Conclusion

Escaping Justice examines the strategies that governments adopt to successfully escape justice for past wrongdoings against their own citizens. Government impunity persists despite a growing global norm of accountability. How is state impunity flourishing in the age of accountability? The answer to this question rests in the ability of governments to strategically adapt their norm response to comply with international pressure for norm adoption while minimizing the domestic risks of norm compliance. The adaptation of transitional justice is central to this story. Counter to the hopes of human rights advocates, transitional justice is increasingly adopted by governments that have an incentive to obstruct efforts to hold their own accountable for past abuses, sidestepping state accountability. I have presented this argument and theoretical mechanisms and documented the process of state impunity empirically through the examination of three cases of strategic adaptation. State impunity in Rwanda, Uganda, and Northern Ireland corroborate my argument.

In the concluding chapter I discuss the main theoretical findings drawn from the empirical cases. I then turn to a discussion of the implications of these finding beyond the study of transitional justice. Next, I discuss the policy considerations of my findings and offer points of reflection about the conditions under which transitional justice will be most likely to advance government accountability. I close with some thoughts on the future of the study of transitional justice.

Main Findings

Escaping Justice makes the argument that in the age of accountability, governments with blood on their hands often exist between an international rock and a domestic hard place. International pressure for the adoption of transitional justice can threaten the political stability of

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post-conflict governments. Governments that have committed wrongdoings in the past have much to lose from being held accountable for those crimes in the future. Accountability can undermine the legitimacy of the government, strengthen political opposition, and threaten the relationship between the government and its security forces. For these reasons culpable governments would prefer a post-conflict strategy of amnesia or amnesty, which allows them to avoid these accountability risks.

Yet we are in an age of accountability where impunity for state crimes is challenged by international actors, legal conventions, and normative pressures. Often the governments most threatened by accountability are those governments particularly susceptible to international pressure to comply with the accountability norm and adopt transitional justice. Security and resource concerns in the post-conflict period can leave governments reliant on foreign aid and international investment; the government's international reputation can be central in securing this support. And so, governments want to be seen as members of the international community, readily complying with international norms.

Rather than risk domestic insecurity or international ire, governments strategically adapt their norm response to comply with an international norm for accountability while minimizing the risks of norm adoption. Strategic adaptation allows governments to comply with international norms while simultaneously protecting their own cadre from punishment. The nature of transitional justice facilitates adaptation because of the government's ability to structure and design transitional justice to advance its own aims. The structure and design of transitional justice can be adapted in such a way as to ensure that government wrongdoers escape punishment. Governments select their strategy of adaptation based on their overall capacity to control their norm response. In adapting transitional justice, the government must ensure that an independent process does not evolve to threaten the government's hold on power – in essence, jumping from the international norm frying pan into the transitional justice fire. A government's capacity to control its norm response is a product of the government's governance capabilities and the domestic constraints on those capabilities.

A government would prefer to advance a robust transitional justice process that it is able to control. However, not all governments have the capacity to pursue this strategy without great risk. A government

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will adapt a strategy it is best able to control given its governance capabilities and domestic constraints. Governments with a high capacity to control their norm response are most likely to pursue an adaptation strategy of coercion where a new and robust transitional justice process is put in place to aid the government in consolidating power in the post-conflict period. Given a high level of control, the government faces less risk in adapting a robust institution. Governments with mid-range capacity to control their norm response face risks from a strategy of coercion and will instead revert to a strategy of containment in which a transitional justice response is contained within existing institutions under government control. Domestic constraints and weaker capabilities require that the government hedges its bets by securing transitional justice within existing structures. Governments with weak capacity to control their norm response are forced to make transitional justice concessions. In pursuing a strategy of concession, governments offer accountability through transitional justice for specific events or accusations rather than adopting a transitional justice process that the government would be unable to control. Weak-capacity governments seek to advance impunity by constraining the reach of transitional justice, offering up accountability for only select individuals and for only select crimes.

My argument plays out empirically across the three cases in this study. The case of Rwanda illustrates a government with a high level of control over its norm response. The high governance capabilities and limited domestic constraints of the RPF government in Rwanda have allowed the government to pursue a strategy of coercion in which transitional justice is adapted to advance impunity for government wrongdoings. Gacaca, Rwanda's transitional justice institution, advances government impunity and political consolidation of the RPF by pursing a maximalist conceptualization of genocide crimes, operating as an indigenous Rwandan process without international interference, and by projecting government power into individual communities through local courts. The result has been a dynamic policy of accountability for genocide crimes that has strategically excluded examination of RPF wrongdoings.

In Uganda, the domestic constraints of a hybrid regime prevent the NRM government under President Museveni from creating a robust and controlled transitional justice program. With mid-range capacity to control its norm response, there is a risk that transitional justice

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could be expanded to threaten NRM rule. The government is best served containing its transitional justice response within institutions already under its control. Responding to pressure from the International Criminal Court, for example, the International Crimes Division was established within a judiciary that is closely monitored and controlled by the NRM government. Customary justice institutions have been supported and advanced despite these institutions having no jurisdiction over government crimes. International involvement has been strongest around the writing of the National Transitional Justice Policy. Here the NRM government has worked to stall and weaken the policy to ensure that an independent transitional justice institution does not emerge to threaten the government's hold on power. The result has been a prolific but weak transitional justice strategy that has been ineffective in pursuing accountability for government wrongdoings.

Northern Ireland is offered as a case of a strategy of concession where the strong democratic constrains on the British government have pushed the government toward limited accountability. The British government is an example of a government with weak capacity for control of its norm response. While the British state has a high level of governance capabilities, the government's norm response is threatened by a strong civil society, a free press, and international human rights commitments to pressure the government toward norm compliance. Creating a new and independent transitional justice process would be a highly risky endeavor. The checks and balances of democratic institutions make it difficult for the British government to ensure that it would be able to control a transitional justice policy once it is adopted. Yet, the government has not been able to sidestep the norm of accountability altogether. In this context the British government has engaged a strategy of concession where individual cases of government abuses are investigated through public inquiries or the Historical Enquiries Team. This strategy allows for accountability in individual cases without adopting a process that would systematically investigate government wrongdoings, preserving broader government impunity in the face of limited accountability.

The argument of strategic adaptation holds beyond the three cases examined here. Burundi, Côte d'Ivoire, and the Central African Republic are offered as additional examples of the strategic adaptation theory in action. In Burundi, a strong government has engaged a truth

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commission focused exclusively on Hutu crimes. In Côte d'Ivoire, a government with mid-range capacity to control its norm response has addressed pressure for accountability by establishing a Special Investigative Unit contained within the judiciary and creating a Commission for Dialogue, Truth and Reconciliation tightly controlled by the government. In the Central African Republic, the government is weakened by its lack of territorial control and an ongoing armed conflict. International pressure, however, has pushed CAR toward establishing transitional justice. With the help of an internationally funded hybrid court, the CAR judiciary has moved forward with prosecutions, but the government has worked to ensure that those cases include only select members of the current government's ruling coalition. In each of these six cases the government's ability to control its norm response impacts its chosen adaptation strategy and subsequently the way in which impunity is pursued in each case.

Implications

This book makes two broad claims that address the shortcomings of the existing literature on transitional justice and norm compliance. First, I argue that the rise of transitional justice is attributable to the rise of strategic adaptation on the part of governments threatened by norm compliance rather than solely the rise of a norm against impunity. The strength of the international norm of accountability is such that most governments are no longer able to blatantly ignore global calls for justice. Rather, governments comply with the norm despite the very real domestic risks of accountability. Governments respond to international pressure for accountability by adapting transitional justice in ways that minimize these potential risks. Second, I contend that a government adjusts its norm response in line with its ability to mitigate the risks for norm compliance based on its ability to control the institutional response it adapts. Three primary strategies emerge through which strategic adaptation can be advanced given variation in a government's capacity to control its norm response – coercion, containment, and concession. Each of these strategies produce different institutional outcomes that potentially lead to different accountability outcomes for a post-conflict state. These two claims raise several avenues for future research.

First, my study focuses on the proliferation of the international norm of accountability, but this is not the only norm that has gained the

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power to compel governments to make difficult domestic political trade-offs. Hyde's (2011) work on election monitoring offers an interesting opportunity to further examine this topic. Hyde identifies that state's often invite election monitors with little or no intention of holding free and fair elections. Fake compliance, as Hyde terms it, offers both international and domestic benefits without meaningfully advancing election accountability. Do countries engage elections through similar strategies of coercion, containment, and concession? Do these strategies produce different institutional outcomes? Complying with an international norm is particularly threatening to governments when that norm response can challenge the legitimacy and security of the government. Donno, Fox, and Kaasik's (2022) work on norm compliance suggests that not all norms are equally risky, inviting further investigation into the characteristics of norms that make strategic adaptation more likely. We should expect to see similar patterns of strategic adaptation for other norms that threaten the government's hold on power.

Second, the possibility of strategic adaption raises the question of how to identify adaptation across norms and across cases. Given the alternative incentives for norm compliance, how can scholars and policymakers identify cases most at risk for strategic adaptation? New research across disciplines is at the forefront of advancing critical scholarship regarding the alternative incentives for transitional justice adoption (e.g., Cronin-Furman 2020; Kochanski 2020). In prior work on the concept of transitional injustice, I identified regime characteristics that alter the risks of impunity, such as judicial independence, levels of state repression, and civil liberties restrictions (Loyle & Davenport 2014). These characteristics serve as shortcuts for identifying cases most at risk for the strategic adaptation of transitional justice. In all three cases studied in this book, the current government in power was directly responsible for violence in the past, making strategic adaptation most likely given the risks of accountability. While there is variation across the types and severity of wrongdoings attributed to the government in these cases, I do not explicitly explore the ways in which different types of violence raise the risks of norm adoption. This raises the questions of if, and under what conditions, states are able to break out of this trajectory.

Third, the examination of strategic adaptation encourages continued study of the indicators of policy success beyond the dichotomy of norm

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compliance. For the study of transitional justice, what are the necessary outcomes of transitional justice, and how can these be measured taking the potential for norm adaptation into account? Quantitative work on the variation of transitional justice institutions grapples with measurement concepts such as transparency and legitimacy (Bates et al. 2020; Binningsbø et al. 2012; Nichols 2019), which are crucial for answering questions about the impact and effectiveness of transitional justice. This work calls for conceptions of transitional justice impact that move beyond a compliance/noncompliance dichotomy. What structures of transitional justice are most able to hold governments to account? Which adaptation strategies are more or less risky for governments?

Fourth, my findings highlight the importance of the lived experiences of individuals whose experiences with government wrongdoings are subsequently excluded from transitional justice. Before we ask questions about the success of transitional justice, we need to engage with the possibility that not all people in each society are facing justice for their wrongdoings in equal measure. The possibility of the exclusion of certain experiences from transitional justice, particularly in the case of government wrongdoings, should lead us to critically reevaluate the ways in which the successes and failures of transitional justice are evaluated. In interviews conducted across all three empirical cases, mistrust for governance institutions, particularly the police and the judiciary, resulting from a history of impunity was a particularly salient theme. I spoke with one Protestant woman at a community center in the Upper Ardoyne area of Belfast. When asked about the possibility for government accountability, she wholly dismissed state institutions. "There is no trust in courts or police on both sides. I don't think there is any justice in Northern Ireland. I don't think there ever will be," she said.[1] Down the hill in the Catholic neighborhood of Ardoyne, a father worried about the generational impacts of this mistrust on his children. "My child has an almost pathological fear of the police because she just associates them with bad news and bad times."[2] He was anxious about what this would mean for her future in Northern Ireland. This father was right to worry. Research by Kit Rickard and Kristen Bakke (2021) has found that the legacies of

[1] Interview (UA-6), Upper Ardoyne, Belfast, Northern Ireland, May 2010, notes on file with author.

[2] Interview (A-1), Ardoyne, Belfast, Northern Ireland, May 2010, notes on file with author.

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community violence in Northern Ireland during the conflict impact people's safety and security to this day. What are the long-term impacts of government impunity on the functioning and political consolidation of the state, and do those impacts vary across different strategies of accountability?

Finally, the cases discussed in this book focus our attention on powerful national governments. However, a focus exclusively on government actions toward accountability paints over the very real and important work done on the local level to carve out pockets of accountability that challenge government policy. While local initiatives likely will not rise to the level of holding government actors accountable for their actions, these initiatives can be useful for truth telling and memorialization, their own forms of justice. In Rwanda, for example, despite the coercive and exclusionary narrative of the RPF, there are small pockets of resistance. Kristen Doughty (2016) has meticulously identified resistance to gacaca in a number of courts through documenting what she refers to as the "micropolitics of reconciliation." Lee Ann Fujii (2009, 2010) and Susan Thomson (2013) have written about the everyday resistance of Rwandans to the RPF's programs of national unity and reconciliation. While Rwandans often appear to comply with government policies, Thomson (2013: 189–190) identifies areas of subtle resistance, which signals both their individual agency and the strategic nature of their engagement. Communities in Uganda, such as the survivors in the village of Lukodi, memorialize their losses, including their lost traditions and community destroyed by the forced relocation of the Acholi people, in small memorials, museums, and yearly gatherings. In Northern Ireland, families from Ballymurphy continue to meet every year to commemorate the death of their loved ones and to call for state accountability for those murders. These sites of resistance have been only marginally effective in shaping official transitional justice policy in these countries, but they have provided meaningful spaces of reflection and memory. The presence of local accountability initiatives across my cases raises the question about the ways in which local efforts can be mobilized to advance state accountability.

Policy Considerations

The rise of a global norm of accountability with its focus on the domestic use of transitional justice has shifted the accountability

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landscape for many governments. Programs advocating transitional justice have become central to the agenda of domestic and international civil society organizations, particularly those interested in advancing the liberal goals of democracy and human rights. Calls for accountability are incentivized by international donor support that attaches financial incentives to the implementation of certain transitional justice policies. Yet these international demands for accountability have created an environment wherein governments may adopt transitional justice without a normative commitment to accountability, respect for human rights, or democracy.

This situation has arisen because transitional justice advocates have often overlooked or, more often, ignored the political environments in which they champion accountability. Central to advocacy for transitional justice is an assumption that a meaningful political transition has occurred and that the (new) government in power has no culpability in past wrongdoings. The cases in this book, however, illustrate that in many contemporary cases of transitional justice that is not the case. Adopting transitional justice when governments have abuses of their own to hide has led to environments where transitional justice is strategically adapted to advance state impunity. A critical evaluation of the ability of transitional justice to hold government actors to account suggests that the international community should have less faith in transitional justice. Fullard and Rousseau (2009) suggest that rather than seeing transitional justice as an institutional solution to the challenges of the liberal peace, our engagement with transitional justice would be advanced by seeing "truth-telling initiatives as spaces that are somewhat indeterminate rather than prescribed zones of constraint and possibility, in which intent, direction, and outcomes are transformed through the intersection, interventions and conflicts between multiple actors and parties" (81).

Many post-conflict states are susceptible to international pressure. The influence of the international community opens several avenues for advocacy to address the potentially pernicious effects of strategic adaptation that occurs in these political environments. First, while the international community has supported a toolbox approach to transitional justice, ultimately the structure and governance of transitional justice are determined domestically. Executive orders are proposed. Legislation is debated. Civil society is consulted. National referenda are held. And in all permutations of this process, there is the opportunity for political manipulation of transitional justice. The cases in this book

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demonstrate that governments have become particularly astute at advancing adaptation strategies that allow them to comply with calls for accountability while simultaneously advancing state impunity. It is the nature of transitional justice that makes these policies particularly susceptible to adaptation when incentives and constraints are misaligned. The domestic political environment matters. Paying greater attention to the political environment and the characteristics of the transitional justice institutions that are put in place allows accountability advocates to move away from a dichotomous (compliance/noncompliance) approach and instead evaluate transitional justice policy based on a more robust list of factors such as the mandate, scope, and institutional structure of the process.

Second, considering the strong pressure to adopt transitional justice, advocacy often stops short of the monitoring needed to ensure state accountability once transitional justice has been put in place. The marker of successful transitional justice can no longer be the presence or absence of a transitional justice process, but rather which wrongdoings are addressed in these quests for accountability. In my earlier writing on transitional injustice (Loyle & Davenport 2014, 2016), I identified cases of extreme abuse of transitional justice principals, but the cases of Uganda and Northern Ireland, as well as other contemporary cases such as Sri Lanka and Tunisia, suggest that it may be the more subtle forms of impunity that are the most pernicious. When governments portend to offer some form of accountability, they obfuscate their own role in violence, potentially laying the groundwork for this violence to continue. Advocates of accountability should continue to engage with transitional justice even after the process has been adopted. International engagement is important for ensuring that transitional justice is implemented in adherence with international normative principles.

Third, a critical evaluation of transitional justice should also call us to focus policy attention on alternative institutional interventions outside the current transitional justice toolkit. In cases where strong, unconstrained governments are in power, it may prove difficult to adopt widespread accountability. Programs focused on strengthening the rule of law can be effective at strengthening the position of domestic civil society in their fight against impunity (but see Sesay 2021 for a cautionary tale in this regard). Programs that strengthen the capacity of opposition political parties are often influential at weakening the government's coercive capacity and strengthening domestic

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constraints, potentially opening new nodes of access to justice and accountability.

Before we wholly dismiss the use of transitional justice, it is useful to reflect on the conditions under which transitional justice is likely to constrain government behavior and therefore be most likely to lead to state accountability. If the normative goal of the international community is to advance accountability for the violation of human rights, then holding state perpetrators accountable for their behavior should be a central goal. Using the variation in strategic adaptation of transitional justice across the cases of Rwanda, Uganda, and Northern Ireland, we can learn from these different strategies adapted by governments to escape justice to build stronger and more responsive accountability strategies moving forward. *Strategies of coercion* result in new institutions strongly monitored and controlled by the government. This form of strategic adaptation calls for greater international monitoring and involvement in the transitional justice process. In the presence of robust transitional justice that nevertheless fails to hold government actors to account, the international community should draw attention to state impunity and advocate for civil society or international initiatives outside of state control. *Strategies of containment* produce transitional justice policies that are subsumed within existing state institutions. Here international pressure is best served advocating for independent institutions that are outside of the existing power structures of the state. The government has proven adept at controlling existing state institutions, so advocating for independent, civil society initiatives could be a potentially useful tool for advancing state accountability. *Strategies of concession* result in transitional justice that is limited to select state wrongdoings but often fails to engage broader or more systematic patterns of abuse. This context is likely the most responsive to international influence. In these cases, international and domestic pressure for accountability has already been successful in encouraging accountability for a limited number of government wrongdoings. More sustained international pressure is likely to be sucessful in continuing to pressure the government for additional concessions.

The Future of Transitional Justice

As Archbishop Desmond Tutu wrote in the introduction to the final report of the South African Truth and Reconciliation Commission,

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"The past refuses to lie down quietly." The necessity of wrestling with the abuses of the past will and should remain at the forefront of efforts to reintegrate and rebuild societies following periods of intense violence. Moving forward in the study and advocacy of transitional justice, the imperative is on the actors promoting transitional justice to engage these institutions in ways that allow for the inherently political nature of accountability. Given the pressing demands and risks of governments following the end of conflict, it is not surprising that concerns of political order take precedent. But the quest for order should not overshadow the real and pressing needs for justice.

I wrote this book out of a genuine concern for the pasts that would not "lie down." The individuals I met in Rwanda, Uganda, and Northern Ireland spoke passionately about their anger and disappointment at being excluded from justice in their countries. While some people expressed a sense of hopelessness, others expressed a desire to keep fighting to be heard. In both cases, exclusion from a national reckoning with the past has the potential to impact future political participation, engagement, and even the likelihood of conflict recurrence. Understanding who is held accountable for past wrongdoings and why should therefore be seen as an essential step in building a more just and peaceful world.

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