

Searching for Truth in the Transitional Justice Movement. By Jamie Rowen. Cambridge: Cambridge University Press, 2017.
Transitional Justice and the Prosecution of Leaders in the Arab Region: A Comparative Study of Egypt, Libya, Tunisia, and Yemen. By Noha Aboueldahab. Oxford and Portland: Hart Publishing, 2017.

Reviewed by Susan F. Hirsch, George Mason University

What accounts for the apparent norm of using legal and quasi-legal remedies after large-scale incidents of violence and human rights abuse? In a literature crowded with overviews and broad stroke characterizations, these two volumes each advance a refreshingly distinct answer to this and other pressing questions about transitional justice. Moving beyond the perennial concern over whether transitional justice is a field, a discipline, or a theory, Jamie Rowen posits transitional justice as an “idea,” one that sits at the center of a movement with the same name. Taking a constructivist approach focused on how social actors mobilize and instrumentalize the concept, Rowen argues that the “malleability” of both transitional justice and truth commissions as ideas allows stakeholders with different, even contradictory, agendas to imagine that quasi-legal truth-seeking initiatives might serve their disparate interests. By contrast, Noha Aboueldahab interrogates the norm toward legal and quasi-legal responses to mass violence through comparing the concrete circumstances and processes specific to particular cases following the Arab Spring uprisings. She highlights how these cases challenge the assumed norm invoked at the outset of this review. Both volumes confirm that, across a wide array of cases of mass violence and oppression, at least a subset of stakeholders has strong interest in some form of legal response and that interest, in most cases, bears the shaping effect of transnational legal actors. These volumes contribute significantly to a growing scholarly understanding of how the efforts of international institutions and transnational actors intersect with local (and regional) interests in transitional justice remedies. Both Rowen and Aboueldahab also offer evidence that transitional justice initiatives routinely fall short of expectations, which should serve as a caution to everyone contributing to the study and practice of transitional justice.

Rowen’s three, chapter-length cases illustrate her valuable argument that the malleability of truth commissions as an option attracts stakeholders and a wide range of outcomes ensues. In Bosnia and Herzegovina, the possibility of a truth commission after the violent break-up of Yugoslavia was initially appealing across stakeholder groups. As different approaches to truth-seeking came into

conflict with one another and with other initiatives, such as local and international prosecutions, the whole project proved “disruptive” to the broader aim of reducing social divisions. In Colombia, the notion of seeking truth faced opposition as stakeholders clamored for accountability and powerful actors sought to avoid it. Yet, through persistent discourse, the idea of seeking truth captured enough attention to become a transformative factor in Colombia’s movement toward peace and justice.

The well-researched, intricate detail in Rowen’s analyses provides readers familiar with these cases the opportunity to appreciate them in new ways. Relatedly, her solid argument about malleability, especially its role as both an asset and a liability, will likely prompt reconsideration of other well-studied cases. Although malleability might account for the growing number of truth commissions, the implied vagueness does not preclude a growing sense of certainty about some elements of truth-seeking initiatives. One of these is the strongly held perception that, in comparison to legal trials of perpetrators, truth commissions promise victims greater opportunity to have a “voice” and thus to gain recognition and, perhaps, solace for the harms they have suffered. Rowen notes that victims’ need for voice is subject to cynical manipulation in debates over establishing a truth commission; in some instances, the emphasis on voice drowns out the call for legal accountability from other victims. Whether demonstrated through scholarship or the support of stakeholders, is the promise of voice one of the truisms about truth commissions, and what others lie behind its malleable exterior?

In Rowen’s analysis, the “quasi-legal” nature of truth commissions contributes to their malleability and their appeal to stakeholders. Yet, as Rowen craftily demonstrates, truth-seeking efforts reinforce law’s significance even as they provide a means of sidelining legal accountability. Law’s framing role is an artifact, in part, of who brought the idea of truth commissions into global parlance. One of the most fascinating discussions in the book is the behind-the-scenes history of the International Center for Transitional Justice and other early advocates of truth commissions. These transnational actors were themselves arguably malleable and certainly versatile figures. Primarily professional lawyers, they could also talk-the-talk of reconciliation, peacebuilding, trauma healing, and conflict prevention. Rowen does not explore the extent to which these transnational actors, and others who work on transitional justice more locally or academically, understand themselves as part of a “movement.” The term movement is a bold and provocative label for transitional justice, one which is not quite justified through Rowen’s brief comparison with transnational advocacy organizations, epistemic communities, and social movements.

Rowen's third case is one not typically discussed under the rubric of transitional justice. In 2009, some years after the 9/11 attacks and the subsequent U.S.-led "global war on terror", efforts emerged to mount a truth commission to address human rights violations, including torture, detention, and disappearances committed by the U.S. government. The idea of a truth commission was malleable enough to encourage even some U.S. politicians, such as Senator Patrick Leahy, to embrace it. Not all advocates for a truth commission fully understood what it would entail and, as Rowen shows, the notion was "de-coupled" from real-world examples, perhaps out of ignorance or to avoid comparisons that would further fuel "this won't work in America" responses. Here, Rowen's explanations for why a post-9/11 truth commission never got off the ground—President Obama lost interest or pending lawsuits were given priority—seem to miss a larger point: the U.S. military would never have consented to scrutiny of those actions, especially while Guantanamo remained open. As the discussion of Aboueldahab's volume below confirms, pitted against a powerful deep state reeling from attack and bent on controlling the narrative, idealistic calls to search for the truth of U.S. government abuses stood little chance of success.

Aboueldahab's central contention is that transitional justice theory fails to account for the justice responses to the Arab Spring conflict in Egypt, Libya, Tunisia, and Yemen, where actual transition rarely resulted even though political leaders faced prosecutorial justice. By defining transitional justice as a "return to liberal democracy," Aboueldahab can readily show that her cases fail to conform to the paradigm, as they are characterized by authoritative, nondemocratic regimes prior to the uprisings and little evidence of functioning liberal democracy following prosecutions. Aboueldahab's argument is limited in its reliance on a narrow theory of transitional justice that, given all the critical literature and divergent examples, should fall, once and for all, from paradigmatic status. Yet, the country cases themselves are highly interesting and add significantly to the ever-broadening pantheon of transitional justice examples. For instance, in the Arab Spring examples, the prosecution of political leaders was favored, yet priority was given to prosecuting economic crimes over human rights violations or other political crimes, which were also of interest to victims and civil society organizations. Another of Aboueldahab's insightful findings is a tendency to scapegoat a few individuals through high-profile trials rather than to pursue broader accountability that would address civil society demands for structural change.

Aboueldahab draws an astute conclusion: "The patchy extent of the prosecutions in Egypt, Libya, Tunisia, and Yemen demonstrate that decisions regarding prosecution have for the most part been guided by a reckoning with the transition itself, rather than

with what brought about the transition to begin with” (136). The result is that long-standing and deeply ingrained political and economic structures were rarely challenged through transitional justice after the Arab Spring uprisings, and corrupt regimes either remained in power or were replaced by regimes similar entrenched in corrupt practices. The resemblance to Rowen’s example of the failed U.S. truth commission is relevant here, as the tendency for deep state operatives to protect existing structures and interests emerges as common across very different contexts

Aboueldahab’s process-tracing methodology facilitates direct comparison of the four cases and leads to discoveries about the factors that prompt prosecutions. Aboueldahab finds that whether political trials had been held prior to the Arab Spring influenced the ability and will to prosecute political leaders afterwards. For example, a history of impunity for human rights violators in pre-transition Libya triggered strong support for accountability once Gaddafi had been toppled. As a matter of style, the rigid consideration of the Triggers, Drivers, and Shapers at the end of each case chapter becomes repetitive and precludes more nuanced explanations and narratives of the idiosyncrasies of the examples. Likely owing to its importance as a regional powerhouse, the case of Egypt receives more detailed treatment, which illuminates in fine detail how civil society constituencies, such as labor unions, played a role in the push for accountability. Additional attention to Egypt’s influence on the other three cases could have broadened understanding of the regional dynamics of transitional justice and the influence of transitional justice experiences in one nation upon the choices made in another. Overall, the volume demonstrates the value of taking a regional perspective in studies of transitional justice.

For each case, Aboueldahab perceptively teases out the role of international actors, including institutions, organizations, and governments, and notes dynamic interaction with domestic stakeholders who were not always interested in the same aims. With respect to Libya, international attention, especially intervention by the International Criminal Court, encouraged domestic prosecutions. By contrast, the tendency of powerful stakeholders to minimize the importance of corruption and economic crimes as targets for prosecution made it difficult for domestic constituencies to expose the deeper causes of long-standing oppression, especially in its structural form. Aboueldahab is highly critical of the international community’s inconsistency with respect to its professed norm of seeking accountability after mass violence, citing the contrast between international insistence on prosecution in Libya and acceptance of grants of immunity from prosecution for perpetrators in Yemen. Her skepticism about an emerging international

accountability norm is an important intervention into transitional justice scholarship and practice.

Both authors recognize and confirm the central role of law in response to mass atrocity. Rowen concludes: “Truth commissions are now understood as a complement to prosecutions, if not a precursor, and mobilizing around one further contributes to the anti-impunity agenda, for better or worse” (150). For Aboueldahab, limited judicial capacity and weak laws contribute to ineffective or nonexistent prosecutions in all four of her cases, which leads her to call for capacity building for judiciaries prior to any transitional justice efforts. As these volumes demonstrate, legal and quasi-legal responses to mass violence and human rights violation are increasingly treated as necessary and expected, even if certain exceptions apply, but responses in the name of transitional justice are ultimately insufficient. Transitional justice can be viewed as a continuously constituted idea or as a narrow, well-established theory; yet, it is mostly a series of experiments none of which fully meets the anguished needs that prompted it and none of which adequately protects against extraordinary harms in the future.

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Being and Becoming an Ex-Prisoner, by Diana F. Johns. London: Routledge, 2018.

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“I don’t see it as re-integration because I wasn’t integrated to begin with” (139). This powerful statement, shared by an Australian former prisoner with author Diana F. Johns and included in her book *Being and Becoming an Ex-Prisoner*, effectively summarizes the paradoxical nature of so-called “prisoner reentry.” Coined in the United States in the early 2000s, when the catastrophic social costs of mass imprisonment finally started to draw the attention of some reform-oriented politicians and policy makers, the term describes the difficult process of returning to free society after incarceration. The emerging reality of prisoner reentry has inspired a growing body of literature, focused on documenting the challenges faced by formerly incarcerated people as they navigate their way back to a society that—even before it warehoused them in prison—had often already confined them at the bottom of the racial and class