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## Trying Just Enough or Promising Too Much? The Problem-Capacity-Nexus in Tunisia's Transitional Justice Process

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### ABSTRACT

This article shows that for post-revolutionary Tunisia, a holistic approach to transitional justice – which aims to address a wide range of justice issues through a combination of measures – may lead to an expansion of mandates and consequently, to the overloading of transitional justice institutions. It therefore identifies a ‘problem-capacity-nexus’: While the expansive approach appears well-suited to relevant problems and the capacities of transitional justice professionals, it does not necessarily fit with the capacities of domestic institutions. Thus, transitional justice, while making efforts to address a broad range of relevant problems, has yet to find suitable avenues for actually doing so.


### KEYWORDS

Transitional justice; Tunisia; truth commissions; socio-economic justice; capacities; mandates

### Introduction

Current debates in transitional justice (TJ) research and practice often seek to answer two salient questions: what constitutes TJ processes’ ideal scope and what TJ measures are imperative for a society to address a legacy of violence and repression. As part of these debates, a strand of literature has offered ample critique of the field’s ‘deference to legal dominance within [...] policy and practice’ (Lundy and McGovern 2008, 265), which, as the critics argue, understands justice as too narrow to adequately address (the often-socio-economic) grievances that generally warrant responses (see e.g. Mani 2005; Miller 2008). This critique grounds a trend towards a broad-minded holistic approach to TJ, whereby different problems are addressed through various measures that ideally work complementarily to each other, such as trials, truth commissions, reparations, and institutional and legal reforms.

While such approaches appear well-suited to the wide scope of justice problems they aspire to address, their practical conclusions remain somewhat not worked out theoretically – indeed, as Adam Kochanski finds, little scholarship has been directed at ‘problemat[ing] the assumption that more priorities will automatically make for a more effective process’ (Kochanski 2020, 127). Taking this issue as its entry point, this article offers insight to the TJ literature in outlining, through an exploration of whether ‘all good things go together’ (Grimm and Leininger 2012, 391), the potential backlash underscoring

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an overloaded approach to TJ. To cast its argument in brief: Many scholars and practitioners deem a holistic TJ approach as the most promising avenue to address the justice problems material to a legacy of violence and repression. However, as this article will empirically show, such approaches carry with them an expansion of mandates that may overburden institutions in contexts with limited capacities – which, in broader implication to the TJ literature, reveals how TJ, while today indeed better in addressing relevant problems, is yet to find suitable ways and means to addressing them.

While a strand of literature has devoted increased attention to linkages between TJ and peacebuilding in scholarship and practice (Arnould 2016; Baker and Obradovic-Wochnik 2016; Millar and Lecy 2016; Andrieu 2010; Lambourne 2009), TJ research still rarely engages with statebuilding debates. Some authors conceive TJ as part of a liberal statebuilding project (see e.g. Gready and Robins 2014, 341; Andrieu 2010, 541). The goals of both endeavours intersect, as both should contribute to democracy and peace and deal with, *inter alia*, human rights, the rule of law and functioning institutions (Zaum 2007; Wolff 2011). Moreover, a ‘more is better’ approach has been identified, and critiqued, in statebuilding (Lemay-Hébert 2013). Especially for post-authoritarian contexts, which engage in re-configurations of the state, this nexus may be a worthwhile avenue for analysis of an expansive approach to TJ and potential repercussions.

Drawing on the Tunisian example and building from field research insights, this article illustrates how, in a democratizing context with limited capacities of political institutions, the promises of a holistic TJ approach may indeed address relevant problems but can lead to the impression of projects as unfeasible, even in those administering them. In providing such an illustration, my intention is neither to imply the greater normative desirability of a less comprehensive mandate for the Tunisian context, nor more generally to advance an argument in favour of a different (i.e. narrower) TJ approach that ‘call[s] for less ambitious goals’ (Lynch 2018, 12), as other authors have done. Instead, I aim to contribute to the understanding of an empirical phenomenon and make visible complexity and that more may not always be better in TJ.

The article proceeds as follows: I briefly introduce the research process and empirical material that ground this paper’s argument. I then detail the paper’s conceptual basis in two parts – first outlining professionalized TJ and its favouring of the holistic approach, before introducing the idea of the ‘problem-capacity-nexus’ that underscores the relation between problems to be addressed and institutional capacity to actually addressing them. After an overview of how TJ has manifested in Tunisia, I then provide empirical illustrations of my core argument, which ultimately casts an expansive approach to TJ, notwithstanding its certain suitability for addressing existing grievances, to be potentially problematic for reasons of a mismatch between expectations and actual capacities to deliver on them.

## Research process and methodology

This article draws on five months of field research conducted in Tunisia between 2014 and 2017 (mainly in the capital Tunis, but also in the central towns of Gafsa and Kasserine), and two research stays in the United States, in 2015 (New York) and 2019 (Washington, DC, New York), later supplemented by phone/skype interviews conducted in May/June 2020. This data largely culls from interviews of over 90 individuals,<sup>1</sup> among them Tunisian

politicians, representatives of civil society, the Tunisian government, the media, international organizations and NGOs, as well as truth commission members and staff. Complementary data includes observations I gleaned from events held by the Truth and Dignity Commission (TDC), and conferences on TJ convened in Tunisia and abroad.<sup>2</sup> My research aims were chiefly guided by purposive sampling, i.e. the selection of politically important or salient cases. Interview partners were chosen for their function or position within a pertinent political configuration (e.g. status as members of a particular party, civil society organization, the technical committee drafting the TJ law, etc.). This strategy was complemented by snowball sampling. As I conducted research concurrent to the TJ process unfolding, my sampling had ‘an *iterative* or ‘rolling’ quality, working in progressive waves as the study [and also the TJ process] progresse[d]’ (Miles, Huberman, and Saldaña 2014, 33; emphasis in the original). Interviews were usually topic-based with an open, narrative start.<sup>3</sup> The interviews were coded with the qualitative data analysis software MAXQDA. I conducted several partial coding cycles in between field research visits and one complete coding cycle after the main data collection period had ended.<sup>4</sup> Most of the specific interviews quoted in this article were conducted in the early phase of the institutionalized TJ process between mid-2014 and spring 2015.

### Professionalized TJ, the holistic approach, and its critique

TJ, as a global enterprise, has seen its dispersion to different parts of the world by the so-called ‘justice industry’ (Subotić 2012, 117), comprised of professionals who, reliant on technical responses, toolboxes and templates to a criticized degree (Clark and Palmer 2012, 6), are sometimes said to ‘parachute’ into different countries without much prior knowledge of the context and situation they have been hired to tackle.

The toolboxes and dominant responses utilized by TJ professionals parallel trends in the field, which has skewed in recent years towards the comprehensive. Just a decade ago, Rosemary Nagy lamented that transitional justice was a narrow global project, addressing only a very limited set of problems with a limited set of solutions (Nagy 2008, 279). However, Pdraig McAuliffe more recently described how debates in the field about what goals are imperative in TJ as well as how to achieve them have ‘raced’ through different approaches ‘to ultimately arrive at a general commitment to holistic blendings of mechanisms’ (McAuliffe 2017, 250). In practice, this blended approach sets out to combine retributive with restorative justice (Boraine 2006, 19), promoting the combination of various TJ measures (cf. Andrieu 2010, 540) to address the different factors that engender violations (International Center for Transitional Justice 2009; see also Mani 2005).<sup>5</sup> In addressing a society’s disparate root-causes of conflict and pillars of repressive rule, holistic approaches extend beyond TJ’s initial directive of providing (predominantly legal) responses to physical human rights violations, confronting economic crimes, corruption, and socio-economic injustices, and eliminating injustices enshrined in institutions by reforming them – what TJ should necessarily address to facilitate the non-recurrence of violence and repression. Rather than picking and choosing single tools from a toolbox, it should integrate a variety of transitional justice measures, such as trials, truth commissions, reparations, institutional reforms or memorialization efforts, as required by the particular context.

Outside the bounds of theoretical, normative debates, the holistic approach has been promoted by international advisors key to the development of mandates and institutionalized processes. For one, the UN Secretary-General's *Report on the rule of law and transitional justice in conflict and post-conflict societies*, a salient guide for policy-making in the field, posits that '[w]here transitional justice is required, strategies must be holistic' (UN Security Council 2004, 9). For another, the International Center for Transitional Justice, the leading NGO in facilitating transitional justice processes worldwide, posits several TJ measures as best combined in a holistic approach, which, building from their complementary interplay, more thoroughly addresses the various factors that engendered the past injustice(s) of a particular context (International Center for Transitional Justice 2009). For yet another, academic philosopher Pablo de Greiff, who served as the first *United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence* during the incipient stages of TJ in Tunisia, has advocated for holistic approaches in theory and practice (De Greiff 2012),<sup>6</sup> with current UN Special Rapporteur, Fabián Salvioli, sharing his emphasis on such approaches' imperativeness.<sup>7</sup>

This is not to say, however, that such approaches remain devoid of critique from scholars and practitioners. In critically assessing the holistic justice agenda's promises, Rebekka Friedman and Andrew Jillions (2015) neither find its core notion of the complementarity of means to necessarily imply institutional cooperation, nor the striving for it to beget realization of the transformative potential pursued by a holistic approach. Holistic justice is rather connected to 'messy, contentious politics' (Friedman and Jillions 2015, 147), administered in measures and processes that, even if aimed to be purely technocratic, likely benefit some actors more than others (cf. Kurki 2011, 228–229). What is more, conceptual holism, rendered in practice, has trended towards application of 'more is better' approaches (cf. Lemay-Hébert 2013)<sup>8</sup> which bear the danger of overloading TJ institutions' capacities (Andrieu 2010) if not better 'ground[ed] in questions of feasibility' (Sharp 2019, 582). To wit, Baker and Obradovic-Wochnik (2016, 282) find singular TJ institutions to be saddled with 'near impossible target[s]', with de Greiff himself pointing to a broader capacity concern in TJ endeavours' tendency towards 'mission creep,' evident in their 'mandates [...] hav[ing] expanded without any sort of functional analysis to suggest that the measures can indeed perform the ever-growing functions attributed to them' (De Greiff 2018).

Indeed, one TJ practitioner I interviewed acknowledged the dilemma of 'more-is-better holism', but concluded that initially 'you need the broader vision'<sup>9</sup> – eventually adapted pragmatically to the context concerned – to achieve the best possible outcome. Another interlocutor mentioned that there is the assumption among TJ consultants that one should include ambitious plans in peace agreements, even if it is unrealistic from the beginning that these get implemented.<sup>10</sup> Against this backdrop, this article illustrates that when conceptual holism comes along with such enormous tasks, it does not necessarily do well in delivering a sense of justice, and bears the danger of TJ becoming perceived as incapable of delivering on its promises.

### Expansive mandates, unachievable goals and the problem-capacity nexus

In applying Jean Baudrillard's theory of 'hyper-reality' – and more specifically, his observation of how 'our perception of things has become corrupted by a perception of reality

that never existed' (Hehir 2011, 1074) – to the context of statebuilding, Aidan Hehir underscores the extent to which statebuilding projects aim at creating an idealized state with an idealized version of liberal democracy and thereby set unachievable goals whose purpose potentially lies in reflection of the involved international actors' 'own vitality and competence' (Hehir 2011, 1079).

To provide an empirical example, Hehir cites the case of Kosovo, whose, 'hyper-real' statebuilding project, in giving no heed to the capacities of Kosovar society to implement it, he outlines as marked by a 'capacity gap' (Hehir 2011, 1076, 1082). In TJ, we can observe a similar trend towards "“aspirational” thinking" (UN Human Rights Council 2017, 16), which the former UN Special Rapporteur de Greiff himself recognizes in the 2017 report to the 36th session of the Human Rights Council, in which he defines expansion of TJ mandates as (problematically) lacking 'sufficient sensitivity to functional and institutional requirements for success, or to basic features of the context of implementation' (UN Human Rights Council 2017, 1). This report, it must be noted, links this *problematique* to the application of TJ measures originally developed for post-authoritarian contexts to post-conflict contexts, as the former are thought to have stronger institutions and better capacities and resources to implement such projects (UN Human Rights Council 2017, 16–17).<sup>11</sup> But as this article shows, an expansion of mandates can engender overloading even within a post-authoritarian context whose accompanying TJ project is comparatively well-resourced.

Lack of capacity can result from different factors, such as scarce resources, a lack of time, or insufficient information about the actual problems to be addressed (Grimm and Leininger 2012, 404). One critique of TJ practice is that too often problems are not identified before implementing its measures (Nagy 2008, 276). In a similar vein, McAuliffe finds that the field of research has become too self-referential – concentrating, that is, on its 'own knowledge-making practices [and] expanding the interdisciplinary spaces within transitional justice', rather than studying conflictive contexts (McAuliffe 2017, 250). As such, it often neglects the *transition* part of TJ (McGrattan 2009; see also Salehi 2018). While I have outlined in the previous section that TJ has developed towards conceptual holism exactly to better address relevant problems, bringing these two points – addressing relevant problems holistically and being attentive to the context – together provokes the question of whether both can be done at the same time. In the following, I offer an analytical perspective to pinpoint more precisely the issue with doing so.

Drawing on Ferguson's (1994) work on the political functions of seemingly anti-political moves in the context of development policies, I introduce the concept of what I term the 'problem-capacity-nexus' that underscores specific internationalized processes of change. In his work, Ferguson finds that development professionals, rather than pursuing measures that address the actual development problems requiring fixing, tend to pursue only those measures they have capacity to implement. In this article's particular case, however, the 'problem-capacity-nexus' skews in a different direction: TJ *addresses* relevant problems – indeed today better so – but its implementation is marked by a skewed nexus between justice problems to be addressed and the capacities of institutions in transitional contexts to properly deliver on the promises made. In a transitional context, the capacities may be lacking to actually carry out such an ambitious process that addresses relevant problems. These lacking capacities can, for example, stem from a

lack of resources, such as financial means, staff and equipment, or a lack of experience, skills and knowledge. McAuliffe (2017) reminds us, however, to account for the different interests and capacities of domestic actors, who may not all share an interest in, and prioritize, the introduction and implementation of TJ measures. Thus, in a context in which domestic and/or international<sup>12</sup> '[t]ransitional justice actors lack social or political power' (McAuliffe 2017, 256), a lack of capacity (of transitional justice institutions) can also mean a lack of leeway in the transitional context. Here, the capacities of domestic elites may be used for other things (such as law- or constitution-writing) and to advance different interests.<sup>13</sup> The skewed nexus therefore may not only result from a mere 'capacity gap', but also from a prioritization of how to use capacities.

The following section will exemplify the problem-capacity-nexus as it pertains to TJ in Tunisia. To this end, it offers a more detailed illustration of how measures pursued may have indeed held practical merit – in fitting well to the historical, social and political context, and to the capacities and expertise of TJ professionals – yet ultimately exceeded the limited capacities of the domestic (transitional) institutions of a country undergoing political change, (in particular transitional justice institutions).

### Introducing a holistic transitional justice project in Tunisia

As the locus of the uprisings' 2010-beginnings and the sole nascent democracy remaining in its aftermath, Tunisia is oft-regarded as the 'poster-child' for the so-called Arab Spring. After the fall of Zine el-Abidine Ben Ali's authoritarian regime in January 2011, Tunisia began re-configuring the state's 'political architecture'<sup>14</sup> by developing new political rules and institutions. Germane to this re-configuration was the country's early adoption of TJ measures to address its authoritarian past and pave the way for sustainable peace, democracy, and a political system based on respect for human rights and the rule of law. Initially derived from pre-existing legislation and institutions, these initiatives ultimately lay within the framework of a well-planned, comprehensive process of TJ – borne of the ideal-type holistic approach and strongly supported by international actors – that, as mentioned, entailed the establishment of new institutions, including a Truth and Dignity Commission (TDC).

Under dictatorship, international political engagement was highly restricted in Tunisia, especially in areas related to human rights (Bush 2015, 188ff; Kausch 2013). But with the 'revolutionary window of opportunity' in 2011 came an opening for the expansion of internationalized initiatives (Bush 2015, 19.) The uprisings and the perceived vanguard role Tunisia occupied in the region led to the country's increased prominence as a subject of international attention, and to increased technical and financial aid from donors who wanted to assist the 'birthplace of the Arab Spring' (Kausch 2013, 19). By this time, international organizations and NGOs had become active in advising Tunisia on a range of issues – development, political reform, conflict resolution, human rights, and the like – reflective of the extent to which international advocacy for, and professional engagement in, TJ had expanded in 'size, reach and consequences' (Subotić 2012, 106) in recent decades. Among these international actors, the International Center for Transitional Justice, the United Nations Development Programme and the Office of the High Commissioner for Human Rights proved especially proactive in establishing a TJ project in Tunisia (Andrieu 2016, 264). To this end, these organizations provided material



help – in offering expertise and access to financial resources – and closely accompanied the so-called National Dialogue on Transitional Justice (cf. Ministry for Human Rights and Transitional Justice 2013), a country-wide consultation process, led by a technical committee composed of representatives of Tunisian civil society and the Ministry for Human Rights and Transitional Justice,<sup>15</sup> that provided the basis for subsequent law-drafting.

This consultation and law-drafting process, although described by my interview partners as unusually inclusive and transparent<sup>16</sup>, may have been exclusionary to some extent,<sup>17</sup> in ‘tend[ing] to lend voice to those who were already empowered within their communities, and literate, further excluding the most marginalized’ (Ladisich and Yakinthou 2020, 86). Institutionalization also excluded youth (Kurze 2019) and activists not ready to institutionalize their demands for justice, due to previous experience with institutionalized repression (Mullin and Patel 2016).

This dialogue and law-drafting ultimately spawned a much-lauded TJ law, that was passed by Tunisia’s National Constituent Assembly in December 2013.<sup>18</sup> The law established an extensive TJ project intended to address almost six decades of repressive rule, founding the TDC as its central institution, tasked with uncovering the ‘truth’ regarding Tunisia’s authoritarian past, and providing for the establishment of Specialized Chambers in the Tunisian court system<sup>19</sup> and a reparations fund.<sup>20</sup>

A crucial side note before proceeding: despite this article’s focus on holism in TJ, I privilege empirical focus in what follows on the TDC – and for several reasons. First, the holistic approach does not only relate to the integration of different measures but also to the variety of justice grievances that should be addressed. Thus, the conceptual trend towards holism and expansion of mandates comes along with an expansion and growing complexity in truth commission design (UN Human Rights Council 2017, 16; Kochanski 2020, 126–127). The truth commission was mandated to deal with a very broad set of justice problems (see below) and was tasked with providing recommendations on reforms of institutions and in various sectors, such as administration, the judiciary, the security sector, the media and the economy. Secondly, there is an institutional linkage that means the different measures converge to some degree at the truth commission, as it would refer cases to the Specialized Chambers and take decisions about reparations.<sup>21</sup> The third reason is temporal, since the TDC was the first of these institutions to take up its work. Thus, the TDC is the institution where we can (at least so far) best observe the mismatch between expectations and capacities.

In their mandate to address almost 60 years of repressive rule and human rights violations, the TJ institutions necessarily focussed attention on socio-economic justice issues and crimes, which, although oft-overlooked in international interventions and relegated to the periphery of TJ debates (cf. Lai 2017, 362; Baker and Obradovic-Wochnik 2016, 282; Miller 2008; Sharp 2013),<sup>22</sup> were an essential target of Tunisia’s institutionalized TJ process.<sup>23</sup> For one, not only individuals but also marginalized regions could be considered victims according to the law. Socio-economic marginalization was an essential component of repressive rule, and the resulting grievances contributed to mobilization against the regime (Ayeb 2011). Thus, this broad approach, which put previously peripheral issues centre-stage, fit well with the grievances Tunisians experienced under dictatorship.

This ambitious TJ process likewise fit well with the ‘heady idealism’ of democracy assistance during that phase more generally (Bush 2015, 198). Tunisian actors generally



welcomed support in the transitional-period design of new legal and political frameworks, with those involved in the transfer of knowledge and expertise quick to adopt, and indeed appropriate, the concepts at hand – evidence speaking to the substantive role international influence played in shaping ideas about what form TJ (and democratic transition, generally) should take. International professionals, though, have garnered criticism for how they have supported the Tunisian TJ process (see e.g. Nassar 2014, 2020). But as this process has likewise seen domestic demand for, ownership of, and struggle over its respective initiatives (Salehi 2019), frictions and alliances appear cross-cutting rather than simply running along the lines of domestic/international (cf. Arnould 2016; Kappler 2013).

The TDC was initially given a (relatively generous) mandate of four years, addended by a potential one-year extension that was never granted in full.<sup>24</sup> The commission began with 15 truth commissioners, some of whom immediately resigned without ultimately being replaced.<sup>25</sup> According to the TDC, at its peak, 676 staff members and consultants worked at the commission and it was allocated a budget of 58 million Tunisian dinars (around 17.8 million euros) between 2014 and 2018 (Truth & Dignity Commission 2019, 6, 43).<sup>26</sup> In terms of physical space, the commission had nine regional offices<sup>27</sup> outside its headquarters and an *annexe* building in Tunis. In total, over 60,000 people submitted their files to the TDC, with the commission managing to conduct almost 50,000 closed hearings before political quarrels forced termination of its operation at the end of 2018. Its final report, which established a historical record of systematic violence, repression and corruption, was finished and submitted to the government around the same time, later made public on the commission's website (March 2019) and ultimately published in the country's official journal in June 2020.<sup>28</sup> It remains unclear whether the government will follow up on any of its recommendations.

## Empirical illustration

Since its beginnings, the legitimacy of the Tunisian TJ process has been continually impugned from a number of perspectives.<sup>29</sup> One essential criticism was directed at its offering of 'small measures for big problems'<sup>30</sup> and seeming incapability to fulfil its tasks.<sup>31</sup> In the following, I draw on field research insights to show the process's ambitious mandate as corresponding well to both the field's trending towards holistic approaches and Tunisia's domestic issues of justice but much less so to what TJ institutions were actually able to deliver. This empirical work thus exposes a 'problem-capacity' dilemma: While holistic approaches are normatively desirable to address a wide range of justice problems, and may very well align with the capacities of the TJ professionals involved in their administering, they may not befit, however, capacities of domestic (TJ) institutions, to the extent they inculcate impression of their goals as unachievable.

To this end, I first illustrate how different actors contributed to an idealized mandate and the skewed problem-capacity-nexus. I then show the overload of the TDC as it has been apprehended by (and shared among) different actors more or less deeply involved in the TJ process, a tracing that draws from discussions of the following issues: the inclusion of socio-economic issues and corruption in the transitional justice mandate; the task of advising on institutional reform; and the perception that the commission was not getting much done.

## Pursuing as much justice as possible: How different actors contributed to an idealized mandate and the skewed problem-capacity-nexus

The foundations of the Tunisian approach to TJ were influenced by ideas that enjoyed wide currency among TJ professionals, i.e. those favouring a holistic approach. The ‘justice industry’, however, is not a homogenous group, meaning the actors that constitute it do not all rely on the same opinions and preferences. Indeed, they differ on how best to approach the design and implementation of TJ projects, with some practitioners lamenting the field’s focus on technical, standardized responses. In my interviews and conversations<sup>32</sup> with several staff members of a large, international TJ NGO working in and on Tunisia, each expressed different ideas about the preferable approach to follow in the country. Those with an activist background in human rights perceived the field as too dominated by technocratic jurists, who themselves saw TJ work as no ‘matter of the heart’ but rather as a wholly professional endeavour. And those favouring a more pragmatic approach to TJ – those more willing, that is, to make political concessions to achieve what, in their perspective, constituted a better outcome – lamented the ‘textbook mentality’ of those who wished to adhere rigidly to existing frameworks.<sup>33</sup> In addition to these base viewpoints, different actors and organizations further tried to include their ‘pet issues’ in Tunisia’s TJ project, thus contributing to its expansive nature and broad mandate.<sup>34</sup>

But with expansiveness came certain criticism. One of my interview partners, an international TJ professional, lamented how certain colleagues would ‘preach the integrated [i.e. holistic] approach like a gospel’,<sup>35</sup> pushing, in pursuit of as much justice as possible, its combination of various measures at the expense of other, more pragmatic approaches perhaps more feasible in Tunisia’s conflictive political context. In general, my interview partner argued, international practitioners tend to overlook the limited capacity of newly established political and TJ institutions, and particularly, the extent to which the latter may be overburdened with the various tasks they aspire to complete in line with a holistic project whose timeframe is limited. To illustrate his point, he drew on the trope positing Scandinavian countries as good democratic examples with strong political and economic institutions:<sup>36</sup>

They could maybe do it if they were Sweden. But if they were Sweden, they wouldn’t need a transitional justice process. So, why are we asking them [the Tunisians] to do things that are way too sophisticated and that even Sweden would have difficulties with?<sup>37</sup>

Which points to a dilemma: such an ambitious transitional justice process would require a state to have such Scandinavian qualities, but the process itself is only necessary because the country is in transition and therefore does not (yet) have strong democratic institutions or level of stability and prosperity.

The broad mandate, however, was not solely the product of external input, with similarly-inclined domestic actors likewise playing a role in its initiation. Among my interview partners, there were strong concerns regarding a potential counter-revolution: ‘We now have the revolution and the counter-revolution, and the counter-revolution has a lot of power, a lot of means.’<sup>38</sup> Old-regime actors seemed emboldened to return to the political scene.<sup>39</sup> A far-reaching TJ project was thus favoured, for one, in the hopes it would help consolidate post-revolutionary power structures and prevent this ‘old regime’ from

returning to positions of power. Another reason lay in its striving for the ‘attainment of perfection’ (Hehir 2011, 1078). Civil society actors, especially, saw the aim of designing a current-trend-informed ‘perfect’ TJ project for Tunisia as characterized with a degree of virtue that, in some regards, cast them as a vanguard: ‘We wanted Tunisia to be an example.’<sup>40</sup> Given civil society’s heavy involvement in initial consultations and law-drafting, these actors certainly contributed to the eagerness of establishing such an ambitious TJ process. Thus, although the problems addressed and the measures applied did indeed fit the Tunisian context (and not only the capacities of international transitional justice professionals) the lack of attention given to limited domestic institutional capacity also led to a precarious ‘problem-capacity-nexus’.

### ‘Hyper-real’ ambitions and limited capacities

From the commission’s outset, there was little confidence among members of the government, and even truth commissioners themselves, that the TDC would be able to fulfil its vastly ambitious mandate. One minister expressed such scepticism in an interview made shortly after the commission had begun operations: ‘This is tedious work. I don’t see how they want to finish this gigantic work.’<sup>41</sup> Moreover, a former truth commissioner, interviewed shortly after her resignation from the commission, criticized the mandate’s inclusion of corruption as too much for the commission to handle, preferring instead a mandate of narrower focus – one that conformed less to a holistic ideal of transitional justice and focused instead on its core business:

Look, I give you the example of corruption. [...] I don’t understand why corruption is effectively put on the back of the TDC. That means, the TDC should simply take care of victims of repression, in my opinion, because the mandate is just too heavy.<sup>42</sup>

The task of proposing economic reforms, a task explicitly mentioned in the 2013 Law, provides another overburdening example, whose scope one truth commissioner criticized as ‘too broad’ for the commission. Although the ‘economic transition’ is often mentioned as one of Tunisia’s biggest post-revolutionary challenges,<sup>43</sup> this commissioner saw the link between economic reforms and the victims’ cases as unclear; one could hardly combine the task of proposing economic reforms in the sense of economic models – he cited neo-classic, Keynesian and Marxist models – with the other tasks of the TDC, he believed.<sup>44</sup> In general, he considered that he and his fellow commissioners lacked sufficient guidance from the legislature on how to interpret the law, as many tasks remained blurry.<sup>45</sup> Moreover, one politician remarked that ‘a bit of populism’ underscored the economic question’s inclusion in the TJ project, given its unlikeliness to prove any systematic marginalization.<sup>46</sup>

A similar dynamic has underscored reform of the judiciary, a Tunisian institution plagued by persisting perceptions of corruption and innate resistance to reform. Indeed as a TJ-responsible representative of the justice ministry stated, ‘The problem is in the whole justice system,’<sup>47</sup> with former justice minister Mohamed Salah Ben Aissa himself going so far as to question the judiciary’s independence because ‘reforms do not bear fruit immediately [and] the old judges of the dictatorship are still in place,’<sup>48</sup> As such, institutional reform was considered essential for Tunisia’s TJ process.<sup>49</sup> By law, the TDC was also tasked with making recommendations on vetting and future

institutional reform. A truth commissioner questioned whether this would be both doable within the mandated timeframe and compatible with reform plans emanating from the political bodies (executive or legislative).<sup>50</sup> Moreover, one interview partner, a staff member from the Ministry for relations with constitutional institutions and civil society, indicated that reforms were indeed planned to ensure that the state ‘functions better [and] more justly’<sup>51</sup> but that vetting should play no part in them. This implies that the untrustworthy personnel would still occupy decision-making positions and, likewise, that TJ would have overclaimed.<sup>52</sup>

Interview partners additionally noted both the (perceived) slow progress of the TJ process, and the commission’s choosing to organize consultations, roundtables and conferences when it instead should have been advancing other activities (so they argued, without further specification):<sup>53</sup> ‘In any case, we expect them to advance much better and at a much faster pace.’<sup>54</sup> This perception of the truth commission as working slowly and using its funds for representative functions, rather than focusing on its core tasks, could be interpreted as a lack of will or capacity for ‘real’ change. A civil society representative remarked:

Unfortunately, so far, what we have noticed is ... that there are problems with transitional justice for us, essentially with regard to reforms. [...]. The two important institutions [that were] responsible for human rights violations are the security institution and the judicial institution. Unfortunately, what we have noticed so far is that there has not been much change in the legislation of these institutions. There has been no change in the structures of these institutions; there have only been conferences and some outreach towards NGOs [...]. That is why we’ve found that there has been a great delay regarding the change.<sup>55</sup>

In a similar vein, the wide-ranging mandate also made it difficult for external observers to assess the work of the TDC as it progressed.<sup>56</sup> The commission was therefore frequently said to be mismanaging its budget and failing to use its funds effectively.<sup>57</sup> A truth commissioner mentioned that the commission was even accused, by at least one victim, of profiting from the victims’ predicament: ‘[...] you take money from UNDP and do business with our cause’.<sup>58</sup>

Looking briefly beyond the TDC, one can observe a similar lack of task- and expectation-related capacities in the Specialized Chambers, which are yet to conclude a case, despite taking on its first in mid-2018. The World Organisation Against Torture (*Organisation Mondiale Contre la Torture*, OMCT) reports the chambers to have been ‘overwhelmed with files’ (OMCT 2020, 14; my translation) to the extent they are unable to cope with the number of cases. The International Commission of Jurists similarly notes their limited capacity, which influences how many TDC cases they can assume, thus restricting access to this aspect of TJ (International Commission of Jurists 2017, 6).<sup>59</sup> With regard to reparations, the TDC has indeed sent out decision letters, even after its mandate’s official end, and in theory a reparations fund exists. But as mentioned above, to my knowledge, there is no actual reparations programme being implemented as of yet.<sup>60</sup> In a recent conversation, a TJ professional worried that decision letters sent out in a careless manner, without proper explanation and follow-up on how to potentially access reparations, would bring about more harm than good.<sup>61</sup>

To summarize: TJ commitments were perceived by interview partners as unachievable and as having populist appeal, perceptions exacerbated by the TJ process’s perceived lack

of progress, as judged against its heavy mandate. Of particular note is that goals were perceived as unattainable by both those involved in the project's establishment, and those mainly responsible for its implementation (i.e. truth commissioners).

During follow-up research via phone and skype in May/June 2020, several TJ professionals singled-out the mandate's overloading as a salient problem in Tunisia's TJ process. This process would indeed provide insights for 'understanding the limits of transitional justice'.<sup>62</sup> Asking interlocutors for feedback (cf. Miles, Huberman, and Saldaña 2014, 295) on my finding that TJ has become better at identifying problems but not yet at finding suitable avenues for addressing said problems, they agreed.<sup>63</sup>

Moreover of note, during research conducted after the TDC's termination, one TJ professional mentioned that 'the commission operated as if they were operating in a vacuum', ignoring 'so much (that) has been done outside of transitional justice'.<sup>64</sup> This ties in with Kerr's observation that 'transitional justice can only *contribute* to the solution to these problems [of socio-economic inequality and corruption]; it lacks capacity to solve them alone (Kerr 2017, 131; my emphasis).

Taking a brief look back at the 2017 report, de Greiff (like others beforehand) laments a 'lack of theory' in TJ and 'serious functional analysis of what the familiar transitional justice tools are good for' (UN Human Rights Council, 16). I would contend that there is not so much a lack of theory that informs TJ, but rather an insular understanding that misses theoretical (and practical) connections to questions of political change and state capacities in other areas.

## Concluding remarks

In sum, this article discussed the potential repercussions that may accompany a holistic approach to TJ in practice. Taking post-revolutionary Tunisia as its empirical subject, it illustrated how the objective of pursuing as much justice as possible, and therefore addressing relevant justice problems, led to the overloading of a project limited in time, capacity, and resources.

To begin, this article explored how the 'justice industry' and its dominant dogmas influence transitional justice processes and how this contributes to favouring holistic/ambitious mandates. I then introduced the notion of a skewed problem-capacity-nexus evolving from a holistic approach to TJ, whereby, in Tunisia, the problems addressed and the measures chosen as part of such an approach indeed fit the Tunisian context as well as the repertoire of TJ professionals, but not necessarily the capacities of the institutions in the transitional state.

After the fall of Ben Ali's regime in 2011, TJ professionals mostly favoured a holistic approach for Tunisia. Since this was also in the interest of (some) domestic Tunisian actors, it benefitted the introduction of far-reaching efforts and an expansive mandate orienting the newly established TJ institutions. Although well-suited to the justice problems in transitional Tunisia, this far-reaching mandate did not account for the limited capacity of these institutions. Indeed, as illustrations from field research showed, even truth commissioners themselves perceived the mandate to be overwhelming, with its inclusion of corruption and socio-economic issues, alongside the objective to formulate (and eventually implement) institutional reforms in a timely manner, leading to it being regarded as too ambitious, expansive and impracticable. Moreover, in the mandate's

actual rendering in practice, the TDC was perceived as progressing too slowly through its heavy agenda. With such observations, the article empirically illustrated the risk of creating the impression that TJ institutions will fail to deliver on promises made.

This finding represents a dilemma, as many actors involved in Tunisia's TJ process, both those Tunisian and international, would still consider striving to address as many justice issues as possible as normatively 'right'. I could sense a general agreement among TJ professionals that leaving out the socio-economic dimension in Tunisia would be a mistake. Notwithstanding the problems emerging from the broad mandate outlined here, both while the transitional justice process was ongoing and in hindsight, socio-economic marginalization was such an integral part of Tunisia's legacy of repressive rule, interwoven with the general lack of civil liberties.<sup>65</sup>

Thus, while TJ's last decade appears to reflect learning regarding the address of relevant problems, the field is still yet to find suitable ways and institutional formats for actually doing so. There seems to be intrinsic tension between the *justice* and the *transition* part of transitional justice: The tension between the objectives of addressing the broadest possible range of issues relating to justice, on the one hand, and capacities in the transitional state, on the other. As a consequence, transitional justice, as statebuilding, would need to become 'more politically savvy' (Bell 2017, 31) and take better into account the particular challenges that come along with a political transition in a conflictive context.

As mentioned before, I do not want to argue for returning to less ambitious approaches or refocussing on 'core tasks' of transitional justice. In this vein, one suggestion for a way forward in research and practice could be to further work towards overcoming the 'insular' tendencies of transitional justice and try to better harness cooperative avenues in the transitional state, e.g. within other policy fields and political institutions, to work towards political and social change.

## Notes

1. This number includes interviews on TJ in Tunisia and in general.
2. For example, an event with members of the Tunisian Truth and Dignity Commission in Germany; these conferences contributed to my overall understanding of how truth commissioners understood their task, presented their work in public and provided opportunities for informal conversations.
3. I loosened up my interviewing strategy from semi-structured (using a pre-prepared interview guide) to topic-based, as I could secure more extended interviews and thereby improve data quality with this more open format. Interviews were mostly conducted in French, some of them in English, and few with impromptu, non-professional translation from Arabic into English or French. I was able to record the majority of my interviews, which were then mostly transcribed by two research assistants.
4. The complete cycle did, therefore, not include the data collected in 2019 and 2020. For coding, I mainly relied on coding principles laid out by Miles, Huberman, and Saldaña (2014).
5. Next to the debates that are shaped by normative considerations about what transitional justice should address, do and achieve, there is a strand of scholarship that quantitatively analyses the effect of different transitional justice measures and their combination. These studies find that some combinations work better towards achieving the goals of contributing to peace, human rights and democracy than others (see e.g. Olsen, Payne, and Reiter 2010). Consequently, they do not argue for a holistic, all-encompassing approach.
6. In Tunisia, de Greiff and his ideas have played an essential role in shaping perceptions on what transitional justice should do and achieve (cf. Salehi 2019).

7. Remote participation in web-seminar taking place on 12 December 2019 in Geneva; see also <https://www.ictj.org/es/node/24384> (last accessed 13 December 2019).
8. Or what Dustin Sharp calls 'critical one-upmanship' (Sharp 2019, 582).
9. Personal interview with transitional justice professional, Washington, DC, May 2019
10. Personal conversation with representative of an international organization, New York, May 2019.
11. See also Kerr (2017, 118) on how the expansion of TJ goals and measures went along with the integration of TJ into peacebuilding.
12. McAuliffe does not make explicit whether he only considers 'internationals' to be transitional justice actors, as he juxtaposes the term with 'domestic elites' (McAuliffe 2017, 256). In my understanding, this category would include domestic actors.
13. See also Rachel Kerr's argument that transitional justice is costly and may be perceived as a 'luxury' (Kerr 2017, 124) in contexts, in which problems and economic grievances are manifold.
14. Personal interview, Tunis, March 2015. Note that there is also critique towards a perspective that is ignorant towards previously existing institutions and their potential strengths (e.g. from a transitional justice professional in a phone interview, May 2020).
15. Lamont, Quinn, and Wiebelhaus-Brahm (2019, 117) argue that the ministry served to lock-in political preferences. According to Andrieu (2016, 281), the ministry should have played mainly an organizing and mediating role in the process, however it would eventually play a significant role in the consultations leading to the drafting of the law. Especially some parts of civil society were critical about the establishment of a transitional justice ministry, since they saw the danger of the issue being instrumentalised for a particular political agenda (personal interviews, Tunis, May 2014 and October 2015). With the government reshuffle in early 2014, under an interim technocratic government, the ministry was dissolved shortly after the TJ law was passed and even before truth commissioners were nominated and the transitional justice portfolio was integrated into the Ministry of Justice. The responsible *chargé de mission* stayed on until his service was ended by governmental decree in mid-2015.
16. Personal interviews e.g. with representative of the Ministry of Justice (Tunis, March 2014) and a former minister (Tunis, October 2015).
17. Meaning, as a consequence, that the TJ process it arranged for is to a likewise extent exclusionary.
18. Organic Law on Establishing and Organizing Transitional Justice, an unofficial translation provided by the International Center for Transitional Justice is available here: <https://www.ohchr.org/Documents/Countries/TN/TransitionalJusticeTunisia.pdf> (last accessed 28 January 2020).
19. Article 8 of the TJ law provides for the establishment of the Specialized Chambers within courts of first instance to deal with cases of gross violations of human rights, as well as other cases referred to by the TDC, for example dealing with financial corruption, misuse of public funds or electoral fraud. While the Chambers were formally established by presidential decree in 2014, the first hearing took only place in mid-2018 in the Chamber in Gabès, one of thirteen Chambers that are operational. For brief references to struggles/problems of the Chambers see page 27 and footnote 59.
20. Article 41 of the TJ law provides for the establishment of a 'Fund for the Dignity and Rehabilitation for Victims of Tyranny', which was eventually established with the law for the 2019 state budget. The Tunisian state has pledged 10 million Tunisian Dinar to the fund, which is about 3 million euros. For a brief discussion of the current state of the reparations programme, see page 28 and footnote 60.
21. To my knowledge, the reparations fund exists in theory, but not yet in practice.
22. Among others, the quoted contributions to the Special Issue on transitional justice and peacebuilding aim at challenging this condition.
23. In its final report, the TDC names the establishment of an 'organic connection [...] between tyranny and corruption' (Truth & Dignity Commission 2019, 7) as a central contribution of



- Tunisia's TJ process as well as 'the unprecedented exhaustiveness that distinguishes it from other comparative experiences' (Truth & Dignity Commission 2019, 28).
24. The TDC claims to have had the full extension in its final report (Truth & Dignity Commission 2019, 34).
  25. Truth commissioner resignations and dismissals remained a continual feature of the TDC across its lifespan.
  26. Especially in its early years, the TDC requested a much larger budget than that granted by parliament. In a personal interview, a staff member of the TDC, as well as a truth commissioner, complained about the budget arriving late, which would hinder the commission in hiring staff, renting locations, etc. and therefore in properly doing its work. Tunis, March 2015.
  27. Initial plans to establish regional offices in all 24 governorates could not be realized due to budget limitations (Truth & Dignity Commission 2019, 48; these difficulties were also mentioned in personal interviews with truth commission members and staff in Tunis, Gafsa and Kasserine).
  28. According to several transitional justice professionals the report has been altered various times after being uploaded on the TDC's website, without the agreement of all commissioners. Phone interviews, May/June 2020.
  29. Several personal interviews with politicians and civil society representatives, Tunis, 2014–2015.
  30. Personal interview with a lawyer (an outspoken critic of the TDC), Tunis, August 2016.
  31. To be sure, this is not the only criticism the TDC faced. Other issues, such as the perception that the TDC's composition was a result of favouritism and/or cronyism and that it was therefore perceived to be partisan and politicized, are beyond the scope of this article.
  32. Some conversations were not set up as formal interviews and happened spontaneously, but all conversations I am drawing on here clearly evolved against the backdrop of my research interests and my interlocutors were aware of them.
  33. Personal interviews/conversations with staff members of a large international transitional justice NGO; New York, April 2015.
  34. Personal conversation with transitional justice professional, Tunis, March 2015.
  35. Personal interview with transitional justice professional, New York, April 2015. This point was reiterated by another transitional justice professional from a different organization in May 2020.
  36. See for example Fukuyama (2011) on 'getting to Denmark'.
  37. Personal interview, New York, April 2015
  38. Personal interview with politician, NCA member, Tunis, April 2014.
  39. Personal interview with civil society representative, Tunis, May 2014.
  40. Personal interview with director of civil society organization, Tunis, May 2014.
  41. Personal interview with government minister, Tunis, March 2015.
  42. Personal interview, former truth commissioner, Tunis, March 2015.
  43. E.g. Personal interview with ARP member, Tunis, March 2015.
  44. Personal interview with truth commissioner, Tunis, March 2015
  45. Personal interview with truth commissioner, Tunis, March 2015.
  46. Personal interview with politician, NCA member, Tunis, April 2014.
  47. Personal interview, Tunis, April 2014.
  48. Personal interview, Tunis, March 2015
  49. Personal interview with civil society representative, Tunis, March 2015.
  50. Personal interview with truth commissioner, Tunis, March 2015.
  51. Personal interview with ministerial staff member, Tunis, March 2015.
  52. This was also warned for in the report on Special Rapporteur de Greiff's 2012 mission to Tunisia (UN Human Rights Council 2013).
  53. Personal interview with truth commissioner, Tunis, March 2015.
  54. Personal interview with ARP member, Tunis, March 2015; own translation.
  55. Personal interview with civil society representative, Tunis, March 2015.

56. The problem was home-made to some extent, due to a lack (of will) of the TDC communicating its work. Several personal observations and conversations in Tunisia, Germany, and the US, 2014–2019.
57. Informal conversation with Tunisian journalist, Tunis, March 2015
58. Victim quoted by truth commissioner in an interview, Tunis, March 2015. Original source of comment is unknown.
59. A main challenge is that the Specialized Chambers do not manage to have the accused present at many of the court hearings, since there is a lack of cooperation by the security services. Concerns voiced by interlocutors (phone interviews in May/June 2020) about whether the chambers meet legal standards are beyond the scope of this article.
60. There was some hope that the government of Elyes Fakhfakh, that was in power from February to September 2020, would drive forward the TJ process. In fact, civil society representatives mentioned in recent interviews that they were quite satisfied with the then-head of the Ministry of Human Rights and Relations with Constitutional Bodies and Civil Society, Ayachi Hammami. They had the impression that he took the issue seriously and things were moving forward (phone interviews, September 2020). Indeed, a commission to manage the Dignity Fund was set up in July 2020. However, according to recent reports the new government that is in power since September 2020 has stalled the process again (Belhassine 2020), which corresponds with the impression of my interview partners.
61. Phone interview, May 2020.
62. Phone interview, May 2020.
63. Phone interviews, May 2020.
64. Phone interview, May 2020.
65. Several personal conversations, in Tunisia, the US and Germany 2014–2019.

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