

TRANSITIONAL JUSTICE AND POST-WAR JUSTICE: MECHANISMS, CHALLENGES, AND PROSPECTS

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Abstract The cessation of hostilities does not necessarily signify the end of war. One of the main challenges is breaking the cycle of violence and escaping the spiral of conflict. This goes beyond ending hostilities to addressing their consequences in order to achieve just and sustainable peace. Such aim can only be realized through genuine transitional justice, which constitutes a comprehensive framework balancing accountability, reconciliation, reparations, and institutional reform, while preventing a return to violence. This raises the question: what form of transitional justice should be prioritized in the post-war phase, and through which mechanisms can it be effectively implemented?

Keywords Transitional justice, accountability, reparations, security sector reform, political rehabilitation, sustainable peace.

1. What is the Transitional Justice

When military battles end, a new struggle emerges—a struggle to shape the future, redefine relationships among individuals and groups, and lay the institutional and social foundations necessary to prevent societies from reverting to cycles of violence. Here, post-war justice becomes the essential pillar through which societies transition from the chaos of conflict to a stable system capable of acknowledging its past without remaining trapped by it.

In the post-war phase, the challenge extends beyond rebuilding cities reduced to ruins or reviving economies crippled by destruction. It also involves reconstructing social trust, restoring civic engagement, and rebuilding individuals psychologically and socially in ways that promote coexistence and long-term stability.

In this context, transitional justice emerges as a central mechanism for achieving stability after conflicts. At its core, transitional justice emphasizes the necessity of moving beyond the past—without erasing it—in order to build a nation that accommodates all. At its core, transitional

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justice emphasizes the importance of confronting the past through legal, political, and social processes that allow societies to move forward without denying previous violations or suffering.

Transitional justice may therefore be understood as one of the fundamental pillars for addressing the legacy of conflicts and wars, providing post-conflict societies with an opportunity to confront the past in a manner that promotes stability and sustainable peace. Conflicts frequently leave behind grave human rights violations, including war crimes, crimes against humanity, and systematic abuses affecting both individuals and communities. Such violations often generate distrust, deepen social fragmentation, and weaken national cohesion. In this regard, transitional justice functions as a mechanism not only for delivering justice to victims, but also for restoring confidence in public institutions, strengthening accountability, encouraging national reconciliation, and reforming institutional structures in order to prevent the recurrence of future violations.

From this perspective, the success of transitional justice depends largely on its capacity to achieve long-term objectives, including the establishment of the rule of law, the promotion of a culture of human rights, and the consolidation of democratic values. Accordingly, transitional justice should not be perceived as a temporary or exceptional response limited to the aftermath of war; rather, it constitutes an ongoing and multidimensional process aimed at fostering sustainable peace and comprehensive justice. In this regard, it has been argued that

“Transitional justice appears to be an established field of scholarship connected to a field of practice on how to deal with past human rights abuses in societies in transition. The original focus of transitional justice discourse was that human rights law requires accountability in transitions, rooted in the discipline of law. Over time, this focus has been expanded to include a much broader range of mechanisms, goals and inquiries across a range of disciplines.”¹

This broader understanding reflects the evolution of transitional justice from a narrowly legal approach focused primarily on criminal accountability into a multidimensional process that also incorporates truth commissions, reparations, institutional reform, and reconciliation initiatives aimed at restoring social cohesion and achieving long-term peace.

Some scholars, such as Larry May, distinguish between post-war justice and transitional justice. He states:

“Transitional justice concerns the moral and legal considerations that apply to situations where a new, normally more democratic, regime is being formed after mass atrocity or oppression. Post-war justice concerns the moral and legal considerations that apply to situations where a war or armed conflict has come to an end. In both cases justice pertains to situations where peace is being established. It is not merely peace that is at issue, but a just peace, where mutual respect and the rule of law are key considerations.”²

¹ Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field,’” *The International Journal of Transitional Justice* 3, no. 1 (2009): 5.

² Larry May, *Contingent Pacifism: Revisiting Just War Theory* (Cambridge: Cambridge University Press, 2015), 187.

From this perspective, transitional justice highlights the ethical and legal dimensions that must be considered when a society undergoes a political transition toward a new, often more democratic system after a period of repression or widespread atrocities. Its significance lies in how societies address the heavy legacy of past violations—whether through legal accountability, truth-seeking processes, reparations, or institutional reform mechanisms intended to promote reconciliation and long-term stability.

However, post-war justice focuses on the ethical and legal considerations that arise once wars or armed conflicts come to an end, with particular emphasis on addressing the consequences of violence and destruction while balancing accountability with the practical necessities of reconstruction and social recovery. While the two concepts apply to different contexts—one concerning political transformation and the other the aftermath of armed conflict—both form part of broader efforts aimed at establishing peace. However, peace in its conventional sense is insufficient unless it is accompanied by justice, institutional fairness, mutual respect, and adherence to the rule of law. These elements are essential for preventing the recurrence of past violations and for ensuring that peace acquires both sustainability and legitimacy in the eyes of all members of society.

In this paper, we will focus on these two dimensions and examine post-war justice in general, and transitional justice in particular, as interrelated frameworks aimed at addressing the consequences of conflict and political violence. From this standpoint, transitional justice and post-war justice should not be viewed as entirely separate paths; rather, they represent interconnected concepts that pursue common objectives, including the realization of justice, the promotion of accountability, and the establishment of sustainable peace. Such an approach requires moving beyond rigid conceptual distinctions and understanding justice as a comprehensive and continuous process capable of addressing the legacy of violence, repression, and large-scale violations, whether arising from authoritarian rule or armed conflict. In this sense, achieving a just and lasting peace depends not only on ending violence but also on creating institutional and social conditions grounded in fairness, reconciliation, inclusion, and the rule of law.

Transitional justice is generally understood as both a field of practice and an academic discipline concerned with addressing past violence in societies undergoing political transition. The concept emerged prominently during the democratic transitions in Eastern Europe and Central America in the late 1980s and early 1990s, where debates focused on how successor regimes should confront the human rights abuses committed by former authoritarian governments. Over time, transitional justice developed into a coherent field encompassing mechanisms such as criminal trials, truth commissions, vetting procedures, and reparations aimed at promoting accountability and democratic transformation.³ Its development also reflected a growing recognition that societies emerging from repression or conflict require more than punitive responses; they require broader processes capable of rebuilding institutional legitimacy, restoring citizens' confidence in public authority, and facilitating social reconciliation. This evolution demonstrates that transitional justice extends beyond the narrow pursuit of punishment, forming

³ See Christine Bell, "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'," 7, 8.

instead a broader framework through which societies attempt to confront past abuses, restore public trust, and establish the foundations for sustainable peace and democratic governance.

The evolution of transitional justice is closely linked to developments in international criminal law and the gradual strengthening of accountability mechanisms for mass atrocities. Initially, international humanitarian law placed primary responsibility on States to prosecute serious violations committed within their jurisdiction during armed conflict, as reflected in the Hague and Geneva Conventions. While the Nuremberg and Tokyo Tribunals established individual criminal responsibility after the Second World War, enforcement remained largely domestic. A significant shift occurred with the Genocide Convention of 1948 and was later consolidated through the establishment of the International Criminal Tribunal for the former Yugoslavia in 1993 and the International Criminal Tribunal for Rwanda in 1994. These developments marked an important transformation in international law by reinforcing the principle that individuals, including political and military leaders, could be held internationally accountable for mass atrocity crimes. This development strengthened international individual accountability and was further advanced by the Rome Statute of 1998 and the creation of the International Criminal Court, which expanded the codification of war crimes, crimes against humanity, genocide, and the crime of aggression. Subsequently, several hybrid and internationalized tribunals emerged in different contexts, including Sierra Leone, Cambodia, East Timor, and Lebanon, reflecting the increasing international commitment to combating impunity for mass atrocity crimes.⁴ Collectively, these legal and institutional developments contributed to shaping transitional justice into a global framework that combines criminal accountability with broader efforts aimed at reconciliation, institutional reform, and the prevention of future violations.

In parallel, transitional justice emerged as a distinct field of study and practice during the 1990s, gradually moving beyond its initial focus on transitions to democracy. The expansion of the field was reflected in the growing use of diverse accountability mechanisms, including truth commissions and mixed judicial processes, alongside evolving debates on the relationship between justice, peace, and political transition. By the early 2000s, transitional justice had become an established framework encompassing both legal and non-legal responses to past violence, supported by academic institutionalization, specialized organizations, and increasing normative engagement by the United Nations.⁵

According to the United Nations report, the concept of transitional justice constitutes a key framework for strengthening the international community's efforts to protect human rights, ensure security, promote economic development, and resolve conflicts through peaceful means. In this regard, transitional justice serves not only as a normative framework for defining international objectives, but also as a practical framework for identifying the mechanisms and institutional processes necessary to achieve those objectives.⁶ As stated in the report:

⁴ See Wendy Lambourne, "International Humanitarian Law, Jus Post Bellum and Transformative Justice," *International Review of the Red Cross* 106, no. 927 (2024): 1267, 1268.

⁵ Christine Bell, "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field,'" 8, 9.

⁶ See United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of*

“The notion of ‘transitional justice’ discussed the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”⁷

Based on this definition, it can be concluded that transitional justice is not merely a tool for addressing past violations but a comprehensive process aimed at ensuring accountability, establishing justice, and fostering reconciliation within societies that have endured conflict or repression. The report emphasizes that transitional justice is neither static nor confined to a single model; rather, it adapts to different contexts through a combination of judicial and non-judicial mechanisms, including trials, reparations programs, truth-seeking initiatives, institutional reforms, and the removal of officials implicated in violations.

Following this understanding of transitional justice as a multidimensional and adaptive framework, its relevance extends beyond questions of accountability and post-conflict redress to encompass broader processes of peacebuilding and societal transformation.

“Justice as part of peacebuilding may therefore be seen as something broader than ensuring criminal accountability, and as a process that goes beyond the short-term notion of a political transition. Transitional justice thus becomes part of a long-term process of transformation to support a comprehensive or holistic and sustainable peace, incorporating both the ending of armed conflict ‘negative peace’ and the building of a ‘positive peace’ or ‘peace with justice.’ As such, it equates to thinking of *jus post bellum* as addressing not only the justice of how wars end, but also how to prevent a recurrence through building peace and pursuing accountability.”⁸

This perspective highlights that transitional justice should not be understood merely as a short-term collection of legal responses to past violence, but rather as a sustained and transformative framework linking justice to long-term peacebuilding objectives, institutional reconstruction, and social reconciliation. Accordingly, transitional justice contributes not only to addressing the consequences of violence, but also to reshaping the structural and political conditions that may otherwise reproduce future conflicts and instability.

This understanding of transitional justice underscores its role in building more stable and just societies. Its scope extends beyond holding perpetrators accountable to include institutional reforms that prevent the recurrence of abuses. Ultimately, the success of transitional justice depends on striking a delicate balance between accountability and justice on one hand, and reconciliation and the construction of a shared future on the other, while taking into account the unique political, historical, and social circumstances of each society. This tension between justice and reconciliation represents one of the most difficult practical and theoretical challenges facing

the Secretary-General (S/2004/616) (New York: United Nations, 2004), 4.

⁷ *Ibid.*, 4.

⁸ Wendy Lambourne, “International Humanitarian Law, *Jus Post Bellum* and Transformative Justice,” 1274.

transitional justice processes, particularly in societies where demands for accountability may collide with political realities or fragile peace arrangements.

2. The Mechanisms of Transitional Justice

2.1. Accountability and Prosecution

Transitional justice is closely connected to the principles of accountability and reparation as foundational steps toward achieving genuine justice in post-conflict societies. Consequently, theorists of post-war justice frequently argue that prosecuting war criminals and political leaders accused of committing grave atrocities constitutes an essential component of any credible process aimed at achieving justice after conflict. This position is grounded in the belief that sustainable peace cannot be achieved where serious violations remain unaddressed or where perpetrators are allowed to evade legal responsibility. Moreover, considerable emphasis is placed here on the principle of ‘No peace without justice,’ which reflects the view that fair and public judicial proceedings are necessary to protect victims’ rights, reinforce the rule of law, and punish those responsible for violating the laws of war through legitimate legal procedures.

The prosecution of individuals involved in war crimes contributes to broader objectives extending beyond punishment alone, including restoring confidence in legal institutions, reaffirming the authority of law, and safeguarding fundamental rights. These objectives are essential for building a just and sustainable peace. However, mechanisms of transitional justice must also adhere to the principle of proportionality within the framework of *jus post bellum*, ensuring that justice is implemented fairly and in ways that do not contribute to renewed instability or political fragmentation. Accordingly, accountability mechanisms must be perceived as legitimate by all parties concerned, including victims demanding justice, affected communities seeking recognition, and even the accused, who remain entitled to fair trial guarantees and should be held accountable through lawful and fair procedures.

Nevertheless, adherence to the principle of proportionality should not result in leniency toward perpetrators or allow war criminals to escape accountability. At the same time, a rigid application of justice without considering political and social realities may lead to counterproductive outcomes, as it could provoke the accused to resist accountability by resorting to renewed violence, thereby undermining the justice process itself. Ultimately, neglecting justice and failing to prosecute war criminals would undermine both the principles of *jus post bellum* and the broader framework of international human rights law, thereby fostering a culture of impunity capable of perpetuating future cycles of violence. Consequently, any transitional process that fails to prioritize justice risks producing a peace that is fragile, contested, or merely temporary.⁹

⁹ See Melissa Labonte, “Jus Post Bellum, Peacebuilding, and Non-state Actors: Lessons from Afghanistan,” in *Ethics, Authority, and War: Non-State Actors and the Just War Tradition*, ed. Eric A. Heinze and Brent J. Steele (New York: Palgrave Macmillan, 2009), 227, 228.

This perspective underscores the significance of holding perpetrators accountable in the post-war phase as a central condition for ensuring just and sustainable peace. Justice should therefore not be regarded as a secondary or optional element of political transition, but rather as a necessary foundation for rebuilding societies, restoring institutional legitimacy, and reinforcing the rule of law. At the same time, accountability processes must avoid transforming justice into an instrument of revenge or political exclusion, as this could deepen social divisions and undermine prospects for reconciliation. Striking a balance between accountability and reconciliation thus requires an approach grounded in proportionality, legitimacy, and sensitivity to the political realities of transitional societies. Therefore, any transitional process that neglects justice—or indefinitely postpones it in favor of short-term stability—may ultimately result in a fragile peace vulnerable to collapse. Conversely, a transitional process in which justice evolves into an excessively punitive and uncompromising practice may itself generate new forms of resentment and violence, potentially reproducing the same conditions that initially fueled conflict. Accordingly, the central challenge associated with accountability as a mechanism of transitional justice lies in identifying a balanced framework capable of combating impunity without allowing accountability to devolve into pure retaliation. In both scenarios, the danger of renewed violence remains substantial. This issue will be examined in greater detail later in the paper.

In pursuit of transitional justice, and in recognition of accountability as a crucial step toward achieving justice in post-conflict societies, the United Nations has, since the 1990s, supported the establishment of special criminal tribunals to address grave violations of human rights and international humanitarian law. These initiatives formed part of broader international efforts aimed at combating impunity and reinforcing the principle that individuals responsible for mass atrocities should be subject to legal accountability regardless of their political or military status. Criminal trials therefore occupy a central position within transitional justice frameworks because they publicly condemn unlawful conduct, affirm the rights of victims, and demonstrate that serious violations will not remain beyond the reach of justice. They also contribute to strengthening public confidence in the state's capacity to uphold the rule of law, documenting crimes, establishing authoritative historical records of past events, and excluding extremist actors from positions of political influence, thereby facilitating the restoration of social peace. However, balancing the multiple objectives of criminal justice in transitional settings remains highly challenging due to limited institutional resources, the large scale of violations, political instability, and the complex power dynamics that often characterize post-conflict societies.

Accordingly, both national judicial systems—as the primary mechanisms for prosecuting violations committed within domestic jurisdictions—and international justice mechanisms aimed at pursuing perpetrators beyond national boundaries play essential roles in achieving accountability. For example, the International Criminal Tribunals for the former Yugoslavia and Rwanda played a significant role in advancing justice within their respective regions. Beyond their immediate judicial impact, these tribunals contributed substantially to the development of international criminal law by establishing influential judicial precedents that strengthened the normative foundations of the international legal order. As a result, greater legal clarity emerged regarding matters such as the criminalization of rape as both a war crime and a crime against

humanity, the legal definition of genocide, the characterization of torture, the scope of individual criminal responsibility, the doctrine of command responsibility, and standards governing criminal judgments and evidentiary procedures. These tribunals also contributed to shaping models of hybrid courts in other locations, reflecting the ongoing impact of the evolution of international criminal justice in promoting global accountability and achieving transitional justice.¹⁰

All of this underscores the central role played by international and hybrid criminal courts in advancing transitional justice, particularly through their contribution to combating impunity and reinforcing the rule of law in post-conflict societies. Such courts not only provide legal accountability for perpetrators of grave crimes but also contribute to rebuilding confidence in justice institutions and affirming the international community's commitment to protecting fundamental human rights. The success of these courts in holding those responsible for serious crimes accountable, despite the challenges, enhances confidence in international justice mechanisms and supports national efforts to promote reconciliation and prevent future violations. However, the effectiveness of these mechanisms ultimately remains dependent on the degree of state cooperation and the willingness of the international community to uphold justice as a fundamental condition for sustainable peace and long-term stability.

The twentieth century witnessed profound transformations in transitional justice mechanisms, particularly in the aftermath of the two world wars, when debates emerged concerning the effectiveness of national versus international approaches to accountability and the appropriate balance between collective punishment and individual responsibility. On this subject, Ruti G. Teitel argues in an article titled *Transitional Justice Genealogy (Symposium: Human Rights in Transition)* that the post-World War II period marked the emergence of a new model of transitional justice characterized by a shift from reliance on national trials toward international accountability mechanisms. The experience following World War I — when the responsibility for trials was left to the German government — demonstrated the ineffectiveness of relying solely on national courts to achieve deterrence or prevent future conflicts. In response to these shortcomings, the post-World War II framework established international tribunals to prosecute Nazi leaders, thereby reinforcing the principle that individuals, rather than states alone, could bear responsibility for grave international crimes.

Moreover, the approach adopted after World War I, which involved imposing sweeping collective sanctions on Germany, led to counterproductive results, fueling feelings of frustration and revenge and contributing to the outbreak of World War II. This experience highlighted the dangers associated with forms of accountability perceived as indiscriminate or excessively punitive toward entire societies rather than directed at individual perpetrators. Consequently, the post-World War II approach shifted toward a more individualized conception of accountability centered on prosecuting those directly responsible for atrocities instead of imposing punishment collectively. Transitional justice therefore increasingly adopted a liberal legal approach focused on individual criminal responsibility while simultaneously seeking to rebuild political and social institutions rather than subject entire societies to punitive measures. This shift also reflected a

¹⁰ See United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 13, 14.

broader recognition that sustainable peace is more likely to emerge from accountability processes that combine justice with reconstruction, reconciliation, and institutional renewal.¹¹

The Cambodian experience illustrates how considerations of peacebuilding initially took precedence over demands for criminal accountability, resulting in a prolonged period of impunity in the aftermath of the conflict. This approach delayed the pursuit of justice for mass atrocities committed under the Khmer Rouge regime and left accountability mechanisms absent for several decades. However, this situation gradually changed with the establishment of a hybrid judicial mechanism designed to address these crimes. In this context, the Extraordinary Chambers in the Courts of Cambodia (ECCC) were established in 2005 as a hybrid tribunal mandated to prosecute former senior leaders of the Khmer Rouge and individuals deemed most responsible for serious atrocities. The tribunal exercised jurisdiction over both domestic offences and core international crimes, including genocide, crimes against humanity, and war crimes. Proceedings commenced in 2009 and resulted in a limited number of completed trials, which nevertheless marked Cambodia's first formal attempt to confront large-scale atrocities through judicial accountability and to translate long-standing impunity into legal responsibility.¹² This development therefore reflects a significant—though incomplete—shift from a political environment characterized by impunity toward a more structured process of internationalized criminal accountability within a post-conflict setting.

These experiences demonstrate that the evolution of transitional justice mechanisms must take into account the lessons of past conflicts in order to ensure that justice is pursued in ways capable of supporting long-term peace and political stability. They also reveal that accountability mechanisms cannot operate effectively in isolation from broader political and social realities, particularly in societies emerging from violence and institutional collapse. Within this framework, both national and international courts remain essential instruments of accountability within transitional justice processes, particularly where domestic legal systems lack the capacity or independence necessary to address large-scale violations effectively.

In the same context, what is known as 'truth commissions' or 'commissions of inquiry' also falls within the scope of transitional justice, though they differ fundamentally from judicial accountability. While criminal trials seek to hold individuals accountable for human rights violations through legal penalties, truth commissions aim to achieve accountability by uncovering facts, documenting abuses, and offering victims a platform to share their experiences. This means that truth commissions enhance accountability without delivering justice in the conventional judicial sense. They play a vital role in transitional justice by revealing the truth, ensuring official recognition of violations, and proposing reform recommendations, thereby contributing to the establishment of a more just and stable society after conflict or repression.

¹¹ See Ruti G. Teitel, "Transitional Justice Genealogy (Symposium: Human Rights in Transition)," *Harvard Human Rights Journal*, vol. 16 (2003): 72,73.

¹² See Wendy Lambourne, "International Humanitarian Law, Jus Post Bellum and Transformative Justice," 1270,1271.

Notably, truth commissions are official, temporary, non-judicial bodies that investigate patterns of human rights or humanitarian law abuses over time. They focus on victims, issue final reports with findings and recommendations, and have been established in more than 30 countries, including Argentina, Chile, South Africa, and Sierra Leone. These commissions help post-conflict societies uncover the truth, foster accountability, preserve evidence, identify perpetrators, and propose reparations and reforms. They also give victims a public platform to share their stories and encourage national debate on confronting the past.¹³

From this, it can be concluded that truth commissions play a crucial role in transitional justice by uncovering the truth about serious human rights violations and helping societies confront their past transparently. By documenting crimes and hearing victims' testimonies, these commissions create space for official acknowledgment of past injustices, reinforcing moral and political accountability, even when the judiciary cannot prosecute perpetrators. Furthermore, truth commissions contribute to institutional reform and the prevention of future violations by offering recommendations to strengthen the rule of law and ensure accountability. They also help rebuild social trust by allowing victims to share their suffering, thereby fostering national reconciliation. Thus, their role extends beyond merely documenting the past to paving the way toward a more just and stable future.

However, their effectiveness depends heavily on independence, transparency, and strong societal and international support. Without these conditions, they risk becoming mere symbolic mechanisms lacking real impact on transitional justice. These commissions may also face challenges that hinder their effectiveness, such as a weak civil society, political instability, victims' and witnesses' fear of testifying, corruption in judicial systems, limited investigation time, lack of public support, and insufficient funding. Additionally, if they are hastily established or politically influenced, their credibility may be compromised. Hence, they must be created through consultative processes and employ effective communication strategies to build public trust while addressing the needs of victims, particularly the most affected groups. Moreover, these commissions require strong international support to fulfill their roles effectively while maintaining their independence.¹⁴

In summary, the success of truth commissions requires the existence of a supportive political and institutional environment capable of guaranteeing independence, transparency, and meaningful public participation, alongside active civil society engagement and sustained international commitment. Overcoming the obstacles facing these commissions requires more than the mere availability of financial or administrative resources; it also demands a genuine willingness by political actors and state institutions to confront past violations openly and to accept accountability as a necessary condition for democratic and social reconstruction. Ultimately, the effectiveness of truth commissions depends largely on their ability to gain the trust of victims and society as a whole, thereby enabling them to function as central pillars of transitional justice

¹³ See United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 17.

¹⁴ See *ibid*, p.17.

through promoting reconciliation, strengthening collective acknowledgment of past abuses, and contributing to the prevention of future violations.

2.2. Compensations and Reparations

Compensations and reparations are widely regarded as fundamental pillars of transitional justice because they seek to address the material, psychological, and social harm suffered by victims of serious human rights violations. These reparative measures may take different forms, including financial compensation, symbolic acknowledgment, restitution of rights or property, and the provision of essential services such as healthcare, education, and psychological rehabilitation. Through these mechanisms, reparations aim not only to remedy individual suffering but also to reaffirm victims' dignity and restore their sense of recognition within society. They further contribute to rebuilding trust between affected communities and state institutions while supporting broader processes of national reconciliation. Accordingly, reparations should not be understood merely as gestures of sympathy or acknowledgment of suffering; rather, they constitute an essential component of justice and an important mechanism for promoting long-term peace and social stability.

The United Nations has paid close attention to the issue of compensations, recognizing their importance in achieving justice for victims and enhancing the stability of affected communities. One of the most prominent examples is the work of the United Nations Compensation Commission after the First Gulf War, which processed more than 2.5 million compensation claims, resulting in the payment of over \$18 billion to those affected by Iraq's unlawful invasion of Kuwait. Furthermore, the UN Human Rights Committee developed the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, thereby establishing an important normative framework concerning victims' rights to remedies, accountability, and reparative justice.

In peacekeeping and post-conflict operations worldwide, the United Nations has also supported states in designing compensation and reparations programs intended to address common challenges faced by societies emerging from violence, including the loss of homes, property, livelihoods, and legal status among refugees and internally displaced persons. The United Nations further emphasizes that state responsibilities extend beyond prosecuting perpetrators to include meaningful measures directed toward victims, particularly through the provision of fair, adequate, and accessible reparations. In this regard, compensation programs function as complementary mechanisms alongside criminal courts and truth commissions by offering tangible forms of redress, supporting reconciliation efforts, and helping restore victims' confidence in the legitimacy of state institutions.

Reparations are not limited to financial compensation alone; they also encompass non-material measures designed to address the broader consequences of violence and exclusion. These measures may include restoring victims' legal rights, implementing medical and psychological rehabilitation programs, and adopting symbolic initiatives such as official apologies, memorials,

commemorative events, and public recognition of victims' suffering. In addition, restitution of property—or compensation for lost or destroyed assets—constitutes a particularly important aspect of reparations programs in conflict-affected societies.

Nevertheless, reparations programs face significant legal, political, and administrative challenges. Among the most difficult issues are determining which categories of victims qualify for reparations, assessing the extent and nature of compensable harms, establishing reliable standards for evaluating damage, and ensuring fair and equitable distribution of resources among affected groups.¹⁵

In summary, reparations constitute a central component of transitional justice because they contribute to alleviating victims' suffering, reaffirming the principle of responsibility, and strengthening trust between societies and state institutions. Their significance lies not only in compensating for past harms, but also in recognizing victims as rights-holders entitled to justice, dignity, and inclusion within post-conflict reconstruction processes. Although the implementation of reparations programs involves numerous practical and political difficulties, the development of fair, transparent, and inclusive mechanisms significantly enhances their ability to contribute to justice, reconciliation, and sustainable peace.

The Colombian experience represents one of the most extensive contemporary examples of transitional justice within the context of prolonged internal armed conflict, particularly regarding victims' rights and reparative mechanisms. Over the past decade, Colombia developed a comprehensive transitional justice framework in response to decades of violence that produced millions of victims of displacement, kidnapping, torture, enforced disappearance, and homicide. This framework was institutionalized through measures such as the Justice and Peace Law of 2005 and the Victims and Land Restitution Law of 2011, both of which established mechanisms for victim registration, reparations, truth-seeking, land restitution, and historical memory preservation. The Colombian model also allocated substantial state resources to reparations programs and adopted an expansive definition of victimhood while emphasizing victim participation in the design and implementation of transitional justice policies.¹⁶ At the same time, the Justice and Peace Law sought to reconcile peace and justice through a complex process combining demobilization, criminal accountability, and reparative measures. Victims were granted the right to participate directly in judicial proceedings, demand reparations, and contribute to truth-telling processes, while reparations extended beyond compensation to include restitution, rehabilitation, guarantees of non-repetition, and administrative reparations. Specialized institutions such as the National Commission for Reparation and Reconciliation were also created to promote reconciliation, historical memory, and victim awareness. Despite the practical challenges of implementing such an ambitious framework amid ongoing violence, the Colombian process contributed to transforming victims from marginalized actors into central participants within the

¹⁵ See *ibid.*, 18, 19.

¹⁶ See Enzo Nussio, Angelika Rettberg, and Juan E. Ugarriza, "Victims, Nonvictims and Their Opinions on Transitional Justice: Findings from the Colombian Case," *International Journal of Transitional Justice* 9, no. 2 (2015): 338, 339, 343.

transitional justice system.¹⁷ Overall, the Colombian case demonstrates how transitional justice may combine judicial accountability, victim participation, and reparative policies within a broader effort aimed at reconciliation and the reconstruction of social trust after prolonged conflict.

Compensation and reparative justice also occupy a central position within the post-war justice. In this regard, Hugo Grotius argues that moral obligations exist toward those who have suffered harm as a result of war and violence. These obligations extend beyond merely preventing cruelty and instead provide a broader ethical foundation for reparations, including duties that a just victor may owe even to a defeated adversary. Grotius therefore frames reparative obligations not simply as acts of generosity, but as requirements grounded in moral responsibility and the pursuit of stable peace. He further emphasizes the virtue of refraining from claiming every possible legal entitlement, viewing such restraint not as an expression of weakness or benevolence alone, but rather as an ethical and political approach intended to facilitate settlement, moderation, and long-term peacebuilding. Such restraint reflects a willingness to relinquish certain rights in pursuit of broader reconciliation and social stability, provided that fundamental moral principles and justice are not sacrificed.

From this perspective, reparations function both as a principle and a goal of post-conflict justice, particularly within distributive justice. This approach is illustrated by post-apartheid South Africa, where retributive justice was not fully pursued despite victims' legal entitlement to it. Instead, the Truth and Reconciliation Commission imposed limited accountability measures, similar to Rwanda's Gacaca system, to rebuild the rule of law and social trust by signaling that victors would not demand everything they were legally owed. A comparable logic underpinned the Allied reconstruction of Germany and Japan after World War II, in which assistance extended beyond compensation to foster democratic stability and peaceful relations, demonstrate respect for defeated populations, and support legal and political reform.

A critical question may arise: Does refraining from claiming full entitlements constitute a form of justice, given that justice is often closely tied to legal principles? Some argue that such restraint is better understood as goodwill or benevolence rather than justice. In this context, justice may be confined to its strictly legal dimensions, while the relinquishment of certain rights could be regarded as an ethical choice rather than a legal obligation. Nevertheless, this view can be challenged by recalling that humility—not merely benevolence—has historically shaped the concept of justice since the Middle Ages. This resonates with Aristotle's vision of justice as a virtue grounded in moderation.¹⁸ Within this framework, reparations emerge as one of the most significant mechanisms for advancing post-conflict justice because they attempt to address harm while simultaneously preserving conditions necessary for political and social stability. However, reparative justice also raises difficult practical and ethical questions regarding whether meaningful redress for victims can be achieved without imposing burdens capable of destabilizing societies emerging from conflict. On the one hand, reparations constitute a legitimate right for individuals

¹⁷ See Republic of Colombia. *Transitional Justice in Colombia: The Justice and Peace Law: An Experience in Truth, Justice and Reparation* (Bogotá: Government of Colombia, 2010).

¹⁸ See Larry May, *Contingent Pacifism: Revisiting Just War Theory*, 183, 184.

and communities that have suffered serious harm; on the other hand, extensive reparations programs may place heavy economic, institutional, and political burdens on post-conflict states already facing fragility and limited resources. Accordingly, transitional justice mechanisms must often balance competing demands between victims' expectations for full redress and the practical limitations confronting transitional societies. Therefore, the effectiveness of reparations programs should be measured not solely by their material value, but also by their capacity to create a sense of fairness, restore victims' dignity, and facilitate their reintegration into society in ways that reduce the likelihood of renewed violence or future violations.

The refusal to target civilians and to regard them as legitimate targets is one of the most fundamental principles of post-war justice. Yet, within the framework of post-war justice, the principle of reparations is often directed toward civilians in two respects:

First: Civilians as Obligated to Pay Reparations: After the end of conflicts, civilians may be required to contribute to reparations for damages caused by their state, even if they were not directly involved in the political or military decisions that led to the war. This stems from the concept of collective responsibility, whereby citizens are viewed as part of the state that committed violations and, therefore, bear a financial or economic burden to repair the damage caused by war. This may take the form of additional or higher taxes.

Second: Civilians as Recipients of Reparations: On the other hand, civilians can be the beneficiaries of reparations, particularly if they are victims of gross human rights violations such as mass killings, forced displacement, or military occupation. In such cases, reparations serve to restore victims' dignity, whether through direct financial compensation, property restitution, or non-material measures, including official apologies, memorials, and access to healthcare and psychological support services.

This dual position—civilians as both contributors to reparations and recipients of them—creates a challenge for transitional justice. States must find a fair balance that ensures those responsible for violations bear the brunt without imposing unjustified punishments on innocent civilians. At the same time, reparations provided to victims must be sufficient to achieve justice and restore dignity without creating a sense of revenge or exacerbating divisions within society. The challenge therefore lies in designing reparative frameworks that advance accountability and acknowledgment while avoiding the reproduction of collective resentment or renewed instability.

On this issue, Walzer explains that civilians, after the end of the war, become political and economic targets. One such target could be the payment of reparations. By distinguishing between not targeting civilians during war and targeting them after it ends, Walzer implicitly refers to forms of collective responsibility. As part of the political entity of the state, individuals become responsible for bearing the consequences of the unjust acts committed by their state, as they participate in its institutions and bear some responsibility for its decisions. However, this responsibility is limited to bearing the costs of these acts; they are not necessarily responsible for the war itself, so they should not be targeted during armed conflict.¹⁹

¹⁹ See Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2004), 85, 86.

2.3. Security Sector Reform and Political System Rehabilitation After Conflict

In the aftermath of armed conflicts and wars, achieving stability and establishing the foundations for a just and sustainable peace constitute fundamental challenges for societies emerging from prolonged cycles of violence and institutional fragmentation. Post-conflict societies are often confronted not only with physical destruction, but also with weakened institutions and entrenched patterns of insecurity that undermine prospects for long-term peacebuilding. Accordingly, the establishment of transitional justice and the pursuit of a just peace cannot be achieved without comprehensive reform of the institutional structures damaged or corrupted during periods of conflict. For this reason, post-conflict reconstruction efforts must devote particular attention to processes of security sector reform and political rehabilitation.

Security sector reform is a critical step in ensuring the rule of law and preventing the recurrence of violations. It requires restructuring security institutions, enhancing civilian oversight, and ensuring their commitment to human rights. At the same time, political rehabilitation is essential to strengthen democratic participation, rebuild trust between citizens and the state, and create an inclusive and just political environment that helps overcome the legacies of the past. Meanwhile, system reconstruction ensures the continuity of good governance by reforming institutions, strengthening accountability mechanisms, and entrenching the rule of law as a foundation for transitional justice and national reconciliation.

In addition to institutional reform and political rehabilitation, the restoration of order is considered an essential requirement in post-conflict societies. Drawing on the Hobbesian view that the absence of sovereign authority leads to a constant state of conflict and insecurity, Patterson argues that post-war obligations should prioritize the establishment of order before justice and reconciliation. In this context, order primarily consists of ending violence, preventing murder and rape, and ensuring governance within war-torn societies. Similarly, Elshain emphasizes the importance of establishing and maintaining a 'just order' capable of protecting individuals from renewed violence. Although she acknowledges that military force alone cannot achieve lasting peace, she argues that it can contribute to securing stability in the immediate post-conflict phase. For Elshain, this 'minimal decency' requires not only security control but also legitimate political structures based on democratic processes, representative government, constitutional legitimacy, and respect for the equal moral worth of individuals.²⁰ Accordingly, the establishment of order becomes an essential foundation for achieving sustainable peace and advancing the broader objectives of transitional justice within post-conflict societies.

Regarding security sector reform as one of the mechanisms of post-war justice and achieving stability, Melissa Labonte states:

²⁰ See David Chiwon Kwon, *Justice after War: Jus Post Bellum in the Twenty-First Century* (Washington, D.C.: The Catholic University of America Press, 2023), 69, 70.

“Providing physical security for the general population that exceeds the status quo ante is one of the highest priorities of peacebuilding and represents a core goal of jus post bellum. Whether carried out by a multinational peace operation sanctioned by the United Nations, a regional force, or a coalition of the willing, it is the responsibility of the ‘victor’ to establish order and provide sufficient capacity to defend against internal and external threats. In many peacebuilding settings, the first step toward comprehensive security sector reform involves (1) DDR of ex-combatants as well as the cantonment/destruction of weapons; and (2) extending the ‘victor’s’ authority throughout the country as well as beginning the process of reestablishing and retraining a national armed force and civilian police authority. When effective, security sector reform facilitates progress in other areas of peacebuilding, such as transitional justice and national reconciliation, rebuilding a just social order, rule of law reforms, and economic revitalization. It also promotes the realization of fundamental human rights associated with freedom from physical harm and violence.”²¹

This means that achieving security for people who have experienced war and lived within a cycle of violence is one of the most critical objectives of post-war justice and peacebuilding. This is accomplished through a series of steps, including disarming, demobilizing, or dismantling former combatant forces and their weapons. This process also includes rebuilding national armed forces and retraining security institutions, including the civilian police, to ensure a security force that operates under new standards that contribute to achieving stability.

When implemented effectively, security sector reform produces consequences that extend well beyond the immediate restoration of public security. It contributes positively to broader peacebuilding and transitional justice objectives, including national reconciliation, the reconstruction of a just social order, rule-of-law reforms, democratic governance, and economic recovery. Moreover, such reforms strengthen the protection of fundamental human rights, particularly the right of individuals to live free from physical violence, intimidation, and insecurity. Security sector reform therefore represents not only an institutional process, but also a societal effort to restore citizens’ sense of safety and trust after periods of widespread conflict and state failure. From this perspective, security sector reform may be regarded as one of the foundational pillars of sustainable peace, since neither justice nor political stability can be secured in post-conflict societies without security institutions capable of protecting civilians and enforcing the law in a fair, impartial, and accountable manner. The success of such reforms ultimately reflects the broader capacity of post-conflict states to establish secure political communities governed by the rule of law and committed to the protection of human rights and democratic legitimacy.

However, the effectiveness of these reforms hinges on the commitment of relevant actors to implement them impartially and to prevent their misuse as instruments of domination or the suppression of particular groups—practices that may ultimately undermine long-term peacebuilding efforts. Melissa Labonte nevertheless argues that there is no universal model for security sector reform in post-conflict countries. For example, the Allies’ experiences in rebuilding Germany and Japan after World War II cannot be treated as absolute or universally applicable approaches. This is because the political and social conditions of each conflict differ, as does the

²¹ Melissa Labonte, “Jus Post Bellum, Peacebuilding, and Non-state Actors: Lessons from Afghanistan,” 221.

nature of each society. Therefore, post-war reforms must be carefully tailored to each state's specific political, social, and institutional characteristics, as well as to the level of corruption within its institutions; If the previous political system had committed severe violations, a complete restructuring might be necessary. In other cases, however, gradual reform may be the most effective solution. Accordingly, the general rule is to avoid sweeping, radical reforms unless the collapsed political system is entirely incapable of managing state affairs or is severely dysfunctional. In such cases, comprehensive state reconstruction becomes necessary—not only to achieve justice but also to ensure sustainable peace and prevent a return to the conditions that contributed to the outbreak of conflict in the first place.²²

In other words, attempts to replicate previous reconstruction experiences wholesale are neither practical nor appropriate in most post-conflict transitions. Although the political rehabilitation of defeated states may constitute an important component of post-war justice, such measures must remain proportionate to the nature of the former political system and the extent of its authoritarianism, institutional corruption. Accordingly, post-conflict reform strategies should be shaped by contextual realities rather than by rigid adherence to externally imposed models of political transformation. The dismantling of an entire political system and the drafting of a new constitutional order should therefore not be treated as automatic or universally applicable responses to conflict. Instead, such radical restructuring should generally be reserved for exceptional cases, such as transitioning from fascist authoritarian regimes to liberal democracies, as in Germany and Japan.

This idea highlights the need for a realistic, flexible approach to dealing with defeated states after conflict, as a unified reconstruction model cannot be imposed on all cases. While some political systems may require gradual reform processes in order to preserve institutional continuity and maintain stability, other situations may necessitate more comprehensive restructuring to prevent the re-emergence of authoritarianism or systematic violence. The central challenge therefore lies in balancing political rehabilitation with political realism in ways that expand opportunities for peace and democratic transformation without imposing external institutional models disconnected from local realities and societal conditions.

As a conclusion, security sector reform is one of the fundamental pillars of achieving post-war justice, serving as the cornerstone for rebuilding the state and preventing the recurrence of chaos or human rights violations. Security stability is not merely an end in itself but a necessary condition for the success of any subsequent political or economic reform. If security institutions are not reformed to ensure respect for the rule of law and the protection of citizens, reconstruction efforts could collapse entirely, leading to renewed conflict or the persistence of injustices that existed before the war. Such reform ensures that previous repressive regimes do not return and provides a safe environment that helps build sustainable peace. However, the success of this process depends on how well it integrates with other transitional justice strategies, such as holding perpetrators accountable, reforming political institutions, and promoting national reconciliation.

²² See *ibid*, 224, 225.

Without reliable and sustainable security, neither stability nor just peace can be achieved—one that ends past violations and lays the foundation for a more equitable future.

In summary, effective security reform cannot be achieved without comprehensive political reform. On the other hand, political rehabilitation requires security institutions that guarantee a stable and just environment. This shows that security sector reform is not merely a technical matter but an essential part of post-war state-building.

In addition to security sector reform, political rehabilitation is widely regarded as another essential component of achieving peace and post-war justice. Brian Orend addresses this issue in his discussion of political rehabilitation as one of the principal objectives of *jus post bellum*, arguing that reforming the political system of a defeated state constitutes a crucial step toward preventing the recurrence of aggression and restoring international stability. This objective may be pursued through transferring authority to a legitimate and representative government capable of rebuilding political order and restoring institutional legitimacy after conflict. Political rehabilitation may also involve the imposition of disarmament measures designed to ensure that military force is not employed again in ways that threaten peace and security. At the same time, Orend recognizes that excessively harsh or externally imposed reforms may risk being perceived as punitive interventions rather than legitimate efforts aimed at stabilization and peacebuilding.

The most controversial aspect of this argument is the idea that political rehabilitation may require the complete dismantling and replacement of the ruling system, particularly in cases where the existing regime is blatantly repressive or aggressive. According to Orend, such regimes may necessitate radical political reform to ensure justice and prevent the recurrence of the violations that led to the conflict in the first place.²³ Thus, political rehabilitation can be considered a crucial tool for achieving post-war justice, as it aims to address the root causes of conflict and works to prevent its recurrence. However, the effectiveness of this step depends on how well political intervention balances necessary reform with respect for national sovereignty. While dismantling the existing political system may be necessary in certain contexts, it can also trigger instability if not implemented with careful planning and prudence. Therefore, achieving justice through political rehabilitation requires a balanced approach that integrates political reform with social stability, ensuring it does not become a vehicle for domination or political retribution.

It is also crucial to foster a general sense of stability in countries emerging from war and seeking to move beyond its aftermath. This entails not only attention to the political system but also consideration of the broader concept of social and institutional order, which ensures that conflicts are resolved in an organized and sustainable manner. This may include:

- The security system: Ensuring security and stability after the war and preventing chaos or renewed violence.
- The legal system: Re-establishing the rule of law and preventing unlawful acts of retribution.

²³ See Helen Frowe, *The Ethics of War and Peace: An Introduction*, 2nd ed. (New York: Routledge, 2016), 242.

- The political system: Establishing a legitimate government or transitional authority capable of governing effectively, maintaining institutional continuity, and preventing state collapse or political fragmentation.

Accordingly, “order is a moral as well as a political imperative... Therefore, we should work toward post-conflict agreements that enact a minimal *jus post bellum*: the promotion of international order and the preservation of human life.”²⁴ This means that order should not be understood merely as a political necessity required for state survival, but also as a moral obligation arising from the responsibility to protect human life and prevent renewed suffering after conflict. The restoration of order therefore acquires both ethical and institutional significance within post-war justice frameworks because it creates the minimum conditions necessary for social recovery and peaceful coexistence. Maintaining order after war consequently becomes a fundamental responsibility for ensuring stability, preventing chaos, and reducing the likelihood of renewed violence, thereby highlighting the importance of post-conflict settlements capable of guaranteeing at least a minimal degree of justice, preserving international order, and safeguarding civilian populations. From this perspective, the priority following armed conflict should be the establishment of stability and the creation of a secure environment within which broader processes of justice and reconciliation may gradually emerge.

Moreover, in the context of post-war justice (*Jus post bellum*), achieving order is one of the fundamental pillars for ensuring stability after the end of armed conflicts. While transitional justice emphasizes accountability and redress, and reconciliation focuses on rebuilding the social fabric, order remains the fundamental prerequisite, without which none of these objectives can be achieved; Without a minimum level of institutional and social stability, mechanisms of accountability and reconciliation may become ineffective or impossible to implement. Stability provides the foundation that enables societies to overcome the consequences of war, rebuild political and legal institutions, and create a secure environment conducive to sustainable peace. However, the extent to which justice and reconciliation are achieved varies from one case to another, as some settlements may focus primarily on establishing order, while others expand to include deeper dimensions of justice and reconciliation.

Order is regarded as the first principle of post-war justice, as it ensures the minimum level of stability necessary for reconstruction and the establishment of good governance. However, pursuing full justice and complete reconciliation may not always be immediately possible or practical after a conflict. From this perspective, the moral priority is to end the war, as continued fighting may lead to further destruction and loss of life. Consequently, a political settlement that halts hostilities and provides a stable environment may be preferable, even if it does not encompass all aspects of justice and reconciliation. This does not imply abandoning justice altogether, but rather recognizing that post-conflict societies may need to pursue justice gradually and incrementally within conditions of fragile stability. Therefore, each post-conflict situation must

²⁴ Eric Patterson, “*Jus Post Bellum and International Conflict: Order, Justice, and Reconciliation*,” in *Rethinking the Just War Tradition*, ed. Michael W. Brough, John W. Lango, and Harry van der Linden (Albany: State University of New York Press, 2007), 43.

be addressed according to its specific circumstances, with an emphasis on balancing peace and stability with the pursuit of sustainable justice.²⁵ From this, we conclude that the establishment of order constitutes a necessary precondition for achieving sustainable peace and realizing the broader objectives of post-war justice. Justice and reconciliation cannot effectively emerge amid continuing instability and institutional collapse. Instead, post-conflict stability creates the political and legal space necessary for reform processes and enables societies to move beyond the destructive legacy of war. However, order itself should not be regarded as an ultimate objective, but rather as a preliminary stage through which deeper reforms and more comprehensive forms of justice and reconciliation may later be pursued.

In short, the achievement of order constitutes an essential condition for ending war in a just and sustainable manner because it provides the minimum level of stability necessary to prevent chaos, protect civilians, and establish a secure environment during the fragile post-conflict phase. Without such order, broader aspirations for justice, reconciliation, and democratic transformation are unlikely to succeed or endure over time.

3. Transitional Justice Between the Imperatives of Peace and the Demands of Justice

Based on what we have discussed, transitional justice is considered one of the most prominent legal and political approaches that has emerged to address the legacy of serious human rights violations in societies transitioning from armed conflict or authoritarian regimes. It aims to facilitate the transition toward a more stable and just political order through a set of interrelated and mutually reinforcing mechanisms. One of its most significant mechanisms is accountability and the prosecution of perpetrators of violations, as an embodiment of the principle of ending impunity on the one hand, as well as reparations and redress measures aimed at compensating victims and restoring their dignity on the other. We have previously noted in this article the importance of striking a balance between accountability and reconciliation to the greatest extent possible, given the centrality of this balance in achieving the overarching goals of transitional justice and bringing an end to conflict and consolidating durable peace.

The implementation of these transitional justice mechanisms raises a complex issue concerning the relationship between the requirements of peace and the demands of justice. Some argue that an emphasis on accountability may undermine prospects for political settlement and stability, while others maintain that neglecting justice in favor of a quick peace merely entrenches impunity and reproduces cycles of violence. Hence, the 'peace versus justice' debate has emerged as one of the most significant dilemmas confronting transitional justice processes.

In post-conflict contexts, one of the most persistent challenges concerns how to reconcile the pursuit of accountability for past atrocities with the need to foster reconciliation and sustainable peace. This tension arises from a deeper normative dilemma regarding whether post-conflict societies should prioritize retributive justice aimed at punishing perpetrators, or

²⁵ See *ibid*, 41.

adopt more restorative and conciliatory approaches designed to reduce hostility and facilitate long-term coexistence.

The concept of retribution within Transitional Justice reveals a deeply contested and multi-layered debate concerning the moral and legal foundations of post-conflict order, particularly in relation to how victorious and defeated parties should be treated in the aftermath of war. At its core, the literature reflects an enduring tension between two opposing intuitions: on the one hand, the idea that victors should adopt a magnanimous posture in order to eliminate cycles of revenge, and on the other hand, the belief that they should adopt a harsher and punitive stance to ensure the definitive consolidation of victory and the irreversibility of defeat.

Within this framework, retribution is commonly understood as the pursuit of legal accountability for those responsible for initiating or conducting unjust wars. Historically, Grotius contributes to this discussion by advocating a principle of moderation and a form of equal justice between former adversaries, thereby rejecting excessive punishment while still preserving the necessity of accountability. In contrast, Michael Walzer defends the necessity of post-war trials such as those conducted at Nuremberg, arguing that they are justified when fundamental moral values have been violated in extreme ways. However, he simultaneously warns that such judicial processes may intensify hostility if they fail to reframe defeated parties as potential participants in a renewed international order, thus revealing the dual function of retribution as both moral response and political instrument.

This instrumental dimension is further developed by Brian Orend, who argues that war crimes trials constitute an essential component of post-war punitive settlements. He maintains that individuals materially associated with aggression, tyranny, or atrocity should be excluded from participation in the new political order, thereby linking accountability directly to regime transformation and political reconstruction. Kellogg similarly reinforces this perspective by emphasizing that such trials should be understood not as isolated ends in themselves, but as means toward achieving sustainable peace and post-conflict stabilization, thereby situating retribution within a broader teleological framework of transitional justice and post-conflict stabilization.²⁶

Taken together, it can be said that retribution in post-conflict settings cannot be reduced to a single coherent principle. Rather, it operates as a site of continuous tension between legal accountability, moral judgment, and political necessity. The difficulty lies not only in determining whether perpetrators should be punished, but in calibrating the extent, form, and timing of such punishment in a manner that does not undermine the broader objective of establishing a stable and just post-conflict order.

In contrast, another important perspective within transitional justice emphasizes reconciliation-oriented approaches that prioritize social healing, reintegration, and the restoration of fractured relationships over strict retributive or punitive justice. This approach highlights the necessity for former adversaries to move beyond cycles of revenge and toward processes that enable psychological recovery, collective healing, and the gradual reconstruction of trust within

²⁶ See Albert W. Klein, "Attaining Post-Conflict Peace Using the *jus post bellum* Concept," *Religions* 11, no. 4 (2020): 173, 13,14.

divided societies. Rather than focusing primarily on punishment or legal accountability, this strand of thought underscores a normative aspiration toward restoring social cohesion and enabling a durable form of peace that extends beyond the mere cessation of hostilities. Within this framework, reconciliation is not only a moral aspiration but also a practical requirement for achieving sustainable peace after conflict.

Within this perspective, St. Augustine articulates reconciliation as fundamentally linked to the human desire for peace, suggesting that peace constitutes the ultimate aim not only of political order but also of war itself, insofar as even conflict is driven by an underlying pursuit of peace. This framing situates reconciliation as an inherent teleological endpoint of post-war transformation rather than a secondary political option. Building on this ethical orientation, Iasiello advances a 'healing mind-set' approach to post-conflict societies, emphasizing that reconciliation requires psychological, moral, and social recovery across all levels of society. In this view, both victors and defeated parties are expected to engage in a process characterized by regret, humility, conciliation, and even contrition. Such an attitude is presented as contributing to the broader objective of healing collective trauma and consolidating the foundations of a just peace, even where a full return to pre-war conditions remains impossible. Walzer further contributes to this discussion by conceptualizing reconciliation through a relational and social analogy, suggesting that post-conflict relations may resemble deeply embedded familial structures in which even severe violence does not necessarily eliminate the possibility of renewed coexistence. From this perspective, reconciliation remains viable so long as conflict does not escalate to total destruction of social bonds, thereby preserving the possibility of renewed political and social relations between former enemies.

From a transitional justice perspective, Pinsky reframes reconciliation as a mechanism that may emerge precisely where criminal justice and peacebuilding objectives come into tension. He suggests that in certain contexts, reconciliation may be facilitated through mechanisms such as amnesty rather than prosecution, thereby offering an alternative pathway when punitive justice risks obstructing political stabilization.²⁷ However, reconciliation is not positioned as a substitute for justice, but rather as a complementary yet contested component within post-conflict reconstruction.

This diversity of approaches reflects the broader unresolved tension within Transitional Justice regarding whether peace is better achieved through punishment, forgiveness, or a calibrated combination of both. In this context, the relationship between peace and justice remains one of the most enduring and contested dilemmas in post-conflict transitions within the field of Transitional Justice. This tension is not limited to peace negotiations but extends into broader processes of peacebuilding and state reconstruction, where competing demands for accountability and stability continue to shape policy choices. In this regard, Wendy Lambourne argues that the perceived opposition between peace and justice is a persistent feature of both political and legal decision-making in contexts marked by mass atrocities. She suggests that while international criminal prosecutions for serious violations of international humanitarian law may strengthen accountability and uphold legal norms, they can also complicate efforts to achieve

²⁷ *Ibid.*, 14, 15.

negotiated peace and reconciliation. Conversely, approaches that prioritize reintegration, amnesties, or non-prosecutorial mechanisms may facilitate short-term stability but risk falling short of the normative requirements associated with *jus post bellum*. From this perspective, compliance with international humanitarian law during armed conflict plays a crucial role in shaping the prospects for a sustainable post-war order that can reconcile both peace and justice.²⁸

In this sense, Wendy Lambourne does not approach peace and justice as mutually exclusive objectives, but rather argues for an integrated model capable of reconciling accountability with social healing and long-term transformation. As she explains: “I have argued for a combination of retributive and restorative justice that would promote justice as well as reconciliation, along with symbolic justice experienced as a result of public apologies or the establishment of memorials. Transitional justice therefore requires a transdisciplinary mindset and a holistic and comprehensive approach to societal as well as State transformation, incorporating insights and methods from multiple disciplinary perspectives and experiences which go beyond the dominant Western liberal ‘peace versus justice’ paradigm.”²⁹ This perspective reflects an important shift within transitional justice scholarship away from framing peace and justice as competing alternatives and toward understanding them as interdependent and mutually reinforcing dimensions of post-conflict transformation. Rather than privileging criminal accountability in isolation or prioritizing political stability at the expense of justice, Lambourne advocates a holistic framework that integrates retributive, restorative, and symbolic dimensions of justice within broader processes of societal reconstruction and reconciliation.

Building upon Wendy Lambourne’s call for a balanced approach that reconciles accountability with reconciliation, Brian Orend’s conception of ‘just punishment’ offers a further normative framework for addressing the peace–justice dilemma within post-conflict societies. Rather than viewing punishment as an instrument of vengeance, Orend conceptualizes post-war accountability within a broader rehabilitative project aimed at reconstructing a minimally just social and political order. In this sense, his theory may be understood as an attempt to articulate a model of ‘just punishment’ that preserves the requirements of accountability while avoiding the destabilizing consequences of excessive or indiscriminate retribution.

Orend distinguishes between two competing models of post-war justice: the revenge model and the rehabilitation model. The revenge-oriented approach is grounded in punitive excess, emphasizing harsh reparations, prolonged sanctions, and the infliction of additional suffering upon the defeated society beyond the cessation of hostilities and formal accountability measures. According to Orend, such an approach risks reproducing cycles of resentment and instability, generating future conflicts, harming innocent civilians, and obstructing long-term reconstruction. More importantly, he rejects the assumption that justice necessarily requires retaliatory suffering, arguing instead that vengeance frequently undermines the very conditions required for sustainable peace.

²⁸ See Wendy Lambourne, “International Humanitarian Law, *Jus Post Bellum* and Transformative Justice,” 1270.

²⁹ *Ibid.*, 1274.

By contrast, the rehabilitation model seeks to preserve accountability while directing post-war measures toward political and societal reconstruction. Although this model continues to support mechanisms such as peace treaties, public apologies, demilitarization, prisoner exchanges, and war crimes trials, it rejects indiscriminate sanctions and excessive reparations that burden society as a whole. Within this framework, accountability becomes a means of restoring a just peace rather than an end rooted in retribution alone.

Furthermore, Orend emphasizes that the ultimate objective of *jus post bellum* should not merely be punishment itself, but the rehabilitation and reconstruction of a ‘minimally just society.’ This approach reflects a broader tendency within transitional justice scholarship to search for forms of accountability that punish perpetrators without producing collective victimization or undermining post-conflict recovery.³⁰ Accordingly, Orend’s theory of just punishment demonstrates that the relationship between peace and justice need not be understood as an absolute contradiction. Rather, the challenge lies in designing accountability mechanisms capable of balancing legal responsibility with the political, social, and institutional imperatives of reconciliation, reconstruction, and sustainable peacebuilding.

In conclusion, the examination of the peace–justice dilemma within the framework of transitional Justice demonstrates that the relationship between peace and justice is not one of absolute contradiction, but rather a structural tension shaped by the political, legal, and moral complexities of transitional periods. A peace process founded upon the neglect of victims’ rights and the perpetuation of impunity remains vulnerable to the recurrence of violence and social fragmentation. Conversely, the rigid pursuit of justice without regard to political realities and post-conflict fragility may undermine prospects for stability and peaceful transition. Accordingly, the success of Transitional Justice does not lie in privileging peace over justice, or justice over peace, but in developing a flexible and context-sensitive approach capable of balancing the demands of accountability with the imperatives of reconciliation, stability, and political reconstruction.

Conclusion

This article has examined transitional justice as a complex and evolving framework situated at the intersection of law, politics, and moral philosophy in societies emerging from armed conflict or authoritarian rule. Rather than treating it as a static or purely legalistic doctrine, the analysis has conceptualized transitional justice as a dynamic field of practice that seeks to manage the enduring legacies of mass violence through a combination of accountability mechanisms, reparative measures, truth-seeking processes, institutional reform, and broader strategies of reconciliation and state reconstruction. Across these interrelated dimensions, transitional justice emerges not as a unified model, but as a negotiated and context-dependent response to the competing demands of justice, peace, and political stability.

A central conclusion of this study is that peace and justice are not opposing goals, but are linked through a persistent structural tension in post-conflict transitions. The ‘peace versus justice’

³⁰ See David Chiwon Kwon, *Justice after War: Jus Post Bellum in the Twenty-First Century*, 76, 77.

dilemma, as demonstrated throughout the analysis, does not present a binary choice; rather, it reflects an ongoing process of calibration between the necessity of accountability and the imperative of maintaining stability. Excessive emphasis on punitive justice risks destabilizing political settlements and obstructing reconciliation, while prioritizing peace at the expense of justice fosters impunity and undermines the moral and legal foundations of sustainable order. Transitional justice, therefore, operates within this delicate equilibrium, where neither peace nor justice can be meaningfully realized in isolation.

The discussion of accountability and judicial mechanisms highlighted the indispensable role of national, international, and hybrid tribunals in affirming individual responsibility for grave violations of international law. Yet, the analysis also demonstrated that legal prosecution alone cannot fully address the multifaceted consequences of mass atrocities. This necessitates complementary mechanisms such as truth commissions and reparations programs, which extend the scope of justice beyond punishment to include recognition, and victim-centered redress. In this sense, transitional justice expands the meaning of accountability from a narrowly juridical function to a broader social and symbolic process of acknowledgment and repair.

Similarly, the examination of reparations underscored their dual nature as both material and symbolic instruments of justice. While financial compensation and restitution address tangible harms, symbolic measures such as apologies, memorialization, and institutional acknowledgment play a critical role in restoring dignity and rebuilding social trust. However, the implementation of reparations remains structurally constrained by economic limitations, political instability, and competing narratives of victimhood and responsibility, particularly in deeply divided post-conflict societies.

The analysis further demonstrated that security sector reform and political rehabilitation constitute foundational pillars of post-conflict transformation. Without effective restructuring of security institutions, restoration of the rule of law, and establishment of legitimate political authority, neither accountability nor reconciliation can be sustainably achieved. Stability, in this framework, is not the endpoint of transitional justice but the precondition for its meaningful realization.

In addition, the study has shown that reconciliation-oriented approaches remain essential to the long-term success of transitional justice processes. Drawing on philosophical, theological, and legal perspectives, reconciliation emerges not merely as an ethical aspiration but as a functional requirement for rebuilding fractured social relations and enabling durable coexistence. Yet reconciliation cannot replace accountability; rather, it must operate in tandem with it.

Taken together, these findings suggest that transitional justice should be understood as a governance framework of post-conflict transformation rather than a fixed legal model. Its effectiveness lies not in the application of a single normative paradigm, but in its capacity to integrate logics of justice, peace, and reconstruction. The comparative experiences discussed in this article demonstrate that there is no universal formula for success; instead, outcomes depend on the political will, institutional capacity, and historical specificity of each context.

These insights open several important avenues for future research. First, there is a need for more systematic comparative studies examining how different configurations of transitional justice mechanisms—combining prosecutions, reparations, truth-seeking, and institutional reform—affect long-term peace. Second, future scholarship should further explore the temporal

dimension of transitional justice, particularly the sequencing of justice measures and their impact on both political stabilization and social reconciliation. Finally, greater attention should be given to normative frameworks of justice, which may offer better reflect cultural and contextual diversity.

In conclusion, transitional justice remains an indispensable yet inherently complex and ambivalent project. Its significance lies in its capacity to address the multiple and often competing demands of post-conflict societies, particularly the need to balance accountability with stability, and retributive justice with processes of reconciliation. Beside working with those tensions, transitional justice operates within them by providing a structured framework through which states attempt to manage the legacies of mass violence and institutional breakdown. In this sense, it functions as an ongoing governance process aimed at redefining justice in contexts seeking to consolidate peace, restore legitimacy, and prevent the recurrence of conflict.