Introduction

In a small village on the shores of Lake Kivu in Western Rwanda, a young woman named Yvette[1] sat on a cement step in the doorway of her two-room hut. As the sun rose and the fog burned off the lake, she shelled peas and clanked them into a metal bowl at her feet while her two children played quietly in the dust a few meters away. Her hut was located on the slope of a steep hill overlooking the lake, with farming plots on both sides and her neighbors' huts visible all the way down to the paved main road. I was visiting Yvette to learn about her experiences during the 1994 genocide. During my visit, I sat across from her on a wobbly wooden bench that she had set up for me in her yard. As the sun rose behind us, Yvette spoke to me not just about her tragedies but also about her hopes for justice in the new Rwanda.

During the genocide, Yvette lost her parents and siblings. At that time, she lived further down the hill closer to the large town of Kibuye. Her family was killed one night in late April in an attack by local Interahamwe – the genocidal militia group targeting ethnic Tutsi. While her family was murdered, Yvette hid in the crops growing behind her house. For the next two months Yvette was on the run; she hid during the day and moved only at night in search of food. Yvette survived through luck and the kindness of a few strangers willing to help a terrified and hungry child. When the genocide ended, she journeyed back to her family home and found that the land and house had been occupied by one of the men responsible for killing her family. Unable to return to her family land, she began again to rely on the generosity of neighbors and distant relatives.

Despite the immense hardships she had suffered, Yvette spoke with optimism about her future in Rwanda. She had heard on the radio that the government was creating a system of local courts, called gacaca, as part of a national plan to hold perpetrators of the genocide to account

[1] The names Yvette and Geraldine are pseudonyms changed for confidentiality.

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for their actions and to reckon with the immense violence the country had experienced. Yvette hoped that through gacaca she would learn more about the death of her family and could potentially retake possession of her land.

When I met Yvette in 2005, the gacaca courts were just being launched throughout the country. Gacaca is a transitional justice intervention modeled on a historical Rwandan dispute resolution mechanism and composed of community courts designed to hold lower-level criminals (i.e., violators of property, genocide collaborators, etc.) accountable for the abuses they committed through a forum of public testimony and community engagement. The Rwandan government expressed a strong commitment to justice and accountability for the country's past crimes (Schabas 1996), and gacaca embodied that commitment. Internationally, gacaca was being lauded as one of the most innovative approaches to justice and reconciliation yet attempted – the solution to overcoming decades of political violence and ethnic hostility in Rwanda (OHCHR 2007). Yvette's hope for the promise of gacaca was encouraging, and I was interested to learn more about gacaca's prospects for achieving these aims. After my conversation with Yvette, I spoke with other Rwandans about their expectations for the courts. This is how I met Geraldine.

Geraldine's story was both similar to and different from Yvette's. When I meet Geraldine, she was living in the north of Rwanda in the shadow of the Virunga Mountains. Rather than the morning fog off Lake Kivu, Geraldine sat in her hut below the mist rising from the dense Virunga Forest. Like Yvette, Geraldine had lost members of her family during the violence in Rwanda. Two of her brothers had been killed and Geraldine herself was severely beaten near her home. Her wounds were slow to heal, and in the morning it often hurt to bend her knees deeply. The violence against her and her family was not committed by Interahamwe, however, but by forces associated with the new Rwandan government, the Rwandan Patriotic Front, as part of a counterinsurgency campaign to root out political challengers to the post-genocide regime. Geraldine's grief over the loss of her family members was no less present than Yvette's when she told me her story, but Geraldine's recounting lacked the notes of optimism that Yvette had shared with me. Geraldine was aware of gacaca but viewed its arrival in her community with skepticism. Gacaca was only slated to try crimes of genocide, and so violence committed after 1994 would

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not be included in the courts' investigations. Geraldine expressed resentment toward the court because the process would address the experiences of some members of her community while excluding her own. "What happened to me is not being remembered," she said, kicking aside a rotten avocado that was resting near her feet. Geraldine, a Hutu, understood that government crimes would not be included in the national reconciliation process. "This government does not speak for me," she said, casting her eyes down into the dirt. Despite Geraldine's harms, transitional justice in Rwanda would not bring her justice. The government's strong public commitment to punishing the violations of the past would not extend to its own violence.

The structure of the gacaca courts allows the Rwandan government to escape justice while reinforcing an international perception of Rwanda's adherence to global norms of accountability. Gacaca courts have a limited mandate that focuses exclusively on crimes of genocide. The government blocks attempts to challenge that mandate, and in doing so strengthens its international legitimacy by concealing government crimes. While the genocide was by far the greatest source of human tragedy during this period of Rwandan history, it is also an event in which the current government has committed no wrongs.[2] Yet, as Geraldine's story illustrates, the Rwandan government is culpable for other violence committed in the country. As structured, gacaca has allowed the Rwandan government to address international pressure for accountability for the genocide while escaping the costs of justice for its own wrongdoings. Despite a robust transitional justice agenda, the Rwandan government has maintained impunity through narrowly construing the wrongdoings done in the country. Critically engaging with the experiences of transitional justice in Rwanda pushes us to acknowledge that, despite the adoption of transitional justice and seeming adherence to international norms of accountability, there has been functional impunity for many government perpetrators. Impunity is taking place under the guise of compliance with international norms.

As the demand for accountability expands globally, examples accumulate of transitional justice processes that fail to live up to the expectations of the international human rights community and fail to address the needs of affected populations. In Rwanda, despite a robust transitional justice agenda, attempts to hold the Rwandan army

[2] See Verwimp (2003) for a challenge to this claim.

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accountable for past crimes have been actively blocked by the government, but this level of blatant obstruction is not always the case. In Uganda, for example, the government passed a broad-based National Transitional Justice Policy, but the policy's implementation has been undermined by the government's resistance to attempts to hold its own security forces responsible for human rights violations committed in Northern Uganda. In Northern Ireland, select incidences of state violence have been acknowledged through public inquiries or, less commonly, through criminal trials of individual state perpetrators, but these one-off cases have not led to a broader reckoning with the systemic violence committed by the British government against the Catholic community during the civil war. What is striking about these cases is not that government forces were not held to account, but rather that state impunity is advanced in each country under a façade of attempts to engage with past abuses through transitional justice. State impunity persists alongside accountability.

The Puzzle of State Impunity in the Age of Accountability

How do we reconcile state impunity in Rwanda with the glowing accounts of transitional justice's ability to bring accountability and reconciliation to a country following egregious violence? According to transitional justice advocates, Rwanda's adoption of gacaca should herald justice. At its zenith in the early 2000s, transitional justice – domestic institutions that promote accountability for past violence, such as human rights trials, truth commissions, and reparations programs – was lauded as a necessary component of a political program to break with the wrongs of the past and to usher in a new future for countries following civil conflict (see discussions in Dancy & Thoms 2022; Loyle & Appel 2017; Mendeloff 2004; Sriram 2007). In the case of transitional justice, accountability refers to the ability to reckon with past violence by holding the wrongdoers of that violence responsible for their actions or by acknowledging one's wrongdoing. In the legal sense, accountability often refers to punitive measures, such as criminal accountability through legal trials. Accountability can also result from restorative measures of justice where past harms are acknowledged and amends are made, such as through truth commissions or reparation processes. Justice, in the sense of transitional justice, encapsulates the concept of moral rightness in which every person receives what

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they deserve. While there are cultural and political differences in the calls for justice following periods of violence, accountability often involves punishment, truth-telling, acknowledgment, and redress.

Transitional justice has been lauded for its ability to usher in democracy and peace by advancing a new or renewed domestic focus on rule of law, which may have been absent or systematically ignored in the past. Here, a new government can distance itself from past abuses by demonstrating its adherence to the rule of law, a key tenet of democracy (Gutmann & Thompson 2000), subsequently increasing political legitimacy for the new regime (Boraine 2006). Furthermore, transitional justice demonstrates respect for rule of law and human rights within a new regime by holding individuals to account for their violations. Accountability potentially has a deterrent effect on future violence in the host country (Orentlicher 1990) or in neighboring countries (Kim & Sikkink 2010) by revealing consequences for prospective actions. By officially addressing past abuses, transitional justice is argued to prevent retribution killings or a resumption of violence resulting from social grievances that echo those motivating the first wave of violence.[3]

The last three decades have witnessed a precipitous rise in an international norm of accountability and the adoption of transitional justice. International donors, aided by an emerging transitional justice industry (Subotić 2012), lobby for accountability through transitional justice, a policy that stems from the core idea that the unaddressed wrongs of the past are a threat to peace and stability in the future. The transitional justice tool kit now ranges from classic human rights trials through to truth commissions, amnesty agreements, reparation programs, and lustration processes as well as educational curriculum reform, the establishment of domestic human rights committees, memorialization efforts, or the creation of permanent scholarships or victims' funds (Backer 2009). In data collected with Helga Malmin Binningsbø, Scott Gates, and Jon Elster (2012), we found that 53 percent of armed conflict since 1946 ended with some form of reckoning. Famous transitional justice processes, such as the International Military Tribunals at Nuremberg and Tokyo and the South African Truth and Reconciliation Commission, have sparked a collective enthusiasm for "staying the hand of vengeance."

[3] See Mendeloff (2004) for a detailed overview of these arguments.

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Yet for many people around the world these lofty goals remain disconnected from the political realities on the ground. Specifically, transitional justice continues to prove ineffective at holding those perpetrators in power accountable for their actions; powerful leaders and their supporters continue to escape accountability for their crimes. In Guatemala, General Efraín Ríos Montt oversaw one of the bloodiest episodes of the genocide of Mayan peoples as a military dictator between 1982 and 1983. He later remained active as a politician and served as a member of Congress, which provided him with immunity against attempts at prosecution until 2012. The following year, he went on trial and was found guilty of crimes against humanity and genocide, but the decision was overturned by the Guatemalan Constitutional Court. Although a retrial began in 2015, the process moved slowly due to Ríos Montt's old age and remained unfinished when he died in 2018. In Chad, Hissène Habré was responsible for widespread human rights abuses during his term as president from 1982 to 1990. Following his ouster, Habré went into exile in Senegal where an initial legal case was opened against him in 2000, which was later dropped. Over the next decade multiple parties, including the International Court of Justice and the country of Belgium under the universal jurisdiction of its War Crimes Law, tried to get Senegal to either extradite or prosecute Habré with little success. Senegal eventually agreed to hold a trial with African Union–appointed judges and arrested Habré in 2013. Twenty-six years after leaving office Habré was ultimately sentenced to life in prison for rape, torture, war crimes, and crimes against humanity and died in prison of COVID-19 in 2021.

Outcomes have been similar for international attempts at justice. Despite the International Criminal Court's attempts to hold Sudanese president Omar al-Bashir to account for crimes against humanity and war crimes, it was not until al-Bashir was removed from power in 2019, following a coup, that Sudan agreed to hand him over to The Hague. As of this writing, this transfer has not happened. In 2011, former president of Côte d'Ivoire, Laurent Gbagbo, was extradited to the International Criminal Court and charged with four counts of crimes against humanity after violence erupted when he refused to concede defeat in the 2010 election. Due to insufficient evidence, he was acquitted of charges and returned to Côte d'Ivoire in 2021 to launch a new political party. The inability of transitional justice to

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meet global expectations for state accountability has led to an escalation of critiques of these processes and challenges to their adoption.[4]

The prevalence of state impunity has led scholars and advocates of transitional justice to draw attention to the disconnect between what transitional justice promises to be and what it has been able to achieve. Frank Haldemann (2022) has referred to the current conception of transitional justice as stuck in a singular vision where a "heavily institutionalized, hyper-normative field" has restricted our scholarly abilities to engage the "political struggles, contingencies, conflicts, and compromises" of pursing justice (xiii). Concerns have been raised about the potential tensions between peace and justice (e.g., Daly 2008; Kerr 2017; Mendeloff 2004; Snyder & Vinjamuri 2004), the legitimacy of international institutions in specific domestic contexts (e.g., Ba 2020; Baines 2007; Clark 2018; Sesay 2021), as well as the very nature of international law and its potential conflict with alternative cultural norms of forgiveness and collective guilt (e.g., Arthur 2009; Baines 2007). These critiques are more than theoretical; indeed, we have little empirical evidence that transitional justice is working in the ways that the international community and domestic civil society would like it to (e.g., Gillooly, Solomon, & Zvobgo 2024; Loyle & Appel 2017; Mendeloff 2004; Thoms, Ron, & Paris 2010). Evidence remains mixed regarding the conditions under which transitional justice can move the needle on achieving lasting democracy and peace in many countries (Loyle & Appel 2017; Mendeloff 2004; Olsen, Payne, & Reiter 2010).

Despite these reservations, it is seemingly indisputable that there has been a worldwide shift in the way that people, organizations, and governments engage with the violation of human rights. The international pressure for transitional justice policies has been such that Ellen Lutz and Kathryn Sikkink (2001) identified what they call a *justice cascade* – the rise of an international normative commitment to individual accountability for human rights violations. But the examples above suggest that adoption of transitional justice has not always led to greater accountability for *state* crimes. A large proportion of transitional justice adopted since the Cold War has been adapted in ways that shield government actors from being held to

[4] Similar challenges have been made regarding rule of law promotion in general, see Sesay (2021).

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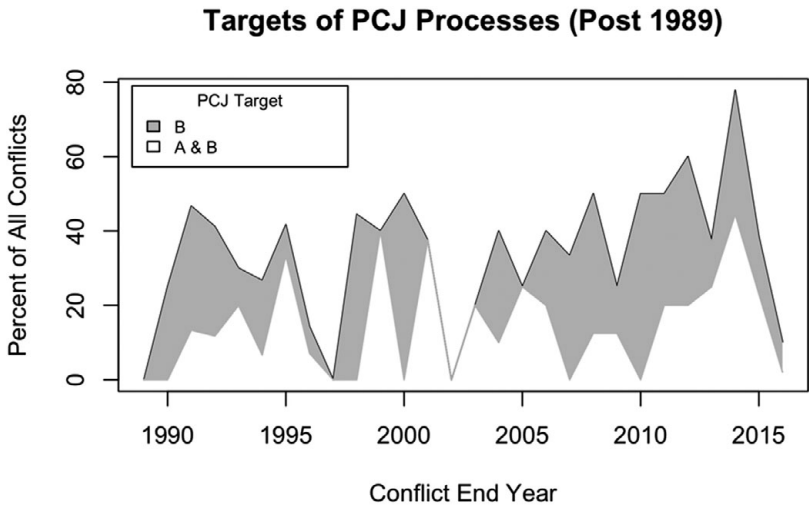


Figure I.1 Post-conflict justice processes by target (rebel group, or government and rebel group) 1989–2016.

account. Figure I.1 illustrates the proportion of transitional justice processes following armed conflicts from 1989 through 2016. The unshaded area represents transitional justice adopted to addresses violations by both the government and its challenger – the transitional justice ideal – while the shaded area represents those cases where transitional justice was adapted to only address violations committed by the challenger group – potential state impunity. An overall increase in the percentage of conflicts that end with transitional justice is accompanied by an increasing proportion of processes that exclude government wrongdoings. This disconnect between transitional justice and state accountability is not confined to specific regimes or contexts, but rather is a pervasive pattern in conflicts across the globe. Impunity for government actors has been seen in democracies as well as authoritarian regimes and following civil wars as well as political transitions. Furthermore, the recorded processes are not sham proceedings. As a result of variation in the structure of the process, transitional justice can hold some individuals to account while overlooking the wrongdoings of others. In this way, government actors in countries where transitional justice is adapted continue to escape justice despite the presence of seemingly robust regimes of transitional justice.

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This book wrestles with this central contradiction of transitional justice: state impunity persisting despite domestic and international pressure for accountability driving a "cascade" of transitional justice. In doing so, this book sheds light on broader patterns of norm compliance and adaptation that lead to diverse institutional outcomes. I explain the proliferation of state impunity in the presence of transitional justice as a successful strategy on the part of governments to manage demands for accountability through the adaptation of institutions to secure political order. The malleability of transitional justice allows governments to adapt institutions to shield state agents from culpability under the guise of accountability. Variation in the capacity of the government to manage its norm response results in the government selecting from a range of tactics engaged by states under threat, namely strategies of coercion, containment, or concession. The selected strategy is the result of different domestic political conditions and produces different institutional outcomes. By understanding how states respond to normative threats, we can begin to understand state impunity in the face of institutions of accountability and justice.

Existing Explanations for State Impunity

Among scholars of transitional justice, theories of state impunity have been dominated by two complementary explanations. I briefly summarize each logic and outline what remains missing from these explanations. The first rationalist approach argues that governments escape accountability when the domestic balance of power is in their favor. Championed by Samuel Huntington (1991) following the Third Wave of democratic transitions, this argument focuses on the balance of power between the exiting and incoming elites. When elites leaving power retain control or influence over social, political, economic, and/or military forces, the incoming elite will be less willing or less able to challenge that power by holding the old elite accountable for past actions. Following this explanation, state impunity persists when the old elite can credibly threaten the new government's hold on power. Under these conditions, new elites will choose to forgo accountability of the old elite in favor of contemporary political order. This argument has been used to explain the impunity of junta leaders following the democratic transitions in Central and South America, including Ríos

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Montt in Guatemala. Given the strong ties between deposed leaders and military commanders, it was too risky to pursue prosecutions for human rights violations committed under the military regime.

The second explanation argues that state impunity is a product of the inability of global norms of accountability to diffuse or resonate domestically. It may be that the norm has not proliferated, institutional resources are not prioritized, or citizens are simply willing to trade peace for justice. Goodman and Jinks (2008) identify a mechanism of acculturation where states replicate the behaviors of other states in their perceived membership group despite the lack of domestic resonance of a norm. Acculturation can lead to incomplete internalization where the formal commitments made by states are not reflected in, and are thus decoupled from, the behaviors of local actors. Without local resonance, a norm is not internalized and is therefore likely to be less effective. State impunity can also result from resource constraints. Levitsky and Murillo (2009) argue that governments may implement "window-dressing institutions" in response to international norms because of domestic legitimacy concerns even though the actual implementation of these institutions is difficult. Limited state capacity to monitor enforcement or a disparity between formal and de facto powers may further prevent institutional enforcement (Levitsky & Murillo 2009). In the case of human rights violations committed during civil war, civilians often choose to forgo accountability in a perceived exchange for lasting peace. Wartime experiences often drive civilian preferences for peace over accountability (Dyrstad, Binningsbø, & Bakke 2022). In this case the domestic costs of norm compliance outweigh the benefits.

These two explanations, however, explain cases of state impunity that result from amnesty or amnesia policies. Amnesty and amnesia policies are those in which the government chooses to forgo mechanisms of justice or accountability altogether. Perpetrators of human rights violations are pardoned, crimes are ignored, and society moves forward, willingly or not, without a national reckoning. The rationalist and normative arguments explain cases in which governments reject international or domestic pressure for accountability or transitional justice. The current puzzle is more complex in that transitional justice has been adopted, and it is those processes that are failing to hold state agents to account.

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A second wave of transitional justice scholarship engages the question of state impunity by focusing on potential domestic political incentives for transitional justice adoption, distinct from accountability (e.g., Branch 2015; Chakravarty 2015; Cronin-Furman 2020, 2022; Hinton 2018, Kochanski 2020; Leebaw 2011; Loyle 2018; Loyle & Davenport 2016; McEvoy 2007; Rubli 2012; Subotić 2009; Theidon 2009; Thomson & Nagy 2011). This scholarship engages the possibility that state accountability is not the government's first order concern. Jamie Rowen (2017) argues that the proliferation of transitional justice is driven in large part by the ability of transitional justice, particularly truth commissions, to be used to accomplish a variety of aims, not necessarily directly linked to accountability. In other writings, I have advanced the claim that under certain conditions the government's objective is "transitional injustice" – the fomenting of violence and state repression, consolidating authoritarian regimes, and solidifying or increasing societal divides through transitional justice (Loyle & Davenport 2014, 2016). Others have argued that transitional justice has been used to advance the process of nation building (Wilson 2001), consolidate political power (Nalepa 2010; Subotić 2009), and/or as a public good designed to appease domestic or international constituencies (Grodsky 2010). These scholars do not conclude that accountability under these conditions is not possible; rather, justice and accountability are not the first-order concern of all governments, making state impunity more likely.

There are similar incentives to engage transitional justice for international political gains. Jelena Subotić's (2009) work on government cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) finds that certain governments were more likely to appear compliant with the ICTY for international political capital and feigned compliance to avoid compromising domestic support. Governments in Serbia and Croatia, for example, used their engagement with the ICTY to lend the appearance of cooperating with international legal norms, strengthening their case for European Union membership in order to fortify their domestic political base. Yet neither country maintained a measurable commitment to justice or accountability. In her discussion of justice commitments in Sri Lanka, Kate Cronin-Furman details the way in which the Sri Lankan government created a series of weak investigative commissions as part

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of a "coalition-blocking strategy" to convince swing vote states on the UN Human Rights Council to oppose the creation of an international inquiry into war crimes by the government (Cronin-Furman 2020). Governments such as in Libya and Iraq have been able to fend off international pressure for rigorous accountability with bureaucratically slow kangaroo courts or traditional justice measures (Vinjamuri & Snyder 2015: 13).

Both the original state impunity scholarship and more recent interventions focus on domestic constituencies and the post-transition constellations of power that permit or prevent state accountability. In an age of accountability, it is difficult to isolate domestic factors and international pressure for norm compliance from the costs and benefits associated with that compliance. Taking the risks of norm compliance seriously, I focus my explanation for state impunity on the capacity of a government to control its norm response in the face of this pressure and use variation in government capacity to identify different strategies for adapting transitional justice to manage the risk of norm compliance.

Responding to the Risk of Norm Compliance

In this section, I outline a theoretical framework for state impunity that examines how governments respond to the risk of norm compliance by strategically adapting transitional justice and why transitional justice is particularly susceptible to this adaptation. This discussion of transitional justice considers the different strategies of government engagement with transitional justice and the domestic political conditions that make the adoption of each strategy more likely.

There are four steps to my argument. First, I suggest that accountability is a risky proposition for governments, particularly those that have committed wrongdoings of their own. Governments with blood on their hands can lose legitimacy and power when the public is faced with the knowledge of their wrongdoings. Opposition parties can exploit these revelations, and civil society can use this awareness to press for institutional change (Nalepa 2010). Because of the risks associated with accountability, governments would likely prefer to pursue a policy of amnesty or amnesia for past violations and avoid the political costs of holding their own agents to account. Second, I contend that a growing global norm of accountability for human rights violations is making this preferred path rare. Governments,

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particularly those susceptible to international reputation costs, have an incentive to appear compliant with international norms and as such are often unable to reject international norms outright. Third, governments that face domestic risks from norm adoption can choose to strategically respond to international pressure by adapting their norm response in a way that is less risky to the government. Fourth, governments have a choice in the adaptation strategy they pursue. The domestic political environment shapes which adaptation strategy a government will pursue to minimize the risks associated with norm compliance. Gauging its own capabilities and constraints, a government selects a norm adaptation strategy that gives it the most amount of control over accountability outcomes, complying with international demands while managing the domestic risks of norm compliance. My goal is to explain the institutional outcomes that result from this decision leading to state impunity.

Building from the literature on threat response, I identify three primary strategies through which governments respond to the domestic risks associated with norm compliance: coercion, containment, and concession. Each of these responses represent different strategies a government can engage to manage its norm response. I examine the implications of each strategy for the design of transitional justice and subsequent justice outcomes. In adopting an adaptation strategy, a government signals compliance to international norms while mitigating the domestic risks of accountability. Complying through coercion involves an adaptation strategy where the government uses repression to monitor and regulate transitional justice, tightly controlling its norm response to ensure state impunity. A containment strategy involves complying by pursing transitional justice within existing institutions and mitigating the potential for widespread state accountability by relegating the government response to international norms within existing power structures. Concessions suggest that a government complies with international norms by conceding to the justice demands of some influential groups or individuals while restricting justice for other claims against the state, allowing only limited cases of state accountability to advance wider state impunity. In my discussion, these three adaptation strategies are theoretical building blocks for helping understand how governments engage international demands for norm compliance and the resulting impact of the strategic adaptation of international norms on variations in institutional outcomes.

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In responding to international demands for norm compliance, a government is most concerned with its ability to adequately control its norm response. A government is therefore likely to pursue the adaptation strategy that ensures the most predictability and control. The domestic political conditions in which norm compliance takes place determines which strategy will be most effective in managing the government's norm response. Specifically, I examine variation in the government's strategy of strategic adaptation as a product of its capacity to control its norm response as measured by the government's capabilities and its domestic constraints. Capabilities capture the degree to which the government can monitor and enforce its chosen adaptation strategy. A government's capabilities address the ability and willingness of the government to adopt its chosen norm response, identify and monitor challenges and challengers to that response, and ultimately repress domestic threats should they arise. Domestic constraints refer to the degree of influence that a government has over state and social institutions. This measure captures the degree to which institutions in a society will perform in a way that the government is able to predict and control or if the institutions themselves are able to constrain the government's behavior. Overall, governments with a high capacity for control of their norm response are more able to inhibit actors seeking to advance state accountability and are subsequently able to control institutions adopted to respond to international demands. Governments with weaker capacity to control their norm response are unable to identify and mitigate threats to the government and are constrained in their behavior by domestic institutions. Under these domestic conditions governments are less able to control newly created institutions. In examining these patterns, we can learn more about the ways in which transitional justice can be adapted to facilitate government actors to escape justice.

As governments come under international pressure to address the legacies of past abuses, the very nature of transitional justice makes it possible to appropriate these norm responses – in essence talking the talk of justice while masking alternative political aims. Within the quasi-judicial malleable nature of transitional justice lies the potential for government actors to hijack or appropriate the very processes that look so attractive in international circles, to further aims unrelated to justice and accountability (Loyle & Davenport 2016, Rowen 2017; Subotić 2009). Because transitional justice is implemented

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domestically, governments have disproportionate influence over how a given process is structured. Political considerations determine the adaptation strategy that defines which events and wrongdoings will be investigated and which perpetrators will be held to account.

Transitional justice is particularly susceptible to adaptation for two reasons. First, institutions hold an impressive amount of power to define our understanding of events and shape policy into the future. Transitional justice institutions are tasked with identifying the perpetrators of past violations, documenting the potentially systematic nature of past abuses, and often offering redress. Yet, decisions about transitional justice structure and governance are mired in the political dynamics of the post-violence period. Jamie Rowan (2017) has written at length about the malleability of transitional justice in which the lack of prescribed structure and the focus on domestic adoption allows for transitional justice institutions to be structured in line with government priorities. Second, perversely, increasing pressure to adopt transitional justice and financial support from the international community for accountability creates the conditions that make this adaptation more likely. Governments are rewarded for transitional justice adoption, often without verifiable indicators of institutional success such as effectively holding their own to account. While evidence has mounted of the challenges of transitional justice to live up to its lofty mandate, international support has oftentimes proceeded uncritically, simply allowing governments to continue under the auspices of the accountability norm without judiciously assessing the character of the institutions put in place.

Of note, there are clear scope conditions to my argument. The analysis focuses on how governments engage transitional justice to advance impunity. I begin my discussion with those cases in which the threshold of pressure to pursue justice has already been crossed. These are not the early cases of amnesia from Franco's Spain, or unanswered calls for justice following the genocide in Guatemala. Nor are these cases of limited statehood where the pursuit of justice is weakened by state fragility (Lake 2014, 2018). Rather, my examination wrestles with the contemporary dilemma that governments face when attempting to protect their own in the face of rising global and domestic pressures for accountability. This is also an examination of cases where the government in power has blood on its hands. In other words, these are cases in which a government has an incentive to

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pursue impunity rather than accountability to ensure the stability of its regime.

In advancing my argument, I make two explicit assumptions. First, I believe that the inclusion of government wrongdoings in transitional justice is important. Central to Dahl's (2005) analysis of who governs is the question of whose needs, experiences, and political preferences are voiced through a country's governing institutions. In this way, whose harms are included and whose are excluded from a national reckoning with the past is likely to have long-term consequences for political participation, social cohesion, and political order into the future. Second, I assume that political institutions cannot be studied free of politics. There is nothing unique about transitional justice that should lead us to believe that these institutions would transcend political and bureaucratic pressures despite their lofty goals. Therefore, an investigation of the strategies through which a government engages with transitional justice should be a promising place to start to understand accountability outcomes. Domestic consumers of transitional justice are clear about the politics involved in these processes. Even if the international policy and scholarly communities have often failed to acknowledge or engage with the strong pull of domestic politics on transitional justice, domestic audiences have not. Analyzing state impunity through transitional justice can help us understand broader patterns of institutional adoption and adaptation following periods of violence by focusing on the challenges that governments face and the strategies they employ as they balance domestic and international threats to their rule.

Implications for Scholarship

This study is driven by a personal commitment to better understand how to hold state perpetrators of human rights violations to account for their actions and in so doing reduce human rights violations against civilians. Along with the growing norm to promote individual accountability for the violation of human rights, an epistemic community of scholars and activists has been traveling the globe to promote the institutions of transitional justice (Rowen 2017; Subotić 2012). Organizations such as the International Center for Transitional Justice have become central players in peace negotiations and post-conflict reconstruction efforts and have influenced the aid priorities of

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donor countries such as the United States (Bird 2015; Subotić 2012). But is the international community helping or hurting in this pursuit? This book seeks to provide new insights into the motivations, actors, and actions that impact transitional justice with the goal of improving transitional justice advocacy and advancing state accountability.

My argument contributes to prior work on the use and misuse of international norms, particularly work on norm compliance and backlash (Hillebrecht 2021), signaling (Hyde 2011), norm hijacking (Subotić 2009), and quasi-compliance (Cronin-Furman 2022). I build from this work to engage with the literature on the power of political institutions (e.g., Alston et al. 2018; Moe 1990) in which, in addition to being mechanisms through which collective-action problems are mitigated, institutions can be used as weapons of coercion and redistribution (Moe 1990: 213). The weaponization of institutions can be more pernicious following a political transition or a termination of armed conflict where new institutions are created in unstable political environments. My argument also builds from discussions of the challenges of authoritarian control (e.g., Gandhi 2008; Geddes, Wright, & Frantz 2018; Lust-Okar 2005; Magaloni 2006; Slater 2010) and post-transition political order (e.g., Barma 2018; Dallin & Breslauer 1970; Nalepa 2022) by identifying the specific incentives and constraints put on governments as they pursue their quest to secure and consolidate power. Theories of the politics of memory and narrative formation (Foucault 1975, 1980; Jelin 2003), public transcripts (Scott 1990), rhetoric and symbolism (Wedeen 2015), and framing (Chong & Druckman 2007; Entman 2004) further inform my understanding of how the institutions of transitional justice aid legitimacy-seeking behavior in a government's quest for political order.

I offer three primary contributions specifically to the study of transitional justice and post-conflict political institutions. First, I find that accountability and the resulting transitional justice policies are a second-order concern to governments who are primarily occupied with (re)building and maintaining political power. Even those governments and leaders with central commitments to accountability pursue those goals in political climates that often hamper these aims. In this way, international pressure for domestic policy changes can be and (often) is misused. My findings lend additional evidence to the already excellent work done on the hijacking of transitional justice (Subotić 2009) and quasi-compliance with international human rights institutions

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(Cronin-Furman 2022). Under the right political conditions, rather than advancing accountability, global advocacy for transitional justice can be used to consolidate political power for nondemocratic regimes. The international legitimatization of transitional justice can potentially make the impacts of impunity more destructive.

Second, given the variety of ways that governments engage transitional justice through different institutional structures, the measurement of institutional impact cannot be transitional justice adoption or nonadoption. Rather, my argument demonstrates the importance of engaging with incongruences as to whose stories and experiences are included in transitional justice and the implications of that disparity, answering the question of justice and accountability for whom. Focusing on the institutional structure of transitional justice draws attention to the ways in which institutions can be adapted while still ostensibly complying with international norms. Furthermore, identifying whose claims are included and excluded from transitional justice raises alternative potential solutions in terms of how to achieve greater state accountability.

Third, I center the importance of the institutional control capacity of governments to understanding how norms are strategically adapted domestically. Not all norm adaptation occurs in the same way. While much of the original work on norm compliance focused on a compliance/noncompliance dichotomy (e.g., Checkel 2001; Keck & Sikkink 1998; Simmons 2010), allowing for variation in norm adaptation draws attention to alternative state responses to the risks of norm compliance. Variation in how governments adapt to the risks posed by norm compliance has implications for the types of institutions put in place and the outcomes of those institutions. Through examining variation in adaptation strategies we can better understand how and when governments comply with norms, when they adapt their engagement, and to what effect.

While the focus of this book is transitional justice and the resulting variation in state accountability, the themes explored here have implications for post-conflict and authoritarian regime studies more broadly. Transitional justice offers an opportunity to observe the domestic politics at work in novel institutional creation and the use of accountability strategies to strengthen state power. The findings in this work have important implications for the adoption of other types of institutions. If transitional justice can be adapted for political aims

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given the intersection of the incentives and constraints to do so, we should certainly be aware of the possibility of strategic adaptation in other policy areas such as elections, rule-of-law reform, security sector reorganization, and so forth where advocacy objectives and domestic political incentives misalign. Understanding the answers to the questions raised in this study gives us another avenue through which to engage with post-conflict and authoritarian politics and most importantly the role of institutional selection and design in consolidating political power. Critically evaluating these processes is an important step to protect against the potential abuse of government power and to create effective institutions capable of advancing societal change.

Despite the political nature of transitional justice and the mixed motivations of governments in its creation, even a problematic process may have second-order effects. My conclusion is not that transitional justice is inherently incapable of advancing peacebuilding goals, as is often championed, or of holding governments to account for past violence, but rather that these outcomes are contingent and tempered. We are likely to see less substantive movement toward these goals than the transitional justice literature and policy advocates would lead us to believe. The peacebuilding advances we do see are likely to be conditioned by the political environment in which transitional justice is adopted. Variation in transitional justice, specifically in the ability of these processes to hold governments accountable for past violations, is a product of the strategy a government engages to mitigate the risks of norm compliance. It is this variation that ultimately determines whether state actors will be held to account.

Plan for the Book

In this chapter I presented the core tension in the study of transitional justice – the frequent failure of transitional justice to bring justice to victims of state violence. While it is likely unreasonable to expect a single process to be all things to all people, the stories of Yvette and Geraldine in Rwanda help us think about who receives justice, for which wrongdoings and why, and who escapes justice. Yvette's and Geraldine's stories unfold in a context of heightened international attention to, and engagement with, calls for accountability for human rights violations of the past. In engaging these two divergent experiences, I question how governments escape justice in the age of

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accountability. The strategies through which a government adapts transitional justice to manage potentially risky demands for accountability have implications for who is held responsible for the atrocities of the past, a central factor for political order itself.

In Chapter 1, I present the main argument of the book. Accounting for the demand for norm compliance and the domestic risks inherent in norm adoption, this chapter elaborates the ways in which governments strategically adapt transitional justice to advance state impunity. In making this argument I identify a growing global norm of accountability for human rights violations putting pressure on governments to hold perpetrators of wrongdoings to account. Adhering to international norms can carry domestic risks, particularly in cases where governments are culpable for wrongdoings. In responding to the risks of accountability, governments strategically adapt transitional justice to comply with international norms. I identify three strategies governments use to advance impunity while seemingly complying with international norms, namely coercion, containment, and concession. These strategies are selected based on a government's ability to control its norm response.

The next three chapters delve into research in three post–civil war countries to examine each adaptation strategy in practice. The cases in this book are selected for their variation across government institutional control capacity, the independent variable of interest. All three cases – Rwanda, Uganda, and Northern Ireland – are ones in which the current government is culpable for wrongdoings during the conflict and can subsequently be implicated in past abuses. However, the governments in each case use different adaptation strategies to escape justice. How does my theory of strategic adaptation make sense of what I observe in these cases?

In Chapter 2, post-genocide Rwanda serves as a case of strong institutional control in which the government engages transitional justice through a strategy of coercion. The high control capacity of the government allows the RPF to escape justice by adopting and enforcing a transitional justice process focused exclusively on crimes from the genocide. In Chapter 3, Uganda is a case of midrange institutional control in which transitional justice policies have been subsumed within existing state institutions through a strategy of containment. Here the Museveni government is constrained in its norm response and thus uses a preexisting system of patronage to control

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transitional justice outcomes, advancing state impunity contingent on these structures. Northern Ireland, in Chapter 4, typifies a highly constrained government. In this case, institutional constraints on the British government led to a strategy of concession in which transition justice driven by emblematic cases is offered as concessions to the demands of strong domestic constituencies without a genuine attempt to reckon with past wrongdoings by the British government. This strategy represents an accommodation that leads to accountability for select state agents without engaging broader structural questions and inequalities at the heart of the conflict.

While there are no clear solutions to the challenge of increasing government impunity in the age of accountability, the findings of this book offer suggestions for future research as well as new directions for advocacy. The concluding chapter of the book presents this research agenda and suggests policy prescriptions for those committed to advancing the accountability of states and holding government perpetrators of violence accountable for their actions.

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Accountability for human rights violations is a somber goal, and its proponents, many of whom devote careers and lives to its pursuit, are deeply sincere. Despite growing evidence in the critical transitional justice literature of the strategic adaptation of transitional justice, the mission of accountability for human rights violations should not be written off as futile. While at times I question the ability of certain government-designed institutions to bring about social reconciliation and societal change through transitional justice, I stand firmly behind the belief that addressing social grievances is an essential step for preventing the recurrence of armed conflict and other forms of violence in the future. To further this aim, it is no longer enough to be critical of what transitional justice has failed to achieve. We need an understanding of transitional justice that accounts for the dynamic interplay among various government incentives to help us discern the risks and potential benefits of transitional justice in specific political contexts to advance the goal of bringing all perpetrators of human rights violations to account for their crimes.

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