

Conclusions

11.1 INTRODUCTION

This book assessed whether transitional justice can meaningfully respond to historical abuses of states and churches in Ireland, the United States, the United Kingdom, Canada, and Australia, and the broader global legacy of abuses in the Roman Catholic Church. It identified significant dissatisfaction at the approach taken, in existing critical literature and among survivor communities. This dissatisfaction stems from a failure by church and state to (i) change meaningfully the use and distribution of power, (ii) address the emotional and lived experience of survivors, and (iii) engage in the reimagining of national and religious myths and identity, required in taking responsibility for historical-structural injustices. In light of these failures, states, churches, and societies may employ the rhetoric and practices of transitional justice to legitimate existing structures of power and emotional narratives that continue to subordinate and marginalise historically abused groups and individuals and seek legitimation in existing national and religious myths. Such transitional justice is *unrepentant* justice: even as they claim to serve the needs of victim-survivors, states and churches retain the belief in their own legitimacy, authority, and capacity to control and shape the lives of those in their territories, denominations, and beyond. These states continue to assert the legitimacy of coercive confinement for asylum seekers, in prisons, and their capacity to morally and legally categorise and ‘other’ those deemed social problems. Churches continue to assert their capacity to ‘other’ those deemed morally and spiritually problematic, such as those who identify as LGBTQI+. The logic of historical-structural injustices continues today. This brief conclusion reflects on the potential of justice efforts in the face of this lack of repentance.

11.2 ASSESSING TRANSITIONAL JUSTICE FOR THE HISTORICAL ABUSES OF CHURCH AND STATE

This book concerned attempts in recent decades to address historical-structural injustices, reflecting both individual and institutional acts of violence within lived memory and inter-generational structures and patterns of violence, discrimination and harm. Part I considered both the nature and extent of longer and inter-generational forms of non-recent violence. Chapter 2 outlined organised violence among states and churches and demonstrated the consistent forms of 'othering' used to justify and legitimate these forms of harm over different historical and national contexts. Chapter 3 considered that if transitional justice focused only on addressing historical abuses within lived memory, it would not connect non-recent abuses to current harms experienced by the descendant members of historically marginalised groups. As a result, the chapter employed the concept of historical-structural injustice, to articulate how non-recent forms of violence can be more effectively understood as part of widespread and systemic patterns of socially reproduced violence, as well as the result of the direct commission or perpetration of violence by specific individuals, institutions, and states. In turn, the chapter argued that an evaluation of the role of power and emotion would reveal that resistance is the result of an unwillingness or inability of existing holders and beneficiaries of power structures to divest themselves of power and authority and to enable the articulation of new national and religious myths and forms of identity.

Chapter 4 considered power as a four-dimensional phenomenon, examining its role as a form of agency, as a structure, and at its epistemic and ontological levels. While the abuse of power was present across these dimensions in historical-structural injustices themselves, the chapter also suggested that these patterns and practices of power may be present in transitional justice mechanisms and processes, with the effect of limiting their ability to address historical-structural injustices directly. In particular, the chapter argued that existing practices and structures of power are sustained and reproduced by national and religious myths that legitimate and justify the status quo. Chapter 5 combined this analysis of power with assessing the parallel role of emotions in shaping both historical-structural abuses and attempts to address the past. Particular emphasis is placed on the emotion of shame. As an emotion that in its structure is a criticism of individual identity rather than individual conduct, it is an emotion that is pervasive in existing accounts of historical-structural injustices but also in attempts to respond to the past. The suggestion of this chapter is that while shame may play some beneficial role at

an individual level, when deployed by powerful actors across existing structures, it is capable of reinforcing the structure of society based on ‘othering’ and the creation of inferior social categories.

Part II evaluated existing transitional justice mechanisms through these lenses of power and emotion. Transitional justice provides several episodic experiences and contests of power for victim-survivors, state, and church institutions. In some instances, inquiries, apologies, and redress schemes have also affected national attitudes and awareness regarding abusive aspects of the past. However, current practices also reflect fundamental sites of resistance to addressing historical-structural injustice across each of the dimensions of power and emotion examined in the book, which are likely to remain and adapt in the future. Evaluating how states and churches address historical abuses across four dimensions of power reveals some of the limitations of current approaches.

Victim-survivor participation in inquiries and reparations is essential to legitimate these mechanisms. The experience of survivors in both instances is ambivalent – although some find inquiry processes helpful and empowering forms of recognition, as in some Australian inquiries, but others have frustrated, distressed, and re-traumatised survivors, especially Irish and some UK inquiries. Similarly, with redress schemes, while they can grow to some considerable scale such as the Irish RIRB or Canadian IRSSA schemes, even the best designed and most munificent schemes struggle to address the ‘unrectifiable loss’ of historical-structural injustices completely and may cause forms of distress and re-traumatisation. In addition, litigation processes considered in Chapter 7 offer limited and instrumental forms of survivor participation and empowerment and continue broader patterns of distress and re-traumatisation within victim engagement with the legal system. While apologies discussed in Chapter 9 can be crafted in a manner that involves survivor participation, their benefits to survivors are maximised when combined with other material measures designed to address survivor priorities directly. Finally, Chapter 10 highlighted the persistence of non-empowering forms of governance under the banner of reconciliation.

In contrast to these victim experiences, there are some actors who stand to lose in practical, economic, and authority-based terms by a shift towards a redistribution of power, even on the imperfect terms of current transitional justice practices. States and land-based economic actors, such as those involved in extractive industries such as oil or mineral wealth, all stand to lose power if land is redistributed to First Nations peoples. Churches may stand to lose financially if redress schemes continue to be developed that seek

contributions from responsible non-state actors. In addition to material and economic power, addressing the past may challenge the authority of individuals and institutions. Politicians who operate out of a political ideology that relies on division along racial, gendered, or religious lines have good reason to resist a more inclusive electorate that is not divided along identity lines. Churches whose theology continues to operate from a scapegoating posture and who assert their claims to spiritual authority are threatened by more inclusive redistributions of power. Attempts to change these distributions of power are likely to be resisted and fought. McAuliffe notes that where elites have guarded power to date, they remain unlikely to voluntarily concede it where they have the option not to do so.¹ John Borrows concurs that efforts to enable Indigenous self-determination and self-governance are likely to be met with substantial opposition from those who benefit from the prevailing allocation of power.²

Secondly, the structure of transitional justice mechanisms means that even the best practices are limited by design. Inquiries' inability to shape the implementation of their recommendations and the tendency to separate historical injustices from contemporary harms limit their potential to reorder fundamentally current social political and legal structures. The good practices of the Canadian TRC and MMIWG inquiries and the Australian RCIRCSA offer a better approach than traditional inquiry models but fundamentally remain contingent on external political will. Litigation mechanisms are typically designed to avoid addressing structural injustices and frame harms as deviations from structurally just baselines. In contrast, those landmark cases such as *Brown* in the United States or *Mabo* in Australia represent potential sites for significant change to existing structures. However, although these victories are profound and significant, there appears a persistent retrenchment and opposition to fully embracing the fundamental challenge posed by these decisions to the legal and political systems they seek to restructure. Similarly, while potentially broad or expensive in material terms, redress mechanisms nonetheless struggle to address the full scale and impact of settler colonial or imperial processes, with notable gaps in the provision of reparations for transatlantic slavery and limited return or restitution of Indigenous lands. Apologies are typically designed to exclude admission of legal liability or

¹ Pádraig McAuliffe, 'The Problem of Elites' in Matthew Evans (ed), *Transitional and Transformative Justice* (Routledge 2019) 93.

² John Borrows, "'Landed Citizenship': Narratives of Aboriginal Political Participation' in Will Kymlicka and Wayne Norman (eds), *Citizenship in Diverse Societies* (Oxford University Press 2000) 340.

recognition of the violation of rights. Reconciliation policies remain structurally predicated on the existence and legitimacy of states and churches that have constituted and constructed themselves in part through historical-structural abuses.

In contrast to mechanisms that may positively affect the structural harms experienced by victim-survivors, the structure of transitional justice itself may also enable resistance to meaningfully address the past. The capacity of transitional justice to address historical-structural injustice is hampered by its current focus on ‘strengthening rather than challenging the state’,³ which will disable its role in addressing settler colonialism or other processes requiring changes to structural features of states and churches. Augustine Park has argued a ‘radicalised transitional justice would abandon liberal teleology, recognising the deep interrelation between liberalism and settler colonialism’. Such a move would disrupt ‘the settler’s linear concept of time and the colonial ideology of progress.’⁴ Similarly, Balint et al suggest that the relevant transition: ‘is from unjust to just relations – transforming of the social political economic and legal frameworks that underlie settler colonialism’.⁵ While such a radical model of transitional justice grows in academic popularity, it must address the foreseeable resistance and challenges that a model would face, to overcome potential scepticism about whether such transition or transformation is possible.⁶

Expecting the existing mechanisms of transitional justice to address structural injustices directly seems implausible in light of the current practices adopted by relevant states and churches. For de Greiff, the known inadequacy of transitional justice mechanisms is a central challenge.⁷ He notes the profound challenge involved in transitional justice as an effective form of social change: ‘Although our knowledge of institutional transformation processes is deficient, it still outstrips our ability to effect changes in culture or personality. Again, this is not the result of mere chance. Culture and

³ Jennifer Balint, Julie Evans and Nesam McMillan, ‘Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach’, (2014) 8 *International Journal of Transitional Justice*, 194, 201

⁴ Augustine SJ Park, ‘Settler Colonialism, Decolonization and Radicalizing Transitional Justice’ (2020) 14(2) *International Journal of Transitional Justice* 260, 277.

⁵ Jennifer Balint and others, *Keeping Hold of Justice: Encounters between Law and Colonialism* (University of Michigan Press 2020) 100.

⁶ Pádraig McAuliffe, *Transformative Transitional Justice and the Malleability of Post-Conflict States* (Edward Elgar Publishing 2017) 296; Dustin N Sharp, ‘What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice’ (2019) 13(3) *International Journal of Transitional Justice* 570, 588.

⁷ Pablo de Greiff, ‘A Normative Conception of Transitional Justice’ (2010) 50 *Politorbis* 17, 19.

personality structures, . . . are resistant to direct interventions.’⁸ Transitional justice, with its commitment to an alternative future but one that involves a problematic state and limited means to address broader processes of structural and cultural change, may be necessarily inadequate to the task of addressing historical-structural injustices, at least in its current form.

Third, transitional justice in inquiries, litigation, and redress, especially, presents opportunities for the healing and validation of victim-survivor experiences but also significant risks of re-traumatisation, distress, or fresh forms of epistemic injustices. The experiences of survivors in Irish mechanisms routinely constitute new forms of epistemic injustice, ignoring or marginalising survivor experience and denying recognition of framing of historical abuse as the violation of rights, with the exception of the *O’Keeffe* case before the ECHR. Existing accounts also criticise the treatment of survivor experiences in the Northern Irish and English and Welsh inquiries. In contrast, inquiries in Canada, especially the TRC and MMIWG processes, emphasised the distinct value of First Nations knowledge and expertise and aligned with the well-received treatment of survivor testimony in the Australian Lost Innocents, *Bringing Them Home*, and *Forgotten Australian* inquiries, and the recent RCIRCSA. Redress schemes that aim to avoid the potentially re-traumatising experience of litigation can nonetheless form a fresh site of epistemic injustice where they preclude survivors from a further opportunity to express their experiences and have these validated and acknowledged. Chapter 9 concluded that while some states’ and churches’ practices of apologies were broader and more holistic, the narrative constructed by apologies for historical abuse remains largely limited by its failure to acknowledge historical abuses, not as separate and past, but as continuous with and reproduced in the present. Chapter 10 concluded that as currently practised, reconciliation seeks to operate as a form of settlement designed to close down ongoing and perhaps perennial forms of contestation about the legitimacy of state- and church-led efforts to address the past. Instead, an agonistic conception of reconciliation offers the potential to serve as a site of ongoing contestation and a mechanism to evaluate whether and how the voices, knowledge, and views of survivors and marginalised communities and peoples form part of states’ and churches’ response to the past and reformed structures and practices of power, emotion, and national or religious myths.

⁸ Pablo de Greiff, ‘Making the Invisible Visible: The Role of Cultural Interventions in Transitional Justice Processes’ in Clara Ramírez-Barat (ed), *Transitional Justice, Culture, and Society: Beyond Outreach* (Social Science Research Council 2014) 13.

Moreover, with all the testimony gathered, it remains unclear the extent to which it impacts the discourse and behaviour of institutions, churches, states, and societies that were involved in abuses. Those who retain power and privilege in these contexts today have the luxury to ignore, dismiss, or minimise the need for radical change that arises from addressing survivor experiences directly. As Carol Gilligan has observed, positions of power are distinguished precisely by their ability to ‘opt not to listen. And [to] do so with impunity’.⁹ The effect of transitional justice processes may thus be to require survivor testimony, disclosure, and potential re-traumatisation, in the hope of seeing harms officially acknowledged, but ultimately this process will not affect how survivors are treated or viewed in society. Viewing epistemic injustice as one dimension of power, acts of listening, or performances of emotion by state and church officials, such as in apologies, are necessary but insufficient – such processes should accompany material changes for individual survivors and for the structures that gave rise to and reproduce historical-structural injustices, and not be a substitute for such changes.

Finally, meaningfully addressing historical-structural injustices requires the reworking of national and religious myths and identities, seeking to engender change in social and institutional consciousness and attitudes to the past, to the nation and to victim-survivor populations and historically marginalised groups. Lu suggests ‘contemporary agents must struggle to turn away from the images of themselves and each other produced through objectionable social and political structures and relations and effect a turning around or reorientation of their vision’.¹⁰ The inability or unwillingness of states, churches, and societies to fully accept both legal or interactional responsibility and ongoing social responsibility for historical abuses today arises in part because these groups want to maintain social, cultural, and national identities and myths that tell ourselves that we are fundamentally good people – and accepting the full reality and cost of historical-structural injustices fundamentally and necessarily challenges that picture. We want to tell ourselves that we are not perfect, but criminal, violent, or abusive conduct remains exceptional, the purview of a ‘few bad apples’. Cognitive psychologists tell us that typically people prefer to understand events as caused by the character or personality traits of individuals, rather than caused by forces such as the social and cultural environment

⁹ Carol Gilligan, ‘Feminist Discourse, Moral Values, and the Law: A Conversation’ (1985) 34 *Buffalo Law Review* 11, 62.

¹⁰ Catherine Lu, *Justice and Reconciliation in World Politics* (Cambridge University Press 2017) 280.

or institution in which the event takes place.¹¹ This preference comes from our desire to be comforted by the belief that we live in a ‘just world’, in which justice is imposed and predictable based on what people deserve.¹² In doing so, we may declare ourselves, our states, and our churches innocent of any complicity or responsibility for historical-structural injustices.

For instance, Alissa Macoun argues that

We declare ourselves innocent when we assume that non-Indigenous people are basically benevolent bystanders to racism and colonialism, just requiring additional information or education in order to do good. We declare ourselves innocent when we assume that we educated white progressives are fundamentally different from other non-Indigenous people, the solution to a problem that lies in the hearts and minds of others rather than in our own institutions, knowledges, and practices. We declare ourselves innocent when we acknowledge a racist colonial past but assume a separation between this past and our racist colonial present. We declare ourselves innocent when we see ourselves as agents of progressive futurity and not also of colonial institutions and racial power.¹³

For Christians, such a severance of the past and present and harm and responsibility is especially pernicious. Former Archbishop of Canterbury Rowan Williams notes that the church, as the body of Christ, should be conceived of as extending over time and space and not merely over different geographical nations: ‘The Body of Christ is not just a body that exists at any one time; it exists across history and we therefore share the shame and the sinfulness of our predecessors, and part of what we can do, with them and for them in the Body of Christ, in prayerful acknowledgement of the failure that is part of us, not just of some distant “them”.’ He continued:

To speak here of repentance and apology is not words alone; it is part of our witness to the Gospel, to a world that needs to hear that the past must be faced and healed and cannot be ignored . . . by doing so we are actually discharging our responsibility to preach good news, not simply to look

¹¹ Jon Hanson and David Yosifon, ‘The Situation: An Introduction to the Situational Character, Critical Realism, Power Economics, and Deep Capture’ (2003) 152 *University of Pennsylvania Law Review* 129, 147; Jon Hanson and David Yosifon, ‘The Situational Character: A Critical Realist Perspective on the Human Animal’ (2004) 93 *Georgetown Law Journal* 1, 102.

¹² Adrian Furnham, ‘Belief in a Just World: Research Progress Over the Past Decade’ (2003) 34 *Personality & Individual Differences* 795, 796.

¹³ Alissa Macoun, ‘Colonising White Innocence: Complicity and Critical Encounters’ in Sarah Maddison, Tom Clark and Ravi de Costa (eds), *The Limits of Settler Colonial Reconciliation* (Springer Singapore 2016) 86.

backwards in awkwardness and embarrassment, but to speak of the freedom we are given to face ourselves, including the unacceptable regions of . . . our history.¹⁴

Conceived of in this way, Christian churches and communities have specific spiritual and theological obligations to address the harmful aspects of the past, especially those that are perpetuated in the present.

Resistance to this challenge to national and religious identities and myths functions as a form of denial of social connection and historical connection. Western states and churches do not see the need to problematise their myths or conception of legitimate power. They see that they only stand to lose by doing so. The focus on power and national and religious identity reinforces the profound and fundamental nature of addressing historical-structural injustices. The scale of the challenge is vast and daunting, the work of multiple generations. The demands for reparations, decolonisation, and transfer of power and land, involved as alternatives to existing processes, would fundamentally and radically change the nature and structure of the societies and churches examined and be met with significant claims of ignorance, innocence, and protest. By seeking to apply transitional justice to historical-structural injustices, it is no longer possible to suggest that current liberal democracies are a suitable utopian end point for transitional justice processes and mechanisms. Instead, the only way to relegitimate the power and authority of states and churches responsible for historical-structural injustices is to give it away and to recognise what was always true: that claims to power, authority, and truth are shared with the most marginalised in these societies and churches. The power and authority within Indigenous peoples, African Americans, women, children, victim-survivors of historical-structural abuses considered in this book and those historically marginalised groups beyond the present scope, as experts in their own experiences, harms, and futures, form the basis for more legitimate and just societies and churches.

11.3 WHITHER TRANSITION

In the context of these critiques, it is worth considering whether transitional justice retains any value for addressing large-scale and non-recent violence in the settings considered in the book. The field and its institutional responses to violence are capable of capture, manipulation, and being consistent with the

¹⁴ Stephen Bates, 'Church Apologises for Benefiting from Slave Trade' *The Guardian* (London, 9 February 2006) <www.theguardian.com/uk/2006/feb/09/religion.world#>.

existing distributions of power and authority in society. Equally, these state-led responses are capable of instrumentalising the participation of victim-survivors to relegitimate the state at the expense of survivor re-traumatisation and further marginalisation or disempowerment.

And yet, there remains something significant about framing mechanisms to address the past as a broader process of social change, that is, as transitional justice. First, transitional justice has been and continues to be employed by victim-survivors of historical-structural injustices as one framework to address their demands for justice measures. The case selection for this book concerns national and religious contexts where (i) living victim-survivors are advocating for state and church responses to accusations of non-recent violence on a large scale and (ii) where descendants of social groups, especially women, Indigenous peoples, and African Americans, can and do make claims that ongoing forms of discrimination and harm that they experience bear some relationship or continuity with similar forms of violence or prejudice against these same social forms of identity in prior generations. These factors offer the basis for distinguishing cases of historical-structural injustices with ongoing effects and agents in contemporary societies, from those that do not. For instance, Winter gives the example of the Viking invasion of Ireland not being a basis for state redress from Denmark to Ireland.¹⁵ It is in the cases where justice issues remain live, contested, and lived by victim-survivors, families, and descendants that transitional justice remains of value.

Second, in employing transitional justice in this context, both Stephen Winter and Nicola Henry concur on the capacity of transitional justice to unify diverse issues, debates, institutions, and practices as part of a broader and more coherent evaluative framework.¹⁶ However, in doing so, the unifying function of transitional justice may work in different directions. A concern with unity or coherence may be compatible with transitional justice as the (re) building of legitimacy alone. Stephen Winter suggests: 'state redress both improves the historical congruency of state actions with legitimating values and satisfies outstanding rectificatory demands. In doing so, it removes burdens from political legitimacy and thereby extends and strengthens political authority'.¹⁷ For Winter, a focus on the need for political legitimacy

¹⁵ Stephen Winter, *Transitional Justice in Established Democracies: A Political Theory* (Palgrave Macmillan 2014), 220.

¹⁶ Nicola Henry, 'From Reconciliation to Transitional Justice: The Contours of Redress Politics in Established Democracies' (2015) 9 *International Journal of Transitional Justice* 199, 206, 217.

¹⁷ Winter (n 15) 214.

highlights that the inadequacy of transitional justice mechanisms remains 'to the task of political transformation. Only when we see how they are unified by the larger theory of political legitimacy does a modest transformative prospect emerge.'¹⁸

While Winter provides a good descriptive account of some of the existing functions of redress mechanisms in state redress, he also concedes 'still it is likely that there are other, more effective, ways to stop communal cycles of violence than by improving the legitimacy of state institutions'.¹⁹ His account eschews consideration of the ongoing dimensions of historical-structural injustices, and the role of emotions and articulated national myths, such as national shame,²⁰ as sites of resistance to the potential legitimating work of transitional justice. Part of the work of this book in examining those further issues is to suggest that transitional justice mechanisms will be necessarily inadequate to their task of addressing victim needs and contributing to social change if they do not extend beyond the role of enhancing state legitimacy.

In contrast, for Nicola Henry, this unifying function of transitional justice 'in turn refocuses attention to the fundamental questions that need to be asked about redress in such democracies'.²¹ For Henry, rather than necessarily resolving crises of state legitimacy, transitional justice may also 'productively assist to destabilize or challenge the power of the state, even through measures that are designed and implemented by the state'.²² Transitional justice may thus play a useful agonistic role in 'bringing together competing ideas on, first, what kind of change has occurred, and second, what kind of change is desired in the future', extending to addressing the 'complex social, economic, cultural, interpersonal, and generational tragedies generated by historical injustices of the past'.²³

Third, considering transitional justice in the context of historical-structural injustices and the case studies selected in this book prompts consideration, not just of what an adequate single justice initiative is but what the transition involved in these contexts is. Balint et al suggest this should concern:

not solely transition to a democratic regime as initially understood in the transitional justice paradigm, but also as transition from unjust relations to

¹⁸ *ibid* 225.

¹⁹ *ibid*.

²⁰ *ibid* 219.

²¹ Henry (n 16) 206.

²² *ibid* 212.

²³ *ibid* 209, 218.

just relations and the transformation of the social, political, economic and legal frameworks such as those that underlie settler colonialism. It is the structural injustice of settler colonialism, and colonialism generally, that continues as the core injustice into the present. This includes the ongoing denial of indigenous sovereignty and the potential to place indigenous peoples outside the rule of law in governance.²⁴

More recently, Balint et al suggest, 'It is through a more committed recognition of the past and its enduring significance in the present that the beginning of just relations might be found.'²⁵ On their account, acknowledging the enduring impact of the past on the present may enable 'the present to be conceptualized as not only a place of injustice, but of possibility, responsibility, and relationality. It compels a recognition that there are possibilities to interact justly still'.²⁶ This book shares their commitment to persist with the need for justice and to remedy structural injustices explicitly and directly.

As a result, there remains distinctive value in employing a transitional justice framework to address past large-scale violence, particularly where the consequences of such violence retain impact in contemporary societies. Transitional justice can unify diverse discourses and practices, can engage questions of whether and how the state (or church) can be legitimated as those institutions address the past, and can prompt the question and fresh consideration of whether, from what, and to what, there is a transition in state, church, and society. However, unless and until transitional justice measures address explicitly the role of power, individual and social emotions, and national myths, progressing the task of addressing historical-structural injustices may remain elusive.

11.4 POWER, EMOTIONS, AND PROGRESS

On this account, there is no reason to suggest that historical-structural injustices can be undone by a single (set of) transitional justice mechanisms. There is no reason to suggest that a particular configuration of institutional designs could avoid co-option or the reconsolidation of power. It is foreseeable that actors who benefit from existing power structures will seek to reassert that distribution of power when challenged on an episodic or individualised basis.

²⁴ Jennifer Balint, Julie Evans and Nesam McMillan (n 3) 214.

²⁵ Jennifer Balint and others (n 5) 133.

²⁶ *ibid* 141.

Knowing this should challenge the suggestion that the mere pursuit of a bottom-up, survivor empowerment would be capable of overcoming these structural limitations. Instead, the longer time frame of violence to be addressed, the reproduction of violence in contemporary societies, and the deeply embedded structures of power and cultural identity all suggest the need to revise the sense of progress that such transitional justice could feasibly claim to achieve.

For Michael Walzer, moral progress is concerned not with the discovery or invention of new principles but with the inclusion under old principles of previously excluded men and women.²⁷ On this account, moral progress is a matter of correcting epistemic errors about who ‘counts’ as a person.²⁸ A second approach, associated with Axel Honneth, describes moral progress in terms of improved institutional implementation of existing moral principles.²⁹ Such accounts of progress would mirror attempts to ‘recognise’ Indigenous peoples within a liberal democracy or suggest the need for further implementation of existing transitional justice strategies.

For Rahel Jaeggi, progress is different from a particular outcome. It instead ‘refers to the form of change, to the process of transformation towards the good or better as such. To assert that the abolition of slavery represents progress is not the same thing as to say it is right’.³⁰ On this account, ‘[p]rogress is not the ongoing mastering of a basic problem or a set of basic problems; instead it is a matter of ongoing and progressive problem solving in the course of which its ends and means can undergo transformation – without a definite end. An advantage of such a conception is that it can be conceived as plural’.³¹ In this regard, Amy Allen suggests progress must be problematised if framed as a form of triumph, and that, with relevance to progress in the context of settler colonial states, instead: ‘A genuinely open and open-ended dialogue with colonized or subaltern subjects requires a kind of humility or modesty about our normative commitments and ideals that is inconsistent with these vindicatory narratives.’³² As a result, even if deemed ‘successful’ in addressing the

²⁷ Michael Walzer, *Interpretation and Social Criticism* (pbk ed, Harvard University Press 1993) 27.

²⁸ Rahel Jaeggi, ‘Resistance to the Perpetual Danger of Relapse’ in Amy Allen and Eduardo Mendieta (eds), *From Alienation to Forms of Life: The Critical Theory of Rahel Jaeggi* (University of Pennsylvania Press 2018) 20.

²⁹ Axel Honneth, ‘Rejoinder’ (2015) 16 *Critical Horizons* 204.

³⁰ Jaeggi (n 28) 19.

³¹ *ibid* 28.

³² Amy Allen, *End of Progress – Decolonizing the Normative Foundations of Critical Theory* (Columbia University Press 2017) 209–10.

past, transitional justice must be problematised as a form of progress. Transitional justice in the service of progress as the expansion of a liberal democracy seems inappropriate for settler colonial contexts. Progress as the better implementation of pre-existing values also seems inappropriate in UK, US, and Irish contexts where those values were implicated in historical-structural abuses.

Instead, progress may be measured by the dismantling, transfer, and sharing of power across the four dimensions explored in the book: material victim empowerment; changing legal and structural conditions but also amplifying voice, belief, knowledge; and a shared rewriting of national and religious myths. At a basic, interactional level, those concerned to address historical-structural injustices in their communities can model change by divesting themselves of power and privilege. Alissa Macoun insists we cannot 'see ourselves as agents of progressive futurity and not also of colonial institutions'. We cannot 'make ourselves the subjects and heroes of our own stories'.³³ Instead, it is incumbent on those who benefit from a society or church that is built on historical-structural injustices to learn from those who have suffered and stand in solidarity with those activists seeking to engage in social change.

Second, existing legal and social structures must cease to be sites of discontinuity and division between past and present and instead explicitly acknowledge their origins in the claims of redemptive violence. Law can be the basis for telling our whole stories as societies and communities, both good and bad, and for amplifying voices of the marginalised, rather than narrowing and excluding them. A 'living' law offers the means of showing continuities between Indigenous laws and ways of knowing and challenging dominant laws and conceptions of justice.³⁴

Third, the ongoing promotion of victim-survivors as the primary source of knowledge and experience on the abusive past remains key. Achieving epistemic justice may remain illusory, but exhaustive efforts to amplify survivors within existing national and religious narratives would be a significant contribution. Richard Kearney emphasises that:

even where narrative testimony can never measure up to the complexities and alterities of the past, it is important – ethically and poetically – to continue to remember. Or at least to keep on trying. I would go so far as to say that it is precisely when one is right up against the limits of the immemorial that one most experiences the moral obligation to bear witness to

³³ Macoun (n 13) 95.

³⁴ John Borrows, *Drawing out Law: A Spirit's Guide* (University of Toronto Press 2010); Balint and others (n 5) 42.

history, echoing the words of Beckett's unnameable narrator: 'I can't go on, I'll go on'. The alternative, as I see it, is the expansion of the postmodern malady of melancholy without reprieve or redress. And that is unacceptable.³⁵

Finally, our national and religious myths must incorporate the negative and combine the ambitions of nationalisms and Christian theology for utopias and progress, with the lived experiences of suffering caused in the name of these lofty ideals. Gordon Lynch cautions us to remember: 'When the moral certainties of humanitarian action dull sensitivity to the experiences of those believed to be its beneficiaries, then humanitarianism is as capable of causing harm as any other sacred tradition.'³⁶ This truth can be applied to the supposed humanitarianism of institutionalisation, child migration, coercive adoptions, and theories of racial superiority all framed in part as humanitarian and as Christian – and indeed to contemporary efforts of transitional justice.

It is possible to suggest that everyone, in successive generations of states and churches, is a survivor of a political and theological order that has as a central feature these patterns structures and practices of violence. Mahmood Mamdani suggests that decolonisation would involve recognition of a shared identity as survivors of political modernity, which 'requires that we stop accepting that our differences should define who benefits from the state and who is marginalized by it'.³⁷ Instead, our imaginations are required to consider how to rework national and religious identities and myths in light of historical-structural injustices.

Imagine new national and religious myths that tell our whole story as peoples who share time and space with a violent past and present, who employ narratives and myths that describe the sincerely held but morally wrong beliefs of settlers and of Christian and white superiority; that incorporate the knowledge and experiences of suffering of individual victim-survivors, their families, of historically marginalised communities, of women, of African Americans, and Indigenous peoples; that incorporate the fallibility of state and church authority as a central feature and lesson of our collective memory and mythology; that revere the endurance and courage of those who have pursued

³⁵ Richard Kearney, *Strangers, Gods, and Monsters: Interpreting Otherness* (Routledge 2003) 189–90.

³⁶ Gordon Lynch, *Remembering Child Migration: Faith, Nation-Building, and the Wounds of Charity* (Bloomsbury Academic 2016) 112.

³⁷ Mahmood Mamdani, *Neither Settler nor Native: The Making and Unmaking of Permanent Minorities* (The Belknap Press of Harvard University Press 2020) 23.

justice for historical-structural harms over successive generations; and that emphasise our current collective responsibility to address the impact of our past on our present.

Finally, imagine national myths that are not triumphalist in nature but recognise the challenging reality that we live within a very imperfect and unjust world – and that is the context in which transitional justice efforts will always operate. Robert Meister suggests that ‘transitional justice tends to assume that past victims never really win – their choice is whether to persist in struggle or to stop’.³⁸ Meister suggests that this inadequacy is rooted in a secularised Christian eschatology, that at some future point in time justice will be done – so time itself is sufficient: ‘This is a secular shell of messianism to which redemption *never comes*.’³⁹ Such a view suggests transitional justice efforts despite extensive advocacy, time, money, and effort are doomed to failure in their imperfections and limits.

In contrast, Rosemary Radford Ruether suggests a better model comes from the Jubilee tradition in Hebrew Scripture,⁴⁰ which assumes that there needs to be periodic and increasing renewal, every seven days, every seven years, and every seven times seven years (fiftieth year), with most radical reform intended to ‘undo the unjust accumulations of wealth for some and oppression for others that have accumulated over the last several generations, re-establishing the basis for a viable society of equitable sharing of the means of life’.⁴¹ None of these alternatives are irreversible; those in power who seek to avoid responsibility for past injustice will no doubt continue to have the means and opportunity to do so. However, naming the roles of power, emotion, and national myths, and the need to rework and redistribute their practice can emphasise dealing with the past is deeply relational and can contribute to the undoing of otherness. An emphasis on our shared, and inter-generational, responsibility to address the violence of the past done in our communities, nations, churches, and identities may be the most appropriate expectation of transitional justice for historical-structural injustices, to make it harder to repeat the sins of our fathers.

³⁸ Robert Meister, *After Evil: A Politics of Human Rights* (pbk ed, Columbia University Press 2012) 10.

³⁹ *ibid* 307.

⁴⁰ Leviticus 25:8–17.

⁴¹ Rosemary Radford Ruether, *America, Amerikkka: Elect Nation and Imperial Violence* (Equinox 2007) 266.