In both countries, high on the agenda of political parties described as Islamist were laws on political exclusion (in Tunisia) and isolation (in Libya). This analysis acknowledges that the political parties discussed here are somewhat different to previously examined religious actors—churches in Romania and Rwanda and religious (women's) groups in Solomon Islands. As political parties, these entities naturally seek political power. Nonetheless, the religious discourse that they espouse and their attempt to legitimize themselves by appeal to religion—or, in Weberian terms, by drawing on traditional and charismatic grounds as opposed to legal-rational ones—justifies their inclusion in the category of religious actors. As such, it is important to examine what specific transitional

justice measures they have advocated and how these measures relate to their political goals.

In Tunisia, political exclusion of individuals associated with the Ben Ali regime gained momentum after the 2011 elections for the National Constituent Assembly, which had been won by candidates representing Ennahda and its coalition partners, the Congress for the Republic (CRP) and Ettakatol.[120] Four separate legislative drafts were proposed.[121] The November 2012 version proposed by Ennahda envisaged barring members of the Rassemblement Constitutionnel Démocratique (RDC), Ben Ali's political party, and those who called for his reelection in 2014 from standing in local and national elections and from civil service positions for ten years.[122] The proposal's criteria for exclusion were party membership and (loose) affiliation with Ben Ali, as opposed to individual responsibility for involvement or complicity in human rights violations. It thus went beyond a vetting initiative that would seek to pursue the legitimate aim of removing personnel responsible for gross human rights violations and screening new candidates in an effort to ensure nonrecurrence[123]—instead, it resembled a purge attempt. Thousands of individuals would have been prevented from exercising their political rights, which would likely have been in breach of Tunisia's obligations under the International Covenant on Civil and Political Rights and other human rights instruments.[124] The law, which ultimately was not adopted, could have also resulted in draining much-needed resources and expertise from the administration, as many of those who would have been affected had clerical functions in the state bureaucracy.[125]

A more recent attempt at barring from elected office individuals who were part of the Ben Ali government and those who held positions of responsibility in the RDC was included in article 167 of the draft electoral law.[126] This provision was time-bound insofar as it stipulated that its validity was to cease when the transitional justice system (provided for in the 2013 transitional justice law) was (fully) established, yet it also raised a number of concerns regarding due process guarantees, respect for political rights, and proportionality.[127] The National Constituent Assembly failed to adopt the article in May 2014. The Ennahda party, after strongly supporting similar exclusionary initiatives, was split on this vote, with a considerable number of its delegates abstaining.[128]

Yet again, linking the present role of a religious actor to its role during the authoritarian regime offers a useful angle from which to understand Ennahda's pursuance of transitional justice measures in general and vetting legislation specifically. Commentators identify victimhood as the key element

driving Ennahda's transitional justice efforts.[129] Post–Ben Ali, one of the most sought-after roles became that of "getting to decide who the victims are."[130] In this respect, Ennahda, which, unlike religious actors in Romania, Rwanda, or Solomon Islands, held governmental and legislative power during the transition, was in a position to shape and contribute directly to the adoption of specific transitional justice legislation. This facilitated the creation of a dominant narrative that emphasized the victimhood of members and sympathizers of Ennahda and obscured the suffering of other categories of victims, such as those belonging to the leftist opposition or, indeed, those who had fought in the revolution. In turn, Ennahda's search for accountability for the treatment of its members represented an attempt to strengthen its legitimacy and political credentials.[131]

At the same time, the "fragmentation among different categories of victims" through a dominant-victim narrative and policies aimed at disenfranchising scores of individuals affiliated with the former regime heightened both political and societal polarization.[132] Ennahda's split vote on article 167 may have been an indication that some of its members understood the likely effects of this provision and changed course so as to mitigate the perception that the transitional justice measures it helped draft represented victor's justice.

In Libya, the Political Isolation Law is a broadly worded act adopted by the General National Congress (GNC) in May 2013. The act disqualifies for a period of ten years individuals associated with the Gaddafi regime from holding public office, including governmental, legislative, administrative, and security positions, as well as from positions in political parties, the judiciary, the media, and universities; "isolated" categories include individuals who served in leading political, administrative, diplomatic, and security positions, heads of universities and student unions, and researchers at propaganda institutions.[133] Described as a draconian law,[134] the act certainly resembles a purge. It falls short of rule of law standards,[135] and, in the words of the UN secretary-general's special representative on Libya, "Many of the criteria for exclusion are arbitrary, far-reaching, at times vague, and are likely to violate the civil and political rights of large numbers of individuals."[136]

The law's adoption is said to have occurred as a result of sustained pressure—including in the form of sieges of ministries—exercised by armed militias, most of which reportedly supported political forces with an Islamist orientation;[137] the Libyan wing of the Muslim Brotherhood was among the law's strongest supporters.[138] Agreement appears to be widespread among a variety of observers that "Islamist parties" that had been excluded from the Gaddafi

regime stood to benefit most from its exclusionary measures.[139] In this sense, victimhood was used as a means to achieve political gains. According to Wiebelhaus-Brahm,

> The law seems intended to curb the influence of successful politicians, many of whom were part of Qaddafi's regime at some point. The mechanism to replace banned parliamentarians benefits Islamist groups, whose representatives were runners-up in many districts. Thus far, retributive justice in Libya has been about settling old scores and has undermined the development of credible political institutions.[140]

It is difficult to establish a correlation and, even less, causality between the instrumentalization of victimhood in the form of exclusionary policies and the Islamist forces' devastating loss at the ballot box in the 2014 elections; certainly many other factors contributed to the election results.[141] One may nonetheless legitimately inquire whether the exclusionary agenda has backfired. At the most basic level, the large number of individuals who found themselves among the isolated categories would not have voted for the Islamist parties. Others may have been disinclined to do so because they would have perceived these policies to be nothing more than victor's justice leading thus to a loss of legitimacy for these parties.

The Tunisian and Libyan contexts are not equivalent, and the religious actors involved in transitional justice in the two countries are certainly not identical in actions or rationale of actions. The review of their respective exclusionary "vetting" initiatives, however, reveals that the goal of these policies was predominately retributive, as opposed to preventive or restorative. While in Tunisia reconciliation continues to be an important topic,[142] the political exclusion proposals showed few signs of having been drafted with a reconciliatory model in mind. This was clearly the case for Libya's Political Isolation Law.

Against this background, however, it would be erroneous to charge religious actors embracing Islam with a preference for retributive measures and a disinclination toward reconciliation or forgiveness. On the contrary, scholars have argued that a logic of forgiveness similar to Christianity's is present in Islam.[143]

Beyond this, one can look to the military and *secular* regime that came to power in Egypt in July 2013 as a possible comparison. The new regime imposed in 2014 a mass death penalty on 1,212 supporters of former Egyptian President Mohamed Morsi, who was affiliated with the Muslim Brotherhood. The retributive character of the "vetting" laws in Tunisia and Libya pales in comparison

to these death sentences, which were likened to "a political trial carried out in haste with the aim of eradicating political opposition rather than establishing the guilt of perpetrators on a well-founded basis of law."[144]

What is suggested here is that while religion was present in the makeup of Tunisian and Libyan societies and likely also responsible for certain cleavages, the religious nature of the examined political parties fails to account for their decision to pursue transitional justice and certainly fails to explain the particular form that these measures took. Much rather, it is the treatment to which these groups had been subjected by the former regimes and, incontestably, the political ends they sought to obtain by instrumentalizing their victimhood that are the explanatory factors for their support of particular transitional justice measures.

Even if only in relation to the five sample case studies examined here, two points hold true. First, the involvement of a religious actor in rights abuses or, conversely, its experience as a target of violations in the period of repression or conflict, and whether the religious entity and other perpetrators were held accountable can be considered explanatory variables for the role it assumes in transitional justice or, indeed, the lack of such a role. Second, without denying that reconciliation or forgiveness may drive a religious actor's involvement in transitional justice, more directly political goals and economic interests may equally motivate them.

SHOULD RELIGIOUS ACTORS "ACT" IN TRANSITIONAL JUSTICE?

In answering the question of whether religious actors should be called on to "act" in transitional justice, the chapter must engage critically with some of the perceived drawbacks of their involvement. It is useful to revert to the leitmotiv parallel between the relationship of religion and international law and that of religious actors and transitional justice.

A first objection raised by some international lawyers to "immixtures" of religion and law can be termed the legality argument. According to this view, the establishment of international law as "law proper" resulted from its conscious separation from religion;[145] accordingly, international law is law because states consent to it by means of treaty or custom and because it can be rationally discerned from general principles and case law, irrespective of its roots in natural law and its seminal relationship to religion.[146] When applied to transitional justice, the legality argument carries some force. Over the past 20–30 years, a comprehensive conception of transitional justice has been

articulated, one that is increasingly grounded in legal instruments.[147] This "new law" of transitional justice relies cumulatively on international human rights law, humanitarian law, and criminal law.[148] Hence, seeking the truth, pursuing criminal prosecutions, making efforts to repair victims, and, to a certain extent, enacting institutional reforms are today binding legal obligations.[149] Moral, religious, and other grounds would thus represent additional impetuses for pursing transitional justice. Yet, even at a commonsensical level, one can surely understand that by calling on religious actors to strengthen the legitimacy of transitional justice or, indeed, international law in various cultural contexts, a de-legalization (or a de-secularization, if it is admitted that both disciplines are secular ones)[150] is not intended: the source of the legitimacy of transitional justice and international law will not come to be based primarily on tradition or charisma through the mere presence of such actors.

A second reason for the insistence on the separation of law and religion draws on historical awareness of religious wars; a neutrality argument emerges whereby if the law is to ensure equality and nondiscrimination in today's multireligious and multicultural world it must rest on secular foundations.[151] This argument may be particularly relevant for transitional justice contexts in which societies have experienced conflict across religious lines or where a secular–religious cleavage exists, given that the operational involvement of religious actors in formal transitional justice mechanisms may raise tensions by, for instance, reinforcing such cleavages.[152] Their involvement may, however—as argued by some in reference to grassroots initiatives in Bosnia—assuage certain religious tensions and legitimize (personal) reconciliation when religious leaders of opposing parties seek to work together.[153]

From a legal point of view, a certain religious neutrality of the work of transitional justice mechanisms is warranted. It may be relevant to recall the case of *Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan*. In that case, the African Commission on Human and Peoples' Rights found that non-Muslims and Muslims alike have the right to trial in nonreligious courts if they so choose,[154] a finding that appeared to flow both from the guarantee of a fair trial and the right to religious freedom.[155] The Commission's view would certainly be salient in relation to criminal prosecutions of alleged perpetrators of past human rights and international humanitarian law violations, who similarly should have the right to be tried by non-religious courts. Beyond this, when the proposition is embraced that all formal transitional justice mechanisms should follow the rule of law,[156] which in its substantive form includes

freedom of and from religion,[157] one finds support for the argument that a (predominantly) religious character of a truth commission's sessions and its religiously inspired findings may frustrate the rights of certain victims and alleged perpetrators. A victim-centered approach to truth seeking would also sanction a certain neutrality, as some victims may feel uncomfortable with the religious contours of a truth commission.[158] Even so, the mere presence of religious actors in truth commissions would not, per se, vitiate the rule of law requirement.

A third separationist claim could be called the denial/distortion of justice argument, which points to the possibility that the involvement of religious actors in transitional justice may result in a denial of justice or its distortion toward certain "softer" forms. This argument has several strands. One suggests that a logic of reconciliation grounded in forgiveness, which allegedly animates the actions of religious actors in transitional justice, could determine an advocacy for amnesties. To the extent that these are amnesties that bar from prosecution individuals that have allegedly committed war crimes, genocide, crimes against humanity or gross violations of human rights, they would be inconsistent with international law; if they frustrate the right of victims to obtain a remedy and reparation, and the victims' and society's right to know the truth, they may also fall short of legal requirements.[159] While the rules of non-international armed conflict[160] permit amnesties, they do so in order to "encourage a release at the end of hostilities for those detained or punished for the mere fact of having participated in hostilities. [They do] not aim [provide] an amnesty for those having violated international humanitarian law."[161] Along these lines and drawing on the etiological roots of the term, amnesties do not aim to ensure forgiveness—religious, social, political, or otherwise—but represent a legal instrument through which a limited category of crimes are "forgotten" in the interest of societal integration.[162]

It should be clearly stated at this stage that religious actors are not the foremost promoters of amnesties; governments, and certainly secular ones, have outdone religious actors in that regard by a considerable margin. Certainly, religious entities have specifically advocated for amnesties in some cases, such as in Mozambique and Sierra Leone,[163] and in Uganda, where the Acholi Religious Leaders Peace Initiative reportedly regarded the Amnesty Act of 1999 (which entails a blanket amnesty) as its "moment of triumph."[164] In the latter case, the provision of amnesty was seen as the necessary fundament upon which the religious actor could build a "systematic advocacy for peace through sensitization campaigns conducted at all levels of society."[165]

In other contexts, religious entities have approached amnesties very differently. In El Salvador, for example, various Catholic entities have disagreed on the issue of granting amnesty. The Tutela Legal del Arzobispado, the legal aid office set up in 1977 by archbishop Oscar Romero to systematically document rights violations in El Salvador, including during the civil war, lodged the *El Mozote Massacre* case with the Inter-American system . As a result, in 2012 the Inter-American Court of Human Rights held that the amnesty law which was in force in El Salvador since 1993 was "evident[ly] incompatible" with international law, and asked the authorities to investigate, prosecute, and punish those responsible for grave human rights violations.[166] In 2013, however, the current archbishop of San Salvador abruptly closed down Tutela Legal; he had previously spoken in favor of the amnesty law as "the most appropriate mechanism" for preserving the peace.[167] In still other contexts, religious nonstate entities have openly worked to discourage amnesties. In Solomon Islands, for instance, SICA has condemned blanket amnesties while explicitly promoting truth and reconciliation.[168]

A related strand of opinion suggests that the logic of reconciliation and forgiveness espoused by numerous religions skews or distorts the type of accountability sought by religious actors toward restorative forms of justice, as opposed to retributive ones. This, in turn, is said to translate into the preference of religious entities for truth commissions,[169] although sometimes the causality appears to be inversed and the preference for truth-seeking mechanisms is taken as evidence of their logic of forgiveness or reconciliation.[170] It is statistically correct to observe that religious actors have been involved more often in truth commissions than in other transitional justice mechanisms, but part of the reason behind this may be more mundane: priests, ministers, imams, and rabbis can be more easily accommodated by truth commissions as commissioners or capacity builders than on the bench or at the bar in criminal proceedings.[171]

The preference for truth commissions could become problematic from a legal point of view only if religious actors pursue them as an exclusionary strategy—that is, at the expense of other transitional justice measures.[172] Perhaps the more pressing problem, as identified by some, refers to tensions between religious actors and human rights advocates, who are often said to embrace a logic of liberal legalism and prefer to pursue criminal prosecutions.[173] However, the panoply of rights underpinning transitional justice today requires a comprehensive or integrated framework that includes, in addition to prosecution, truth seeking, reparations, and institutional reforms.[174] While the retributivist approach may still be overly influential, this integrated framework

is setting the stage for a rebalancing between retribution and restoration and should function as a check on the actions of religious actors, human rights organizations, and, indeed, states.

Several of the case studies in this chapter offer examples of transitions where religious actors advocate or pursue more retributive forms of justice or, indeed, act against the interest of any form of justice, and such actions are grounded not necessarily in religious forgiveness but in less "sacred" interests, such as economic or political ones. In some cases, the skewing of justice may hold true, but this is because of an element more resembling revenge than forgiveness—as has seemingly become apparent in respect to the exclusion and isolation laws in Tunisia and Libya.

Although the legality, neutrality, and denial/distortion of justice arguments regarding the interaction of religion and international law, discussed above, hold some—albeit limited—merit, this chapter has shown how these concerns and objections can be addressed or even invalidated in the context of transitional justice.

Finally, it is important to take a step back and examine the very question asked in this part of the study— whether religious actors should act in transitional justice. Zinaida Miller portrays transitional justice as a "definitional project explaining who has been silenced by delineating who may now speak."[175] She contends that "[d]espite its claims to exposure, revelation and memorialization, the project of transitional justice may simultaneously perpetuate invisibility and silence."[176] In embracing this understanding, one should acknowledge that (international) lawyers are not *the* gatekeepers of the system, although they "tend to be represented [in transitional justice processes] with a relatively strong voice (often backed up by institutional power and money)."[177] Much rather, a plurality of actors are, and will have to be, involved in transitional justice processes if these measures are to assist in the pursuit of redressing violations and in facilitating the (re)establishment of the rule of law and of a measure of reconciliation.

Instead of offering a normative answer to the question of whether religious actors should be *allowed* to participate, much rather the analysis in this chapter provides evidence that they will often be present in transitional justice in various roles; yet, if they lack accountability for their own deeds during repression or conflict, their capacity to lend legitimacy to transitional justice processes is doubtful, and so is their active presence. As such, it is the accountability of religious actors which sets the limit of their involvement in transitional justice as a measure of effectiveness.

CONCLUSION

Scholars of transitional justice, unlike much of international law scholarship, have grasped the importance of religious actors as *actors* and have avoided the pitfall of proposing incompatibility scenarios between their own field and religion. They have understood that religious nonstate actors are agents that provide religious and social interpretations that can underpin but also frustrate transitional justice processes in various contexts. Their underpinning can refer to the provision of capacity (in particular, in scenarios where states are weak) and to the transfer of legitimacy (including when official institutions are not trusted by the public either because they are perceived as corrupt or foreign). This chapter ultimately ties into this tradition of the agency of religious actors.

The chapter has explored the full panoply of interpretations that religious actors may offer—beyond those related to reconciliation or forgiveness—by linking the reasons for such interpretations to the roles they themselves played in the period from which transitional justice aims to make a transition. It found that the roles of religious actors in repression or conflict, as victims of, complicit in, or perpetrators of abuse, will likely affect the roles they assume in transitional justice processes as advocates, agents, or spoilers thereof or, indeed, their absence from such initiatives. The linking of the period to be redressed to the period of redress also suggests that the roles of religious entities in the former may influence the form of justice they pursue and the precise measures they advocate, which may include truth-seeking initiatives, but also criminal prosecutions, vetting, and property restitution. This linking of periods also reveals that, in addition to a religious logic of forgiveness, more mundane aspects, such as economic and political interests, may drive religious actors' actions in transitional justice contexts.

Last, in a rejoinder on legitimacy it can be concluded that at stake is not a one-sided process of legitimation—that of transitional justice with the assistance of religious entities—but a dual process whereby religious actors are perceived as legitimate, or not, by reference not only to their religious integrity but also in terms of their own adherence to human rights and humanitarian law standards. This also holds in the aftermath of authoritarianism and conflict. The accountability of religious actors for their own actions during the period of repression or conflict is perhaps the most important variable to be considered when evaluating whether the involvement of such actors can result in a transfer of legitimacy to transitional justice mechanisms.

NOTES

1 Research for this chapter was undertaken during the author's scholarly residence at the Center for Human Rights and Global Justice, NYU School of Law, funded through a grant by the Swiss National Science Foundation. Thanks are due for research assistance to Jessica Boulet, and for comments to Pablo de Greiff and Roger Duthie, as well as to the participants in the authors' workshop organized by ICTJ in April 2014. A much-reduced draft of this chapter was published on http://voelkerrechtsblog.org in May 2015; Evelyne Schmidt's insightful commentary to that contribution has been useful in improving this chapter. Shortcomings as they may remain are the author's sole responsibility.

2 The sample included Argentina, Brazil, Chile, the Czech Republic, East Germany, East Timor, El Salvador, Guatemala, Northern Ireland, Peru, Poland, Rwanda, Sierra Leone, South Africa, and the former Yugoslavia. Daniel Philpott, "When Faith Meets History: the Influence of Religion on Transitional Justice," in *The Religious in Response to Mass Atrocity: Interdisciplinary Perspectives*, ed. Thomas Brudholm and Thomas Cushman (Cambridge: Cambridge University Press, 2013), 174–212, 178. For the elements used to qualify the processes as strong or moderately strong, see 176–77.

3 An overview of cases and typology of religious actors' roles is offered in Leslie Vinjamuri and Aaron P. Boesnecker, "Religious Actors and Transitional Justice," in *Religious Pluralism, Globalization, and World Politics*, ed. Thomas Banchoff (Oxford: Oxford University Press, 2008), 155–88; Aaron P. Boesenecker and Leslie Vinjamuri, "Lost in Translation? Civil Society, Faith-Based Organizations and the Negotiation of International Norms," *International Journal of Transitional Justice* 5 (2011): 345–365.

4 The term "secular" refers to a neutral stance towards religion.

5 Religious actors were previously theorized in Ioana Cismas, *Religious Actors and International Law* (Oxford: Oxford University Press, 2014), 51–8. See also the section in this chapter on "Religious Actors and Legitimacy."

6 Jan Klabbers, *International Law* (Cambridge: Cambridge University Press, 2013), 124.

7 See generally, Christine Bell, "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-field,'" *International Journal of Transitional Justice* 3, no. 1 (2009): 5–27; and Christine Bell, "The 'New Law' of Transitional Justice," in *Building a Future on Peace and Justice*, ed. Kai Ambos, Judith Large, and Marieke Wierda (Berlin, Heidelberg: Springer, 2009), 105–126.

8 See Cismas, *Religious Actors and International Law*, 17–26.

9 Ibid., 19; Ilias Bantekas, "Religion as a Source of International Law," in *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices*, ed. Javaid Rehman and Susan Breau (Leiden: Martinus Nijhoff Publishers, 2007), 115–136, 130.

10 See James Cockayne, "Islam and International Humanitarian Law: From a Clash to a Conversation Between Civilizations," *International Review of the Red Cross* 84 (2002):

597–626.

11 Mashood A. Baderin, "Religion and International Law: Friends or Foes?," *European Human Rights Law Review* 5 (2009): 637–658, 643.

12 Daniel Thürer, *International Humanitarian Law: Theory, Practice, Context* (London: Martinus Nijhoff, 2011), 167; Cismas, *Religious Actors and International Law*, 20.

13 Thürer, *International Humanitarian Law: Theory, Practice, Context*, 167.

14 See Cismas, *Religious Actors and International Law*, 55–58.

15 Max Weber, *Economy and Society* (Guenther Roth and Claus Wittich, eds.) (Berkeley: University of California Press, 1978), 215. See also H. H. Gerth and C. Wright Mills, eds., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1975), 296.

16 Weber, *Economy and Society*, 33 and 215. See also Martin E. Spencer, "Weber on Legitimate Norms and Authority," *The British Journal of Sociology* 21 (1970): 123–134, 123.

17 For instance, Thomas Franck describes the legitimacy of international law in the following terms: "The real power of law to secure systematic compliance does not rest, primarily, on police enforcement—not even in police states, surely not in ordinary societies, and especially not in the society of nations—but, rather, on the general belief of those to whom the law is addressed that they have a stake in the rule of law itself: that law is binding because it is the law." Thomas M. Franck, "The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium," *American Journal of International Law* 100 (2006): 88–106, 91.

18 Weber, *Economy and Society*, 215.

19 Cismas, *Religious Actors and International Law*, 19.

20 A project that taps into religious roots to advocate for transitional justice is Daniel Philpott's *Just and Unjust Peace: An Ethic of Political Reconciliation*. The author argues that a view of political reconciliation, which "equals justice that entails a comprehensive restoration of [right] relationship," can be constructed from the religious traditions of Judaism, Christianity, and Islam. Daniel Philpott, *Just and Unjust Peace: An Ethic of Political Reconciliation: An Ethic of Political Reconciliation* (Oxford: Oxford University Press, 2012), 8, 53.

21 Roger Duthie, "Introduction," in *Transitional Justice and Development: Making Connections*, ed. Pablo de Greiff and Roger Duthie (New York: Social Science Research Council, 2009), 19.

22 See, for example, Yasmin Sooka, "Dealing with the Past and Transitional Justice: Building Peace Through Accountability," *International Review of the Red Cross* 88 (2006): 311–325, 312–315; Patrick Vinck and Phuong Pham, "Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC," *International Journal of Transitional Justice* 2 (2008): 398–411.

23 In their article, Boesenecker and Vinjamuri explain that they define accountability narrowly in terms of criminal prosecutions. Vinjamuri and Boesnecker, "Religious Actors and Transitional Justice," 364.

24 Lila Abu-Lughod, "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others," *American Anthropologist* 104 (2002): 783–790, 783.

25 See Antonio Cassese, *International Law* (2nd edition, Oxford: Oxford University Press, 2005), 71.

26 Jean D'Aspremont, "Inclusive Law-Making and Law-Enforcement for an Exclusive International Legal System," in *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law*, ed. Jean D'Aspremont (London: Routledge, 2011), 425–439, 425.

27 This refers to attempts to portray nonstate actors as subjects of international law. See Andrea Bianchi, "Introduction: Relativizing the Subjects or Subjectivizing the Actors: Is That the Question?," in *Non-state Actors and International Law*, ed., Andrea Bianchi (Dartmouth: Ashgate Publishing, 2009), xi–xxx.

28 The two terms, subject and international legal person, are often employed by scholars as synonyms.

29 James Crawford, *Brownlie's Principles of Public International Law* (8th edition, Oxford: Oxford University Press, 2012), 115.

30 Interestingly, many commentators embracing this view overlook the fact that states do not hold the most prominent international rights, human rights.

31 See Philip Alston, "The 'Not-a-Cat' Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?," in *Non-state Actors and Human Rights*, ed. Philip Alston (New York: Oxford University Press, 2005), 3–36, 19–20. See also Jan Klabbers, "(I Can't Get No) Recognition: Subjects Doctrine and the Emergence of Non-State Actors," in *Nordic Cosmopolitanism: Essays in International Law for Martti Koskenniemi*, ed. Jarna Petman and Jan Klabbers (Leiden: Martinus Nijhoff Publishers, 2003), 351–369.

32 The acceptance of international organizations as subjects of international law was prompted in 1949 by the International Court of Justice (ICJ) in Reparation for injuries suffered in the service of the United Nations, Advisory Opinion, ICJ Reports 1949, 174.

33 Indeed, given this strong relation, some international lawyers considered it erroneous to even include international organizations among the category of nonstate actors. See Nigel Rodley, "Non-State Actors and Human Rights," in *The Routledge Handbook of International Human Rights Law*, ed. Scott Sheeran and Nigel Rodley (Abingdon: Routledge, 2013), 523–544, 523–524.

34 See Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006).

35 Ibid., 25–58.

36 Janne E. Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (The Hague: TMC Asser Press, 2004), 65–80.

37 This suggestion is developed in Cismas, *Religious Actors and International Law*, 76–82.

38 The work of the International Law Association on the accountability of international organizations, for example, included a "first level of accountability" designated "Internal and External Scrutiny in General," comprising such principles as those of good governance, good faith, constitutionality and institutional balance, supervision, and control and due diligence. See International Law Association, "Accountability of International Organizations: Final Report," Berlin Conference, 2004, 5.

39 Fionnuala D. Ní Aoláin and Catherine O'Rourke, "Gendered Transitional Justice and the Non-state Actor," in *Contested Transitions: Dilemmas of Transitional Justice in Colombia and Comparative Experience*, ed. Michael Reed and Amanda Lyons (Bogota: International Center for Transitional Justice, 2010), 115–143.

40 Ron Dudai, "Closing the Gap: Symbolic Reparations and Armed Groups," *International Review of the Red Cross* 93 (2011): 783–808; Luke Moffett, "Beyond Attribution: Responsibility of Armed Non-State Actors for Reparations in Northern Ireland, Colombia and Uganda," Queen's University Belfast Law Research Paper No. 20 (2013).

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42 Pablo de Greiff mentions the activity of civil society organizations, sponsored or not by churches, in collecting information about human rights violations in Latin America that was later drawn upon by state-sanctioned truth commissions. See Pablo de Greiff, "Transitional Justice and Development," in *International Development: Ideas, Experience, and Prospects,* ed. Bruce Currie-Alder et al. (Oxford: Oxford University Press, 2014), 414.

43 For a comparative analysis of the features of "traditional" transitional justice settings versus fragile and post-conflict contexts, see *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff*, UN doc. A/HRC/21/46, August 9, 2012, paras. 15–17.

44 Elin Skar and Eric Wiebelhaus-Brahm, "The Drivers of Transitional Justice: An Analytical Framework for Assessing the Role of Actors," *Nordic Journal of Human Rights* 31 (2013): 127–148.

45 Agentic constructivism is a theory that regards actors as norm-entrepreneurs and examines their role in norm-diffusion. See Kathryn Sikkink, "Beyond the Justice Cascade: How Agentic Constructivism Could Help Explain Change in International Politics," Revised Paper from a Keynote Address, Millennium Annual Conference, October 22, 2011, "Out of the Ivory Tower: Weaving the Theories and Practice of International Relations," London School of Economics, presented at the Princeton University IR Colloquium, November 21, 2011. See also Hun Joon Kim and J. C. Sharman, "Accounts and Accountability: Corruption, Human Rights, and Individual Accountability Norms," *International Organization* 68 (2014): 417–448.

46 Vinjamuri and Boesnecker, "Religious Actors and Transitional Justice," 155–188.

47 Boesenecker and Vinjamuri, "Lost in Translation? Civil Society, Faith-Based Organizations

and the Negotiation of International Norms," 345–365.

48 Lavinia Stan and Lucian Turcescu, "The Romanian Orthodox Church and Post-Communist Democratisation," *Europe-Asia Studies* 52 (2000): 1467–1488, 1468; Comisia Prezidentiala pentru Analiza Dictaturii Comuniste din Romania, Raport Final (Bucuresti, 2006), 16, 166, and 459–63.

49 Although, as noted by Stan and Turcescu, Patriarch Iustinian was not, per se, a member of the Communist Party. Stan and Turcescu, "The Romanian Orthodox Church and Post-Communist Democratisation," 1468.

50 Ibid.

51 Comisia Prezidentiala pentru Analiza Dictaturii Comuniste din Romania, Raport Final, 467. For the manifold relations between the Orthodox Church and the communist authorities, see also Cristian Vasile, "Scholarship and Public Memory: The Presidential Commission for the Analysis of the Communist Dictatorship in Romania (PCACDR)," in *Remembrance, History, and Justice: Coming to Terms with Traumatic Pasts*, ed. Vladimir Tismaneanu and Bogdan Iacob (Budapest: Central University Press, 2015), 329–346, 340–42.

52 See Lucian Turcescu and Lavinia Stan, "The Romanian Orthodox Church and Post-Communist Democratisation: Twenty Years Later," *International Journal for the Study of the Christian Church* 10 (2010): 144–159, 151. Some clerics were vulnerable to the blackmail of the Securitate because of their support of and membership in the Romanian Iron Guard, an anti-Semitic and pro-Nazi party, during the interwar period. Comisia Prezidentiala pentru Analiza Dictaturii Comuniste din Romania, Raport Final, 467.

53 It should be mentioned here that clergy and lay members of the Roman Catholic Church and of protestant denominations in Romania have also been persecuted, arbitrarily imprisoned, or tortured or have suffered inhumane treatment and flagrant violations of their freedom of religion. See Comisia Prezidentiala pentru Analiza Dictaturii Comuniste din Romania, Raport Final, 166, and 376–382, 463–472.

54 Stan and Turcescu, "The Romanian Orthodox Church and Post-Communist Democratisation," 1482. See also Decree No. 177/1948 for the general regime of religions, published in Official Gazette ("Monitorul Oficial") no 178, August 4, 1948.

55 Norman Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford: Oxford University Press, 2011), 170.

56 Notably, some efforts for institutional reform appear to have been made from within the Church in early 1990, but were fruitless. See Oana Iuliana Murgoci, *Romania–In Church We Trust! An Analysis of the Nationalistic Discourse of the Romanian Orthodox Church in Four Case Studies* (MA Thesis, Budapest: CEU, 2009), 23.

57 Stan and Turcescu, "The Romanian Orthodox Church and Post-Communist Democratisation," 1483.

58 Turcescu and Stan, "The Romanian Orthodox Church and Post-Communist Democratisation: Twenty Years Later," 149.

59 The 2008 amendment permitted the governmental agency to verify the files of clergy "exclusively at the demand of the representatives of their own religious denomination, meaning the leadership of their Church." Until 2015, no such request was made by the Orthodox Church. Cristian Vasile, "Scholarship and Public Memory: The Presidential Commission for the Analysis of the Communist Dictatorship in Romania (PCACDR)," 340–342. See also Iuliana Conovici, "Re-Weaving Memory: Representations of the Interwar and Communist Periods in the Romanian Orthodox Church After 1989," *Journal for the Study of Religions and Ideologies* 35 (2013): 109–131, 120.

60 See Biroul de Presa al Patriarhiei Romane, Comunicat de Presa: Fara ura si partinire, Nr. 5205, December 20, 2006, available at http://basilica.ro/comunicat-de-presa-fara-ura-si-partinire/; George-Eugen Enache et al., "Biserica Ortodoxâ Românâ în anii regimului comunist. Observatii pe marginea capitolului dedicat cultelor din Raportul final al Comisiei pentru analiza dictaturii comuniste din România," *Studii Teologice* 2 (2009): 7–103.

61 Philpott, "When Faith Meets History: the Influence of Religion on Transitional Justice," 188. The idea has been articulated in earlier works as well: Daniel Philpott, "Religion, Reconciliation, and Transitional Justice: The State of the Field," Social Science Research Council Working Paper, 2007; Daniel Philpott, "What Religion Brings to the Politics of Transitional Justice," *Journal of International Affairs* 61 (2007): 93–110.

62 Philpott, "When Faith Meets History: the Influence of Religion on Transitional Justice," 189 at footnote 49.

63 See Comisia Prezidentiala pentru Analiza Dictaturii Comuniste din Romania, Raport Final, 234-240.

64 One may speak of "moral extraterritoriality," to use the term of Philpott, who borrowed it from George Weigel. Ibid., 188. Even so, the autonomy variable does not faithfully account for the economic aspect at stake in the restitution of property.

65 Turcescu and Stan, "The Romanian Orthodox Church and Post-Communist Democratisation: Twenty Years Later," 148–149.

66 "Involvement" here refers to clerics' standing for elections or their advising followers as to a preferred (external) candidate of the church. See Ovidiu Voicu, "Implicarea Bisericii in politica: Desi au incredere in Biserica, Romanii nu o vor amestecata in politica," Fundatia Soros România, September 2011, available at http://www.fundatia.ro/sites/default/files/Implicarea%20Bisericii%20in%20Politica_analiza%20studiului.pdf. It should also be noted that trust in the church as measured by polls has decreased radically from percentages in the mid-80s during the 1990s to the low 70s in 2011, to the low 60s in 2014. Ibid., and "Sondaj INSCOP: Increderea romanilor in DNA a inregistrat o crestere spectaculoasa, UE ocupa locul I in topul increderii in institutiile internationale, urmata de NATO. Biserica isi continua scaderea," *Hotnews*, December 11, 2014.

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ICTR-96-17-T, International Criminal Tribunal for Rwanda, Trial Chamber I, Judgment and Sentence of 21 February 2003; *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana,* Cases No. ICTR-96-10-A & ICTR-96-17-A, Appeals Chamber, Judgment of 13 December 2004.

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70 David P. Gushee, "Why the Churches Were Complicit: Confessions of a Broken-Hearted Christian," in *Genocide in Rwanda: Complicity of the Churches?,* ed. Carol Rittner, John K. Roth, and Wendy Whitworth (Saint Paul, MN: Paragon House, 2004), 259–266, 262.

71 Longman, "Church Politics and the Genocide in Rwanda," 182.

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75 Ibid.

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94 Amnesty International, *Solomon Islands: A Forgotten Conflict*, 34.

95 Ibid., 24; Department of National Planning and Aid Coordination, United Nations Country Team for Solomon Islands, *Solomon Islands Millennium Development Goals, Report 2004*, 2005, 9.

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145 Mark W. Janis, "Introduction," in *Religion and International Law*, ed. Mark W. Janis and Carolyn Evans (The Hague: Martinus Nijhoff Publishers, 1999), xi–xiii, xi.

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147 Pablo de Greiff, "Justice in Context: Transitional Justice and Paradigms of State and Conflict," International Center for Transitional Justice, undated, 2.

148 Christine Bell, "The 'New Law' of Transitional Justice," 105–126.

149 See ibid.

150 For a critical account of such assertions, see David Kennedy, "Losing Faith in the Secular and the Culture of International Governance," in *Transgression, Punishment, Responsibility and Forgiveness*, ed. Andrew D. Weiner and Leonard V. Kaplan (Madison: Wisconsin University Press, 1998), 115–127.

151 See discussion in Cismas, *Religious Actors and International Law*, 22.

152 In a conversation with the author, for instance, a keen observer of the Tunisian transitional justice process argued that the perception that some members of the Truth and Dignity Commission are close to either Ennahda or the secular party Nidaa Tounes may delegitimize the work of the mechanism in the eyes of the rival faction. See also Jonathan Steele, "On the Eve of Its Launch, Tunisia's Commission on Truth, Dignity in Turmoil," *Middle East Eye*, November 21, 2014, available at www.middleeasteye.net/news/eve-its-launch-tunisias-commission-truth-dignity-turmoil-213755480#sthash.vMuFVpDY.dpuf.

153 See Branka Peuraca, "Can Faith-Based NGOs Advance Interfaith Reconciliation? The Case of Bosnia and Herzegovina," USIP Special Report (Washington, DC: US Institute

of Peace, 2003). See more generally the work of R. Scott Appleby on religious actors as peacebuilders who "strive to create coalitions across ethnic and religious boundaries; they channel the militancy of religion in the direction of the disciplined pursuit of justice and nonviolent resistance to extremism. The religious argument they build in support of this agenda is decisive to its success." See R. Scott Appleby, *The Ambivalence of the Sacred: Religion, Violence, and Reconciliation* (Lanham, MD: Rowman & Littlefield Publishers, 2000), 282.

154 *Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Sudan v. Sudan*, Communication nos. 48/90-50/91-52/91-89/93 (1999), para. 72.

155 See also Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), para. 24

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157 On the difference between substantial or "thick" and procedural or "thin" forms of the rule of law, see Martin Krygier, "Rule of Law (and Rechtsstaat)," in *The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat)* ed. James R. Silkenat et al. (Berlin: Springer, 2014), 51ff.

158 Perhaps the closest such reported situation was that in South Africa. Scholars have documented that some public hearings of the South African Truth and Reconciliation Commission had a "decidedly religious character" which "resembled a church service more than a judicial proceeding, with a definite 'liturgical character.'" While this was welcomed by many South Africans who could relate to a critique of apartheid founded in Christian ideals, it was alien to some commissioners and some victims, who complained about "the imposition of Christian morality." Audrey R. Chapman and Patrick Ball, "The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala," *Human Rights Quarterly* 23 (2001): 1–43, 18.

159 See OHCHR, "Rule of Law Tools for Post-Conflict States: Amnesties," Geneva, 2009; *Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1, principle 24.

160 Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (1977), art. 6(5); Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Rules*, vol. I (Cambridge: Cambridge University Press, 2009), rule 159.

161 See Letter from Dr. Toni Pfanner, Head of the Legal Division, ICRC Headquarters, Geneva, 1997, as cited in Naomi Roht-Arriaza, "Combating Impunity: Some Thoughts on the Way Forward," *Law and Contemporary Problems* 59 (1996): 93–102, 97.

162 See Bell, "The 'New Law' of Transitional Justice," 105–126.

163 See Boesenecker and Vinjamuri, "Lost in Translation? Civil Society, Faith-Based Organizations and the Negotiation of International Norms," 358 and 363.

164 See Gilbert M. Khadiagala, *Greater Horn of Africa Peacebuilding Project: Case Study Two: The Role of the Acholi Religious Leaders Peace Initiative (ARLPI) in Peacebuilding in Northern Uganda* (Washington, DC: US Agency for International Development and Management Systems International, 2001), 8.

165 Ibid.

166 Inter-American Court of Human Rights, *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*, Judgment of 25 October 2012 (Merits, Reparations And Costs), paras. 296 and 301.

167 Erika Johnson, "Human Rights Archives Under Attack in El Salvador," Council on Hemispheric Affairs, November 15, 2013, available at http://www.coha.org/human-rights-archives-under-attack-in-el-salvador/. See also Elaine Freedman, "Monsignor Romero's Murder: Thirty Years of Impunity," *envio*, no. 345, 2010, available at http://www.envio.org.ni/articulo/4166. It should be noted that El Salvador's Supreme Court overturned the amnesty law in 2016. See "With Amnesty Law Overturned in El Salvador, Prosecutors Must Work with Victims to Investigate Civil War Atrocities," International Center for Transitional Justice, July 21, 2016, available at https://www.ictj.org/news/amnesty-el-salvador-civil-war.

168 Documento - Solomon Islands: Fear For Safety, ASA 43/08/00, 13 September 2000, available at http://www.amnesty.org/es/library/asset/ASA43/008/2000/es/c5f5b7ec-ddca-11dd-9bb6-9d0e42687e7f/asa430082000en.html.

169 See for instance Philpott, "Religion, Reconciliation, and Transitional Justice: The State of the Field," 26 and 41.

170 See for example Daniel Philpott, "Introduction," in *The Politics of Past Evil: Religion Reconciliation, and the Dilemmas of Transitional Justice*, ed. Daniel Philpot (South Bend, IN: University of Notre Dame Press, 2006), 1–9, 3–5.

171 Unless, of course, they have the relevant qualifications for the latter positions.

172 This observation is based on the claim that only a comprehensive or integrated approach to transitional justice would be able to realize all the rights which underpin the transitional justice paradigm—i.e., the right to truth, access to justice and the obligations to investigate and prosecute, the right to reparation, and the legitimate expectation of nonrecurrence.

173 See Daniel Philpott, "Beyond Politics as Usual: Is Reconciliation Compatible with Liberalism?," in *The Politics of Past Evil*, 11–44, 12–13; Philpott, "The Justice of Forgiveness," 401; Boesenecker and Vinjamuri, "Lost in Translation? Civil Society, Faith-Based Organizations and the Negotiation of International Norms," 346–7.

174 See *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of*

non-recurrence, Pablo de Greiff, UN doc. A/HRC/21/46, August 9, 2012.

175 Zinaida Miller, "Effects of Invisibility: In Search of the 'Economic' in Transitional Justice," *International Journal of Transitional Justice* 2, no. 3 (2008): 266–291, 267.

176 Ibid.

177 Evelyne Schmid, "'Who May Now Speak'? International Lawyers and Religious Actors in Transitional Justice," Voelkerrechtsblog, May 20, 2015, available at http://voelkerrechtsblog.org/who-may-now-speak-international-lawyers-and-religious-actors-in-transitional-justice/.