The Language of Transitional Justice

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Introduction

In the second half of the twentieth century, instances of horrific mass violence, such as state-sponsored genocides in Guatemala and Rwanda and civil wars in the former Yugoslavia and Sierra Leone, left survivors and the world community with the responsibility of responding to the “world’s worst crimes” while also rebuilding shattered lives and societies. Dated to the Nuremberg trials after World War II, transitional justice comprises legal and quasi-legal mechanisms of delivering justice after significant sociopolitical upheaval and violence, such as a period of dictatorship or political repression, civil or international war, or mass violence from another source (Minow 1998, Teitel 2000). A burgeoning set of practitioners, notably lawyers and NGO workers in postconflict settings, are prime movers of what is sometimes called the transitional justice industry. The study of transitional justice is a large and growing scholarly field, most often associated with political science, international relations, law, and sociolegal studies. The proliferation of multiple forms of transitional justice in the 1990s, including international tribunals, national trials, truth and reconciliation commissions (TRCs), and a wide array of locally meaningful rituals and performances aimed at providing culturally relevant justice and reconciliation makes it both a relatively new phenomenon for anthropological study and one characterized by widely varying and emergent forms.

Transitional justice is also the subject of considerable controversy. It is not surprising that controversy would arise over whether any of the practices of transitional justice could accomplish the daunting tasks of redressing the harm of mass violence or healing devastated societies. Conventional methods of anthropological linguistics can help to explain why many participants are dissatisfied with transitional justice processes, especially those held in formal legal settings, and why approaches designed to be less formal, such as TRCs, also fall short. As a broader controversy, the past twenty years of efforts in the name of transitional justice have emphasized Western liberal legal approaches and, in so doing, have triggered reactions critical of the hegemonic role of powerful international actors, who are accused of shaping transitional justice in self-serving ways. Recent scholarship in anthropological linguistics, particularly semiotics, can illuminate this controversy and account for why it is unlikely to fade.
Defining Transitional Justice

A foundational text defines transitional justice “as the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoing of repressive predecessor regimes” (Teitel 2003: 69), yet both parts of the term have come in for criticism. The word “transition” implies an expectation of movement or change, either transition toward democracy or transition away from violence, each of which are difficult to apprehend and achieve. As for “justice,” is it assumed to mean accountability and punishment, or are other incarnations, such as public apology or reparations, acceptable substitutes? Rather than dwell on definitions, this chapter takes an expansive view, which allows for exploration of scholarship about a wide range of processes.

Post-Nuremberg transitional justice was characterized by national trials and tribunals (e.g., those held in Latin America in the 1970s), and it expanded onto an international scale in the 1990s with the creation of several United Nations-sponsored ad hoc tribunals and courts.1 Regional human rights courts also handle transitional justice cases, and in 2001 the International Criminal Court (ICC) was established in The Hague to provide, when no other venue is possible, a permanent UN-linked site to try perpetrators accused of war crimes, crimes against humanity, and genocide. The same time frame saw the establishment of TRCs; the prototype and widely celebrated version was mounted in South Africa in 1994 (see, e.g., Ross 2003, Wilson 2001). Not all of the many subsequent TRCs achieved the same level of acclaim (Avruch and Vejarano 2002, Hayner 2002). Typically, transitional justice includes several elements, namely, establishing the truth or an account of what happened, determining responsibility for harm, punishing those responsible, and fostering reconciliation or some means of addressing social rupture (Kerr and Mobekk 2007, Minow 1998). The challenges of accomplishing these aims on a mass scale or in formal settings, especially in international courts situated far from where violence occurred, led to recognition of other forms of transitional justice, such as reconciliation rituals and other “performative symbolic and ritual gestures” (Okello 2012, Wagner-Pacifici and Hall 2012).2

Outline of This Chapter

Language is at the heart of transitional justice, but anthropological linguists have only begun to examine it. As explained in the next section, scholarly studies of law and language that focused on courts are precursors to contemporary studies of transitional justice. The section entitled Critical Ideas and Topics considers five areas: Accounting for Past Harm; Special Concern for Victims; Transition through Speech Acts; Culture, Ritual, and Transition; and Framing Discourses. The ever-widening variation in post-1990 transitional justice – from formal legal contexts to TRCs to everyday practices – means that an array of anthropological scholarship informs contemporary studies. The Current Contributions and Research section highlights just three forms of transitional justice: semiotic approaches; apologies; and rituals, embodiment, and silence. Two later sections describe the multiple methods used to study transitional justice, and the practical problems that emerge, especially for individuals, that could be addressed using insights from linguistic anthropology. These and other practical problems could be among the directions for future study, which are described in the chapter’s penultimate section. The concluding section returns to the topic of the controversy over the hegemonic role of Western liberal legal discourse in transitional justice. Recent attention to law’s extraordinary discursive power helps explain why this controversy is likely to continue, even as individual survivors exercise agency in ever more creative ways in response to mass violence.
Historical Perspectives

The post-World War II trials held in Nuremberg and Tokyo were unprecedented and controversial in that many people viewed them as “victors’ justice,” given the control over the proceedings exerted by the United States and their allies (see, e.g., Bass 2000, Kerr and Mobekk 2007). Over a decade later, philosopher Hannah Arendt drew attention to the linguistic features of transitional justice in her journalistic reporting of the trial of Adolf Eichmann in Jerusalem (Arendt 1963). Arendt’s account highlighted how the trial’s focus on the defendants, rather than the victims, exposed the “banality of evil,” as narrated through their dispassionate testimony. Although not a systematic linguistic analysis, Arendt’s popular depiction of the Eichmann trial became a touchstone for scholars and practitioners interested in how narratives of atrocity are developed through formal legal proceedings. As she demonstrated, the trial testimony failed to include many stories, including those of victims and survivors. As a philosopher, Arendt emphasized the crucial importance of public deliberation to democracy and thus was deeply sensitive to the public’s interpretation of the Eichmann trial.

The literature on law and language generates theoretical questions and methodological approaches that are particularly insightful, as they elucidate the micro-level dynamics of the courtroom, which is one venue for transitional justice (see, e.g., Conley and O’Barr 1998, Matoesian 1993, 2001). These studies explicate the conventions of courtroom discourse, for instance, the pre-allocation of turns at talk and the question-and-answer format, as well as the effects of these peculiarities on participants as well as on outcomes (Mertz 1994). The linguistic study of alternative dispute resolution highlights the contrast between formal and informal disputing processes and thus offers approaches pertinent to examining truth commissions and other quasi-legal forums. The foundational literature in law and language also drew attention to gender and power, which has influenced subsequent studies.

Critical Issues and Topics

Each of the following critical issues and topics emerges out of concerns over the adequacy of particular transitional justice initiatives; at the same time they reflect significant areas for developing theories on the role of language in transitional justice.

Accounting for Past Harm

Many transitional justice initiatives are designed to produce an account of the violence, with the assumption that such accounts must be developed, presented, and acknowledged in a relatively public setting in order to achieve justice or some other beneficial result. Accounting for past harm raises questions, however: What should an account include? Who should present it? In what context? How widely should it be disseminated? Accounts of mass atrocity tend to be shaped by victors, often the government in power. They usually produce “master narratives” that acknowledge the horror of the past, when vilified enemies committed atrocities, while also paving the way for a peaceful future with the state as guardian against violence. In the delicate balance of recounting horrific crimes, blaming those responsible, and creating or restoring social bonds between members of a severely divided society, narratives that counter a simplistic master story, or present too complex a story, can be drowned out or marginalized (Cobb 2013). For instance, narratives that recount any violence committed by the victorious regime are frequently omitted. Similarly, in situations where one political party or ethnic group predominated in using violence against another, stories of how “victims” were also violent, or the reasons behind
perpetrators’ violence, are deemed counterproductive to reconciliation. Narratives from perpetrators or bystanders are treated as less important than those from victimized survivors. The marginalization of some stories exposes the inherent partiality of all the accounts of what happened.

In legal contexts where attributing blame is a primary purpose, stories are often carefully crafted, especially by lawyers. Mertz and Yovel (2005: 86) assert, “The imposition of legal frames moves litigant narratives away from more emotional and relational stories toward accounts organized around theories of cause-and-effect and responsibility that respond to the requirements of legal rules.” Even relatively straightforward criminal proceedings ignore many aspects of what happened. In the case of an extremely complex situation where rape, genocide, and other crimes were perpetrated on a mass scale, a narrow explanatory narrative might effectively attribute blame, but it would necessarily fail to reflect multiple perspectives and parallel stories. Furthermore, the constraints of courtroom language and strategy make it difficult to reconcile contradictions in the stories told by previously warring parties (see, e.g., Wilson 2011).

The linguistic constraints of formal legal contexts led to the endorsement of TRCs and other quasi-legal forums, yet conventions for interaction in those settings are also limiting. The trauma of recounting particular events and the instability inherent in mass violence can make it difficult for narrators to follow the usual convention of recounting a story chronologically (Hirsch 2007). Accounts of atrocity are told for multiple purposes, including as a balance against silencing, as sacrament, and as carnivalesque expression, although not all of these are welcome in any particular transitional justice setting (Phelps 2004). Trial courts and TRCs serve as sites for such accounts, yet they cannot control whether an account will stand as the “truth” of what happened, whether other narratives that express different perspectives will emerge, and how these accounts will circulate in the future (Savelsberg and King 2011).

Special Concern for Victims

The widespread belief that narrating mass violence is necessary for transition to a stable society provokes deeper questions about whether the pain of violence can ever be adequately described. Scarry (1985) argues that speech fails as a vehicle for an individual’s experience of violence. Simpson similarly argues that, for victims, the inability to articulate the harm was inextricably part of the experience of violence itself, and consequently the inability to recount their experiences may be a lasting effect (Simpson 2007). By contrast, legal proceedings and other forms of transitional justice are organized under the assumption that victims have a strong desire to speak about their experiences and that narrating the harm might have therapeutic effects, as well as legal consequence (Ross 2003).

The assumption that victims want to tell their stories, coupled with the concern that doing so might be difficult, has fueled attention to victims in the policies of transitional justice settings, such as courts and TRCs (Hirsch 2009, Mertus 2004). For instance, the ICC has a separate Victims’ Unit that conducts outreach to victims and prepares them for courtroom proceedings. Concern over the retraumatization or revictimization that can occur during testimony has led courts to provide therapists and other assistance (see Koomen 2013, Matoesian 1993, on revictimization). Future research might determine whether this increased effort has had appreciable linguistic effects.

With respect to mass violence French (2012: 343) argues that “some actors lost more than others” and thus warrant special attention. By occupying a special status, however, individual victims risk being treated as emblematic of a group whose members might in fact hold diverse perspectives (French 2012). Their diversity could extend to their level of interest in recounting experiences of violence or in seeking justice at all (Stover 2005). As well, victims vary in their
reactions to participating in courts and other transitional justice settings. Some experiences are
negative precisely because those who testified did not feel that their stories were heard or taken
seriously (Mertus 2004, Ross 2003, Stover 2005). Although granted special status, victims might
not be experiencing the empowerment imagined by those who advocated for their participation
(French 2009).

Transition through Speech Acts

Depending on where and how they are offered, accounts of harm can be instrumental in allocat-
ing responsibility for crimes. Relatedly, blaming is a significant speech act associated with many
forms of transitional justice, as is admission of guilt or confession. Both blaming and confession
were central elements of gacaca, a form of local transitional justice instituted after the Rwandan
genocide to adjudicate tens of thousands of alleged perpetrators of genocide and other crimes
(Burnet 2012, Clark 2010). Based loosely on a “traditional” approach to resolving more minor
conflicts, gacaca was reconfigured by the post-1994 Rwandan government and implemented
across the country. During gacaca hearings, which are public and often held in the open air,
alleged perpetrators are encouraged to engage in truth-telling about their participation in the
genocide, and community members are asked to confirm or challenge their statements. Locally
elected judges determine responsibility and mete out sentences. Even though thousands of
gacaca trials were conducted, given the scale of the violence, not everyone would have a direct
experience of blaming or confessing. In other conflicts, the prevalence of amnesties as part of the
conflict resolution process made confession a less likely speech act as part of transitional justice.

Several speech acts that are rare in formal legal settings, such as apology and forgiveness, are
the intended outcomes of other types of transitional justice. Expressions of remorse and forgive-
ness during the South African TRC were thought to encourage reconciliation. Similarly, truth-
telling followed by acknowledgement or forgiveness are speech acts central to a form of local
transitional justice in northern Uganda called mato oput (Anyeko, Baines, Komakech, Ojok,
Ogora, and Victor 2012). The centrality of speech acts to these processes begs questions always
asked of speech acts: What are the “felicity conditions” that make a speech act effective? Who
determines whether the conditions have been met? The classic problem of meeting the “felicity
conditions” of speech acts is exacerbated by the extraordinary circumstances of mass violence.
For instance, what are the challenges in determining the sincerity of an accused person who
apologizes for the murder of one’s family member? How does the specter of retaliation shape
understandings of whether “felicity conditions” have been met (Burnet 2012)? Although the
South African TRC established some principles for evaluating speech in transitional justice set-
tings, cultural, linguistic, and institutional differences can make it difficult to determine whether
any particular act is acceptable to those involved or furthers reconciliation.

Culture, Ritual, and Transition

The contexts for transitional justice vary considerably with respect to the conventions of inter-
action that typify each. Increasingly, political struggles over transitional justice refer to the lin-
guistic features of available contexts. As studies of courtroom discourse would predict, some
participants in tribunals or trials express frustration that the formality of the context felt foreign
or threatening (Mertus 2004, Stover 2005). Even the multilingual nature of international trials
can be off-putting, at the same time as interpretation enhances the goal of involving a broader
audience. Less formal contexts might be equally unfamiliar; the South African TRC relied on
many new conventions for speaking about violence based, in part, on the concept of ubuntu, a
Bantu-language concept that invokes the interconnectedness of community members, who are assumed to share common humanity, and the embrace of reconciliation as a response to violence or conflict (Murithi 2012). The value system underlying ubuntu offers an approach to reconciliation that requires passing through the following stages central to the South Africa TRC: “acknowledgement of guilt, showing remorse and repenting, asking for and giving forgiveness, and paying compensation or reparation as a prelude to reconciliation” (Murithi 2012: 202).

Whether formal proceedings are unsatisfying to victims or otherwise inadequate, the sheer scale of mass crimes can preclude bringing every accused perpetrator before a court or TRC. The concern that some people will miss justice entirely combines with the concern that certain contexts offer unfamiliar justice for victims. Such concerns have fueled efforts to identify culturally recognizable justice, such as gacaca mentioned above. Moreover, the emphasis on blame and punishment in courts and some TRCs is viewed by critics as standing in the way of societal healing or reconciliation, the ultimate goal of transitional justice. One difficulty in adopting already existing, grassroots justice is that, because these institutions or rituals were not created with such massive infractions in mind, adaptation is imperative. For instance, mato oput was one of several rituals of the Acholi people that was redesigned to address destructive violence in northern Uganda (Allen 2006, Clarke 2009). The ritual emphasized welcoming alleged perpetrators back into the community through rituals of healing, rebirth, and forgiveness, using culturally recognized conventions for apology, repentance, forgiveness, and reconciliation. Those who supported the rituals as substitutes for national or international prosecution insisted that local linguistic and cultural practices would promote individual and societal healing. Yet, as neo-traditions, the legitimacy of these rituals is easily questioned, particularly in culturally diverse communities or those that were severely destabilized (Allen 2006, Hirsch 2009). Certain rituals are also vulnerable to criticism – internal and external – for not conforming to human rights discourse and standards, particularly concerning gender and age.

In addition to publically recognized rituals – regardless of their origin or level of endorsement – individuals and groups of people spontaneously create their own locally meaningful ritualized responses, as will be discussed in the Current Contributions and Research section.

**Framing Discourses**

The discourse of human rights – powerful in both its moral message and global reach – provides the frame for the international institutions that seek accountability for mass atrocity in the name of humanity (Ojara 2012). More broadly, the discourse of Western liberal legalism underpins international human rights, humanitarianism, and criminal law, and shapes the micro-level discourse of many transitional justice proceedings (Clarke 2009, Drumbl 2007). This framing role is especially evident in international prosecutions; however, national-level trials generally use similar discursive conventions. Moreover, the power of Western liberal legalism means that, even in local contexts, the speech of many parties is influenced in subtle ways.

Kagoro (2011) argues that transitional justice provides the wrong frame in African contexts and endorses a broader, restorative ‘global justice’ “that has juridical and material dimensions, a culture of accountability that looks at internal mechanisms as well as external reparations by multinational corporations and developed nations complicit in Africa’s conflicts, political repression and human rights violations” and contrasts sharply with Western legal liberalism’s narrow frame (Kagoro 2011: 18). Clarke (2009) confirms the concern expressed about Western liberal legal approaches, particularly in African nations where prominent international prosecutions have been mounted and challenged, at the same time as structural violence and external causes remain unaddressed. Criticism of Western liberal legalism as a discursive frame that fails
to scrutinize the West’s complicity is increasing at the same time as that frame is becoming more pervasive and powerful.

**Current Contributions and Research**

New venues for transitional justice continue to emerge, such as national institutions that invoke universal jurisdiction or prosecute internal infractions that rise to the level of crimes against humanity. Comparison across different institutions and cases is increasingly possible, as is longitudinal study. At the same time as other disciplines have made a quantitative turn in the study of transitional justice (see, e.g., Olsen, Payne, and Reiter 2010, van der Merwe, Baxter, and Chapman 2009), in-depth studies of language in these contexts is warranted. This section highlights three areas of research from among many.

**Treating Accounts as Texts**

Accounts of past violence produced through transitional justice bear the contradictory burden of revealing the “truth” of what happened and also being constructed – implicitly and explicitly – through those processes. Ross (2003) was among the first scholars to note that accounts of violence were shaped by the South African TRC process itself, as well as by factors such as gender and age. The influence of transitional justice on accounts begins early as human rights workers or legal personnel conduct “outreach” among survivors. For instance, “ambivalent or contradictory” memories were policed out of narratives collected through the outreach of Cambodia’s Extraordinary Chamber (Manning 2012).

French’s study of the reports produced after the Guatemalan truth commission is notable in demonstrating how the final accounts were divested of key aspects of the meaning present in their original telling: “survivor testimonies are disciplined into particular institutionally supported forms that further erase ways of meaningful telling and knowing among structurally subordinated groups, further re-inscribing their marginalization in an unintended way” (French 2009: 100). Far from being a transparent window on truth, narrative bears culturally specific messages that reports fail to include. Parallelism, repetition, and metaphor convey considerable meaning about the teller’s experience yet reports rarely include them (French 2009: 102). Survivors’ stories are distorted when reports focus on referential aspects of testimony, rather than pragmatic aspects that come through reported speech and evidentials. For example, fear of the Guatemalan authorities was evident in how survivors quoted them during testimony; however, this aspect of their persecutors’ speech is absent in the historical record (French 2009: 103).

The realization that accounts of past violence are entextualized through politicized processes leads French to argue for a semiotic approach that will focus “on the forms such narratives take, the contexts of their production, and their ongoing local, national, and transnational circulation” (French 2012: 344).

An important, albeit controversial, manner in which accounts circulate is as histories of particular conflicts. The history written through an international legal proceeding has to contend with testimony from deeply partisan perspectives. Arguing that multiple discursive approaches to history – beyond partisan accounts – are part of the trial process, Wilson counters conventional wisdom by refusing to conclude “that the pursuit of justice and the writing of history are inherently irreconcilable” (Wilson 2011: 19). Accounts circulating as history are readily repurposed to explain conflict or to justify strategies in the present or future. Savelsberg and King (2011) draw attention to how media accounts of legal responses to specific atrocities (e.g., the My Lai massacre) shape collective memory and vice versa.
Accounts of violence that are produced with no references to public discourse outside the court or TRC have little chance of creating the conditions for reconciliation (Mazzei 2011). The absence of international legal attention can invigorate “narratives of victimhood” that publicize and memorialize using other means (Chiwengo 2008: 92). The public telling of stories about the past can have significant influence on those who did not experience it, and the knowledge about the past created through formal instances of transitional justice operates in relation to other circulating discourses and is repeatedly renegotiated in conversation (Achugar, Fernández, and Morales 2013) and in various media.

**Apologies and Their Many Effects**

Research on apologies has grown apace with the expanding use of this staple speech act in transitional justice initiatives. Individual apologies are frequently offered during testimony in TRCs, and these have been scrutinized for their adherence to “felicity conditions,” such as the apologizer’s sincerity. Public apology has been an especially fertile area for linguistic analysis (see, generally, Harris, Grainger, and Mullany 2006). *The Age of Apology* describes the many instances of public apology during the post-Cold War era (e.g., President Clinton’s apology to African Americans for slavery; Pope John Paul II’s apology related to the Holocaust) and makes a case for the difficulty of producing an efficacious public apology (Gibney, Howerd-Hassmann, Coicaud, and Steiner 2008). For instance, in the absence of material recompense, a verbal apology can be dismissed as insincere or merely symbolic, and many linguistic tactics can be used to feign the appearance of apology without incurring its negative effects, such as losing face or assuming responsibility. Powerful leaders are especially adept at these tactics (James 2008). They might, for instance, express “regret” and use other non-performative verbs, when they endeavor to reshape social relations, while preserving their own image (Kampf 2009). The increase in apologies sets up a norm, yet following a pattern by rote can also cast doubt on a speaker’s sincerity. Celermajer (2013) argues that the heightened scrutiny of sincerity that is used to judge individual apologies is misplaced when applied to collective transition rituals, which operate with a different logic.

Much of the research on apology in transitional justice assesses whether any particular apology fosters the transition of the conflictual relationship, ideally moving it toward reconciliation. Apologies are generally embedded in larger rituals that have the distinct aims of purification (of the offender’s past), humiliation (of the offender), and settlement (i.e., restored relations) (Kampf and Löwenheim 2012). Noting the scholarly focus on the illocutionary functions of apology, Renner (2011) urges attention to apology’s perlocutionary aspects, particularly its effects on those who are not the intended recipients. A series of apologies between Czech and German officials broke the “taboo of silence” on certain issues, such as the Czech expulsion of Sudeten Germans after World War II, and thereby created not only a public outcry among Czechs not ready for this admission but also new calls for reparations as well as symbolic transitional justice. Coining the phrase “pioneer apologies,” Renner delineates the sensitivity of apologies to their immediate historical context and the diversity of their effects on a wider array of actors than usually considered.

**Justice as Performance, Embodiment, and Silence**

At the same time as liberal legal approaches extend their reach through the ICC, regional and national courts, and TRCs, an ever-widening variety of approaches to the quest for justice has emerged in local contexts and includes memorials, everyday acts of remembrance and
collective memory, reconciliation rituals, and the silent embodiment of understandings about past events (see, e.g., Das 2007, French 2012: 348). These local, idiosyncratic responses to violence are evidence of human creativity and experimentation in the face of massive social upheaval. For example, efforts to address the anticommunist massacres in Indonesia in the 1960s highlight local sense-making through spirit possession (Steedly 1993), state-sponsored formal dance performances (Larasati 2013), and community construction of a park as a monument and performance site (Dwyer 2011). Linguistic and paralinguistic scripts and improvisations that have long been of interest in anthropological linguistics are evident in these rituals and sites, where participants not only make sense of past events but also struggle over present-day relations of power and difference, such as gender, ethnicity, and political allegiances. While acknowledging new contributions to this literature, this section highlights recent scholarship on silence as a key element of the embodiment and performance of transitional justice in local contexts.

Even in places where efforts have been made to encourage narrative, testimony, and dialogue toward reconciliation, silence is a common response to mass violence and to transitional justice initiatives. As Nee and Uvin (2010) found, silence was a more palatable option than formal trials, dialogue, or traditional mediation for Burundians who were asked how past violence should be addressed. Yet, silence should not be interpreted as representing either denial of what happened or lack of participation in justice efforts (Burnet 2012, Dwyer 2009). Burnet’s research in Rwanda demonstrates how the victorious government amplified master narratives that contrasted with the experiences of many Rwandan women, who, in turn, experienced “amplified silence.” The result is an inability to bridge the divisions of the past through speech. For some residents of Sarajevo, silence about the violence in the former Yugoslavia is not erasure but rather has the strategic effects of demanding and producing normalcy, making a moral claim on those who witness a person’s silent presence, and also protesting against particular narratives (Eastmond and Selimovic 2012: 505–506). From this perspective silence displays agency and should not be understood as ceding the opportunity to settle accounts in the future.

Reminding scholars that speech and silence are neither opposites nor one-dimensional, Dwyer describes local responses to the Indonesian genocide of 1965–66 shaped through decades of political repression: “silence is not an even fog barricading events and emotions from view, but a variegated landscape that Balinese navigate with what knowledge and caution they can muster, sometimes drawing on local notions of how speech is channeled and dammed and sometimes moving blindly, the certainty that one can find direction on a shifting social topography undermined in the experience of terror” (Dwyer 2009: 135).

**Main Research Methods**

*Discourse analysis* and related approaches in conversation analysis and the ethnography of speaking have been used to explore the micro-dynamics of interaction in the contexts where transitional justice is sought, especially trials, TRCs, and local rituals. Solid findings in the language and law literature illuminate the constraints of formal legal settings, especially for laypersons, and the power relations negotiated through interaction. *Speech act theory* directs attention to key linguistic forms, such as blaming, apology, forgiveness, and confession, that might spark movement toward both accountability and reconciliation. *Narrative analysis* has been a significant approach, given the centrality of truth-telling and creating accounts in most transitional justice settings. It was the recognition that stories and other utterances in transitional justice settings bear the influence of power dynamics that led to *semiotic approaches* and the attention to entextualization. Understanding how the language of transitional justice – in its many forms – becomes invested
with ideological or political significance is a critically important aim that begins to explain the criticisms leveled against some approaches.

Many studies combine linguistic analysis with ethnography, especially those that examine transitional justice outside legal institutions. Research on transitional justice places heavy demands on researchers. Even in so-called postconflict societies tension can be high, and the politics of conducting research requires special vigilance. Protection of informants is paramount and might require shielding them from the retraumatization of narrating violence. Researchers must guard against furthering the aims of powerful actors who might, for instance, benefit if one particular account of violence is privileged or if silence is interpreted as lack of interest in past violence or in seeking justice (Dwyer 2009). Burnet (2012) makes the poignant observation that ethnographers need to “descend into the ordinary” of survivors’ lives to feel the culturally shaped sensations of their interlocutors, such as holding back tears or silently refusing to comment.

Recommendations for Practice

Insights from linguistic anthropology can be useful to policy makers, human rights practitioners, and legal personnel as they work to develop and improve institutions of transitional justice. Findings about the effects of formal proceedings on the language and experience of participants can help to create a more hospitable atmosphere, especially for those with special needs, such as children, victims of sexual assault, linguistically marginalized persons, and those suffering from trauma or stigma. A semiotic perspective on the construction of stories could enhance understanding among those who work with witnesses, and perhaps counter, through explanation, the frequent criticism that witness accounts have an “inauthentic” or “rehearsed” quality. Relatedly, such an analysis can also help to explain why stories told during trials, TRCs, and local memorial events can sometimes sound as though they had been tailored for an international audience expecting Western liberal legal discourse.

Application of research findings could help ensure that transitional justice better promotes healing and stability for individuals and societies. Although memorials serve an important public function, they can traumatize people who were involved in the conflict and others with similar experiences. Based on a study of a museum display of the internment of Japanese-Americans in concentration camps, to which victims of the Nazi Holocaust took exception, Schiffrin (2001) describes multiple ways in which linguistic anthropologists could reduce negative reactions by translating and contextualizing materials.

Urging experimentation with different speech settings, Simpson concludes that “finding an inclusive procedure or set of procedures in the long term through which even those ‘truths’ and stories which seem utterly incompatible or incongruent with the dynamics of peace and reconciliation (as defined by new regimes), and which often stretch into the unknown territory of the as yet unspeakable, is arguably crucial to the long-term prospects of a stable democratic government” (Simpson 2007: 100).

Future Directions

Future research, which will no doubt examine transitioning societies as they move further from the time of mass violence, might explore the following questions: How do people think about and tell stories of violence over time? Do their narratives change? How is transitional justice spoken about or memorialized? How is meaning made of returns to violence after transitional justice? The extent to which reconciliation is an outcome warrants study; however, the
linguistic challenge is significant (Moon 2008). What counts as evidence of reconciliation? Is it verbal? A handshake? Silent co-existence sustained over time? Novel speech or perhaps very ordinary-sounding interaction? The exploration of these questions through linguistic analysis will need to pay careful attention to culture and context.

Anthropologists will no doubt continue to identify myriad ways in which people deal with a violent past through locally meaningful rituals and the mundane behaviors of everyday life. Understanding transitional justice in these forms might require not only careful attention to local cultural context but also to globally circulating discourses of traumatism and therapy, humanitarianism, and religious healing that can blend with, augment, or eclipse the discourse of transitional justice. Linguistic anthropologists can help to tease out the relations among these discourses and frictions that result from their co-terminous production, especially when the formal institutions of transitional justice fail to deliver what they promise.

Conclusion

The friction between two discourses – transitional justice and the previously mentioned, broader notion of global justice that focuses on restoring relationships and exposing global power dynamics – is especially intense when the topic is the relatively new ICC. The ICC is criticized not only for its narrow legalistic approach to the cause of conflicts but also for focusing attention on less powerful countries in a neo-colonial fashion that is the antithesis of global justice. The ICC's prosecution of African political leaders has led to calls to ignore or reconfigure the court's jurisdiction. At first glance this challenge could be interpreted as undermining an emblematic institution of transitional justice. However, Richland's "theory of jurisdiction" would suggest that, through public debates over the ICC, "the force, authority, and legitimacy" of the court is made manifest, even as its jurisdiction is challenged (Richland 2013: 211). Drawing on semiotics, Richland argues: "[t]hat this is true suggests the extent to which the actors engaging each other in and through the language of law are always already speaking law's social force into existence, and doing so in ways that simultaneously presuppose, and make unavailable for critical assessment, the grounding source of that power" (Richland 2013: 214). Debates over prosecuting alleged perpetrators of twenty-first century atrocities will continue to speak the nascent ICC into being and to grant legitimacy to it and similar institutions of transitional justice. At the same time people seeking justice and healing after mass violence will continue to engage in ever more creative responses that may or may not be understood as justice. Although we can hope for a reduction in the atrocities that demand redress, transitional justice appears poised to remain a site of local, national, international, and transnational struggle – and that struggle will take place through language.

Related Topics

22 Language in the Age of Globalization (Jacquemet); 24 Discrimination via Discourse (Wodak); 26 Legal Discourse (Conley).

Notes

1 These include the International Criminal Tribunal for the former Yugoslavia; the International Criminal Tribunal for Rwanda; the Special Court for Sierra Leone; and the Extraordinary Chambers of the Cambodian Courts.

2 Transitional justice is also pursued through political lustration and memorializations of many types, although these fall beyond the scope of this chapter.
References


Further Reading


