Preface

In 2005, I was part of a team of activists and scholars working on the construction of the National Genocide Memorial in Kigali, Rwanda. One night during that project, I got invited to dinner at the house of then Senator, Dr. Odette Nyiramilimo, a genocide survivor and passionate advocate for genocide survivors' rights. At the time the gacaca courts – Rwanda's national transitional justice response – were in their pilot phase, and Senator Nyiramilimo asked me my opinion on whether the gacaca process was "working." She wanted to know whether gacaca would bring peace and reconciliation to post-genocide Rwanda as the government had promised. "If gacaca isn't working," Senator Nyiramilimo told me, "then we have to come up with something else." I didn't have an answer to her question then, and I have even less of an answer for her now, but that question has taken up a large part of my research interests over the past two decades. For me the question became not just how would we know if transitional justice was successful, but successful for whom? This book does not directly answer Senator Nyiramilimo's original question, and for that I apologize. Academically, we are no closer to knowing if transitional justice is an effective strategy for achieving lasting peace and social cohesion than we were in 2005. If anything, we have more reason to be skeptical about the whole project than we did back then. Yet I now have a deeper understanding of the complexity of the human experiences at issue, and upon which the future of Rwanda is being built.

This book takes on the question of justice for whom by addressing the issue of who is held accountable for gross violations of human rights. In doing so, it is ultimately a book about institutions. Narrowly, *Escaping Justice* is about how transitional justice institutions are structured following the end of armed conflict. I set out to understand how certain institutional choices impact whether and to what extent government actors will be held to account for their past wrongdoings. I study institutional choices as an interaction between international

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norms and domestic politics. In examining that interaction, this is also a book about power. Given the tumultuous political circumstances that exist following armed conflict, who gets to determine which actors are held to account and for which wrongdoings? Whose stories can be told about past violence and whose calls for justice are heard? In other words, under what conditions is transitional justice successful at holding past perpetrators to account for their wrongdoings?

Which perpetrators are held to account for past wrongdoings is a product of the power of some actors to press claims for accountability and still others to resist that pressure. Now more than ever the international community is playing a role in pressuring governments to hold their own to account. Movements around the support for human rights have helped spur global pressure for individual accountability for the violations of those rights, what Kathryn Sikkink (2011) calls the "justice cascade." The last decade has seen a precipitous rise in the use of transitional justice as a mechanism for answering this call for accountability. As normative pressure for transitional justice mounts, governments respond to that demand. Yet the enthusiasm for transitional justice at times impedes our ability to account for the domestic pressures at play in the post-transition or post-conflict period and overlooks the inherently political nature of institutional choices (Moe 2005). International pressure for accountability carries potential domestic costs for governments, particularly when a state has perpetrated violence against its own citizens, as culpability for these actions could delegitimize the state ultimately undermining a government's right to rule. Despite pressure to adhere to global human rights norms, governments have an incentive to respond to those norms in ways that help them escape justice. The result has been the growth of state impunity alongside the rise of transitional justice. In the face of growing international enthusiasm for accountability, state impunity persists.

State impunity persists because of the nature of the institutions created to hold perpetrators accountable for their actions. By institutions I am referring to the "related complexes of rules and norms" as they apply to accountability (Keohane 1988: 383). Specifically, I consider transitional justice – those policies and processes put in place following a political transition or armed conflict to address the harms of the past. Transitional justice holds an impressive power to define our understanding of past events and shape policy and

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remembrance going forward. But before institutions embody that power, actors make decisions about the structure and function of those institutions. Central to these choices about transitional justice are decisions about which events will be considered crimes and which perpetrators will be seen as criminals – who will be held to account and for which crimes. States have an incentive to ensure that their own wrongdoings are excluded from consideration. To understand how states effectively escape justice, the first step is to understand how states respond to demands for norm compliance. Despite international pressure for accountability, states can escape justice by adapting transitional justice in ways that exclude accountability for state abuses – strategically complying with international norms.

In this book I return to the case of Rwanda, as well as the cases of Uganda and Northern Ireland, to study variation in the ways in which each government adapted transitional justice to escape justice. In all three cases, state wrongdoings have been well documented and transitional justice has been put in place. For this reason, these should be easy cases of state accountability in which perpetrators of wrongdoings can and should be held to account for their actions. But this has not been the case. In each of these countries the government has made a concerted effort to escape justice, despite normative pressure for accountability. The governments in each of these cases, however, have engaged transitional justice through different strategies and to different effect. Explaining this variation and its outcomes could not be more important. Understanding the strategies that governments engage to escape justice can help us better conceptualize the use of transitional justice following violence. Furthermore, understanding government strategic adaptation of the accountability norm has wider implications for understanding government motivations and constraints for institutional design and institutional change following periods of political upheaval.

While we often conceive of political institutions as societal structures designed to overcome collective action problems and provide benefits for all concerned, the imbued power within institutions has substantial consequences for political order (Moe 2005). Beyond an understanding of transitional justice, answering questions about the power of institutions helps us gain a stronger understanding of post-conflict institutional outcomes. What are the power structures that shape the

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post-conflict period? Who are the actors involved? How does the international community and its pressures interact in this period? And given these actors and interactions, which institutions should we expect to emerge? In addressing these questions, this book wrestles with the nexus between political institutions and contention following periods of violence.

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