**John Torpey** 00:04

Hi, my name is John Torpey, and I'm Director of the Ralph Bunche Institute for International Studies at the Graduate Center of the City University of New York. Welcome to International Horizons, a podcast to the Ralph Bunche Institute that brings scholarly expertise to bear on understanding of a wide range of international issues.

**John Torpey** 00:25

Today, we examine how countries around the world have dealt with the legacies of authoritarian regimes. In order to explore that issue, we're fortunate to have with us today Pablo de Greiff, a leading analysts of transitional justice, as it's called. Dr. de Greiff, is Senior Fellow and Director of the Transitional Justice Program at the Center for Human Rights and Global Justice at the NYU School of Law. During 2012 to 2015, he was Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence in the Office of the High Commissioner for Human Rights at the UN, and has also served in a variety of missions mandated by the UN's Human Rights Council. From 2001 to 2014, he was also Director of Research at the International Center for Transitional Justice. Before that, he had been an associate professor in the philosophy department at SUNY Buffalo, where he taught ethics and political theory. He's lectured in many countries and universities across Europe in the Americas, and has published extensively on transitions to democracy, democratic theory, and the relationship between morality, politics, and law. Among many other publications, he's written a book called *Transitional Justice and Development,* another called *Justice as Prevention*, and finally, *The Handbook of Reparations* from 2006. He's also been an advisor on justice issues to the World Bank, and to many national initiatives, including truth commissions, and various victims organizations. Thank you so much for taking the time to be with us today, Pablo de Greiff.

**Pablo De Greiff** 02:13

Thank you for the invitation, John. I'm delighted to be talking with you.

**John Torpey** 02:18

Great to be great to have you here. So perhaps we should first discuss the meaning of the notion of transitional justice for those who may not be familiar with it. I recall once telling a friend who worked in the State Department about work that I was doing related to the issue of the problem of transitional justice. And he looked at me a bit blankly. So it may not be familiar to everybody. What does it mean? And could you discuss some of the paradigmatic cases of transitional justice?

**Pablo De Greiff** 02:49

This is a perfect place to begin, John, because of your experience with your friend of the State Department, I must say, I have had similar ones, including at the Human Rights Council in Geneva, after its members had adopted a resolution creating a mandate precisely on the subject. And some of the members that had voted in favor of the resolution didn't seem to be very clear about what it was about. So I guess that the most general way of defining the term transitional justice is by reference to the efforts that countries have made in order to deal with legacies of massive human rights abuses and the originally massive human rights abuses that took place during authoritarian regimes.

**Pablo De Greiff** 03:49

So the incoming, the successor regime usually tried the variety of initiatives in order to come to grips with what is left in the wake of, for example, the use of state institutions for purposes of repression. And the field started not as the unfurling of positions that were formerly articulated in any theory. This is a field that started through practice, by people, particularly in the countries of the Latin American Southern Cone trying to redress and to prevent violations that had taken place during their corresponding dictatorships. So they tried "truth telling exercises," they tried to provide different forms of reparations to big teams, they also tried, at different times, to use the criminal justice system in order to investigate, prosecute and punish those that were responsible. And they tried a variety of measures that were preventive in intent; and had a lot to do with the reform of institutions; particularly, of those institutions that had participated in the violations, military and paramilitary units, or institutions that had failed to prevent the violations, including, for example, the judiciary. So that's our place to start, what countries try to do in order to redress massive human rights violations.

**Pablo De Greiff** 06:09

And then you asked about some of the paradigmatic examples. And I would start with Argentina and Chile. But of course, the field grew very, very rapidly during the last 30 to 35 years. And then people are very familiar with the South African case, particularly its Truth and Reconciliation Commission. People are somewhat familiar with some dimensions of the Eastern and Central European cases after 1989 and now transitional justice as a model; as a model that involves these four elements: truth, justice, reparations and guarantees of non-recurrence. [It] has become normalized. It is expected that countries that undergo different types of political transformations, now no longer the transformation from authoritarianism to democracy, but also their transition from conflict to peace. They are expected to implement the set of measures. So it has become quite popular.

**John Torpey** 07:46

...And quite accepted in the international arena. And you've been in some of the jobs that reflect that fact, I think, right?

**Pablo De Greiff** 07:55

Yeah, so I think, with some amazement, I confess. Anyone who is familiar with how difficult it is to achieve normative change at the international level, has to be surprised about the fact that a set of practices that did not have a name in the late 90s, because no one refered to these set of measures using the term "transitional justice" until the early 2000s. A set of practices that didn't even have a name then, now are the subject of so much use that they have become really the subject of such deeply entrenched expectations. And that is true, even despite the very significant differences in the context where the model took shape -- the post-authoritarian transitions -- compared to the context in which that model is now more often than not used, namely, the post conflict context. So think, for example, about the fact that today the DRC, the Democratic Republic of Congo, the Central African Republic and Mali are countries that are trying to implement transitional justice measures, despite the very deep differences between those countries and, for example, Chile and Argentina. It is remarkable how quickly the model spread.

**John Torpey** 10:00

So you've opened the door, I have to ask you. You've just described, as you say, a massive transformation or transition in normative thinking at the international level and how difficult that is. Why do you think that happened?

**Pablo De Greiff** 10:17

So, I think, [it is due to] a confluence of several factors. One, of course, this coincided with the period that followed the Cold War, when human rights as part of the international agenda acquired a centrality that it did not have before. Or, frankly, that it hasn't had since, because I think that those days, in many ways, sadly, are over. So the period in the late 90s and early 2000s was a period in my mind in which lots of things were possible regarding human rights. And transitional justice was part of the human rights agenda that developed at the time. So this is one factor.

**Pablo De Greiff** 11:22

Second, I think that once the post-authoritarian cases were dealt with, as it were, people thought that the very same model could be applied in the many post-conflict cases that were left in the wake of the Cold War. And that for the first time it seemed to be tractable, they seemed to be resolvable. But something had to be done in order to bring the resolution about. And transitional justice seemed to be a sort of ready made recipe for that. And I have to say that I have some reservations about that very, very quick adoption of a model that was designed for post-authoritarian transitions. The very quick adoption of the very same model led to contexts in which institutions were significantly weaker, and in which the types of violations were also very different. But nevertheless, the fact is that this is one of the factors that in my mind explain the quick success of the model.

**Pablo De Greiff** 12:56

And I think that a third factor that one has to mention is that, of course, this coincided with a period of increased ease in communication and travel. In other words, some dimensions of globalization are also present in the diffusion of the model. People learn from one another much more rapidly than before; it was much easier to put meetings together when the South Africans were thinking about their transition. They organized two very important meetings in which Argentinian and Chilean human rights lawyers and activists were the main speakers. And part of the idea, of course, was to examine whether the model of transitional justice that had been adopted in the Latin American Southern Cone could be adapted to the South African situation. And this is just an example of the sort of diffusion that I am talking about. This was only accelerated by the internet. So now the learning curve is incredibly, incredibly steep... and everything that goes along with that; the field has become a field. And by that, I mean a field both of academic study but also of practice. So there is a profession now around transitional justice. There are masters and PhD programs. There are two specialized journals for people like you and I, who are drawn for our interests in questions about the sociology of knowledge. The field has its own specialized encyclopedia, which I think is a very good marker of at least the aspiration of a field to become an autonomous one --- and in 2012, the field got to its very own. And, of course, the academic activities involve significant exchanges between South and North. So I teach a seminar every year at NYU, where more than half of my students are foreigners. And they go back to their countries of origin. And some of them will work in this area. So I think that there's an element of globalization involved here as well.

**John Torpey** 16:00

Fascinating. It is really an interesting development and one that, as you say, has had enormous ramifications in terms of who's involved, and the fact that there's kind of a profession of people who work in this field, and it is quite extraordinary.

**John Torpey** 16:18

So you've mentioned the Argentinian and Chilean cases and the impact they had on South Africa. I mean, most people probably would say that the first truth commission was the South African -- people who are less familiar with this than you are -- but that had an enormous impact, I think, in this area. South Africa was, perhaps because of the nature of the regime that was being deconstructed, getting more world attention to what was going on [than] in the Southern Cone at that time. But you've sort of suggested that the truth commission model may or may not be entirely adaptable in all situations. I wonder if you could talk about to what extent was it appropriate to dealing with the South African past? And to what extent is it applicable in other contexts?

**Pablo De Greiff** 17:17

So if I may, let me make a general remark first about the challenges that arise from this transposition of a model that was thought for a very strongly institutionalized post-authoritarian transitions to weakly institutionalized post-conflict context. I think that when the strength of the institutions in the post-authoritarian cases go a long way into explaining why the model with these four particular elements made sense, and why it worked well -- and, of course, one has to be modest about what working well meant -- neither Chile or Argentina were automatically rapidly transformed into paradises of the respect of the rule of law and the paradise of a redress and reconciliation through the implementation of the measures. But nevertheless, I think that the implementation of the measures, over time, made a big difference at very different levels. But one can, perhaps, put the point in very general terms, that they contributed to restoring a certain type of trust -- or civic trust, basic trust -- in the institutions of the state, and that they affirm the certain basic principles about the rule of law. They drew a line between a past violations and a present and a future of the aspiration of respect for more lawful relationships; both between citizens, and particularly between citizens and state institutions.

**Pablo De Greiff** 19:38

When you think about the institutions in those countries, it is true that both Argentina and Chile had institutions that were horizontally and vertically very strong. Horizontally, in the sense that the institutions of each state could make themselves present in every corner of the state's territory. Now, like everywhere else, it doesn't mean that you could get equally good services in Patagonia as in Buenos Aires. But that was not because of lack of capacity, but, as it usually happens, because of decisions. So there was national coverage of a very strong type in both countries. And similarly, from a vertical standpoint, most of the crucial spheres of interaction between citizens and state institutions were already regulated by means of laws. Laws, which of course, were breached completely during the authoritarian period, but there was a legal regime that could be recovered and that was not full of empty holes.

**Pablo De Greiff** 21:02

When you move from a context like that, to a context, like the DRC or the Central African Republic, you are, of course, moving into countries in which that description of the institutional reality is no longer true. The institutions of the DRC and the CAR are not horizontally strong; they cannot make themselves present and they haven't been present in large swathes of the territory or each country. And vertically, of course, these are countries that have lots of legal loopholes; where the law is simply silent, lots of issues; very important issues with respect to which the law has not spoken, it has never been established. And I think that that makes a difference. Not surprisingly, in those contexts, it is much more difficult to achieve results via the implementation of a set of measures that presuppose the institutions that were more or less strong and that had certain capacities that cannot be taken for granted everywhere.

**Pablo De Greiff** 22:26

Now, with respect to truth commissions, in particular, I think that the idea of a truth commission was born out of the desire to respond to the basic mode of operation of authoritarian regimes, which, in the Southern Cone, were in the habit of illegally detaining and disappearing people. And therefore, the first commission, as it is now understood in the field that was not the South African Truth and Reconciliation Commission, but the commission that was established in Argentina, the CONADEP, which was a commission specifically tasked with investigating the fate of the disappeared. Because this was the primary mode or violation of the predecessor regime. So because the mode of operation was shrouded in silence, and it took place under a veil of secrecy, the truth commission model made perfect sense. And the task of the truth commission is very clear. It is fact finding, both in the sense of clarifying particular cases -- what happened with particular individuals -- and also victim tracing: "where are they?" or "where are the remains? Because we need them."

**Pablo De Greiff** 24:17

In the cases of conflict, the basic task of a truth commission become a bit more complicated. Open conflict, open warfare is open; there is no secrecy there. Both state and non-state actors attack one another in full daylight. And therefore, the basic task of a truth commission changes. And not surprisingly then, the fact finding and victim tracing functions of the original truth commissions have been substituted for other functions that have much more to do with analysis of root causes of conflict. And while that is crucially important, following recommendations having to do with addressing complicated, sometimes historical difficulties, having to do with the origins of conflict, becomes much more difficult. And therefore, the implementation of truth commission recommendations becomes much more challenging in this new context of operation.

**Pablo De Greiff** 25:47

So, I hasten to add, my argument is not that it is useless to try to establish a truth commission in a conflict situation, but that their function, and what can be expected from them has to accommodate their contextual factors. And if I may, one comment relating to the earlier part of our conversation: there are great advantages to the professionalization of a field having to do with the speediness of the transmission of information: a certain type of standard setting and "quality control," which is all to the good. But with professionalization also comes the danger of a tendency to replicate. And that is, to turn the basic question that the Argentinian and Chilean activists that were originally working on this, which was: how do we best satisfy the rights of victims, to truth, justice, reparations, and non-recurrence? The question now becomes, what is the most efficient way of establishing a truth commission, a prosecutorial mechanism or reparations program, and very familiar measures of non-recurrence. In other words, the project becomes a bit more technocratic, a bit more concentrated on institutional replication, rather than on the satisfaction of rights. It becomes less sensitive to the particularities of the context. And I think that a price is paid for that.

**John Torpey** 27:59

Thanks, that's very helpful for understanding the various things that truth conditions can and perhaps to some extent, can't do. But of course, it has become a kind of tried and true mechanism that people typically want to reach for in these kinds of circumstances where there's some nefarious past that needs to be dealt with, or some people think it needs to be dealt with.

**John Torpey** 28:25

But we've talked about your mandate or your remit as Special Rapporteur for the Office of the High Commissioner for Human Rights, and that it has these four parts. And as you know, I have a particular interest in the reparations basket, so to speak. And I wonder if you could explain a little bit -- I'm trying to remember the name of the principles that the UN adopted for dealing with past injustices -- it's this very long title about the right to reparation, and restitution, and it has very many different kind of facets. I wonder if you could talk a little bit about what those various facets are, and to what extent you think the adoption of these principles has been successful in actually getting people some kind of reparation. And of course, reparation, I always say, when it's singular, it means many things. When it's when it's plural, i.e. the word reparations, and it usually just means money. So I wonder if you could talk about the meaning of the term and how well the adoption of these principles has actually worked for people.

**Pablo De Greiff** 29:38

So John, first, I would like to start by praising both your old article and the subsequent book on the topic from which I learned a lot many years ago. But I think it's a wonderful discussion about some of the complex issues that are involved in trying to do reparations. So after many years of discussion, both in the former Human Rights Commission and subsequently the Human Rights Council, what originally were called the "Van Boben principles," with the last name of a rapporteur that was in charge of drafting the first version. Then the "Bassiouni principles" after the last name of the second rapporteur that took that project over. Eventually, what in short, as you say, the very long title became known as the "Basic Principles" and were adopted in 2005.

**Pablo De Greiff** 31:01

I guess that for the sake of our discussions, the important point to realize is that the international community asserted in those principles that the violations of both human rights law and international humanitarian law gave rise to rights to redress and reparation. And that in the case of reparation, there were five important categories of reparation: one having to do with monetary compensation; one having to do with their rehabilitation -- and not just rehabilitation of, for example, in terms of medical conditions produced by the violations, but also the rehabilitation of people's good name and legal records, for instance. This would be part of what would fall under the category of rehabilitation.

**Pablo De Greiff** 32:15

The third was restitution. So in cases of expropriation, for example, a form of reparation is, of course, the restitution to the rightful owner of the property that had been expropriated. And then two very broad categories in the basic principles having to do with what the document calls "satisfaction and guarantees of non-recurrence". And this refers to an open ended set of measures whose purpose was to provide some degree of satisfaction, peace of mind restoration of a life project. But also to provide, and not just to the victims but to society as a whole, a set of measures concentrating on institutional reforms that aimed at diminishing the likelihood that the violations would take place, again. So this was an exercise in the disaggregation of what reparations could consist of. The motivating principle was, in a certain sense, the principle of full restitution, in other words, to restore the victim to the situation ex-ante, to the situation before the violation took place. But of course, being flexible, because when you have a huge universe of victims and violations of a certain magnitude, this becomes an ideal, a guiding idea more than a criterion of effectiveness. To be honest, I don't think that there's any country that can claim that it has achieved that degree of success in its reparations efforts. And nevertheless, I want to say that there are countries that have achieved some significant success in trying to provide redress to victims, even if it falls short of the principle of full restitution.

**John Torpey** 35:10

Great. Well, thank you very much for that. And I have to say, as I've thought about what you've been saying, I confess, I sort of feel like that we in the United States are now involved in one of these processes. Donald Trump, in many ways, helped to dismantle the idea that the United States was this exceptional nation that there was this business about American exceptionalism in the sense that he rode roughshod over the rule of law, had very little respect for the Constitution, actually no respect. And, there have been many questions, they've, to some extent died down, but there have been many questions about how we should deal with Donald Trump now that he's out of office. And some people would say, that's how you deal with them, you get him out of office, and that's that. But we are about to embark on this second impeachment trial, which seems clear already that he's not going to be convicted in the Senate, they just don't have the votes. So I wonder how you -- you have a very international very broad kind of basis on which to look at the United States situation -- and, every place is exceptional in the sense that it has this kind of unique trajectory. But I wonder if you could let us in on how you think about what's happened here? Obviously, it's got its own special circumstances. And what you think we should do and what do you think is going to happen given the likely failure of the second impeachment trial?

**Pablo De Greiff** 37:01

So I spent a bit of time talking about the importance of transitional justice being sensitive to context. And in some ways, pointing out that the professionalization of the field, which involved its formalization, brings with it the dangers of mere replication. Organizational sociologists have a wonderful name for this. They call it isomorphic mimicry. And obviously, not referring to transitional justice in particular, but with a generalized tendency to think that the very same institutional formations would work equally well regardless of circumstances, which of course, doesn't make much sense. So, everything that I say in response to your question will be colored by this conviction; that whatever is done by way of transitional justice should be sensitive to context. Including not just the institutional setup, but also, for example, cultural preferences and cultural norms.

**Pablo De Greiff** 38:33

Having said that, I have devoted the last 25 years of my life to the notion that past human rights violations matter. That people do not forget that the legacies of the violations remain, and they may be transformed and get manifested intergenerationally in different ways, but they do not simply disappear. And I think that there's evidence of this, from very, very different countries and very different contexts. In Spain, people are still seeking justice for violations that took place during the Civil War under dictatorship. In countries where leaders say "the best thing that we can do is to forgive and forget," people eventually rebelled against this idea and tried to get some recognition of the violations that took place. In other words, I am very firmly committed to the idea that massive human rights violations should not remain inconsequential, that the past matters. And I am not American, but I have spent 40 years of my life in this country. And I am familiar enough with aspects of its history which become manifested and highlighted in a big way, in a big and public way, on particular occasions. And I do think that this is a country that has failed to reckon with the history of racism that did not end with abolition, but whose legal consequences continued until just a few decades ago. [This] by way of redlining laws, differential access to mortgages, obviously, different access to a variety of services which are paid for, by public money and through taxation.

**Pablo De Greiff** 41:21

So this is a country that in the midst of all of this held up the idea of exceptionalism. Without paying sufficient attention to whether the idea of citizenship -- the idea of being a fellow partner in a shared political project -- had the same degree of concrete reality for every one of its members. And therefore, I think that this is a country which would benefit tremendously from a reckoning with its own history. Now, what is the precise shape in which that should take place? Of course, we can discuss. But in general, my sense is that it would be very important for the country to engage in this. And in that respect, Trump was very important because of the role that he played in instigating, not just what happened on the sixth of February, but long before even before he was elected, instigating a certain type of divisiveness in the society. He is important, and he deserves a lot of attention.

**Pablo De Greiff** 43:06

But I also think that it would be a huge mistake to think that Trump is a fluke. Trump and his success -- his electoral success -- and his still very strong following rests on decades and decades of deliberate decision making on the part of the Republican Party, but also on the part of the Democratic Party. And in that sense, it would be a mistake to think that, for example, even if one succeeded in establishing criminal cases against Trump, the problem would be solved. I think that we are dealing here with a significantly broader and deeper problem that calls, as the transitional justice model does, not just for the use of the criminal justice system, but also for the use of truth telling and truth seeking mechanisms in order to socialize truths that the majority of the country have not been particularly interested in. And there is the question which is of interest to you, I know from your own writings, about what to do with the economic inequalities that came about as a result. And that's part and parcel of the history of racism that is so deep in American history.

**John Torpey** 45:06

My own view recently has been that what we need in the United States is something like a rerun, if you like, of the Kerner Commission of the late 1960s: a congressionally mandated panel of experts from various fields, history, economics, etc, trying to understand the extent to which contemporary inequalities are a product of past injustices, obviously, slavery and the so-called Jim Crow. But, to some degree, these things; the sort of health gap, for example, between Blacks and Whites has been, relatively speaking, getting better in recent years. That's not to say that Black life expectancy is as great or as long as White life expectancy, but the gap has been narrowing. So it's not as if these problems continue to the same degree of seriousness as they have had historically and that have changed over time.

**John Torpey** 46:13

And so, my feeling is that if you can get people to sit down and talk about the relative significance of the historical past and essentially the present, it might open the door to understanding what policies would properly address these inequalities, these deep injustices. I don't think it's the case that just achieving economic equality, not that that's in view, but I think there's more to this, obviously, than simply the economic inequalities, however severe and damaging, those are. So I mean, it's not exactly a truth commission, but it's a kind of commission of inquiry that has that old thing: bipartisan support. And, and indeed, it seems to me [that] real progress on these issues requires some kind of mandate from the top, from the center that's based on, some kind of serious inquiry into the origins of these inequalities. Sorry to go on, but I wonder what you might say about that.

**Pablo De Greiff** 47:33

So, I think that here, the moment is such that it would be good to adopt a multiplicity of measures attacking the challenges from multiple angles. I think that there is something important about a centrally constituted and authorized commission to investigate certain set of events, even if they happen to be historically distant or temporarily long lasting. The sort of imprimatur and the signal of seriousness that is involved in the establishment of an official body, I think, is important.

**Pablo De Greiff** 48:36

At the very same time, I think that this is a country that has increasingly low levels of trust in the center, in the political center. That has reached a degree of polarization where I am not sure how convincing it would be and how effective it would be for people in the heartland to listen to the conclusions of a commission that operates remotely and that is run completely by federal bureaucrats or elected officials. Let's not forget that here as in many other countries, the legislature is the least trusted branch of government. The country is very large and very diverse. There are very different histories in the relationship between racial groups, not just between North and South, but amongst, to put it this way, micro-regions within each of those areas.

**Pablo De Greiff** 50:01

So I think that there is also a need for local initiatives that would work out the problem in bottom up way as well. And then the challenge would be how to connect those two sets of truth telling exercises. But I think that both of them have something to offer to the country. And I doubt that either, in the absence of the other, would be sufficiently persuasive and sufficiently compelling to people generally. So I tend to think that you need here a sort of a novel approach to the question of truth. We also have to keep in mind that this is yet another context in which the task of a commission of this sort would not be to remove a veil of secrecy under which institutions operated. All of this happened very publicly. So I think that a good part of the task here is not so much the discovery, but the socialization of truth. And I doubt that the commission composed of federal bureaucrats at a distance is the best vehicle for the socialization of truth that needs to take place in this country. Again, it will be an important component, but I don't think that it could, on its own, carry sufficient weight.

**John Torpey** 52:03

Right. Well, suffice it to say we have a long way to go because most of these initiatives either at the top or at the bottom are not particularly in sight. Although there are certain promising initiatives in the south and elsewhere that, for example, Susan Neiman has recently written about. So let me take that opportunity to wind things up. I really appreciate Pablo De Greiff for coming and sharing his insights about processes of transitional justice and their relevance to the current situation in the United States. I also want to thank Hristo Voynov for his technical assistance, and to acknowledge Duncan McKay, who provided the theme music for our podcast. This is John Torpey, saying thanks for joining us, and we look forward to having you with us for the next episode of International Horizons. Thanks, Pablo.

**Pablo De Greiff** 52:57

Thank you so much, John. Thank you very much.