

Is Transitional Justice Western-Centric? The Case of Algeria's War of Independence

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The field of transitional justice is Western-centric because it focuses on direct human rights violations while ignoring structural violence,¹ especially colonial legacies of violence. Perhaps this is unsurprising; the countries dominating the field tend to be Western states that bear responsibility for colonial violence and still profit from colonial legacies. Thus, these countries have an interest in avoiding scrutiny and maintaining their economic and political ties with former colonies. Drawing from the work of Sarah Maddison and Laura J. Shepherd (2014), this essay uses a postcolonial framework² to examine France's attitude after the Algerian War of Independence.

The colonial conflict between France and Algeria's National Liberation Front (FLN, *Front de Libération Nationale*) lasted from 1954 to 1962, leading to Algerian independence with the signing of the 1962 Evian Accords and the fall of the Fourth Republic in France. The conflict was characterized by guerrilla warfare and the extensive use of torture by the French Armed Forces, leading to more than 250,000 Algerian casualties (Menezes, 2020). Controversial amnesty laws and lack of prosecution for the crime of torture, for instance, illustrate how Algeria serves as a case study for understanding the Western centrism of transitional justice.

¹ Coined by Johan Galtung (1969), structural violence centers on unjust social structures that prevent the satisfaction of basic needs, rather than specific instances of physical violence.

² Postcolonialism is a critical theory examining colonialism and imperialism's political, social, cultural, and economic legacy. It looks at the ways social and political power relations shape the narrative of the colonizer and the colonized, especially the social and cultural discourse of (mostly European) imperial powers (Maddison & Shepherd, 2014).

Transitional Justice

Transitional justice is a field of theory and practice that refers to how societies respond to the legacies of massive and serious human rights violations (International Center of Transitional Justice, n.d.). The field originated at the local level with Jewish families searching for the truth after the Holocaust. During the Cold War, there was a lack of accountability from the Great Powers due to *realpolitik* – that is, politics based on practical objectives rather than on normative ideals. The field returned in the 1970s with the activism of Latin American families affected by military dictatorships. After the end of the Cold War, the field expanded from local initiatives to a global Western movement with the UN push for post-conflict peacebuilding, thus revising what it meant to build or keep peace and what sovereignty meant. The 1992 Agenda for Peace highlighted the leading role of the United Nations in framing the debate and institutionalizing the mechanisms of Transitional Justice (Teitel, 2003).

Within the field of transitional justice, there are two conceptualizations of justice. Maddison and Shepherd (2014) argue that the “thin” conceptualization is the “immediate accountability for human rights abuses and conflict-related violence” (p. 258). Some scholars critique that definition, arguing it excludes structural violence (Nagy, 2008); approaches that include structural factors are considered “thick” conceptions of justice (Maddison & Shepherd, 2014). “Thin” justice is said to reflect Western liberal ideals of accountability inherent in the notion of the rule of law (Lambourne, 2009; Vieille, 2012). This legalistic approach focuses on establishing legal institutions such as tribunals and courts that emphasize individual rights over collective rights. This approach informs the law on what is legal and illegal. The legalistic approach considers the “rule of law” to be neutral, apolitical, and universal, ignoring the cultural contingency of legal practices and understandings. Transitional justice is defined by legal norms and those norms are defined by the West (Vieille, 2012).

The field of transitional justice is Western-centric because dominant state societies have an interest in ignoring legacies of colonial violence that they benefit from. Hugo van der Merwe (2009), for instance, argues that colonial violence is ignored in this field because certain countries oppose exposing atrocities and holding responsible parties accountable for crimes. Dominant actors shape the field’s priorities and define “when” and “to whom” transitional justice mechanisms apply (Nagy, 2008). “When” transitional justice mechanisms apply is linked to the notion of transition. In mainstream transitional justice, there is a focus on applying mechanisms after the conflict ends, implying that violence must end. This perspective obscures instances of continued violence (Nagy, 2008). Structural violence is considered to belong to a broader transformation or reconciliation agenda rather than a transitional justice agenda (van der Merwe, 2009). In the category “to whom,” Rosemary Nagy (2008)

discusses the unequal power dynamic between developing and developed countries. She highlights how developing countries are always the victims and recipients of transitional justice mechanisms, but the field does not always hold developed countries responsible for their actions.

The way Western countries shape the field's priorities is reflected in the literature. Only recently has a new generation of scholars started discussing the Western-centric perspective of the field with a focus on settler colonies (Maddison & Shepherd, 2014) and social and gender injustice (Nagy, 2008). However, most scholars still need to address the Western-centric dimensions of the field (Dezalay, 2017). When explaining how the International Centre for Transitional Justice (ICTJ) became an essential gatekeeper in the field, for instance, Sara Delazay (2017) fails to question the organization's links to the United States and how that proximity might have shaped both the institution's Western-centric perspective and the field's priorities. Even work that addresses this are limited in their analysis (van der Merwe & Lykes, 2020). Maddison and Shepherd (2014) are some of the few scholars who focus on colonial legacies in transitional justice, drawing from perspectives such as critical peacebuilding and security.

Western Centrism in Algeria

The example of France's attitude after the Algerian War of Independence highlights how colonial violence is deliberately ignored in some Western countries. The end of the war in Algeria did not bring forth transitional justice mechanisms such as criminal prosecutions and truth commissions that would have brought justice to survivors. Instead, it was met with amnesty laws that created collective amnesia and silenced the pains of survivors. This was mostly to encourage everyone to forget the atrocities committed by the French military in Algeria and to repair the French Republic's reputation as a just society (Vidal-Naquet, 2001). This reflects transitional justice's tendency to ignore conflicts that would undermine the dominating countries' interests.

It can be argued that the 1962 Evian Accords and ensuing amnesties in 1968 enabled the French state to avoid taking responsibility for the use of torture in Algeria. Notably, amnesty laws were not supported by victims. This was problematic because survivors were denied the rights to truth, justice, reparation, and guarantee of non-recurrence, which are the four pillars of transitional justice (Erickson, 2013). While some argue that amnesties are necessary for conflict resolution – that they can appease tensions and prevent future conflicts, preventing violence caused by prosecutions (Reiter, 2014) – others argue that criminal prosecutions are necessary to bring justice and peace to society (Alfonsin, 1993; Laplante, 2009). I posit that amnesties can only be useful for conflict resolution if they are backed

by mechanisms that uphold victims' rights by creating mechanisms to heal harm, create a collective memory, and share testimonies (see Mallinder, 2007). Amnesties without support for the survivors is a top-down and legalistic approach that focuses on rebuilding the economy and state institutions but ignores the lived experiences of the population. This approach undermines survivors' attempts to regain agency (McEvoy, 2007).

The amnesty laws were problematic for two other reasons. First, the lack of institutional justice in Algeria led society to implement its own justice against the *Harkis* – that is, Muslim Algerians who fought on the side of France during the war. The French military returned home after the conflict ended, but the *Harkis* were not allowed to come to France. Instead, they were exposed to bloody acts of vengeance and massacre; the FLN killed tens of thousands of *Harkis* (Algerian Watch, 2009). Such violence is a potential consequence of amnesty without support from victims (Laplante, 2009). Second, the lack of prosecutions and resulting impunity of the French military enabled the French state to avoid taking responsibility for the use of torture in Algeria. The government denied the systemic use of torture, and the archives of the war were closed to the general public for thirty years after the end of the war (Maschino, 2001). Indeed, the state was not ready to recognize the Algerian War of Independence as a war in itself; it was called *opérations* or *événements* until the official recognition by the French president in 1999 (Jansen, 2010; Löytömäki, 2013).

Exceptionalism and *Françafrique*

The concept of “exceptionalism” was used to establish the field of transitional justice and to enable certain Western countries to avoid responsibility for their use of violence in colonies. “Exceptionalism” in transitional justice is a colonial concept in that it presents certain violent conflicts as abnormal to justify prosecution (Maddison & Shepherd, 2014). This concept was used by Western countries at the end of the Cold War to justify the Nuremberg Trials, for instance. Presenting the Holocaust as an “exceptional” instance of violence, Western countries were constructed as heroic saviors, wiping out their responsibility for causing violence and suffering beforehand. The Nuremberg Trials were the first instance of a global mechanism of transitional justice (Maddison & Shepherd, 2014). However, the only reason the Holocaust was presented as exceptional and requiring prosecution was that Western countries had been victims of the violence. A hierarchy was thus created, with certain violent crimes not needing prosecution – including crimes associated with decades of imperial endeavor. These were left unpunished because Western countries were the perpetrators (Maddison and Shepherd, 2014).

While the Nuremberg trials and Algerian independence are two different and often incomparable cases,³ the trials of Klaus Barbie and Maurice Papon shed some light on France's attitude towards its colonial past. Barbie was the head of the Gestapo in Lyon, France, from 1942 to 1944 and was held responsible for the death of 4,000 Jews (Löytömäki, 2013). During his trial in 1985, defense attorney Jacques Vergès (an anticolonialist and lawyer for Algerian activists of the FLN) shifted attention from Barbie's actions during World War II to French actions during the colonial wars in Algeria and Indochina. Using the *tu quoque* approach – that is, “charging your accuser with whatever it is you've just been accused of rather than refuting the truth of the accusation” (Merriam-Webster, n.d.) – Vergès argued there was little difference between what Barbie had done in Lyon and the French oppression of the colonized during the war in Algeria (Löytömäki, 2013). Papon's trial in the 1990s was different in that the general was directly involved in both the Holocaust and oppression in Algeria. He was a high-ranking Vichy official and a prefect of the Paris police when, in October 1962, Algerian protesters were maltreated and even killed by the police. He was recognized as guilty of crimes against humanity in the Holocaust (Löytömäki, 2013).

In both trials, the concept of exceptionalism is evident because the defendants' crimes are only taken seriously in reference to the Holocaust – not because of atrocities in Algeria. The fact that Western citizens were victims of the violence created this sense of necessity to prosecute and bring justice. Whereas in the case of Algeria, the victims were mostly from a developing country and the absence of international pressure meant that prosecutions were not deemed necessary. Here a postcolonial view helps us see the power dynamic between the developed and developing countries and the sense of superiority that France felt over its colony. (Notably, Vergès maintained that the original indictment in Barbie's trial had been formulated to cover only Jewish victims and avoid any parallel with Algeria [Löytömäki, 2013]). Further comparative analysis of the Holocaust trials and the lack of criminal prosecutions for the use of torture in Algeria highlights how Western countries instrumentalized the notion of “exceptionalism” to avoid taking responsibility for their actions in colonies (Löytömäki, 2013).

Today, *Françafrique* – France's sphere of influence over former French and Belgian colonies in sub-Saharan Africa – highlights the continued legacy of colonialism and pervasive neocolonialism. Neocolonialism is the survival of the colonial system despite formal recognition of political independence in emerging countries (Wallerstein, 2005). As noted, some Western countries still profit from the legacies

³ It is worth mentioning that French law stipulates that only crimes committed during World War Two and after the entry into force of the 1994 penal code could be prosecuted as crimes against humanity (Löytömäki, 2013). Coincidentally (or not), this time frame excludes the use of torture by the French army in Algeria.

of colonization and thus they shape the field of transitional justice in such a way as to avoid scrutiny and maintain their economic and political relations with their previous colonies (van der Merwe, 2009). It can be argued that neocolonialism is a consequence of this lack of scrutiny, as it enables colonizers to maintain their grip on former colonies. *Françafrique* was coined as a term to critique the imperial and exploitative dimension of Franco-African relations with the pun *France a fric* (“France with cash”) (Verschave, 2006). Indeed, France supports dictators in African countries in exchange for their economic cooperation; France's political influence over the African continent is doubled by its economic influence. African countries are dependent on the French currency, which is always lower in Africa (Taylor, 2019). Seen through a postcolonial lens, *Françafrique* is the result of continued and unequal power dynamics between the colonizer and the colonized. This idea of superiority is reflected in contemporary France, where French President Emmanuel Macron questioned the existence of the nation of Algeria in 2021, asking the rhetorical question: “Was there an Algerian nation before the French colonization?” (quoted in Nabli, 2022). This statement has roots in colonial republicanism and led to the dismantling of diplomatic relations with Algeria.

In summary, the field of transitional justice is Western-centric because it ignores colonial legacies of violence. Indeed, mainstream transitional justice focuses on direct human rights violations, using the legalistic approach and the exclusion of structural violence. This occurs because Western countries have an interest in ignoring legacies of colonial violence they benefit from. This is not only reflected in the academic literature, but also in post-conflict case studies such as Algeria. Indeed, amnesties issued after the country's war of independence enabled the French state to avoid taking responsibility for its use of torture. The lack of attention to rights violations in Algeria (as compared to cases such as the Holocaust during World War II) highlights the “exceptionalism” inherent to the field of transitional justice, which privileges the suffering of Western citizens over non-Western ones. This hierarchy continues today, with France maintaining its sphere of influence over former colonies.

References

Alfonsín, R. (1993). Never Again in Argentina. *Journal of Democracy*, 4(1), 15–19.

Algeria Watch. (2009, December 13). The Torture of Algiers. Retrieved from <https://algeria-watch.org/?p=54557>.

Dezalay, S. (2017). The Role of International NGOs in the Emergence of Transitional Justice: A Case Study of the International Center for Transitional Justice. In M. C. Lawther, L. Moffett, & D. Jacobs (Eds.), *Research Handbook on Transitional Justice* (pp. 202-220). Edward Elgar Publishing.

Erickson, J. (2013). Torture: Henri Alleg and the Algerian War. *The Iowa Historical Review*, 4(1), 25-41.

Galtung, J. (1969). Violence, Peace, and Peace Research. *Journal of Peace Research*, 6(3), 167-191.

International Center for Transitional Justice. (n.d.). What is Transitional Justice? Retrieved from <https://www.ictj.org/what-transitional-justice>.

Jansen, J. (2010). Politics of Remembrance, Colonialism and the Algerian War of Independence in France. In M., Pakier, & B. Strath (Eds.), *A European Memory: Contested Histories and Politics of Remembrance* (pp. 275-293). Berghahn Books.

Lambourne, W. (2009). Transitional Justice and Peacebuilding after Mass Violence. *International Journal of Transitional Justice*, 3(1), 28-48.

Laplante, L. J. (2009). Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes. *Virginia Journal of International Law*, 49(1), 916-984. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1292062#.

Löytömäki, S. (2013). The Law and Collective Memory of Colonialism: France and the Case of 'Belated' Transitional Justice. *The International Journal of Transitional Justice*, 7(2), 205–223.

Maddison, S., & Shepherd, L. J. (2014). Peacebuilding and the Postcolonial Politics of Transitional Justice. *Peacebuilding*, 2(3), 253-269.

Mallinder, L. (2007). Can Amnesties and International Justice be Reconciled? *The International Journal of Transitional Justice*, 1(2), 208–230.

Maschino, M. T. (2001). The hidden history of the Algerian war. *Le Monde Diplomatique*. Retrieved from <https://mondediplo.com/2001/04/04algeriatorture>.

McEvoy, K. (2007). Beyond Legalism: Towards a Thicker Understanding of Transitional Justice. *Journal of Law and Society*, 34(4), 411-440.

Menezes, S. (2020, July 22). Algeria's Past Matters: France and Europe Must Acknowledge Colonialism. The New Federalist. Retrieved from <https://www.thenewfederalist.eu/algeria-s-past-matters-france-and-europe-must-acknowledge-colonialism?lang=fr#:~:text=French%20colonial%20rule%20over%20Algeria,France%20from%201848%20until%20independence>.

Merriam-Webster. (n.d.). Tu quoque. Retrieved from <https://www.merriam-webster.com/dictionary/tu%20quoque>.

- Nabli, B. (2022, August 30). Macron et l'Algérie, Un Discours Ambivalent. L'OBS. Retrieved from <https://www.nouvelobs.com/idees/20220830.OBS62534/macron-et-l-algerie-un-discours-ambivalent.html>.
- Nagy, R. (2008). Transitional Justice as Global Project: Critical Reflections. *Third World Quarterly*, 29(2), 275-289.
- Reiter, A. G. (2014). Examining the use of amnesties and pardons as a response to internal armed conflict. *Israel Law Review*, 47(1), 133-147.
- Taylor, I. (2019). France à Fric: The CFA Zone in Africa and Neocolonialism. *Third World Quarterly*, 40(6), 1064-1088.
- Teitel, R. G. (2003). Transitional Justice Genealogy. *Harvard Human Rights Journal*, 16(1), 69-95.
- van der Merwe, H. (2009). Delivering Justice through Transition: Research Challenges. In H. van der Merwe, V. Baxter, & A. R. Chapman (Eds.), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (pp. 115-142). United States Institute of Peace.
- van der Merwe, H., & Lykes, M. B. (2020). Racism and Transitional Justice. *The International Journal of Transitional Justice*, 14(3), 415-422.
- Verschave, F. X. (2006). Defining Françafrique. *Survie*. Retrieved from <https://survie.org/themes/francafrique/article/defining-francafrique-by-francois>.
- Vidal-Naquet, P. (2001, May 11). Amère victoire par Pierre Vidal-Naquet. *Le Monde*. Retrieved from https://www.lemonde.fr/une-abonnes/article/2001/05/11/amere-victoire-par-pierre-vidal-naquet_182459_3207.html.
- Vieille, S. (2012). Transitional Justice: A Colonizing Field? *Amsterdam Law Forum*, 4(3), 58-68.
- Wallerstein, I. (2005). *Africa: The Politics of Independence and Unity*. University of Nebraska Press.

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