

More than Misfortune: Recognizing Natural Disasters as a Concern for Transitional Justice

Megan Bradley*

ABSTRACT[∞]

Natural disasters are often characterized by gross human rights violations, yet these injustices are rarely acknowledged and addressed through transitional justice processes. Do systematic abuses in disaster contexts fall within the scope of transitional justice? In exploring this question, this article draws attention to a facet of injustice that has been ignored, arbitrarily discounted or inadvertently effaced. I suggest that misperceptions about natural disasters as inevitable, blameless misfortunes perpetuate neglect, in theory and in practice, of injustices associated with natural disasters, and draw on insights from the disaster studies literature to challenge this exclusion. Engaging concrete examples of recent disasters to ground my theoretical claims, I contend that egregious, systematic abuses associated with natural disasters may represent significant concerns for transitional justice.

KEYWORDS: natural disasters; scope of transitional justice; misfortune; disaster response, recovery and reconstruction

INTRODUCTION

In May 2008, Cyclone Nargis ravaged Myanmar's Irrawaddy Delta, killing over 138,000 people and displacing some two million, many in areas involved in armed opposition to the government. The death toll and the survivors' suffering were exacerbated by the regime's initial refusal to allow international aid for its rebellious citizens, a denial French Foreign Minister Bernard Kouchner decried as a crime against humanity.¹ Ten days later, a 7.9 magnitude earthquake in China's Sichuan province took almost 90,000 lives, many of them children crushed in schools that, owing to government corruption, were not built to minimum safety standards. Mourning parents seeking acknowledgement and redress have been subject to state harassment

* Assistant Professor, Political Science and International Development Studies, McGill University, Montreal, Quebec, Canada. Email: megan.bradley@mcgill.ca

[∞] This work was supported by the Social Sciences and Humanities Research Council of Canada and the Fonds de recherche du Québec – Société et culture. My sincere thanks to Mohamed Sesay, Catherine Lu and the *Journal* reviewers and editors for their valuable suggestions. Francesca Humi provided valuable research assistance.

¹ Gabriella Blum and Natalie Lockwood, 'Earthquakes and Wars: The Logic of International Reparations,' in *Jus Post Bellum and Transitional Justice*, ed. Larry May and Elizabeth Edenberg (Cambridge: Cambridge University Press, 2013).

and arbitrary detention.² When Hurricane Katrina hit New Orleans in August 2005, levee failures led to the flooding of 80 percent of the city. An estimated 1,245 people died, while thousands more – predominantly black residents without resources to ‘self-evacuate’ – were stranded for days on rooftops, bridges and in the city’s football stadium. After the floodwaters receded, thousands of evacuees – again, predominantly poor and black – were denied the minimum assistance needed to return and reestablish themselves.³ In the media and in insurance industry parlance, natural disasters are often termed ‘acts of God,’ yet the suffering in these cases was not a matter of mere misfortune or divine malevolence, but of massive violations of human rights.

Over the past 30 years, transitional justice – understood here as efforts to ‘redress the legacies of massive human rights abuses’ with the mediate aims of recognizing victims and nurturing civic trust – has evolved into a major field of research and practice.⁴ Recent decades have also witnessed increased rates of devastating natural disasters. Between 1994 and 2013, 1.35 million people died in over 6,870 natural disasters, which affected an average of 218 million people each year.⁵ While disasters inevitably entail losses, many are also characterized by grave injustices: vulnerability to disasters disproportionately falls on the poor and marginalized, and postdisaster contexts often see systematic rights violations and amplify preexisting injustices, sometimes catalyzing major social upheavals.⁶ Yet the violations that often characterize these catastrophes are rarely acknowledged and addressed through transitional justice processes and few scholars have questioned this exclusion.⁷

Do widespread, grave abuses in disaster and postdisaster contexts fall within the scope of transitional justice? In exploring this question, I aim to contribute to the growing literature on the proper scope of transitional justice⁸ by drawing attention to a facet of mass injustice that has been ignored, arbitrarily discounted or inadvertently effaced. I suggest that misperceptions about natural disasters as inevitable, blameless misfortunes contribute to the neglect, in theory and in practice, of injustices associated with natural disasters, and draw on insights from the disaster studies

2 Amnesty International, *Justice Denied: Harassment of Sichuan Earthquake Survivors and Activists* (2009).

3 Rachel Luft and Davida Finger, ‘No Shelter: Disaster Politics in Louisiana and the Struggle for Human Rights,’ in *Human Rights in the United States: Beyond Exceptionalism*, ed. Shareen Hertel and Kathryn Libal (Cambridge: Cambridge University Press, 2011).

4 Pablo de Greiff, ‘Theorizing Transitional Justice,’ in *Transitional Justice: NOMOS LI*, ed. Melissa S. Williams, Rosemary Nagy and Jon Elster (New York: New York University Press, 2012), 40.

5 Centre for Research on the Epidemiology of Disasters, *The Human Cost of Natural Disasters 2015: A Global Perspective* (2015).

6 Gregory Button and Mark Schuller, ‘Introduction,’ in *Contextualizing Disaster*, ed. Gregory Button and Mark Schuller (Oxford: Berghahn, 2016); Reed Wood and Thorin Wright, ‘Responding to Catastrophe: Repression Dynamics Following Rapid-Onset Natural Disasters,’ *Journal of Conflict Resolution* 60(8) (2016): 1446–1472.

7 For an exception focusing on social repair in disaster recovery, see, Omer Aijazi, ‘Social Repair and Structural Inequity: Implications for Disaster Recovery Practice,’ *International Journal of Disaster Resilience in the Built Environment* 6(4) (2015): 454–467.

8 See, e.g., Zinaida Miller, ‘Effects of Invisibility: In Search of the “Economic” in Transitional Justice,’ *International Journal of Transitional Justice* 2(3) (2008): 266–291; Diana Sankey, ‘Towards Recognition of Subsistence Harms: Reassessing Approaches to Socioeconomic Forms of Violence in Transitional Justice,’ *International Journal of Transitional Justice* 8(1) (2014): 121–140.

literature to challenge this exclusion. Engaging Judith Shklar's work on injustice and misfortune, Pablo de Greiff's influential theorization of transitional justice, and concrete examples from recent disasters to ground my claims, I contend that transitional justice scholars and practitioners should acknowledge and encourage the growing interest amongst policy makers and disaster-affected community members in accountability and redress for mass injustices associated with natural disasters. Rather than casting disaster response as simply a question of apolitical humanitarianism, mass abuses associated with natural disasters should, empirically and normatively, be recognized as potential concerns for transitional justice.

I proceed by first discussing conceptualizations of disaster. After highlighting the emerging links between natural disasters and the pursuit of redress, I explore disasters as sites of mass injustice. That is, I draw on the disaster studies literature to examine disasters as products of preexisting structural injustices, and manifestations of injustice in prevention and mitigation failures. I also address systematic injustice in disaster response, and postdisaster struggles for redress. I then explain how a disaster may represent, in de Greiff's terms, a 'very imperfect world' characterized by 'massive rule breakdown and great risks to the institutions that attempt to overcome such breakdowns' – in other words, a context in which transitional justice has a distinct role.⁹ I then preliminarily discuss some of the contributions transitional justice mechanisms may make to redressing injustices associated with disasters. In closing, I broach some of the challenges and risks inherent in locating mass injustices associated with disasters within the scope of transitional justice.

To clarify, my argument is not that conceptions of transitional justice need to be expanded to accommodate egregious violations in disaster contexts, but that in some circumstances transitional justice approaches and mechanisms may have valuable contributions to make in responding to such violations. By questioning assumptions about these disasters as misfortunes in light of insights from the disaster studies literature, it becomes clear that disasters characterized by large-scale rights violations may fall within the scope of transitional justice. My view is not that there are no practical and moral differences between the losses and harms that befall disaster victims and calamities like war and authoritarian violence. Equally, I do not contend that transitional justice is *necessarily* relevant after every disaster, or that it is more important than other (related) aspects of postdisaster justice, such as distributive justice. Phenomena such as earthquakes may involve extensive destruction and suffering, but if appropriate prevention and mitigation efforts were undertaken, and emergency response and reconstruction processes were effectively implemented without systematic rights violations, transitional justice simply may not be germane. My concern is with those unfortunately abundant cases in which natural phenomena are intertwined with widespread rights violations that exacerbate victims' suffering and that demand redress. Some persuasively argue that aiding disaster victims is an obligation or a matter of justice.¹⁰ Yet a distinction can be drawn between a general duty to aid

9 De Greiff, *supra* n 4 at 64. Recognizing that transitional justice has a role in such contexts does not necessarily entail external intervention.

10 See, e.g., Laura Valentini, 'Justice, Charity and Disaster Relief: What, if Anything, Is Owed to Haiti, Japan and New Zealand,' *American Journal of Political Science* 57(2) (2013): 491–503.

disaster victims, and the application of transitional justice mechanisms to redress violations that led to the disaster and/or unfolded in the context of responding to it. I am concerned with the latter challenge. Climate change raises complex questions around, inter alia, assigning responsibility for and attempting to remedy intergenerational harms with diffuse causes and consequences, questions that transitional justice scholars and practitioners may be well placed to help illuminate.¹¹ However, in this initial exploration I set aside debates related specifically to climate change. I also largely set aside ‘human-made’ disasters such as nuclear meltdowns and focus on disasters linked to natural hazards because of the particular misconceptions surrounding the suffering attending them as misfortune rather than injustice. However, such cases certainly merit further examination.

CONCEPTUALIZING DISASTERS: A MORAL AND POLITICAL UNDERTAKING

The International Federation of the Red Cross and Red Crescent Societies defines a disaster as

a sudden, calamitous event that seriously disrupts the functioning of a community or society and causes human, material, and economic or environmental losses that exceed the community’s or society’s ability to cope using its own resources.¹²

While such terse definitions may be operationally useful, disaster remains a fundamentally contested concept.¹³ Generally speaking, however, in disaster studies, disasters are distinguished from natural hazards and are understood as socially constructed products of historically rooted structural inequalities, in which vulnerability disproportionately falls on those who are already marginalized.¹⁴ This view recognizes that ‘disasters occur in societies. They do not occur in nature.’¹⁵ Although disasters are disruptive, destabilizing forces, portrayals of disasters as nonroutine can be misleading as disasters – just as with war and other traditional concerns for transitional justice – cannot be understood in isolation from ‘the normal order.’¹⁶ Rather, they are artefacts of this very order.¹⁷

11 On this issue, see, e.g., Sonja Klinsky, ‘Why Explore “Transitional Justice” in the Climate Context?’ *Climate Strategies*, 2016, <http://climatestrategies.org/wp-content/uploads/2016/10/Why-Explore-Transitional-Justice-in-the-Climate-Context.pdf> (accessed 5 August 2017). See also the flourishing literatures on climate justice and environmental justice. While compensation is a major theme in these literatures, these bodies of work and transitional justice scholarship remain surprisingly disconnected.

12 Controversially, this definition excludes ‘slow onset’ disasters such as desertification and rising sea levels. See, International Federation of Red Cross and Red Crescent Societies, ‘What Is a Disaster?’ <http://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/what-is-a-disaster/> (accessed 5 August 2017).

13 On this contestation, see, e.g., Michael Guggenheim, ‘Introduction: Disasters as Politics – Politics as Disasters,’ *Sociological Review* 62(S1) (2014): 1–16.

14 See, e.g., Button and Schuller, *supra* n 6; Aijazi, *supra* n 7.

15 Anthony Oliver-Smith, ‘“What Is a Disaster?”: Anthropological Perspectives on a Persistent Question,’ in *The Angry Earth: Disaster in Anthropological Perspective*, ed. Anthony Oliver-Smith and Susanna Hoffman (London: Routledge, 1999), 28.

16 *Ibid.*, 23.

17 Edward Woodhouse, ‘Conceptualizing Disasters as Extreme Versions of Everyday Life,’ in *Dynamics of Disaster: Lessons on Risk, Response and Recovery*, ed. Rachel Dowty and Barbara Allen (London: Earthscan, 2011).

Understanding natural disasters thus requires empirical appreciation of the interplay between natural hazards, power relations and patterned vulnerabilities. Conceptualizing disaster is also a moral and political undertaking in which judgments are made, implicitly or explicitly, about the extent to which the situation is a misfortune or an injustice. Assessments about misfortune and injustice affect perceptions not only about the onset and unfolding of the disaster itself, but also of responses to it through recovery and reconstruction processes. The initial assessment that an event like a typhoon is a misfortune not caused by humans can efface the structural injustices that amplify already marginalized populations' vulnerability to disaster, and state risk reduction failures. When events such as the 2010 Haiti earthquake are framed as bad luck, however catastrophic, objections to flagrant injustices in the response and reconstruction processes struggle to gain traction as they run against hegemonic narratives, including framings of disasters as misfortunes.¹⁸ Yet, as Shklar argues, 'the line of separation between injustice and misfortune is a political choice, not a simple rule that can be taken as a given.'¹⁹ Disasters involve but are not simply a matter of misfortune, a point that becomes clear if one is attuned to historical context and responsive to victims' perspectives.²⁰ 'The difference between misfortune and injustice,' Shklar writes,

frequently involves our willingness and our capacity to act or not to act on behalf of the victims, to blame or to absolve, to help, mitigate, and compensate, or to just turn away. The notion that there is a simple and stable rule to separate the two is a demand for moral security, which like so many others, simply cannot be satisfied.²¹

As Gregory Button and Mark Schuller reflect, for many disaster victims, the 'assignment of blame and responsibility often becomes an integral part of [their] struggle to find meaning' after catastrophe.²² Yet for the most part, the field of transitional justice has unquestioningly categorized natural disasters (to the extent that they are considered at all) as blameless misfortunes outside its scope, overlooking victims' efforts to pursue redress for the injustices they experience. For example, in her defence of subsistence harms as a concern for transitional justice, Diana Sankey defines these harms as resulting from direct human agency. She recognizes

18 On disaster narratives, see, e.g., Gregory Button, 'Popular Media Reframing of Man-Made Disasters: A Cautionary Tale,' in *Catastrophe and Culture: The Anthropology of Disaster*, ed. Anthony Oliver-Smith and Susanna Hoffman (Santa Fe, NM: School of American Research Press, 2002).

19 Judith Shklar, *The Faces of Injustice* (New Haven, CT: Yale University Press, 1992), 5.

20 On the role of historical context in shaping how disasters are 'read,' see, LaKisha Michelle Simmons, "'Justice Mocked": Violence and Accountability in New Orleans,' *American Quarterly* 61(3) (2009): 477–498.

21 Shklar, *supra* n 19 at 2. Shklar's language problematically suggests a predominantly passive role for disaster victims and that assistance efforts are positive and welcome. Disaster victims typically take the lead in their own recovery, whereas aid can sometimes have negative and even catastrophic consequences. See, Mark Schuller, *Humanitarian Aftershocks in Haiti* (New Brunswick, NJ: Rutgers University Press, 2016). However, Shklar's observation remains prescient that nonvictims' recognition of an event as an injustice rather than simple misfortune often depends on a willingness to listen and respond to victims.

22 Button and Schuller, *supra* n 6 at 4.

that mass starvation and displacement may occur in the context of natural disasters, but can also be purposefully engineered, arguing that in these instances ‘traditional perceptions [of starvation and displacement as consequences of natural disasters] obscure the existence of the harm.’²³ However, such traditional perceptions of *natural disasters* as blameless misfortunes can also obscure the harms of starvation and displacement in disaster contexts. In the following sections I draw on insights from the disaster studies literature to examine how, in many disasters, environmental phenomena outside human control intermingle with harms caused directly and indirectly by humans, such as relegating marginalized groups to live in high-risk areas, denying or preferentially distributing lifesaving aid, and refusing to allow or help uprooted people to return and rebuild their homes. That these harms do not purely result from human hands should not exclude them from consideration from the perspective of transitional justice.

CONTEXT: INCREASING LINKS BETWEEN ACCOUNTABILITY, TRANSITIONAL JUSTICE, AND DISASTERS

While there has been little focused discussion of the potential role of transitional justice in responding to injustices in disaster contexts, several developments point to growing interest in this issue. First, in terms of the academic literature, within disaster studies a considerable body of work now addresses injustices in particular disasters such as Hurricane Katrina.²⁴ Although this literature rarely engages with transitional justice per se, its exploration of processes such as victim mobilization, commemoration and social repair provides promising potential entry points for new conversations between the fields of disaster studies and transitional justice.²⁵ Within transitional justice scholarship, there is increased attention to famines, crises which reflect how environmental conditions can intertwine with structural inequalities and predatory policies to catastrophic effect. This work could serve as a springboard for broader engagement among transitional justice scholars and practitioners with harms that have anthropogenic and environmental dimensions.²⁶

23 Sankey, *supra* n 8 at 129.

24 See, e.g., Rachel Luft, ‘Beyond Disaster Exceptionalism: Social Movement Developments in New Orleans after Hurricane Katrina,’ *American Quarterly* 61(3) (2009): 499–527; Luft and Finger, *supra* n 3; Chester Hartman and Gregory Squires, eds., *There Is No Such Thing as a Natural Disaster: Race, Class, and Hurricane Katrina* (New York: Routledge, 2006); Benjamin Morris, ‘Hurricane Katrina and the Arts of Remembrance,’ in *Moment to Monument: The Making and Unmaking of Cultural Significance*, ed. Ladina Bezzola Lambert and Andrea Ochsner (London: Transaction, 2009).

25 See, e.g., Omer Aijazi, ‘Theorizing a Social Repair Orientation to Disaster Recovery: Developing Insights for Disaster Recovery Policy and Programming,’ *Global Social Welfare* 2(1) (2015): 15–28.

26 See, e.g., Randle DeFalco, ‘Accounting for Famine at the Extraordinary Chambers in the Courts of Cambodia: The Crimes against Humanity of Extermination, Inhumane Acts and Persecution,’ *International Journal of Transitional Justice* 5(1) (2011): 142–158. Drought is not a necessary condition for famine. For instance, the starvation of millions in Ukraine’s Great Famine (Holodomor) resulted from calculated Soviet policies. However, in regions bordering Russia some attempted to explain the famine as ‘natural’ in order to undercut efforts to pursue accountability for the deaths as genocide, underscoring how the purported ‘naturalness’ or ‘unnaturalness’ of catastrophic events may be mobilized for political ends. See, Tatiana Zhurzhenko, ‘“Capital of Despair”: Holodomor Memory and Political Conflicts in Kharkiv after the Orange Revolution,’ *East European Politics and Societies* 25(3) (2011): 597–639.

Second, growing interest in accountability for harms associated with disasters is evident in various recent laws and policies. For instance, the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) addresses natural disasters as a driver of forced migration, providing in Article 12(3) that a

State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.²⁷

Standards such as the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons²⁸ and the 2010 Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons²⁹ stress that the resolution of displacement arising from both conflict and natural disasters requires redress, particularly in the form of property restitution or compensation. This attention is unsurprising given that forced migration is among the foremost challenges arising from massive disasters, and the increasing recognition of the need to integrate displaced populations into transitional justice processes.³⁰ Such frameworks may provide a foundation for the progressive development of guidelines and standards on accountability for harms experienced by other populations in postdisaster contexts.

Third, as discussed below, survivors of abuses in disaster contexts often understand themselves to be victims of injustices and seek redress, formally or informally, through mechanisms associated with transitional justice. Sceptics may argue that this is simply a misperception of victims' predicament. Yet as Shklar argues, there is no bright line between misfortune and injustice, and understanding the nature and experience of injustice requires taking disaster victims' perspectives seriously.

DISASTERS AS SITES OF INJUSTICE AND STRUGGLES FOR REDRESS

While it is often popularly assumed that disasters entail indiscriminate destruction, followed by apolitical relief and laudable attempts to 'build back better,' the disaster studies literature reveals many disasters as critical sites of injustice. In this section, I explore three key aspects of disasters as sites of injustice, and survivors' efforts to secure redress.

Disasters as Products and Amplifiers of Prior Injustices

Disaster scholars have long recognized that 'the most vulnerable of people end up taking the brunt of disasters resulting both from natural processes and from human

27 'African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),' https://au.int/sites/default/files/treaties/7796-treaty-0039_-_kampala_convention_african_union_convention_for_the_protection_and_assistance_of_internally_displaced_persons_in_e.pdf (accessed 5 August 2017).

28 UN Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

29 See, <http://www.unhcr.org/50f94cd49.pdf> (accessed 5 August 2017).

30 See, e.g., Roger Duthie, 'Transitional Justice and Displacement,' *International Journal of Transitional Justice* 5(2) (2011): 241–261; Megan Bradley, ed., *Forced Migration, Reconciliation and Justice* (Montreal: McGill-Queen's University Press, 2015).

activities.³¹ Almost two-thirds of disaster fatalities occur amongst the one-third of the global population living in low-income states. Per capita death rates in comparable disasters are almost four times higher in the global South than in the global North, where losses are tempered by more well-resourced emergency preparedness, risk reduction, response and healthcare systems. Income disparity has an equal or even more pronounced effect on exposure to direct and long-term harms in disasters compared to war, as the affluent can use their resources to, for example, acquire insurance and avoid or mitigate high-risk situations.³² In contrast, impoverished and marginalized populations are more likely to live in densely populated, hazard-prone areas, in housing unlikely to provide safe shelter in a disaster. For those already on the edge financially, the socioeconomic impacts of disasters can reverberate for years.

By increasing vulnerability to violence, hunger and homelessness, disasters can undercut survivors' ability to resist predatory actors looking to manipulate the post-disaster environment to their advantage.³³ For example, the 2004 Indian Ocean tsunami displaced thousands of families from coastal communities where they had lived for generations without formal tenure rights. In some instances, rather than facilitating their return and implementing appropriate disaster preparedness and mitigation strategies, their dispossession was entrenched as governments capitalized on their absence by turning the land over to resort developers.³⁴

Economic inequality and structural injustices have not been primary concerns for transitional justice.³⁵ However, these dynamics are essential to appreciating that disasters are not simply misfortunes and to situating disaster-related violations as injustices requiring remedy.

Risk Reduction, Prevention and Mitigation Failures as Injustices

Disaster risk is rising globally, as increasingly frequent and severe climate change-related events strike more densely packed communities. Disaster risk can be dramatically reduced through actions such as timely risk assessments, information sharing, and creating and implementing early warning systems and response strategies. However, in many cases even simple and affordable disaster risk reduction steps are not taken, with grievous consequences.³⁶ Notwithstanding transitional justice's typical concern with violations stemming from deliberate actions rather than omissions (and the possibility, epitomized by the denial of aid to Cyclone Nargis survivors, that injustices in disaster contexts may be intentional), massive harms arising from

31 Kai Erikson, *Everything in Its Path: Destruction of Community in the Buffalo Creek Flood* (New York: Simon and Schuster, 1978), vi–vii. See also, Ben Wisner, Piers Blaikie, Terry Cannon and Ian Davis, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (London: Routledge, 2004).

32 Blum and Lockwood, *supra* n 1; David Strömberg, 'Natural Disasters, Economic Development, and Humanitarian Aid,' *Journal of Economic Perspectives* 21(3) (2007): 199–222.

33 Jennifer Hyndman, *Dual Disasters: Humanitarian Aid after the 2004 Tsunami* (Sterling, VA: Kumarian Press, 2011).

34 Matt Weaver, 'Tsunami Victims Evicted by Developers,' *Guardian*, 1 February 2016, <https://www.theguardian.com/world/2006/feb/01/tsunami2004.internationalaidanddevelopment> (accessed 4 August 2017).

35 On the centrality of economic inequality and structural injustice to accountability, see, Miller, *supra* n 8.

36 Timothy Dixon, *Curbing Catastrophe: Natural Hazards and Risk Reduction in the Modern World* (Cambridge: Cambridge University Press, 2017).

egregious state negligence clearly merit redress from a moral perspective. Calls to redress these harms are backstopped by states' evolving legal obligations to reduce disaster risks.

Under international human rights law, there is no explicit right for individuals to benefit from state protection from disasters. Yet according to the International Law Commission, states are obliged to take appropriate measures to reduce disaster risks.³⁷ Actively creating risks or failing to act to reduce them constitute breaches of this duty. The legal duty to prevent and reduce disaster risk is rooted in part in human rights agreements, including the International Covenant on Economic, Social and Cultural Rights.³⁸ The notion that states bear primary responsibility for preventing and reducing disaster risk, and that this is directly connected to human rights protection, is reflected in the Sendai Framework for Disaster Risk Reduction 2015–2030. Endorsed by the UN General Assembly, the Sendai Framework aims to ensure the 'substantial reduction of disaster risk and losses in lives, livelihoods and health.'³⁹ The Framework does not have the power to ensure that states that fail to execute their prevention and risk reduction obligations can be held to account for this breach. However, this was hotly debated in the Framework negotiations, and the agreement broadly seeks to advance accountability by articulating the responsibilities of different actors, stressing the primary responsibility of the state.⁴⁰ Read in conjunction, human rights treaties, standards such as the Kampala Convention and the Sendai Framework support the notion that disaster victims may have legitimate claims for redress if states grossly neglected their duty to take steps to reduce disaster risks. In these cases, remedial efforts would 'correct not against the natural disaster as such but against the lack of adequate action by those who could have otherwise ameliorated the harm.'⁴¹

Legally and morally, the 2008 Sichuan earthquake underscores the importance of redress for violations arising from state failures to reduce disaster risks. In this case, thousands of children died in public schools that did not meet minimum seismic safety requirements, a result of government collusion in construction industry corruption. The nature of the disaster as an injustice requiring remedy is reflected in several works by Chinese dissident artist Ai Weiwei, amplifying parents' demands for recognition and redress. These include installations commemorating the names of the dead, and a giant snake made of backpacks like those carried by the crushed schoolchildren, evoking individual losses that together form a massive injustice. This case demonstrates that risk reduction failures can involve both acts and omissions, as deaths occurred when buildings collapsed because safety standards were not enforced (an omission), and because buildings were knowingly constructed using shoddy practices benefiting corrupt officials.

37 International Law Commission, 'Draft Articles on the Protection of Persons in the Event of Disasters, 2016,' http://legal.un.org/ilc/texts/instruments/english/draft_articles/6_3_2016.pdf (accessed 4 August 2017), art. 9.1.

38 UN Office for Disaster Risk Reduction (UNISDR), *Reading the Sendai Framework for Disaster Risk Reduction 2015–2030* (2015).

39 UNISDR, 'Sendai Framework for Disaster Risk Reduction,' <http://www.unisdr.org/we/coordinate/sendai-framework> (accessed 5 August 2017).

40 UNISDR, *supra* n 38.

41 Blum and Lockwood, *supra* n 1 at 202–203.

Injustices in Disaster Response and Reconstruction

Massive disasters often spark global outpourings of humanitarian support. Such aid can save lives in the emergency phase, yet countless reconstruction failures have been documented, including in Haiti where the American Red Cross reportedly built only six permanent homes in five years for the hundreds of thousands left homeless by the earthquake, despite receiving half a billion dollars for relief and reconstruction.⁴² While such failings have prompted important conversations on humanitarians' accountability to purported 'beneficiaries,' discussions of postdisaster accountability continue to focus predominantly on aid agencies' accountability to donors. Even when attention is devoted to accountability to survivors, the conversation is often limited to the role of nongovernmental organizations (NGOs) and UN agencies, sidelining state accountability, and focuses on issues such as inadequate consultation and duplication, gaps or corruption in aid distribution. These issues are primarily framed as procedural matters, eschewing examination of their potential justice implications and the broader ways in which disaster responses may be characterized by rights violations and injustices.

Disaster relief and reconstruction processes are often beset by serious, systematic violations. For example, violence against women often rises after disasters, with little recourse from national authorities.⁴³ Sexual exploitation and abuse is disturbingly common and impunity widespread, particularly when it comes to humanitarian workers who use aid to extort 'favours.'⁴⁴ Cases such as the 2001 Gujarat earthquake exemplify discriminatory aid distribution practices, reflecting preexisting conflicts and social fault lines. When disasters strike countries already experiencing armed conflict, discrimination can also be manifested in responses that prioritize disaster victims over longer-standing war victims. This occurred, for instance, in Sri Lanka, where responses to the 2004 tsunami elevated tensions between the Sinhalese majority, Tamils and Muslims, shaping notions of citizenship in ways that exacerbated the conflict and that have in turn affected debates on belonging in postwar Sri Lanka.⁴⁵

The displaced are often subject to particular injustices, including arbitrary evictions from shelter sites. For example, various camps sheltering hundreds of families uprooted in the Haiti earthquake were forcibly dismantled or torched by government agents, or with their complicity, when private landowners wanted to repossess their properties, even when their claims were legally tenuous and the displaced had nowhere else to go.⁴⁶ The uprooted have a right to a durable solution to their

42 Justin Elliott and Laura Sullivan, 'How the Red Cross Raised Half a Billion Dollars for Haiti and Built Six Homes,' *Pro Publica*, 3 June 2015.

43 Jacqui True, *The Political Economy of Violence against Women* (Oxford: Oxford University Press, 2012).

44 Taking injustices in disaster response seriously requires attention to the complicity of humanitarian workers, agencies and the humanitarian system generally. The relevance of transitional justice to such a reckoning will depend on the context.

45 See, Hyndman, supra n 33; Michele Gamburd, *The Golden Wave: Culture and Politics after Sri Lanka's Tsunami Disaster* (Bloomington, IN: Indiana University Press, 2013); Alan Keenan, 'Building the Conflict Back Better: The Politics of Tsunami Relief and Reconstruction in Sri Lanka,' in *Tsunami Recovery in Sri Lanka: Ethnic and Regional Dimensions*, ed. Dennis McGilvray and Michele Gamburd (London: Routledge, 2010).

46 Amnesty International, '15 Minutes to Leave': *Denial of the Right to Adequate Housing in Post-Quake Haiti* (2015).

displacement, but often encounter barriers that prevent them from returning and rebuilding. Such barriers are often couched in the guise of public safety but are upon closer examination discriminatory, arbitrary or motivated by the desire to rezone depopulated coastlines for projects benefiting elite economic interests.⁴⁷ In New Orleans after Hurricane Katrina, planners initially contemplated closing low-lying, predominantly African American communities to returnees, suggesting that the land be converted to green space, while equally low-lying but predominantly white neighbourhoods were never targeted for closure. Although city officials ultimately opened all neighbourhoods to returns, devastated black neighbourhoods such as the Lower Ninth Ward were kept closed longer than wealthier, inundated neighbourhoods like Lakeview. Combined with drawn-out debates on whether neighbourhoods like the Lower Ninth should be rebuilt at all, this depressed return rates, with long-term implications for their vitality. New Orleans is now whiter and more affluent than in 2005, as thousands of poor black evacuees could not access essential assistance to return and rebuild or rent a new home in an increasingly pricey city. Against the backdrop of highly antagonistic race relations and public housing demolitions, some activists have characterized this as ethnic cleansing.⁴⁸

Perhaps most egregiously, governments may purposefully withhold or refuse life-saving relief and reconstruction assistance. Refusals may be motivated by pride or a desire to prevent an influx of aid workers who may critique the government. Aid may also be denied when victims come from communities perceived as government opponents. For almost a month after Cyclone Nargis, the Burmese junta refused aid and denied permits for international relief workers, which some western leaders denounced as a crime against humanity potentially justifying intervention under the Responsibility to Protect (R2P) principle. While UN Secretary-General Ban Ki-moon and others opposed the application of R2P in disaster situations, its rhetorical invocation helped shift the regime's position.⁴⁹ Although its precise impacts are difficult to quantify, the month-long aid refusal undoubtedly drove up casualty rates and survivors' suffering, violations that would need to be addressed in the event of even a modest transitional justice process in Myanmar. More generally, this case points to the possibility that 'a natural disaster can evolve into a crime against humanity – thus obviating the distinction between the two.'⁵⁰

Beyond recognizing such overt violations, understanding the dynamics of disaster injustices also requires attentiveness to how normal ethical codes and commitments

47 For a discussion of such barriers after Typhoon Haiyan, see, Angela Sherwood, Megan Bradley, Lorenza Rossi, Rufa Guiam and Bradley Mellicker, *Resolving Post-Disaster Displacement: Insights from the Philippines after Typhoon Haiyan (Yolanda)* (Washington, DC: Brookings Institution and IOM, 2015).

48 Monique Harden, Natalie Walker and Kali Akuno, 'Racial Discrimination and Ethnic Cleansing in the United States in the Aftermath of Hurricane Katrina: A Report to the United Nations Committee for the Elimination of Racial Discrimination,' 2007, www2.ohchr.org/english/bodies/ceerd/docs/ngos/usa/USHRN23.doc (accessed 5 August 2017).

49 See, Roberta Cohen and Megan Bradley, 'Disasters and Displacement: Gaps in Protection,' *Journal of International Humanitarian Legal Studies* 1(1) (2010): 95–142; Stuart Ford, 'Is the Failure to Respond Appropriately to a Natural Disaster a Crime against Humanity? The Responsibility to Protect and Individual Criminal Responsibility in the Aftermath of Cyclone Nargis,' *Denver Journal of International Law and Policy* 38 (2009–2010): 227–276.

50 Blum and Lockwood, *supra* n 1 at 187–188.

often undergo curious – and questionable – revisions, shaped by the perceived exceptionalism of disasters. These revisions can amplify disasters' pernicious effects for already marginalized populations. For example, in many reconstruction processes the established principle that aid should be distributed on the basis of need is set aside as homeowners (i.e., the comparatively well off) receive reconstruction assistance before renters and squatters, and often at significantly higher levels. This occurred, for instance, after Haiti's earthquake and after Hurricane Katrina. While various pragmatic considerations may recommend such approaches, it is striking that their potential unfairness and discordance with humanitarian principles are often overshadowed.

Disasters as Sites of Struggle for Redress

Given how often injustices permeate disasters, it is unsurprising that in many instances survivors understand themselves as victims of injustice and mobilize to seek redress. This sentiment is evident for example in the reflection of a survivor of the 1972 flood in Buffalo Creek in West Virginia, who participated in a class-action lawsuit to secure compensation for the harms he endured: 'I feel as I'm sure a prisoner must feel who has been sentenced to prison for a crime he didn't commit.'⁵¹

In postdisaster contexts from Aceh and Port-au-Prince to New Orleans, survivors and their advocates have taken diverse approaches, formal and informal, to voice and pursue recognition and remedies for their justice claims. As discussed in greater detail below, these efforts have ranged from criminal trials and lawsuits against negligent or corrupt government officials to memorials and annual commemorations. After Hurricane Katrina, a citizens' truth commission and testimonial projects chronicled the harms of the disaster and responses to it.⁵² Some victims have sought compensation from authorities. After the Haiti earthquake, the government (under intense international pressure) expropriated land on the outskirts of Port-au-Prince and dedicated it to the resettlement of earthquake victims. Hundreds of thousands have subsequently settled this area, building homes and organizing communities. As the scale of movement has grown, the government has backpedaled, decrying the residents as squatters, not 'real' victims. International organizations and NGOs have worried the area will become another Cité Soleil, that is, a slum, and that residents are vulnerable to hazards such as mudslides. Yet many residents see their efforts to seize a piece of land and create new communities as a claim for justice in a severely inequitable society and an attempt to overcome the conditions that left them so vulnerable to loss, and keep copies of the president's expropriation decree that, in their view, recognizes their claims and legitimizes their efforts.⁵³ Survivors' varied

51 Erikson, *supra* n 31 at 13. This disaster was caused by the collapse of a mining company's substandard dam and is thus distinct from other examples in this article of disasters linked to natural hazards. However, cases such as Hurricane Katrina (where levees failed) and the 2011 'triple disaster' in Japan underscore how interactions between the natural and built environments shape disaster risk and dynamics.

52 See, e.g., M.G. Olsen, Karen Stornelli and Maria Victoire, eds., *Not Meant to Live Like This: Weathering the Storm of Our Lives in New Orleans* (Washington, DC: ATD Fourth World Movement, 2012).

53 Angela Sherwood, "Grabbing" Durable Solutions: An Ethnographic Study of IDPs and Post-Disaster Land Occupations in Haiti' (paper presented at From Beneficiaries to Actors: Exploring Displaced Persons' Roles in Resolution Processes, McGill University, Montreal, 14–15 December 2015).

justice-seeking efforts are linked by the common conviction that their suffering is not inevitable misfortune, but harm that merits acknowledgement and redress.

MAKING THE LINK: CONCEPTUALIZING DISASTERS AS A CONCERN FOR TRANSITIONAL JUSTICE

Drawing on key insights from the disaster studies literature, I have suggested that disasters are often products of structural injustices in which harms disproportionately fall on those already marginalized, and magnify their vulnerability to further abuse. Disaster risk reduction failures can be injustices insofar as government negligence and corruption exposes individuals to egregious harms, while disaster response and recovery processes are often entangled in discrimination, exploitation and intentional abuse. Disaster survivors do not necessarily resign themselves to their predicament, but advance justice claims in diverse ways. But to what extent is it analytically insightful and coherent to view these injustices, and survivors' claims, through the lens of transitional justice? In this section, I draw on de Greiff's theorization of transitional justice to argue that, if we are committed to even-handed consideration of systematic abuses, disasters involving mass injustices should in some cases be understood as falling within the scope of transitional justice.

Certainly, postdisaster situations are not typically 'transitional' contexts in the sense of the paradigmatic cases that shaped the transitional justice field, from the fall of authoritarian governments in South America, communism in Eastern Europe and apartheid in South Africa, to the end of war in Rwanda and Bosnia. There are, however, important links between natural disasters and more traditional transitional contexts: disasters may strike countries already experiencing war or mass violence. Indeed, countries hit by massive disasters are by some assessments more liable to experience political violence.⁵⁴ Disasters can exacerbate long-standing grievances and stimulate new ones; social movements and mobilizations to redress these grievances may encounter state repression and help catalyze major government transitions.⁵⁵ Disasters can also definitively shape peace processes, as the 2004 Indian Ocean tsunami did in Aceh.

Beyond influencing 'traditional' transitional justice scenarios, some disasters may satisfy criteria characterizing those situations in which transitional justice is germane. From some perspectives, disasters characterized by large-scale violations are easily identifiable as relevant for transitional justice. For instance, the UN secretary-general defines transitional justice as

the full range of processes and mechanisms associated with a society's attempts to come to terms with the legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.⁵⁶

54 Philip Nel and Marjolein Righarts, 'Natural Disasters and the Risk of Violent Civil Conflict,' *International Studies Quarterly* 52(1) (2008): 159–185; Mariya Omelicheva, 'Natural Disasters: Triggers of Political Instability?' *International Interactions* 37(4) (2011): 441–465.

55 On this possibility, see, Clair Apodaca, *State Repression in Post-Disaster Societies* (London: Routledge, 2017); Wood and Wright, *supra* n 6. On social mobilization in disaster contexts, see, e.g., Luft, *supra* n 24; chap. 11 in Mark Schuller and Pablo Morales, eds., *Tectonic Shifts: Haiti since the Earthquake* (Sterling, VA: Kumarian, 2012).

56 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,' UN Doc. S/2004/616 (23 August 2004); de Greiff, *supra* n 4.

While the legacies of mass violations in disasters have rarely been addressed from a transitional justice perspective, there is little in this definition to suggest that they fall outside the scope of transitional justice. In recent years, some have argued that transitional justice may be relevant in situations that are not 'transitional' in a colloquial sense,⁵⁷ or in the more precise sense mapped out by scholars such as de Greiff, such as in western liberal democracies. Some of these perspectives may provide alternative underpinnings for the view that transitional justice mechanisms may be relevant following disasters involving mass injustice. However, my approach here is to argue that even if one grants that transitional justice is only appropriately applicable in a narrower range of circumstances, such as those described by de Greiff, some disasters fall within this range.

De Greiff argues that transitional justice measures operate in a 'very imperfect world,' that is, in contexts of 'massive rule breakdown' in which there is 'no spontaneous generalized compliance with even basic norms' and 'great risks to the institutions that help to overcome such breakdowns.'⁵⁸ A very imperfect world faces not only 'the massive and systematic violation of norms but also . . . huge and predictable costs associated with the very effort to enforce compliance.'⁵⁹ In these contexts, ordinary expectations of justice will go unmet. Remedies will be out of proportion to the harms suffered, often staggeringly so, and those responsible will not necessarily be uniformly held accountable. In such situations, the mediate aims of transitional justice are to recognize victims and (re)build civic trust. Recognition entails 'granting victims moral standing as individual human beings,' acknowledging them 'not only as victims but as (equal) rights-bearers and, ultimately, as citizens.'⁶⁰ Civic trust involves a common commitment to shared norms that reduces the need for vigilance and sanctions to ensure norm compliance.⁶¹ In de Greiff's account, transitional justice ultimately seeks to strengthen democracy and advance reconciliation, understood minimally as 'the condition under which citizens can trust one another *as citizens* again (or anew).'⁶²

Might postdisaster contexts be 'very imperfect worlds'? In the run-up to disasters, and in responses to them, there can be massive rule breakdowns such that the state abrogates its duty to prevent and protect citizens from major harms. Disaster responses may be deeply exploitative and discriminatory, violating basic norms on the rights and equality of citizens. There are of course degrees of imperfection. Sensationalistic media sometimes suggest that disasters witness a complete implosion of social rules. In disasters as in wars, moral codes and governance systems are shaken, often to the core, but it is a mistake to suggest that no governance or norm compliance happens in these settings, or to overlook individuals' great efforts to help one another.⁶³ In many disasters, some officials and agencies strive to serve survivors,

57 See, e.g., Stephen Winter, 'Towards a Unified Theory of Transitional Justice,' *International Journal of Transitional Justice* 7(2) (2013): 224–244.

58 De Greiff, *supra* n 4 at 35 (emphasis in original).

59 *Ibid.*, 58.

60 *Ibid.*, 42.

61 *Ibid.*

62 *Ibid.*, 50 (emphasis in original).

63 Indeed, few if any cases involve 'no spontaneous general compliance with even basic norms.' *Ibid.*, 35 (emphasis added).

at the same time as others flaunt basic norms, exploiting the situation for personal gain or to benefit particular ethnic or social groups. In massive disasters, the challenge of governing and upholding norms may be exacerbated by the sudden death of scores of officials, and the fact that surviving authorities may themselves be struggling with devastating losses. For instance, while Haiti's government was already beset by governance failures, the earthquake killed almost 30 percent of officials and destroyed most ministries, making it all the more difficult for national institutions to respond responsibly.

Reconstruction is a deeply political, hotly contested process, often shaped by privatization pressures and the potential mass exclusion of poor victims from public space and institutions, as postdisaster landscapes and political economies are transformed. In such an environment, there are risks – physical, economic, institutional – to the individuals and entities that attempt to advance inclusivity and accountability to the victims in opposition to alternative visions predicated on, for instance, the nonreturn of displaced populations from devastated areas.

Just as in the wake of wars, in the aftermath of disasters characterized by systematic violations, ordinary expectations of justice will not be satisfied. This is in part because massive disasters entail injuries ill-suited to redress through formal, ordinary justice mechanisms, such as collective trauma, the loss of community and livelihoods, and the undercutting of long-standing struggles to achieve self-sufficiency.⁶⁴ While postdisaster contexts sometimes witness the emergence or strengthening of powerful social movements, these injuries can hinder survivors' ability to seek justice. The impossibility of redressing massive harms in disaster settings through ordinary justice mechanisms is additionally attributable to the massive number of victims and the catastrophic scale of their losses. In such situations, resource limitations usually mean that even if, for example, government negligence or active discrimination unjustly exposed victims to physical harms and the loss of their homes, full restitution will not be made. Rather, survivors must rely on themselves to rebuild their homes and lives. While survivors' resilience is rightly celebrated, a government's failure to remedy survivors' losses and shoulder its responsibilities can corrode its perceived legitimacy and trust, potentially exacerbating instability.

Given, then, that disasters characterized by structural injustices and mass human rights violations may constitute very imperfect worlds, are they also worlds in which the goals of recognition and civic trust are salient? De Greiff observes that, 'Almost without fail, one of the first demands of victims is precisely to obtain recognition of the fact that they have been harmed, and *intentionally so*.'⁶⁵ In natural disasters, the question of intent is undoubtedly murkier than it is, for instance, in cases of massacres and torture. Although earthquakes and other hazards are not intended, the Burmese regime's response to Cyclone Nargis demonstrates that intentional state policy can exponentially compound suffering, potentially to the point of being a crime against humanity. More generally, however, recognizing and redressing victims should not be limited to those cases in which the wrongs are so pointedly

64 On collective trauma and loss of community in disasters, see, Erikson, *supra* n 31. See also, Kai Erikson, *A New Species of Trouble: The Human Experience of Modern Disasters* (New York: W.W. Norton, 1995).

65 De Greiff, *supra* n 4 at 42 (emphasis added).

intentional. Where gross negligence, for instance, leads to preventable deaths and devastation, survivors may reasonably thirst for recognition – as victims, as human beings and as citizens who should have been protected.

Indeed, victims' sense of injustice may be exacerbated by portrayals of their suffering as just bad luck. Shklar suggests that refusals to recognize injustices constitute 'passive injustice.'⁶⁶ This involves 'work[ing] hard at inventing plausible excuses for our countless acts of injustice. The most common of these dodges,' unfortunately familiar in disasters, 'is to redefine injustice as misfortune.'⁶⁷ At the same time, victims' struggles for recognition and redress can advance the public good by helping to strengthen governmental accountability, including to reduce disaster risk and respond effectively and fairly to victims.⁶⁸

Recognition in disaster contexts is thus a critical matter which involves acknowledging intentional injustices, such as the denial or discriminatory distribution of assistance, as well as suffering that was not explicitly intended but which may nonetheless constitute injustice. Looking beyond intentionally caused suffering can attune scholars and advocates to the possibility that what begins as (at least partly) misfortune can *become* injustice, and enable more fulsome responses to calls for recognition in such contexts. Applying a transitional justice lens to postdisaster settings can bring into focus survivors' claims not only for emergency relief and reconstruction aid, but also for redress of the wrongs surrounding the disaster.⁶⁹ Recognizing disaster victims as rights-bearing citizens is particularly important as this entails equal claims to assistance, and an equal place and say in reconstruction planning and implementation – processes from which victims are easily excluded. Victim recognition in disasters is also essential as they are often blamed for their own predicament, or seen as using the disaster opportunistically.⁷⁰ As Shklar reflects, victim blaming is 'not due only to mean-spiritedness. It also expresses our need to trust the social order in which we live.'⁷¹ Yet systematic violations in mass disasters underscore that this social order should not in fact be trusted, but challenged, given its propensity to heap vulnerability on those already close to the breaking point. Recognizing victims and the structural injustices that exacerbate their vulnerability can be a critical step towards rectifying their marginalization.

Just as victim recognition is vital in many postdisaster contexts, so too is the (re)establishment of civic trust.⁷² On the individual, community and national levels, disasters can throw senses of shared norms and values into disarray, particularly

66 Shklar, *supra* n 19 at 3.

67 *Ibid.*, 45.

68 *Ibid.*

69 For discussion of this possibility from a social repair perspective, see, Aijazi, *supra* n 7; Aijazi, *supra* n 25.

70 For example, Haitians who moved into camps after the earthquake were sometimes criticized by the government and international organizations as trying to game the aid system. A degree of victim blaming is implied in the characterization of disasters as 'acts of God,' insofar as God is believed to mete out just punishments. Disasters' meaning and significance are 'read' in light of historical context, and may be downplayed depending on the victims' social standing and perceived moral worth. See, Michele Landis Dauber, 'Faith, Responsibility, and "Natural" Disaster Relief: Narrating the American Welfare State,' *Law and Society Review* 33(2) (1999): 257–318.

71 Shklar, *supra* n 19 at 39.

72 Aijazi, *supra* n 7.

when survivors feel they have been abandoned or betrayed. For instance, the epic failure of federal, state, and local officials to protect New Orleans' most vulnerable citizens when Hurricane Katrina struck laid bare long-standing rents and tore new holes in the American social fabric, resulting in a deep, still-reverberating malaise and a profound questioning of founding national narratives.⁷³ Labelling black evacuees 'refugees,' suggesting they were not citizens but hapless castaways, further eroded civic trust, particularly in light of long histories of discrimination against African Americans in New Orleans and across the US. Even when survivors remain a stone's throw from their devastated homes, they often feel themselves to be living, in the words of Buffalo Creek flood victims, 'in a strange land' or 'a different place' in which long-standing norms and relationships are suddenly unreliable.⁷⁴ Four years after the Haiti earthquake, a staggering 97 percent of residents of highly affected areas reported decreased trust in their neighbours, attesting to the corrosive potential effects of disasters on civic trust.⁷⁵

A detailed discussion of advancing reconciliation and democracy in postdisaster societies, and the significance of transitional justice to these efforts, is beyond the scope of this article.⁷⁶ However, it is worth underscoring that if, as de Greiff suggests, anger and resentment towards state institutions is a hallmark of an unreconciled society, then many postdisaster communities are clearly unreconciled, as evidenced by protests and other expressions of fury over governmental failures to protect and assist suffering citizens.⁷⁷ Strengthening institutions is highly relevant to the broad goal of promoting accountability for harms experienced in past disasters, and for future disaster risk reduction and response efforts.⁷⁸ Democratic processes are central to the equitable distribution of costs and benefits from disaster mitigation and adaptation initiatives, ensuring that all citizens are protected adequately and equitably from future disaster risks.

Applying Transitional Justice Measures after Disasters

Formal transitional justice mechanisms are rarely applied after disasters. However, the proliferation of unmet justice claims, coupled with the need to recognize victims, build civic trust and advance reconciliation and democratic systems suggest that in particular circumstances, they may have significant roles to play. While the preceding discussion focused on how redressing systematic violations in disasters fits within the conceptual apparatus of transitional justice, here I briefly address how some transitional justice measures may relate to disasters.

73 Ron Eyerman, *Is This America? Katrina as Cultural Trauma* (Austin, TX: University of Texas Press, 2015).

74 Erikson, 1976, *supra* n 64 at viii.

75 Angela Sherwood, Megan Bradley, Lorenza Rossi, Rosalia Gitau and Bradley Mellicker, *Supporting Durable Solutions to Urban, Post-Disaster Displacement: Challenges and Opportunities in Haiti* (Washington, DC: Brookings Institution and IOM, 2014), 2.

76 Ongoing reconciliation processes, such as those unfolding in Canada with First Nations peoples, may be hindered by disasters associated with climate change which disproportionately affect indigenous communities.

77 De Greiff, *supra* n 4.

78 Kathleen Tierney, *The Social Roots of Risk: Producing Disasters, Promoting Resilience* (Palo Alto, CA: Stanford University Press, 2014).

Generally, transitional justice measures will be most relevant where disasters are fuelled by extreme structural injustices, profound state failures to protect and assist citizens, or are otherwise accompanied by severe, widespread abuses that require redress beyond what can be provided through ordinary justice and political channels. As in conflicts or democratic transitions, victims' demands may be the best indicator of the salience of particular measures, although assumptions about disasters as misfortunes that must be borne may shape survivors' own interpretations of their predicament, and mute potential justice claims. Assessments of the relevance of different mechanisms must be cognizant that restoring the status quo ante is neither possible nor desirable, as these conditions are precisely what transformed hazards into disaster.⁷⁹ Equally, it is important to bear in mind Eric Klinenberg's observation, gleaned from his 'social autopsy' of deaths in Chicago's 1995 heat wave, that disaster-related harms need to be understood and tackled holistically, overcoming the impulse to neatly pin blame on isolated individuals or institutions.⁸⁰

Recognizing major disaster-related violations as a concern for transitional justice is not simply about importing standard transitional justice mechanisms. Indeed, in many contexts appropriate transitional justice approaches will not entail formal, externally driven institutions such as tribunals, but rather working to understand and support survivor-led efforts. It may also involve exploring how social repair can be advanced through recovery efforts,⁸¹ and the potential relevance of targeted support for disaster risk reduction as a form of redress (linking to work on how development interventions may serve reparative functions).

Consideration of transitional justice mechanisms' roles must also be informed by frank acknowledgement of the limitations of formal legal channels in addressing disasters, and the difficulty of attributing legal responsibility for harms arising from 'natural' rather than more obviously human-made disasters such as the Chernobyl meltdown.⁸² Accordingly, analysis must not be limited to formal legal efforts such as trials, but also consider political processes such as truth telling and commemorations. That said, there has been a striking increase in legal proceedings, particularly trials, initiated by survivors seeking compensation or the sentencing of authorities and experts who actively perpetrated abuses or failed to discharge their responsibilities.⁸³ Most claims have been launched through ordinary justice systems. Ad hoc international or quasi-international trials may be pertinent when there is strong evidence that systemic and egregious disaster-related violations were intentionally committed, but owing to the limited foundation in international criminal law for tackling crimes

79 Aijazi, supra n 7.

80 Eric Klinenberg, *Heat Wave: A Social Autopsy of Disaster in Chicago*, 2nd ed. (Chicago, IL: University of Chicago Press, 2015).

81 See, Aijazi, supra n 7; Aijazi, supra n 25.

82 Mara Benadusi and Sandrine Revet, 'Disaster Trials: A Step Forward,' *Archivio Antropologico Mediterraneo* 18(2) (2016): 7–15. On Chernobyl survivors' struggle for compensation and the emergence of new forms of 'biological citizenship' through this process, see, Adriana Petryna, *Life Exposed: Biological Citizens after Chernobyl* (Princeton, NJ: Princeton University Press, 2002).

83 Benadusi and Revet, supra n 82. See also, Mara Benadusi, 'The Earth Will Tremble? Expert Knowledge Confronted after the 2009 L'Aquila Earthquake,' *Archivio Antropologico Mediterraneo* 18(2) (2016): 17–32.

in disaster contexts, such institutions are unlikely to be established expressly to address disaster-related violations. However, ad hoc tribunals focused on conflicts or abusive regimes could potentially investigate egregious violations in disasters that unfold in these contexts. Alternatively, such extreme violations could potentially be taken up by the International Criminal Court. For instance, the boundaries of international criminal law could be challenged by charging officials with crimes against humanity for purposefully withholding lifesaving aid from disaster survivors. Alongside trials, in disasters characterized by intentional abuses, gross negligence or corruption in risk reduction and emergency response, adapted forms of lustration or vetting may make important, although to this point largely unexamined, contributions. For instance, it may be appropriate to ban elected officials and civil servants who were complicit in disaster-related abuses from holding positions of authority in future, particularly in disaster risk reduction, management and response.

Given the widespread loss of life, displacement and physical damages that typically accompany major disasters, reparations programmes may have more central roles to play. Equally, when displaced persons encounter arbitrary or otherwise inappropriate barriers to reclaiming their homes and lands, property restitution programmes may be pertinent. While some survivors have obtained compensation through ordinary justice systems, addressing claims through reparations and restitution programmes informed by a transitional justice approach could have the benefit of increased accessibility for victims, and more clearly connecting material remedies with fuller acknowledgement – including through apologies – of victims' suffering and standing as equal, rights-bearing members of the community.

Truth commissions, memorials and other forms of commemoration may also have particular resonance following major injustices in disasters. Truth commissions may help establish a clear record of violations leading to, during and after the disaster, and may offer key recommendations to remedy and avoid repetitions of these abuses. This may be achieved by establishing dedicated, disaster-focused institutions or, where relevant, ensuring that commissions investigating longer-standing conflicts and abusive regimes have the mandate to address related injustices in disaster situations. This meshes with the trend towards charging truth commissions to investigate not only civil and political rights violations, but also economic, social and cultural abuses. Similarly, memorials and other forms of commemoration may to varying degrees promote acknowledgement of victims' losses, and encourage rethinking of the policies, practices and structures that exacerbated their suffering. Yet, as with any transitional justice measure, truth telling and memorialization efforts carry risks. Formal memorials erected after the Gujarat earthquake and the tsunami in Sri Lanka were often manifestations of nationalism, religious communalism and state hegemony, and 'tended to be made *for* people affected by disaster rather than *by* them.'⁸⁴ This points to the need for concomitant attention to informal memory work, such as the erection of a countermemorial to Sri Lanka's famous Fernandopulle Memorial, which marks where 1,500 passengers died when the tsunami swept their train away. The countermemorial at the mass grave of some 300

84 Edward Simpson and Malathi de Alwis, 'Remembering Natural Disaster: Politics and Culture of Memorials in Gujarat and Sri Lanka,' *Anthropology Today* 24(4) (2008): 7 (emphasis in original).

victims declares that their deaths were caused not simply by the tsunami, but by 'those in authority neglecting their responsibility.'⁸⁵

LOCATING DISASTERS WITHIN THE SCOPE OF TRANSITIONAL JUSTICE: RELEVANCE, RISKS AND CHALLENGES

Situating natural disasters within the scope of transitional justice is not without risks and challenges. Might addressing mass violations in disaster contexts dilute the focus of transitional justice efforts globally, or represent an ill-advised overreach? Could linking the discourse of transitional justice, its theoretical underpinnings and practical mechanisms to disasters detract attention from victims' needs and priorities? From efforts to 'build back better'? Might it encourage an unproductive politics of grievance, undermining survivors' own, locally grounded justice movements and the 'can do' spirit that sees victims returning to their communities, clearing rubble and rebuilding homes, often long before government plans are fully formed?

As an initial contribution to a nascent conversation on the relevance of transitional justice in disasters, this article cannot respond to all of these questions, although such challenges and risks should be firmly on the radar as this discussion moves forward. At this juncture, the central point to be stressed is that exploration of the links between these fields must be premised on awareness that the relevance, contributions and risks of transitional justice will vary depending on the context and characteristics of the disaster. Where violations were intentional, as in Myanmar after Cyclone Nargis, different forms of or approaches to redress may be applicable in contrast to cases involving, for example, negligence. In some cases, transitional justice may not be germane. For instance, in 2016, major wildfires forced the evacuation of Fort McMurray in Alberta, Canada. The fires were highly destructive and traumatizing for many, and reconstruction will undoubtedly be long and complex. Notwithstanding critiques of the recovery process, there have been no reports of major rights violations, although as I have argued it is important to remain attentive to this possibility as reconstruction continues. At this point, the tools of transitional justice do not appear especially relevant in this case. Commemorations marked the first anniversary of the fire, but these did not reportedly pertain to rights violations and injustices; instead, they recognized collaborative efforts to overcome the losses and suffering that the fires entailed.⁸⁶ Indeed, even when disasters do not involve systematic rights violations, the suffering they cause is nonetheless extensive, a fact I do not wish to downplay.⁸⁷

Transitional justice is not the only pertinent dimension of justice after disasters. Related aspects of justice, including redistributive justice and social justice, may be the most critical, and it is essential to be attentive to the possibility that transitional justice processes may inadvertently detract from or even be manipulated to derail

85 Ibid., 6, 10.

86 Keith Gerein, 'A Year after the Fire, Fort McMurray Residents Report an Uneven Recovery,' *Edmonton Sun*, 25 April 2017, <http://www.edmontonsun.com/2017/04/25/a-year-after-the-fire-fort-mcmurray-residents-report-an-uneven-recovery> (accessed 5 August 2017).

87 The situation in Fort McMurray may arguably represent an injustice insofar as the severity of the fires may be linked to climate change. Reflecting on the relationship between this disaster, climate change and (in)justice is particularly complex, as Fort McMurray is at the heart of the Canadian oil sands.

these goals. The risk of transitional justice efforts having detrimental effects may be particularly pronounced if they are pursued in countries in which the government complicit in disaster-related abuses remains in power. Disasters may catalyze political transitions, but they also unfold in states where authority structures remain largely stable. In such contexts, the selective application of transitional justice mechanisms may inappropriately legitimize those authorities that created the conditions for the disaster and that remain fundamentally hostile to their citizens' rights. While potential tensions between different aspects of postdisaster justice struggles should not be underestimated, there are also important possible complementarities. Serious efforts to rectify structural injustice or pursue social justice in countries rocked by disasters would presumably be predicated on recognition of harms victims suffered, which is one of the central aims of transitional justice. In this sense, after disasters as in the wake of war, transitional justice may be one, initial element of broader efforts to advance justice.

CONCLUSION

Locating disasters characterized by egregious rights violations within the scope of transitional justice will not be a silver bullet to improved accountability, victim recognition and civic trust in communities emerging from catastrophe. Yet normatively and empirically, we have compelling reasons to rethink the exclusion of injustices in disaster settings from scholarly analysis of and practical efforts to uphold responsibility for human rights abuses, particularly through transitional justice. The fact that this remains rare, despite many survivors' efforts to voice justice claims, is in part a testament to the stubbornness of assumptions about disasters as inevitable misfortunes – assumptions that have been widely refuted in the disaster studies literature, but not systematically rethought by scholars and practitioners of transitional justice. Conceptualizing disasters as a concern for transitional justice is not so much about reframing the transitional justice 'enterprise' as it is about removing blinders that have obscured violations in disaster contexts. Disasters may involve intentional abuses, as well as injustices in which natural hazards, structural injustice, negligence, discrimination and other purposeful violations are entangled to varying degrees. This is not a reason to overlook them from a transitional justice perspective. Indeed, passing unjust disaster situations off as misfortunes serves the interests of those who capitalize on disasters to consolidate power or wring gains from victims' suffering. Transitional justice scholars would do well not to perpetuate this pattern. Thinking more concertedly about the relationship between transitional justice and disasters may also help correct the tendency to see disaster response as an apolitical, charitable undertaking, a perspective that overshadows the sometimes unjust implications of humanitarian interventions and allows opportunities to slip by to support local struggles for redress.

This discussion points to the need for a new research agenda in transitional justice studies that examines the intersection of natural disasters with more traditional transitional justice contexts, and how accountability for disaster-related violations can be advanced. Such work will become all the more critical as climate change continues, fuelling complex harms that merit serious consideration from the perspective of transitional justice.