

# 1 *Escaping Justice in the Age of Accountability*

Periods of large-scale violence in countries across the globe result in a complex range of engagements where international and domestic claims for accountability manifest in different justice outcomes. In recent decades this violence has unfolded in an age of accountability where global and domestic forces coalesce around the idea of ending impunity for human rights violations and wrongdoings. Despite a growing global norm of accountability, it is relatively rare for governments to hold their own to account. This pattern holds despite the presence of seemingly robust transitional justice initiatives in post-conflict countries around the world. Culpable governments have incentives to ensure impunity for their own despite pressure for accountability from domestic and international actors. In the age of accountability, how do governments continue to escape justice?

The growth of an accountability norm requires governments to navigate a complex political environment where international and domestic pressure for norm compliance threatens government rule. The most obvious way to escape justice is to resist adopting transitional justice altogether. However, growing demands for accountability make it increasingly challenging for governments to pursue wholesale impunity. Pressure for norm compliance creates incentives for governments to adopt transitional justice, despite the very real risks and future costs of accountability. Pressure to comply with global norms does not change the fact that accountability for past wrongdoings can be threatening to the stability and legitimacy of a state. In this context governments have an incentive to adapt transitional justice strategically to minimize the risks of accountability. Strategic adaptation allows governments to comply with international norms while mitigating the risks of norm compliance.

This chapter examines how governments respond when threatened by the implications of norm compliance. Specifically, I examine how governments pressured to adopt transitional justice are able to

minimize the domestic risks of accountability by strategically adapting transitional justice institutions. My chief assertion is that rather than reject the accountability norm, governments structure transitional justice in ways that shield their own agents from being held to account. While transitional justice is often seen as a viable means to break with the past, its adoption rarely rises above the political fray. Justice, as Judith Shklar (1986) writes, is “not above the political world but in its very midst.” The characteristics of this political world shape the resulting structure and practice of transitional justice, determining who is ultimately held to account for past violence.

My theoretical framework makes four central claims. First, I identify a growing global norm of individual accountability for human rights violations that is putting increased pressure on states transitioning from large-scale episodes of violence to hold perpetrators of that violence to account for their actions. Second, I contend that adhering to international norms can carry domestic political costs. In the case of the accountability norm, these costs can be particularly pernicious for those governments with blood on their own hands, as accountability for past wrongdoings can weaken the government’s legitimacy and potentially threaten its rule. Third, in complying with international norms, a government has incentives to adapt its response strategically. Transitional justice is particularly susceptible to strategic adaptation given the inherently malleable nature of the institution. Fourth, a government selects its adaptation strategy based on its capacity to control its norm response, specifically the institutional constraints on the government. A government will select a strategy of adaptation that allows it the greatest ability to control the outcomes of its norm response. Ultimately, the strategy through which a government adapts transitional justice has observable implications for whether, and how, state actors are held to account for their actions.

In the remainder of the chapter, I elaborate each of these claims in greater detail. I close the chapter by detailing my methodological approach and case selection and discussing some of the ethical challenges and implications of the research.

## **A Cascade of Justice and Injustice**

Historically, abuses of the past were often dealt with through a process of social amnesia or blanket policies of amnesty. Post-Franco Spain is

the classic example where, following the end of Francisco Franco's reign, a Pact of Forgetting (*Pacto del olvido*) was agreed upon by the major political parties stipulating that the past in Spain would be ignored and forgotten in exchange for a unified and peaceful future. To facilitate the transition from autocracy to democracy, the Pact solidified the political agreement that there would be no prosecutions for those responsible for human rights violations committed during the Franco regime. Other governments have escaped punishments for their crimes, such as notorious dictator Mobutu Sese Seko of Zaire, who died in exile in Morocco in 1997, and Mohammed Siad Barre, former president of Somalia, who was exiled after the collapse of his government in 1991. Over the last twenty years, however, a global norm of accountability has emerged making it increasingly difficult for governments to choose to ignore atrocities following armed conflict. In 2009, the UN High Commissioner for Human Rights released a report on the use of amnesties, which suggested that under many circumstances amnesty offers are a violation of international law (OHCHR 2009). Recent engagements in Colombia,<sup>1</sup> Uganda,<sup>2</sup> and Iraq<sup>3</sup> all highlight that the international community has grown deeply skeptical of blanket amnesties and pardons, championing instead judicial accountability.

Originally international human rights sanctions were confined almost exclusively to punishments against violator states through mechanisms such as trade embargos (Cleveland 2002) or naming and shaming campaigns (Hafner-Burton 2008; Hendrix & Wong 2013). A more recent trend has been to hold individual human rights violators accountable for their actions. This change is tied to a focus on individual accountability that has centered around the prosecution and punishment of human rights violators, often through trials. In both international tribunals, such as the International Criminal Tribunal for the Former Yugoslavia that held former Serbian president Slobodan Milošević to account for genocide and war crimes, and domestic trials such as the trials in Argentina of state agents accused of human rights violations during the Dirty War, we are seeing a dramatic shift in the desire, and ability, of domestic and international

<sup>2</sup> [www.thenewhumanitarian.org/analysis/2015/06/12/forgive-and-forget-amnesty-dilemma-haunts-uganda](http://www.thenewhumanitarian.org/analysis/2015/06/12/forgive-and-forget-amnesty-dilemma-haunts-uganda) (accessed October 12, 2023).

<sup>3</sup> <https://extremism.gwu.edu/perilous-intersection-amnesty-and-accountability> (accessed October 12, 2023).

actors to hold previously powerful and historically untouchable state leaders and their followers to account for their behavior. We need to look no further than the creation of the International Criminal Court to substantiate the rise of a global norm of accountability. The message from the human rights community is that impunity for crimes against humanity and other human rights violations will no longer be tolerated. As then Secretary-General of the United Nations Ban Ki-moon proclaimed, “The old era of impunity is over.”<sup>4</sup>

The robust international norm of accountability puts pressure on states to address the legacies of human rights violations through individual criminal accountability for past wrongdoings, specifically through the adoption of transitional justice institutions. Transitional justice as conceptualized by the United Nations encompasses “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation” (UNSG 2004: 4). The term *transitional justice* was coined by Ruti Teitel (2000) to describe the post-democratization wave of human rights trials and lustration processes in Latin America and Eastern Europe, including the 1985 Junta Trials in Argentina and the 1992 Lustration Bill in Poland. The application of the term is no longer confined to democratic transitions but has been applied to the institutional responses to a range of violent events from civil wars to police violence.<sup>5</sup> Transitional justice is alleged to represent an institutional break with the past allowing societies to move forward after reckoning with the legacies of historical abuse.

Building on the definition of international norms as “collective expectations for the proper behavior of actors with a given identity” (Katzenstein, 1996: 5), the global accountability norm prescribes transitional justice as the right and the appropriate response to national experiences of human rights violations and atrocities. Norms increasingly define what constitutes a “civilized state” as a member of the international community “in good standing” (Risse 1999: 530) and

<sup>4</sup> [www.un.org/sg/en/content/sg/articles/2010-05-27/age-accountability](https://www.un.org/sg/en/content/sg/articles/2010-05-27/age-accountability) (accessed October 12, 2023).

<sup>5</sup> The United States is seeing a vibrant conversation about the applicability of transitional justice to the issue of racial violence. [www.ictj.org/news/repairing-past-what-united-states-can-learn-global-transitional-justice-movement](https://www.ictj.org/news/repairing-past-what-united-states-can-learn-global-transitional-justice-movement) (accessed October 10, 2023).

specify “standards of appropriate behavior for actors with a given identity” (Finnemore & Sikkink 1998: 891). In the case of the norm of accountability, holding perpetrators to account through transitional justice has become the appropriate behavior for actors seeking to remain in good standing in the international community. This norm has seemingly trickled down to domestic policies and has been buoyed by strong civil society mobilization for accountability and societal reconciliation in countries across the globe.<sup>6</sup>

Transitional justice has emerged as a recurrent intervention towards both accountability and reconciliation. States are encouraged to draw from a wide array of tools ranging from classic human rights trials to truth commissions, amnesty agreements, reparation programs, and lustration processes through which to address the wrongs of the past. Transitional justice has been championed for its ability to advance justice and reconciliation following the societal divisions brought on by violence, as well as for its more future-oriented capacities to contribute to the development of rule of law (Appel & Loyle 2012; Sharp 2015), institutions of democracy (Gutmann & Thompson 2000), respect for human rights (Turner 2008), and a break in the cycle of atrocities that have lasted in many countries for decades (Loyle & Appel 2017).<sup>7</sup> Support for democracy worldwide has led to support for those institutions, such as transitional justice, seen to promote democracy (Arthur 2009).

Since the establishment of the International Criminal Court in 2002, the global movement for transitional justice has grown. In 2010, Ban Ki-moon released a guidance note on the UN’s Approach to Transitional Justice identifying transitional justice as “a critical component of the United Nations framework for strengthening the rule of law” (UN Secretary General, 2010: 3). Five years later, the United Nations included “access to justice for all” and “effective, accountable and inclusive institutions” as one of the seventeen Sustainable Development Goals.<sup>8</sup> The European Union has adopted transitional justice as a “soft” criterion for joining the EU, encouraging potential member countries to confront state-sponsored crimes through criminal law (Verovšek 2021). As such, transitional justice continues to

<sup>6</sup> See the discussion of the concept of reconciliation in Meierhenrich (2008).

<sup>7</sup> For a full review of these arguments, see Loyle and Davenport (2016).

<sup>8</sup> <https://sdgs.un.org/goals> (accessed October 12, 2023).

proliferate. As Alexander Hinton (2018: 5) contends, transitional justice is now no longer solely about the national policies that reckon with the atrocities of the past, but has become a much larger “assemblage of discourses, institutions, capital flows, technologies, practices, and people,” all concentrated around the principle of accountability for the growth and maintenance of successful and peaceful democracies.

The international community reinforces the accountability norm through international socialization, political pressure, and material incentives. Growing international pressure makes it difficult for members of the global community to dismiss the norm of accountability given concerns of international reputation and adherence to international law (Guzman 2006). International organizations, such as the United Nations, publicly report on member state behavior. Naming and shaming by international nongovernmental organizations (NGOs) impacts foreign direct investment and trade (Barry et al. 2013). Alternatively, adhering to international norms can increase the sense of community or collective identity, which facilitates cooperation between states and potential membership in international organizations (Kelley 2017). As a result of the pervasiveness of the norm, it is becoming increasingly rare for governments to reject international and domestic calls for accountability and block appeals for transitional justice outright.

States economically integrated into the international community are likely to be more susceptible to international pressure for accountability. This pressure is particularly acute for post-conflict countries susceptible to material concerns where norm compliance could be tied to the conditionality of foreign aid, trade, and foreign direct investment. Foreign aid and budget support, for example, is often conditioned on upholding certain human rights standards (Hayman 2011). Molenaers et al. (2015: 62) find that 41 percent of all budget support suspensions are related to “regime issues,” such as major human rights violations. As but one example, budget support from Western donors was threatened in Kenya following state-sponsored election violence in 2008 (Brown & Raddatz 2014). Countries that are heavily reliant on foreign aid for budget support are likely more susceptible to international pressure than countries that have a higher level of economic independence (Swedlund 2017).

It is the intersection of international pressure and a government’s susceptibility to that pressure that leads to transitional justice adoption

(Simmons 2009; Subotić 2009). Particularly following armed conflict, governments in need of international support (e.g., through foreign aid or increased integration into the international community through trade and foreign investment) may be uniquely susceptible to the demand for norm compliance from the international community. A coercive acceptance of the global norm of accountability suggests that rather than (solely) advancing a commitment to human rights, governments may adopt transitional justice because of direct or mediated pressure from more powerful global actors (Simmons, Dobbin, & Garrett 2006: 790). As one expert confirmed, in the case of Sri Lanka, “the president at the time was susceptible” to international outrage, which in turn impacted how the government responded to demands for accountability (Cronin-Furman & Lake 2018: 758). Had conditions been different, international pressure would likely have been less effective. Even in cases where international humanitarian law is not wholeheartedly embraced, states are still pressured to pay lip service to international and domestic accountability demands (Cronin-Furman 2022).

### **The Domestic Risks of Accountability**

Notwithstanding global pressure for governments to adopt transitional justice, international norms can be in tension with domestic politics. Putnam’s famous two-level game reminds us that governments are often in simultaneous dialogue with both international and domestic audiences (Putnam 1988). These distinct audiences can make norm compliance risky, simultaneously opening new avenues for domestic mobilization and international challenges (Kuntz & Thompson 2009). Threats to the government’s rule need to be balanced with the potential gains from norm compliance. In the case of normative pressure for election monitoring, for example, hybrid states that embrace elections risk receiving negative reports from international election monitors. These negative reports have been linked to domestic uprising and electoral revolutions, reductions in foreign aid, exclusion from international forums, and other forms of internationally imposed sanctions (Hyde 2011). In responding to international demands for norm compliance, states must carefully weigh these risks.

Following periods of extreme violence, such as civil war or widespread state repression, a government’s first-order concern is to (re) establish political order – a government’s control over its population

(e.g., Dallin & Breslauer 1970; Davenport 2007; Huntington 1968). Complying with international norms of accountability and adopting transitional justice when a government has blood on its own hands can draw attention to government violations, potentially weakening the government's legitimacy and hold on power. Furthermore, calls for accountability for past abuses can have short-term impacts on day-to-day governance if members of the government are imprisoned or removed from office through transitional justice. The case of Liberia illustrates this point. In 2009, the Liberian Truth and Reconciliation Commission (TRC) recommended that then President Ellen Johnson Sirleaf be barred from public office for thirty years once her term was completed because of her prior support of war criminal Charles Taylor. This recommendation led to immediate calls for her removal from office and pressure for prosecution. While ultimately Johnson Sirleaf finished her term in office, the TRC's recommendation weakened her international reputation and domestic credibility (Steinberg 2010).

The domestic threat of norm compliance does not apply equally across all norms. Daniela Donno, Sara Fox, and Joshua Kaasik (2022) argue, for example, that complying with norms to advance women's rights carries less political risks than other democratic reforms such as reforms related to political competition, elections, or repression. Advances in women's rights are less likely to directly threaten a government's hold on power (Donno, Fox, & Kaasik 2022: 452). In the case of the accountability norm, the risks of norm compliance can be particularly pernicious for those governments culpable of wrongdoings against their own citizens. Often the experiences of past violence are complex with a wide array of perpetrators and wrongdoings (Kalyvas 2006). Post-conflict governments that themselves have engaged in this violence face heightened challenges to political control, as they have violated the social contract that underpins the legitimacy of their rule (Weber 1994). Just as fundamental as security and resource concerns, post-conflict governments must maintain legitimacy if they are to secure a population's sense of obligation or willingness to obey (Levi & Sacks 2009; Levi, Sacks, & Tyler 2009). For governments culpable in past wrongdoings, the adoption of transitional justice opens the possibility of governments being held accountable for those wrongdoings that can ultimately undermine their legitimacy, threatening political order and the government's



ability to stay in power. Monika Nalepa (2010) writes of individuals and political parties that have skeletons in their closets to be exposed through transitional justice. Newly formed political parties or governments established after the conflict are more immune to these risks.

The level of risk posed by adopting transitional justice is furthermore a product of the centrality of past perpetrators within the government's ruling coalition. A government's coalition consists of the groups and individuals needed to keep the government in power (Bueno De Mesquita et al. 2003). If perpetrators are central to a government's ruling coalition, then a government has more to lose by holding those individuals accountable for past behavior. Accountability for highly central figures, such as the president herself, could topple the government. Threats to military commanders could increase the risk of a coup by security forces eager to avoid punishment (Escribà-Folch & Wright 2015). Additionally, governments risk fracturing if threatened elites choose to defect and challenge the government's engagement with transitional justice, raising an additional risk of accountability. Huntington (1991) referred to this as "the torturer problem" where, following a political transition, incoming elites must decide whether to punish or forgive human rights abuses committed by members of their own government. O'Donnell and Schmitter (1986: 30) acknowledge that this decision poses "enormous risks" and that accountability often requires "political and personal courage" from the state leader. The composition of a government's coalition as well as the possibility of fracturing or elite defection from that coalition are strong determinants of government policy (Bueno de Mesquita et al. 2003; Gandhi 2008). Calculations can be similar for incoming elites who may have their own skeletons in the closet (Nalepa 2010).

Beyond threats to the government's own coalition, international demand for transitional justice can increase the risk of domestic mobilization for accountability. Popular mobilization is a persistent threat to governments (Gandhi 2008).<sup>9</sup> Domestic forces, such as human rights groups, opposition political parties, and faith-based organizations, threaten a government when they mobilize around accountability demands that challenge the government's hold on power. Emboldened by the international community, domestic civil society

<sup>9</sup> Jennifer Dixon (2018) writes about this influence in terms of electoral concerns and domestic activism.

can pressure a government to comply with norms of accountability (Backer 2003; Crocker 1999, 2000; de Brito et al. 2001; Elster 1998; Hayner 2011; Kim 2012; Zvobgo 2020). In Guatemala, for example, the Grupo de Apoyo Mutuo drew international attention for its advocacy efforts and became one of the central forces in pressuring the government to adopt a truth commission (Zvobgo 2020). Domestic groups able to leverage connections to powerful international networks are often more likely to accomplish their domestic objectives, challenging the legitimacy and rule of the government (Bob 2005; Keck & Sikkink 1998; Zvobgo 2020).

And so, governments become trapped between an international rock and a domestic hard place – pressure for transitional justice mounts, despite the potential for accountability to destabilize a regime. Governments are pressured to comply with international norms despite these domestic risks. It is in this context that a government must choose how to engage demands for norm compliance. Given the domestic risks of international norm compliance, how do governments respond?

## Adapting Transitional Justice

Early theories of international norm adoption focused on a dichotomy between norm compliance and norm rejection (Raustiala & Slaughter 2002), in which governments make a choice to comply or not with a norm. Compliance refers to “a state of conformity or identity between an actor’s behavior and a specified rule” (Raustiala & Slaughter 2002: 539). Compliance is therefore distinct from the implementation or effectiveness of a policy and agnostic about causality. It is not necessary, for example, for a state to willingly obey in order to comply. Norm rejection or contestation suggests that a government refuses to adopt a norm outright (Adler-Nissen 2014). This original discussion gives little weight to the intentions and motivations of an actor’s choices, focusing instead on policy and institutional outcomes.

Most contemporary explanations for the proliferation of transitional justice have followed a similar trend explicitly linking transitional justice adoption to the normative cascade for individual accountability more broadly tied to the global human rights movement (Bell 2009; Cardenas 2004; Finnemore & Sikkink 1998; Moravcsik 1995, 2000; Sikkink 2011). The diffusion of a global accountability norm is used to explain the change in government behavior toward a

greater propensity to hold violators of human rights to account domestically. Given this logic, the increased adoption of transitional justice can be explained by an acceptance of the norm of accountability on the domestic level, which has led to institutional change (c.f. Checkel 2001; Finnemore & Sikkink 1998; Sikkink 2011). These explanations historically view transitional justice as a dichotomous outcome; either a state has adopted transitional justice or it has not. A dichotomous view, however, fails to account for variation in the design and structure of transitional justice, which is often central to the strategic adaptation of institutions.

A key assumption of the norm diffusion logic is that governments adopt transitional justice with a genuine commitment to hold past violators of human rights to account. But what if the upsurge in transitional justice is not solely the result of a domestic normative acceptance of accountability, but rather a government's strategic reaction to pressure from the international community or a similar instrumental response?<sup>10</sup> If we discount the original assumption of norm compliance resulting from norm acceptance, we can allow for alternative rationales of transitional justice adoption that account for alternative sources of power. Here, instead of a normative commitment to accountability, governments may strategically respond to more powerful actors in the international community or alternative domestic pressures.

States under pressure to comply with international norms and at risk for complying have incentives to pursue alternative forms of engagement beyond a compliance/rejection dichotomy, strategically adapting their norm response (Carothers 1997; Hartlyn & McCoy 2006; Hyde 2011; Hyde & O'Mahony 2010; Subotić 2009). Hyde (2011), for example, offers the concept of fake compliance in which governments have incentives to appear as if they are complying with the will of the international community without fully adopting or adhering to a norm. Within this theoretical framework, hybrid regimes welcome election monitors to signal that they are members of a democratizing community of states, while still tampering with elections (Hyde 2011; see also Noutcheva 2009). Downs (1997) offers an enforcement theory of compliance in which states engage in a strategic dimension of

<sup>10</sup> This explanation is more closely in line with rationalist explanations for norm compliance that focus on the role of coercion, cost/benefit calculations, and the possibility for material rewards (see discussion in Checkel 2001).

cooperation based on self-interest rather than normative proclivities. Hafner-Burton and Tsutsui (2005) identify the potential for decoupling policies and practices where policy changes are only nominal and do not have a substantial effect on domestic outcomes. Subotić (2009) warns of the danger of coercive pressure that often leads to short-term norm compliance and can revert or reverse when that pressure lessens. Specific to the international human rights and criminal justice regime, Cronin-Furman (2022) offers the concept of quasi-compliance in which governments do “just enough” toward advancing domestic human rights and accountability to be perceived as complying. Building from this work, strategic adaptation is a co-optation strategy that allows states to comply with international norms while simultaneously responding to the threats to rule associated with compliance.

Transitional justice is particularly susceptible to strategic adaptation. Transitional justice comprises a range of malleable institutions that are open to opportunities for innovation and manipulation (Rowen 2017). The structure of transitional justice is not predetermined, which allows its institutions and policies to serve “as a placeholder for actors to articulate their goals and strategies and to make claims against one another” (Rowen 2017: 4). For example, in adopting transitional justice, governments must identify the scope, mandate, and procedures of the institution, which leads to variation in which crimes are addressed and how. Angela Nichols (2019), in her work on truth commission design, catalogs variation across the level of independence a truth commission has from the state, how findings are distributed once a commission has concluded, and how effective a truth commission structure is in making a clear break with the past regime. These are institutional variations determined by how the government has chosen to structure and implement its truth commission. Monika Nalepa’s new dataset, the Global Personnel Transitional Justice Dataset, with Genevieve Bates and Ipek Cinar (2020), expertly catalogs the many policy steps forward and backward that take place on the road to transitional justice implementation. The data records policies such as when a transitional justice policy is proposed, when legislation is struck down, and when a process is formally enacted. The project demonstrates the stages of transitional justice but also identifies variation in the structure and implementation of transitional justice across cases. Certainly, there are best practices and commonly understood components of each type of institution, but the extreme

customizability of transitional justice allows governments to adapt their response to international norms of accountability in a wide variety of ways.

There are numerous examples of how the strategic adaptation of transitional justice results in variation across transitional justice. In his survey of war crimes tribunals, Smith (2012) identified that it was often the winner of a conflict who “defined justice and constructed the framework of a trial for his political purposes” (50). The trials that Smith (2012) studied, such as the International Military Tribunals at Nuremberg and Tokyo following World War II and the junta trials in Argentina, often “serve[d] to consolidate power to the extent the trials [were structured to] expand the political influence or control of the mechanisms of government of those conducting the trials or appease some constituent group upon which those conducting trials rely” (19). Similarly, truth commissions, through public testimony, statement gathering, and the publication of a final report, can be strategically adapted through the mandate of the process – determining which wrongdoings are investigated over which periods of time (Buckley-Zistel 2013). In Tunisia, the original mandate of the Truth and Dignity Commission was later rewritten by the parliament to remove the authority to investigate certain economic crimes and ensure amnesty for some categories of corruption by government officials.<sup>11</sup> In South Africa, the establishment of the Truth and Reconciliation Commission was central to the ANC government’s unifying governing vision of *ubuntu* where forgiveness was practiced for past wrongs in order to build a strong political and economic future (Wilson 2001). The *ubuntu* framework secured the economic cooperation of white South Africans in the post-Apartheid state by limiting which wrongs of the past would be central to the forgiveness model. Here individual human rights violations were acknowledged and offered redress, but systemic patterns of land reallocation and the economic marginalization of black and colored South Africans were intentionally left unexamined (Gibson 2009; Walker et al. 2010).

Given its customizability, governments can strategically adapt transitional justice in ways that meet international demands for accountability while allowing agents of the state to escape justice. The design

<sup>11</sup> [www.hrw.org/news/2019/04/05/tunisia-truth-commission-outlines-decades-abuse#](https://www.hrw.org/news/2019/04/05/tunisia-truth-commission-outlines-decades-abuse#) (accessed October 12, 2023).

of transitional justice can advance government impunity by focusing national and international attention on certain events, actions, and perpetrators while obfuscating others through defining acceptable parameters of claims making and sanctioning or punishing deviant claims (Brass 1997). Importantly for this discussion, governments can structure transitional justice in ways that exclude government wrongdoings. Fifty-seven percent of all post-conflict transitional justice adopted between 1989 and 2016 engaged only those alleged violations committed by government opposition.<sup>12</sup> Furthermore, governments can structure transitional justice in ways that give the government control over the institution's functioning. Forty percent of post-conflict countries that adopted a transitional justice process between 1989 and 2016 were classified as a hybrid regime or autocracy on the Polity scale (Marshall & Jaggers 2002), raising questions regarding judicial independence and civil society strength to monitor transitional justice.<sup>13</sup> The strategic adaptation of transitional justice allows governments to escape justice under the guise of advancing accountability.

## **Impunity through Strategic Adaptation**

Managing the demand for norm compliance through strategic adaptation can be a high-risk enterprise. Creating a new institution or ceding an existing platform to international pressure increases the risk to a government's hold on power. At its most basic, compliance with the accountability norm calls for the government to make inroads in holding perpetrators of past violations to account. Even creating quasi-compliant or adapted transitional justice institutions opens the possibility that the chosen norm response could eventually be used to hold government agents accountable for their wrongdoings.

The potential risks of norm compliance require governments to be strategic about how they choose to adapt their norm response. Drawing from insights in the conflict management and governance literatures on how states respond to threats to their rule (e.g., Fjelde & De Soysa 2009, Gandhi & Przeworski 2006; Levi 2006), I identify three strategies through which governments, threatened by norm compliance, strategically adapt international norms: coercion,

<sup>12</sup> Data from the Post-Conflict Justice dataset (Binningsbø et al. 2012).

<sup>13</sup> Data from the Post-Conflict Justice dataset (Binningsbø et al. 2012).

containment, and concession. These strategies help us understand the ways in which governments strategically adapt transitional justice in response to international pressure in order to minimize the potential risks of accountability to their rule. All three strategies work to prevent government agents from being held to account by minimizing compliance risks. What differs across each strategy are the mechanisms through which compliance risks are managed. Furthermore, each strategy produces different institutional outcomes, leading to variation in state accountability.

While all three adaptation strategies have government impunity as their goal, the strategy the government chooses to comply with international norms is based on the overall institutional capacity of the government to manage the risks of its chosen norm response. A government does not want to adopt a norm response that backfires and ultimately leads to the government being removed from power. I take international and domestic pressure for norm adoption as a precondition for my argument, which allows me to focus on the domestic political context in which this pressure exists. Theories of norm compliance have explained government responses to demands for compliance by focusing on domestic political structures, such as regime type or the domestic salience of a given issue area (Cortell & Davis 1996; 2000). Following from Coppedge et al. (2023) and Davenport (2007), I disaggregate domestic political structures to isolate the contextual factors most likely to influence a government's choice of adaptation strategy. A government selects its adaptation strategy based on its perceived ability to control the outcome of that response. As identified earlier, governments threatened by international norms strategically adapt their norm response to reduce the risks of norm compliance. To minimize these risks, a government must ensure that it is able to control the institution put in place to respond to international norms. The capacity of the government to control its chosen response is therefore central to understanding the institutions put in place.

When responding to pressure to comply with an international norm, a government must ensure its overall ability to manage or control its chosen institutional response. Building from Mann's (1986) conceptualization of social power, I understand the government's ability to control its norm response as a product of the government's *capabilities* and the domestic *constraints* on those capabilities. Similar to

Boulding's (1990) notion of threat capacity, the measure of a government's institutional capacity captures the government's ability to monitor, identify, and repress threats to its rule and the constraints on its ability to do so. In this way institutional control is a product of the government's capability to monitor its chosen response and its autonomy in doing so. Variation in a government's ability to control its norm response determines how governments are most likely to comply with international norms. Given its perceptions of its own capabilities and constraints, a government will choose a strategy of coercion, containment, or concession selected to minimize the risks of norm compliance. Central to the puzzle of state impunity is the idea that the strategy by which governments strategically adapt international norms has implications for the transitional justice policies most likely to be put in place. For this reason, strategies of coercion, containment, and concession are likely to produce unique transitional justice outcomes.

A government's capacity to control its institutional response captures the government's ability to implement its chosen institution and to respond to threats to that institution. The capacity for institutional control involves the ability to adopt a given norm response and then identify and monitor challengers to that response. Often capabilities are measured in terms of the coercive capacity of the state, such as the size of a government's security force (Albertus & Menaldo 2012). Fearon and Laitin (2003) argue that the state's military and policing powers are central to the government's ability to monitor, deter, and suppress challengers. A government with strong coercive capacity can effectively respond to threats to its rule. This is but one component of a government's capabilities. Collier and Hoeffler (1998) suggest that high institutional capabilities, such as economic development, reduce the opportunity for challengers to form against the state decreasing the need for a strong coercive apparatus. A government with weak or limited institutional capabilities is unable to respond to domestic threats should they arise. Where the government's capabilities are weak, subnational actors can challenge state institutions and authority, often through violence (Bates et al. 2002; Tilly 1985). Capability for strategic adaptation of norms can be operationalized as a measure of the government's capabilities to adopt and implement its chosen norm response (e.g., bureaucratic capacity, resources) as well as its capability to monitor challengers (e.g., size of security force, funding and



resources for repression, level of training) and respond to those challenges (e.g., command and control structure).

Domestic constraints on a government's norm response capture the degree to which the government has the autonomy to adopt and implement its chosen institution. State bureaucracy or societal institutions can limit a government's behavior (Davenport 2007). Domestic constraints measure the extent to which the government can control state bureaucracy to dominate local authority, or other competing sources of power, in support of government aims. In highly institutionalized settings, a government can predict the behavior of state institutions. In non-institutionalized settings, bureaucratic outcomes are most likely driven by individuals or local power brokers who may be in competition with the government, increasing the risk of the government's norm response being mobilized against the government (e.g., Posner & Young 2007). Constrained governments face higher risks in their norm response because of their inability to ensure control over their institutional outcome. Alternatively, weakly constrained, or autonomous, governments are not constrained and can ensure that local or informal institutions will not supersede or challenge the government's norm response. Weakly constrained governments can exercise control over the bureaucratic functioning of the state and extend the overall penetration of that bureaucratic functioning throughout the state. Domestic constraints can be operationalized through the level of independence of state institutions and the autonomy of those institutions from society, such as the presence and functioning of checks and balances on a government, the procedure for selecting and appointing state bureaucrats, the degree of corruption within the bureaucracy, and the strength of religious or tribal authorities.

Taken together, governing capabilities and domestic constraints determine the extent to which a government can identify and punish challengers to its norm response and rely on the state's institutional infrastructure to pursue its aims. Governments with strong bureaucratic capacity, backed by strong security forces, with few domestic constraints, can ensure control over its norm response (cf. Herbst 2014). Weak capacity and limited autonomy increase the risks associated with norm adaptation, raising the likelihood that a government's norm response will threaten its hold on power. While it may be tempting to assume that the capacity to control a norm response is driven by regime type, this is not necessarily the case. Autocratic regimes may be weakly institutionalized and therefore unpredictable

in their institutional behavior. Democracy regimes, while often constrained, are bolstered in their norm response by strong, predictable institutions. Adaptation strategies are selected with the goal of minimizing the risks of norm compliance. A government's assessment of its overall capacity to control its norm response determines the adaptation strategy a government is most likely to engage in its decision to comply with international norms. In the following section I discuss the domestic political conditions most likely to lead to each strategy of adaptation – coercion, containment, and concession – and identify the likely transitional justice outcomes.

### *Adaptation through Coercion*

Strategic adaptation through coercion is a strategy whereby a government complies with an international norm through repression. Repression “involves the actual or threatened use of physical sanctions against an individual or organization ... for the purpose of imposing a cost on the target as well as deterring specific activities and/or beliefs perceived to be challenging to government personnel, practices or institutions” (Davenport 2007: 2). An adaptation strategy of coercion engages repression to ensure that the given response to an international norm does not destabilize the regime. The government responds to pressure for norm compliance by adopting an institution it tightly controls. With a strategy of coercion, a government adopts transitional justice but strictly enforces which claims for accountability are made through the process, making sure to exclude government wrongdoings and advance state impunity. By expending resources to monitor and control transitional justice the government minimizes the risks of adopting transitional justice. At its most effective, a strategy of coercion reinforces a government's hold on power by marginalizing challengers and strengthening the government's legitimacy by complying with international norms.

A strategy of coercion is facilitated through the creation of new institutions. New transitional justice institutions are structured to exclude government wrongdoings and to advance narratives of violence that maintain the government's legitimacy and hold on power. A strategy of coercion advances government impunity by adopting a transitional justice structure that limits accountability to only those experiences and events in which the government bears no responsibility. These new institutions are monitored to ensure there are no challenges to this narrative. Transitional justice is allowed to move

forward only when government agents are not held accountable. Attempts to broaden the reach of transitional justice to increase the threat to the government are met with repression. Furthermore, transitional justice can be structured to marginalize or punish government challengers. A high level of institutional control allows governments to adopt a robust norm response that can advance state impunity and punishment. All else being equal, a government would prefer to engage a strategy of coercion, as this adaptation strategy secures government impunity, minimizes the risk of norm compliance, and advances alternative governance aims.

New institutions tightly controlled by the government are most likely when the government has a high capability to control its institutional response. A government would not want to create a new transitional justice institution it was unable to monitor and control. Repression requires coercive capabilities to effectively control dissent without risking backlash. A government employs repression when it finds that the benefits of eliminating a particular challenge outweigh the costs of repressive action (Davenport 2007). Identifying and eliminating challengers requires sustained resources for monitoring and enforcement, which requires a high level of capacity. Furthermore, to engage a strategy of coercion, a government must be able to predict the behavior of its own bureaucracy and not be constrained by state institutions or domestic pressures. The government must be able to function with autonomy in its institutional response. With a high capacity for institutional control, a government is able to engage coercion to ensure that transitional justice does not pose a risk to government power.

Rwanda, which I discuss at length in Chapter 3, is a classic case of strategic adaptation through coercion where the Rwanda Patriotic Front (RPF) government has worked tirelessly to advance impunity for government forces while simultaneously pursuing criminal accountability for perpetrators of ethnic crimes and genocide. Through the *gacaca* courts, the RPF has successfully crafted a new transitional justice institution able to address international pressure for accountability while ensuring state impunity. Given the RPF's high capacity for institutional control, only a limited range of accountability claims are permitted through the *gacaca* process. In Rwanda, events of the genocide are honored and acknowledged through a dynamic and robust transitional justice process that excludes crimes committed

during the civil war and post-conflict period. Attempts to acknowledge alternative wrongdoings are often met with repression, criminalization, and violence. Transitional justice in Rwanda has been used to legitimate the current government by repressing alternative claims for accountability that could threaten the Rwandan government.

### *Adaptation through Containment*

Strategic adaptation through containment is when a government complies with an international norm by embedding its chosen response within existing state institutions or policies. Containment refers to the act of keeping something harmful under control or within limits. A government can minimize the risks of norm compliance by situating its response within existing power structures that are both predictable and under government control. Containment allows the institutions of transitional justice to be incorporated or absorbed by the government into existing institutions without gaining new advantage (Gamson 1975). In the study of social movements, Piven and Cloward (1977) discuss the strategy of containment (which they refer to as co-optation) as channeling threatening claims into less disruptive forms of behavior. Under certain political conditions new institutions may be difficult to monitor and control. Containment allows a government to reduce the uncertainty of norm compliance by falling back on preexisting tools of control. A strategy of containment allows a government to comply with an international norm while still working to minimize the threat of compliance and advance state impunity.

Containment is most likely to result in transitional justice being incorporated into existing state institutions, such as state bureaucracies or judiciaries, rather than the creation of new independent institutions. A government will contain transitional justice within existing bureaucracy and monitor and control that bureaucracy when the government doubts its ability to monitor and enforce a new or independent institution. Under a strategy of containment transitional justice is controlled within existing structures of power, allowing a government to advance impunity by relying on existing structures to contain the risks of norm compliance. Containment allows a government to control transitional justice from within, integrating transitional justice into existing power structures and exercising control through existing institutions – stacking judges, restricting budgets, regulating, or withholding reports. The

result, however, is a weak accountability process that is often inefficient and ineffective. A strategy of containment weakens accountability for all wrongdoing in order to ensure impunity for the state.

A strategy of containment is most likely when a government has a mid-range capacity for institutional control. In this middle range governments can monitor and control some functions of the state's bureaucracy but are constrained in other ways. Constraints may include a mobilized civil society, democratic institutions, or checks and balances on government power. These constraints prevent a government from exercising full control over new institutions. Constraints also increase uncertainty around how new institutions will perform and behave once adopted. When a government is constrained in its ability to monitor and enforce its norm response, a government has an incentive to confine its response to existing institutions over which the government can ensure control. Relying on existing areas of institutional control moderates the ambiguity of the outcome of the government's norm response. However, engaging a strategy of containment requires a government to be able to exercise control over particular governance institutions.

Chapter 4 details the containment strategy employed by the Ugandan government in addressing government abuses committed in Northern Uganda. The hybrid nature of the Museveni regime and the lack of institutionalization constrain the government's capabilities for institutional control. Under strong international pressure for accountability, the government has adopted a transitional justice policy that largely engages existing state or community institutions such as the national court system and traditional authorities, rather than adopting new transitional justice institutions. Containment of transitional justice has given the government power over these institutions and subsequently resulted in government impunity.

### *Adaptation through Concession*

Under pressure for norm compliance, a government may respond by offering limited concessions toward government accountability. With a strategy of concession, a government complies with an international norm in certain areas and not others. Concessions are policies or resource allocations granted because of specific demands. Concessions are made to pacify actors who pose a particularly high threat to the government. As Levi (2006: 9) writes, one of the central challenges of creating capable governments is to "offer powerful

constituents enough in the way of benefits to retain their loyalty and to desist from violent predation.” To minimize the risks of norm compliance, a government may choose to secure the loyalty of powerful domestic actors through concessions. In the case of the norm of accountability, conceding limited government accountability for certain wrongdoings minimizes the risk that other claims against the government will be pursued. A strategy of concession allows the government to sacrifice some actors to secure impunity for others.

Transitional justice under a strategy of concession advances government impunity by permitting limited accountability demands and leads to a piecemeal approach to accountability where some government actors are held to account and others escape justice. A strategy of concession requires a government to be selective about which wrongdoings are investigated through transitional justice, structuring institutions to engage with certain events and actors and restricting others. This allows the government to signal that they are complying with international norms while simultaneously ensuring impunity for government actors. Often concessions are granted through existing institutions, as the government lacks the capability to monitor and control a new institution. This strategy advances government impunity by restricting or excluding the most threatening claims. The government must carefully control this response to ensure that only a limited number of events and individuals are engaged in the transitional justice process.

A strategy of concession is most likely when a government has limited capacity to control its norm response and manage the potential risks of norm compliance. The government must offer concessions to potential challengers rather than resort to coercion or containment because of a lack of governance capabilities and domestic constraints on government power. Given that the government lacks the capability to monitor and repress challengers and is constrained in its behavior by domestic institutions, a government will instead work to negotiate or accommodate its risks of norm compliance. Unlike a strategy of containment, a weak-capacity government does not have control over other institutions and cannot situate its norm response within existing arenas of power. In the case of transitional justice, a concessionary strategy facilitates accountability for limited government wrongdoings by securing the cooperation of threatening actors who could challenge the government’s norm response.

Chapter 5 details the concessionary strategy employed by the British government in Northern Ireland against widespread accusations of

abuse by the British army and security forces. Strong pressure from the international community and domestic civil society forced concessions in a select number of specific cases of state wrongdoing, yet these concessions have not translated into a broader acknowledgment of, or accountability for, wrongdoing by the British state. Concessions have led to the pursuit of justice for some government wrongdoings, such as the events of Bloody Sunday, while accountability for other events have been minimal or nonexistent.

In Table 1.1, I identify the mechanisms through which each adaptation strategy helps a government escape justice. Each strategy is the result of a different political environment and leads to different institutional outcomes.

Note, while the strategies of coercion, containment, and concession are presented here as mutually exclusive, it is possible for a government to adopt combinations of these different approaches in its attempt to escape justice. It is also possible for these strategies to shift and evolve over time as a government’s domestic political environment shifts, since changes in institutional control capacity may cause the

**Table 1.1** *Strategic adaptation*

	Coercion	Containment	Concession
Capacity for control of norm response	High	Medium	Low
Mechanisms to escape justice	Control transitional justice by monitoring and repressing challengers	Contain and monitor transitional justice within existing government-controlled institutions	Concessions negotiated with select challengers while blocking widespread state accountability
Institutional outcomes	Robust transitional justice through new institution(s)	Disempowered or weak transitional justice	Accountability for limited government wrongdoings

government to alter its strategy. What is presented here, however, should frame our thinking about the adaptation strategies governments employ and the subsequent impact of that choice on policy outcomes, such as transitional justice and state accountability. In the subsequent empirical chapters, I present these strategies in practice where the permeability of these behaviors is clear. In the next section I turn to a discussion of the research design and methods through which I investigate these patterns.

## Research Design and Methods

Returning to the original research question, I am interested in understanding state impunity in the presence of transitional justice. For that reason, my argument has two primary scope conditions. I am interested exclusively in cases where (1) transitional justice has been implemented following episodes of violence where (2) the government, currently in power, has blood on its hands. The cases in this book were selected to examine instances where transitional justice is being pursued but the government maintains a vested interest in making sure its own wrongdoings are overlooked. These are cases where the government in power faces costs from complying with a norm of accountability as well as costs for ignoring that norm, to allow me to identify and understand the strategic adaptation of international norms.

Relying on the Post-Conflict Justice (PCJ) Dataset (Binningsbø et al. 2012), I identified a universe of cases that met my scope conditions. The PCJ Dataset catalogs transitional justice adopted following armed conflict. By combining the PCJ data with the UCDP One-Sided Violence data (Eck & Hultman 2007), I identified cases where the government in power following the conflict (either the former government or victorious rebel group) had itself committed violence against civilians. One-sided violence is certainly not the only indicator of government culpability for wrongdoings, but violence against civilians during armed conflict serves as a most likely criteria for identifying high costs of government accountability. My argument theorizes that variation across the capacity for the government to control its norm response should impact the adaptation strategy of governments seeking to comply with international norms. In addition to my two primary scope conditions, I therefore selected cases that vary on the level of institutional control capacity. I sought to identify cases where control capacity was high, medium, and low in the post-conflict period to



establish the way in which a government's capabilities and domestic constraints could potentially impact its strategy of norm adaptation. From that universe of possible cases, I selected three cases that had adopted well-documented transitional justice programs where it would be possible to study the rationale for that process and the conditions under which it was adopted. This method led me to identify three prominent cases of transitional justice that meet my scope conditions and vary across these dimensions: Rwanda, Uganda, and Northern Ireland.

In all three cases the government has adopted a transitional justice program in response to international and domestic pressure for accountability. These are also cases in which the government is complicit in human rights abuses against its own citizens but has a vested interest in not being brought to account for those crimes. Each country experienced a violent disruption to its political system producing a complex array of experiences of violence by both state and non-state perpetrators. Yet fundamentally these are three cases of civil war. While the conflict in Rwanda and the accompanying genocide certainly saw the most bloodshed, the violence in Uganda and Northern Ireland was no less devastating to the communities impacted. Northern Uganda experienced one of the worst humanitarian disasters of the twentieth century because of the mass forced displacement of the Acholi people by the Ugandan government. Northern Ireland faced a highly disruptive thirty-year conflict that killed 3,700 people and wounded more than 47,000 others. One war ended in a decisive victory (Rwanda and the RPF), one has ended in a stalemate with the rebel group still at large (Uganda and the LRA), and one ended with a negotiated settlement (Northern Ireland with the PIRA and British government). Following the genocide, Rwanda becomes a consolidated authoritarian regime. Uganda remains a hybrid autocracy. Northern Ireland functioned as a democracy throughout the conflict and after its termination. Variation across conflict termination and regime type allows me to explore alternative explanations for state impunity based on the post-conflict balance of power.

Each case provides variation across my theoretical variable of interest: capacity of institutional control. Following the genocide, the Rwanda Patriotic Front emerged as a highly consolidated and cohesive political party with strong control over its population and governing institutions. While the overall capabilities of the government in Uganda are high, the bureaucracy in Uganda is comparatively non-

institutionalized. The NRM government maintains control of state bureaucracy through a robust patronage strategy but is not always able to effectively predict or control state institutions given the domestic constraints on a hybrid regime. The British government in Northern Ireland is constrained in its repressive capabilities by the democratic political system. Institutions in Northern Ireland are institutionalized, however, making their functioning and outcomes predictable and risky for the British government.

Each case in the book functions as a standalone study that investigates the conditions that facilitate state impunity in the case country. Together the cases offer broader evidence of the strategic adaptation framework for understanding accountability outcomes and generate a further series of testable hypotheses that provide the groundwork for future research. Given the complexity of the task, my approach at this stage is explicitly qualitative. My research design offers a within-case analysis that draws on analytic narratives, engaging in careful description to explain processes of decision-making and change over time to reveal novel political and social phenomena while accounting for rival explanations (Bennett & Checkel 2015; George & Bennett 2005). Because these cases examine three different strategies of adaptation, I am able to focus on the central logic of each strategy and the strategy's implications for state impunity. I am also able to examine changes to government strategy based on fluctuations of my main variable of interest: institutional control capacity. In asking the question of why transitional justice took the form it did in each location and to what effect, I further inform my argument about the ways in which governments harness transitional justice to escape justice.

The material collected for this research is based on fifteen years of extensive fieldwork and archival research that allows me to bring firsthand experience and a depth of expertise to bear for each case. Across all three cases, I conducted more than 200 individual interviews (see Appendix B). The subjects of these interviews include government officials directly involved in transitional justice decisions, lawyers, human rights workers (both domestic and international), transitional justice promoters in each country, journalists, rebel leaders and former rebels, and opposition politicians. In addition to individual-level interviews, I collected primary source material for each case. This data includes government and NGO reports, transcripts from parliamentary and cabinet-level proceedings, newspaper articles, and human rights reports. Fieldwork in Rwanda began in 2005 and continued

through my most recent visit in 2014. Fieldwork in Northern Ireland was conducted between 2009 and 2011. Fieldwork in Uganda was conducted in 2013, 2014, and 2020. For all three cases I made multiple trips over the period of study. Furthermore, all three of these cases are well documented in the secondary literature. Where possible, my evidence builds from existing observations and findings within this rich work.

To understand the impact of state impunity on people living in my case countries, I conducted individual-level interviews and focus groups with conflict-affected individuals engaging with different transitional justice adaptations. I defined “conflict-affected” broadly and let people construct their own experiences with violence and accountability. Interviews in Rwanda were conducted from 2005 through 2009 with people who experienced violence during the genocide and those individuals who experienced violence during the civil war and post-civil war insurgency. Through these interviews I spoke with people whose conflict experiences were included in transitional justice in Rwanda and others whose stories were excluded to advance the impunity of the RPF government. In 2009 and 2010, I conducted semistructured interviews with people in Northern Ireland who lived through the civil war in notably high violence areas. I visited places like Ardoyne in Belfast, where ninety-nine people were killed in just a few small city blocks, and South Armagh, known as Bandit Country, due to the high level of territorial control by the Provisional Irish Republican Army (PIRA). In these interviews, participants and I discussed justice, remembrance, and reconciliation in Northern Ireland and people’s hopes for accountability in the future. While my interviews were stratified across sectarian lines, I often found that both Catholics and Protestants had very similar concerns about state impunity. Because of the proximity of violence in Uganda, and the ongoing nature of the LRA threat, rather than conduct individual interviews, I primarily relied on focus groups conducted in 2013 and 2020. These focus groups were conducted in three conflict-affected areas in Northern Uganda, which were selected to represent a range of experiences with LRA and government violence. Additional information on the methodology across the three cases can be found in Appendix A.

Interviews conducted with people in Rwanda, Uganda, and Northern Ireland included people who experienced violence at the hands of their government. These examinations are, at best, a

superficial comparison of individual attitudes across widely variable contexts. However, despite the surface variance in people's experiences and current living conditions, several themes emerged in these interviews. While this data were systematically collected in each case through random sample based on conflict variation (see Appendix A), the data were not intended to be compared across case. For this reason, rather than testing a series of empirical conjectures, individual interviews are used to raise hypotheses derived inductively from these conversations. The resulting hypotheses allow me to speculate about the impact and potential long-term consequences of government impunity beyond the global erosion of international law. These interviews shed light on individual responses and reactions to state impunity and, in so doing, provide insight into the potential threat of exclusion for future political stability. While the observations from these interviews are not conclusive, they should lend credence to the concern that state impunity can have a lasting impact on the rule of law in post-violence societies as well as seed the ground for potential future violence.

## **Research Ethics in the Study of Transitional Justice**

In conducting this research, I was aware of the potential for several ethical challenges. The countries under study are all locations that experienced extreme violence. While the civil wars had ended by the time this research began, the impact of those events on the lives of the individuals I interacted with had not. When conducting my interviews, I attempted to uphold the highest level of ethical best practices. I received training on identifying and working with trauma-affected populations to ensure that I minimized the impact of my interviews on participants to the greatest extent possible (for more on the issue of minimizing traumatic impact on the researcher, see Loyle & Simoni 2017). I adhered to my university-mandated institutional review board (IRB) policies regarding consent, voluntary participation in the research, and data protection and confidentiality.<sup>14</sup> Where possible and practical, I let interview participants dictate the terms of

<sup>14</sup> IRB approval was attained through the University of Maryland for Rwanda fieldwork (2009–2010) and Northern Ireland fieldwork (2010–2011). IRB approval for fieldwork in Uganda was attained through West Virginia University (2013–2015) and the Pennsylvania State University (2020).

our interactions. Respondents selected the location of research sites, chose the language of the interview, and were given an opportunity to elaborate, correct, or refute my questions as well as their answers. When working in more restrictive research environments, such as my earlier interviews in Rwanda, I worked with research assistants to develop interview protocols that allowed participants to discuss violent events without directly implicating government perpetrators, which in some contexts would have posed elevated security risks for research participants (see Loyle et al. 2019). Great care was taken in all cases to identify and mitigate security risks for those individuals and organizations who participated in my research. Where possible, I returned to research sites to present and discuss my research findings, offering opportunities for further collaboration and consultation with research participants and their communities. Above all, I endeavored to approach my interviewees and their stories with the respect and dignity they deserve.

I have been keenly aware that I am writing about other people's experience and understanding of violence. Identifying and reproducing both collective and individual stories of violent events has been a central focus of this project. There is immense power and responsibility in correctly relaying an individual's experiences with violence as well as their experience with its resolution. One of the core contentions of this book is that there is no single universal experience with violence, but rather that violence is often a highly complex series of events. This book touches on but does not seek to properly document the many sites of resistance to government impunity. In my fieldwork I found countless examples of individuals and civil society organizations working to construct (often small) spaces for acknowledgment and remembrance, to challenge government policies, and to hold state forces accountable for their actions. In some cases, these alternative claims gained spaces of recognition and acceptance across a small section of the population, and despite their limited reach, these footholds were extremely important for many of the people I interviewed. While I do not systematically document resistance in this book, I strive to include individual voices from my interviews throughout the text. Often these voices challenge the state narrative of violence and offer new insight into the complexity of violence and accountability in each case.

## Conclusion

In the cases examined in this book, as in many contemporary post-conflict settings, the question is not one of justice or no justice, but rather justice and accountability for whom. While a nationwide reckoning has taken place for crimes of genocide in Rwanda, government perpetrators of human right violations have not been held to account. Similar patterns have played out around the world. In Tunisia, despite evidence of economic crimes presented by the Truth and Dignity Commission, efforts continue to be made to shield government officials from prosecution for human rights abuses. In Liberia, the Truth and Reconciliation Commission identified several prominent government officials, including the sitting president Ellen Johnson Sirleaf, as individuals who should not be permitted to hold public office. However, these recommendations were not implemented. In Northern Ireland, the British government under David Cameron apologized for the civilians killed by the British Army on Bloody Sunday after an extensive public inquiry into the event, but systematic policies of government abuse have not been investigated or acknowledged. In each of these cases state impunity is upheld alongside a transitional justice process. Rather than advancing accountability, transitional justice is strategically adapted to shield government agents from accountability.

This chapter has presented a novel theoretical framework that identifies the strategies governments engage to reduce the risk of complying with international norms. Not all governments make the same decisions about how best to mitigate the risks of strategic adaptation. Variation in a government's capacity to control its norm response helps determine which strategy a government will pursue. The customizability of transitional justice makes it particularly susceptible to strategic adaptation on the part of governments seeking to advance their own impunity. Domestic political conditions are central to understanding the choice a government makes. By understanding how domestic political conditions shape strategic adaptation we can learn how government impunity persists in the age of accountability.

Using this theoretical framework, the following empirical chapters examine patterns of strategic adaptation of transitional justice. The chapters study the strategies of coercion, containment, and concession

through the cases of Rwanda, Uganda, and Northern Ireland. The cases demonstrate the utility of the strategic adaptation framework. Each of these cases illustrates the way that the government's capacity for institutional control leads to different transitional justice outcomes with different consequences for state impunity. The cases in these empirical chapters also allow us to gain additional insights into how transitional justice across these three strategies functions in the real world.