

“Desire for Justice, Desire for Law: An Ethnography of Peoples’ Tribunals” Symposium edited by Chowra Makaremi and Pardis Shafafi, *PoLAR: Political and Legal Anthropology Review*, Vol. 42, Number 2, pp. 181–243, November 2019

Introduction*

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[p. 181] In recent decades, questions of impunity have become key contemporary topics and major policy challenges on issues of political participation and legitimacy, both in postconflict situations and in liberal democracies. The fight against impunity has taken on a cataclysmic role in rights-driven movements, marking what Karen Engle (2015) identifies as a “turn to criminal law” and a response to issues ranging from economic injustices, to environmental devastation, and even to contexts of genocide. However, this reframing of political and legal action is accompanied by significant challenges. Among the most substantial issues are the reality that not all actors can be brought to court; that advocates often face the absence of a competent legal arena, including trained, recognized, and credible representation; and, not least, the lack of the necessary laws or political will to exercise judgment over powerful entities like governments or corporate organizations. Indeed, even when jurisprudence already exists, the uneven and policy-driven execution of these laws has led to a general rise in disenchantment with the idea of a “global moral community” (Fassin 2011, xii), otherwise presumed to be tasked with the enforcement of rights-based law. The architecture of international law and geopolitical agendas produce double standards and blind spots of unaccountability, as the case of Syria most recently shows. This happens despite the incredible

* For quotation purpose, the original page numbers are indicated [in bracket] in the text.

magnitude and detail of documentation of the conflict. This politics of impunity has led to new kinds of legal resistance.

Counter-Hearings

Publicized in 2000 through the Women's International Tribunal on Japanese Military Sexual Slavery, civil society tribunals—also called tribunals of opinion, symbolic tribunals, peoples' tribunals, citizens' tribunals—are the most common form of prosecution projects in situations of impunity, and challenge the fundamental premise that the law is the exclusive domain of states. They take the form of legal prosecutions and truth commissions run by prominent international law practitioners, public figures, and activists. Yet they do not have any institutional mandate or enforcement capacity. The semantics of describing such tribunals place them at odds with notions of more formal, more official, and more objective legal processes. Interestingly, however, it is from these same points of polarization that people's tribunals draw their power. Peoples' tribunals usually act in the absence of the resources, mandates, and indeed acknowledgment that truth commissions and tribunals enjoy. Their use of extra-institutional legal mechanisms sheds new light on the complex relationships among transnational communities, national contexts, and the global arena as a whole. This highlights a need to identify the various actors engaged in unofficial prosecution initiatives and to investigate further how these initiatives go on, in turn, to reshape communities at transnational levels.

[p. 182] The first international citizen's tribunal was the Commission of Inquiry into the Origins of the Reichstag Fire (also called the International Juridical Investigatory Commission on the Reichstag Fire) held in London in 1933 to present a counter-investigation and denounce the biased trial of the communist parliamentarians accused of the Reichstag fire in Berlin (Klinghoffer and Klinghoffer 2011, 19–43). However, this genealogy has somehow been lost and the filiation claimed by peoples' tribunals since the 1970s is that of the Russell Tribunal. Organized and chaired by Bertrand Russell and Jean-Paul Sartre, this tribunal was impelled by a sense of moral indignation channeled through renowned Western intellectuals, and it contained no legal experts (Zunino 2016). Since this first public attempt to hold the United States accountable for war crimes (in

Vietnam), peoples' tribunals persist in intrinsically embodying a form of transnational resistance to global power politics; yet, key differences have evolved. The organizational impetus has moved away from intellectuals and elites to a “bottom-up” organization involving the victims and survivors themselves, who speak their own experiences to power (Byrnes and Simm 2014; Shafafi 2015). One such prominent initiative is the Permanent Peoples' Tribunal, which continues to be unique in its permanent composition and with a sitting secretariat in Rome. Since the 1960s, over eighty international peoples' tribunals have taken place. These have covered diverse cases, a significant number of which relate to state and political violence. These have included tribunals that deal with the use of force from international actors during conflicts, as in the World Tribunal on Iraq (2002–2005); tribunals examining a single state's violent treatment of its own people, as in the case of the Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China (2018–2019); and tribunals on labor rights, climate change issues, and violations of powerful corporations, such as the International Monsanto Tribunal (2016).

Some, like the Tokyo women's tribunal, are removed temporally (like a time machine) but are a continuation of existing formal processes, examining a specific and persistently unacknowledged issue; in this case, of sexual violence and the institutionalized slavery of thousands of women from multiple nations. The complexities of cases like these are further compounded because, as here, the accountable were mostly deceased at the time of the tribunal (Dolgopol 2015). Others, like the Iran Tribunal (see Talebi, this issue), are both geographically and temporally removed from the site of their occurrence. Reexamining an already written historical record, they are doing so with no access to the scenes where the alleged crimes against humanity took place. On the opposite end of the scale are peoples' tribunals such as that of Myanmar, which were held while the atrocities were ongoing in 2017. Similarly, and in the same year, the people's tribunal called Unravel the NSU Complex, held against neo-Nazi crimes and impunity in Germany, took place in concomitance with the official trial of a National Socialist Underground (NSU) member for the killing of Germans citizens of immigrant descent. In this case, a parliamentary fact-finding commission was nominated in Berlin to inquire into the impunity of NSU killers and their links to the German Secret Services; a criminal public trial was also held in Frankfurt in 2016–2017, with massive media coverage. Meanwhile, a people's tribunal was organized in Cologne in May 2017 to present elements of a “counter-investigation” and to denounce the institutional racism

toward the victims' families—not only during police investigations but also at the Frankfurt Court of Justice. For the Unravel the NSU Complex people's tribunal (see Zapperi 2017), as for the Speak Out Against Poverty hearings held in South Africa in the shadow of the Truth and Reconciliation Commission (see Rousseau, this issue), the ambition was not simply to compensate for a lack of legal mechanisms and action but also to highlight their failures even as they were exercised. Questioning the [p. 183] legitimacy of the law, while also harnessing its power through its symbols (Merry 1996), these initiatives acted as counter-tribunals and counter-hearings.

Ethnographies of Peoples' Tribunals: Filling a Research Gap

Peoples' tribunals have received attention from legal scholars interested in understanding civil society participation in international law-making and implementation (Bickford 2007; Chinkin 2006). Anthropologists, meanwhile, have studied how violence, social injustice, and local histories are narrated through the law, and how legal procedures inform collective memories (Hinton 2010; Theidon 2006). However, this abundant scholarship has so far focused on transitional justice and state-sponsored arenas of international human rights or environmental law-making, thus reproducing the normative boundaries between “official” (state-endorsed) and “unofficial” initiatives. The latter has remained underexplored.

From an anthropological perspective, the creative modes of resistance contained within the medium of truth telling through a people's tribunal, the narrative focus of this particular form of resistance, and the retelling of trauma through an unaccommodating receptacle are points of disciplinary interest. Despite these worthy points of study, however, anthropologists have seldom assessed peoples' tribunals and their tripartite impact on the participant-organizers, perpetrators, and public (including legal authorities). Nevertheless, the discipline is especially well-equipped methodologically for such empirical studies, with the development of courtroom ethnographies (Baxi 2014; Emerson [1969] 2017). Sally Engle Merry conducted the first ethnography of a people's tribunal in the pages of this very journal, by looking at “legal vernacularization” at play in the People's International Tribunal in Hawai'i (Merry 1996). Two decades later, the first monographs on peoples' tribunals

(Çubukçu 2018; Shafafi 2015) indicate the shift by which sufferers of political violence are empowered to learn and use the rituals of international law to make sense of their own experiences and to challenge institutions that are unwilling or unable to represent their interests and pursue accountability. In the process, the very experiences of violence that were put on trial influence, at many levels, the frames and expectations of a collective mobilization. Shafafi (2015) refers to this as “post-traumatic political participation.” Here, the ethnographic perspective delves further into the emotions, representations, and power relations that infuse legal mobilization, beyond (or below) the standardization implied by legal tools and concepts. As Çubukçu (2018) remarks in her seminal ethnography of the World Tribunal on Iraq, these resistant uses of international law actually confront transnational solidarity movements with some major impasses, as the language of human rights and the grammar of international legal expertise have become conveyors of imperial domination, wars, and interventions in themselves. Civil society tribunals confront the cosmopolitan ideas of human rights with the political interests that drive their implementation at both national and international levels.

What then are the—sometimes competing—sources of legitimacy for such initiatives? What paradigms of sovereignty and justice do they mobilize or produce at the boundaries of the legal and the legitimate? How do such inquiries on the legality of state conduct affect the exercises and paradigms of power? In response to these polemics, Chinkin advises not to judge peoples' tribunals against a “criteria of effectiveness” imagined for formal courts (2006, 219); and Dolgopol (2015) suggests to look at the way that tribunals simultaneously and creatively challenge the instruments that form the machinery of states and multistate institutions. In this context, a people's tribunal as a transformative civil society effort is recognizable because “the tribunal represents a move to seize and redefine law itself”: the law is “separated from its nation-state context and redeployed as plural, [p. 184] as local and global” (Merry 1996, 79). Incidentally, anthropologists of violence have been vocal in their claim that “resolving” violence is a more tangled and complex task than simple retributive justice can ever hope to offer (Hinton 2010). Multiplying projects of peoples' tribunals in contexts of impunity are thus interesting at several levels: first, new forms of collective mobilizations question core issues of legitimacy and sovereignty in the production of law; second, productions of collective memories and narratives of violence use legal frameworks and terminology and yet are outside of institutional apparatuses; and third, sources of empirical data are used when on-site investigations prove difficult or

unfeasible, and thus contribute to the debate of ethnographies in “off-limits” zones.

Counter-Memories

As practices of memorialization and spaces of “truth-telling” (Rousseau and Fullard 2009), peoples' tribunals address three questions that are especially prominent. The first is: How can legal-based individual case records construct collective narratives of structural, repressive, and mass violence, and what are the conditions, consequences, and paradoxes contained within this process? Second, what political and legal conditions of production of knowledge do these alternative legal fora bear? Third, how are knowledge and narratives produced as an outcome of the identities of the participants, while at the same time shaping these identities – identities that may evolve throughout the process?

The case of the Tokyo tribunal, described above, illustrates that, deprived of legality, peoples' tribunals ground their legitimacy and efficiency in solid fact-finding procedures aimed at creating a fuller and more accurate historical record. In 2015, the records of the International People's Tribunal on 1965 Crimes against Humanity in Indonesia produced a collective volume revisiting the historiography of the 1965 massacres (Wieringa, Melvin, and Pohlman 2019). This raises important issues, such as the archival dimension of unofficial truth telling and the ethical challenges linked to data collection in repressive, dangerous contexts as allowed through multimedia and the Internet.

These dimensions extend a useful counterpoint to the debates on the crafting of historical narrative through international criminal trials (Wilson 2011). On this point, Wilson demonstrates how a key factor in the quality and the depth of the historical analyses produced through legal procedures is the qualification of the charge itself. Peoples' tribunals are often set up to tackle legal qualifications that go beyond the scope of possibilities offered by state-endorsed legal fora. Moreover, although they strictly mirror the procedures of a court or truth commission, the hearings allow for more creative, subjective forms of testimony through the time allocated to the witnesses, the spatial organization of the court, and, above all, the character and quality in the attention of both the audience and the judges. With shared procedural elements, unofficial tribunals strive to create the conditions for situations of injustice to be narrated and memorialized

through the law, as our symposium further explores. In this regard, Coutin and Lynch remind anthropologists of “the interrelationship among accounts of abuses, the knowledge frameworks that provide evidence for them, and the institutions through which they are produced” (2007, 7). But the creative power of peoples' tribunals is undeniable. They offer new insights on the question of how the rituals of law and rules of adjudication are used to produce collective narratives and memories in the absence of institutional, official forms of recognition. They inspire reflections on the effects, outcomes, and products of these efforts, and about what kinds of tools or grids can be used to assess or understand them. These questions present the red thread running through the ethnographies presented in this symposium.

Our Symposium

[p. 185] Engaging in a multidisciplinary conversation, this symposium aims at an empirical, comparative approach to peoples' tribunals through the multiple levels on which they act: of the defiant telling of public secrets through testimony, the establishment of a creative space of resistance, and of shaping and developing a new understanding of international law. What are the outcomes of these legal mobilizations and arenas? How is one to understand the gap between the desire for justice they perform and the limitations that are carried within these unofficial legal projects? As the contributions enlighten, echo, and enrich one another, they also bring new insights, as a whole, on how peoples' tribunals challenge the relationships among law, justice, and power; the definitions of political and moral subjectivities; and the boundaries of engaged fieldwork. Giovanni Prete and Christel Cournil investigate the International Monsanto Tribunal, organized in 2016 in Brussels, to address a double challenge of impunity: that of a private transnational corporation accused of inducing ill-health and environmentally damaging toxins through its business, and that of transgressions that as yet have no legal qualifications—advocated through a new legal concept of “ecocide.” Nicky Rousseau reflects on the Speak Out Against Poverty commissions set up by local communities throughout South Africa in parallel to the Truth and Reconciliation Commission, with the aim of bringing back into conversation the economic inequalities, structural violence, and longer term socio-economic colonial domination within the debate of

apartheid violence and rights violations. Shahla Talebi looks at the Iran Tribunal against state crimes held in The Hague in 2012 as the inverted reflection of a very different “space of law”: the revolutionary courts as chilling stagings of “popular justice” that conveyed the culture of terror in postrevolution Iran. In this heuristic juxtaposition, Talebi reminds us how the violence and injustices that the people’s tribunal exposed were “themselves part of the way State legality operate[d]” (Merry 2016).

In this symposium, one article addresses state-endorsed violence through structural inequalities (Rousseau); one through mass repression and torture (Talebi); and one through a powerful transnational private actor (Prete and Cournil). Two hearings were organized in the wake of the renewal of peoples’ tribunals as resistance strategies since the 2010s (Prete and Cournil; Talebi), and one goes back to the wake of the transitional justice movement in the late 1990s (Rousseau), offering enlightening genealogical insight on civil society initiatives and their relations to truth commissions. What makes Rousseau’s comparative genealogy all the more valuable is the unique knowledge the author possesses of what she calls “the poster child for truth commissions”: South Africa’s Truth and Reconciliation Commission (TRC), and on which she worked extensively. A noticeable shared point among all of the symposium’s articles is how they stem from, and carry further, the interpenetrations among expertise, knowledge, and engaged practice, which characterize contemporary peoples’ tribunals as phenomena and set them apart from their predecessor—the Russell Tribunal— although in different ways. Christel Cournil, as a legal scholar engaged in the creation and expansion of legal doctrine in the field of environmental law, was herself an expert witness in the Monsanto tribunal. Shahla Talebi, a former political prisoner in Iran in the 1980s and a survivor of the 1988 massacres (Talebi 2011), has experienced the very crimes examined by the Iran Tribunal and has intimate knowledge of the places and temporal moments that examine the crimes that occurred. Nicky Rousseau, a cowriter of the TRC’s final report, is also a long-term grassroots actor of the transitional justice movement in South Africa.

While Prete and Cournil and Rousseau focus on the networks, communities, and legal expertise that organize and conduct the hearings, Talebi reverses the lens to focus on what it means to testify before a people’s court and to hear these testimonies. Partly autoethnographic, and thoroughly reflexive, the act of testimony in such heavily shaped [p. 186] legal spaces itself becomes a key point of address. Her article offers insights on the relations between violence and witnessing by questioning the thresholds of

(in)audibility. This question of audibility and visibility is one of the common themes that run throughout all three ethnographic studies. Rousseau anchors her reflection in a paradox: Why were the Speak Out hearings so “underheard” or inaudible when they took place? And why do they still attract such little attention as research and archival objects? This question has renewed significance because these counter-hearings and thousands of testimonies were recorded in parallel to the TRC. The shortcomings and mischaracterizations would go on to prevent South African society from overcoming structural racism and violence in the next decades; namely, the question of material repair, and the acknowledgment of the colonial and capitalist roots of apartheid violence beyond a “narrow definition of political violence” (Rosseau, this issue), which inescapably redistributes responsibilities and muddies the perpetrator–victim–bystander distinctions. The blurring between clear-cut positions runs through Talebi’s account of what the hearings not only did to the audience but also to the voices of those who appeared in courts. In Talebi’s case, both the producer and the receiver of these voices is subject to an analysis that looks at how the receptacle (the heavily contextualized legal space) has the propensity to be a generator—or a distorter—of people, of experiences, and of historical episodes. The question of the voice is also of concern for Rousseau, who reads the act of testifying as a process of political subjectivation and desire for transformation, as the procedure asserts the identity of the participants as active, self-helping citizens, but also, more basically as humane and therefore deserving rights.

Through heuristic counterpoints, this symposium helps readers to understand a key ambivalence and point of interest raised by peoples’ tribunals as laboratories of resistance. On the one hand, Prete and Cournil unpack the production and circulation of legal expertise and jurisprudential ambitions of a tightly connected network of actors that appears as a global “epistemic community” (Haas 1992), while also supporters of what has been considered a traditional and conservative doctrine and discourse. However, legal practitioners at all levels are increasingly participating in processes that challenge the institutions of their discipline. This is further evidence of the creative powers of peoples’ tribunals. Peoples’ support and participation is more than symbolic, as they also improve the rigor of the documentation processes, and the authority of claims with respect to international law (Prete and Cournil, this issue). Such tribunals may not have enforcement authority, but collectively they have already impacted the elite practices that govern (or ignore) their pleas. Nonetheless, such participation does not reduce tribunals to empty buckets conveying Western imperial models under the guise

of universal human rights. As Talebi and Rousseau each show, tribunals are also the product of strong participation and community politics, and ones that have taken interesting multisited and digitized forms in the last decades. In these spaces of law and collective mobilization, identities and voices are being renegotiated and knowledge coproduced at the threshold of audibility and visibility.

Central to the different projects presented in this symposium is the question of impunity and the numerous and disparate ways in which it is problematized through peoples' tribunals. The Monsanto and Speak Out initiatives illustrate the difficulties of finding the right legal qualifications and arenas for addressing the violence of global and neoliberal governance. In a distinct way, the mass executions and torture examined by the Iran Tribunal do fit the existing definition of "crimes against humanity" perpetrated by the state. The distinction in problematizing impunity here lies not with the legal definition of the crime or the perpetrator, but rather with the absence of political transition and the international community's incapability (and unwillingness) to hold the perpetrator state accountable (Shafafi 2015).

[p. 187] One paradox inherent with such tribunals (similar to the Sri-Lanka, Indonesia, and China tribunals) is their use of the transitional justice model, as illustrated by the "truth commission" held by the Iran Tribunal to inaugurate their cause in June 2012. This is striking because the very existence of these tribunals is precisely connected to a lack of political change or transition. Their selective engagement with the transitional justice model is also apparent in their vehement rejection of the "reconciliation" aspect of this same model, demonstrating acknowledgment of their disparate circumstances: no change in the source and nature of the violence, and certainly no accountability. As such, the Iran Tribunal declared publicly that there would be "no forgetting, and no reconciliation" (Iran Tribunal 2015). The creative and empowered use of the tools and language of the law was thereby marked with intention. Like their methodologically similar counterparts, the truth (and reconciliation) commissions, peoples' tribunals engage in fact finding, victim-centered testimony, and truth telling, and have a characteristic lack of jurisdiction to prosecute (Hayner [2001] 2011). Still, like the people's tribunal discussed in this symposium, truth commissions often also call for such prosecutions to take place as an outcome of their efforts. Their victim- and survivor-centered focus, coupled with the main ambition of "acknowledgement and recognition of suffering and survival to those most affected," warrant further comparisons (International Center for Transitional Justice 2017). Their main difference, therefore, is not the content of their hearings as much as

the source of their mandate, timing, and structural organization, all rooted in the same axis from which they draw their relative, but fragile, power. As Rousseau notes, however, distinctions between peoples' tribunals and truth commissions, "although useful in some respects, are too hard": like in peoples' tribunals, "civil society frequently plays a key role in lobbying for and initiating truth commissions, as is evident in South Africa"; and truth commissions "lack the capacity to hold the perpetrators legally accountable" (Rousseau, this issue).

On a broad scale, the methodological challenges that each of these legal gatherings face serve to highlight the difficulties in assessing and defining violence. A first question here is that of prosecutorial methodologies in the establishment of legal facts and legal truths: How much can the judges consider the testimonies to be true without due trial? What constitutes such a due trial; and how much of this is linked to mandates, dependent on elite hierarchies of power? Another question is that of the theoretical and doctrinal implications of the hearings: How does one distinguish a hearing outcome that itself challenges the breadth and frames of fact finding and sentencing? What constitutes the criteria for "exploding the limits" (Arendt 1963) of current legal practice once again? In the case of South Africa's Speak Out, this concerns how to restore the prominence of structural violence in the history of apartheid, and what the consequences should be in terms of defining the "perpetrators" of such violence. In the case of the International Monsanto Tribunal, readers are compelled to seek a definition of mass crimes and consider the imprescribability for environmental destruction. Because people's justice roots its legitimacy in its respect for the law, the theoretical breakthroughs proposed by tribunals, like those discussed in this symposium, are both successes and limitations of their action. This paradox, which goes back to the duality of the law as both instruments of power and resistance, illustrates the strength but also the enigma of peoples' tribunals; that is, in Merry's (2016) words, "the extent to which faith in law survives even in the face of its inequities and inadequacy."

Counter-Hegemony

Are peoples' tribunals counter-hegemonic projects? What does the concept of hegemony bring to the understanding of these political experiences and their inherent paradoxes? This symposium explores these paradoxes not to assess popular justice initiatives in terms [p.

188] of their legitimacy or achievements, which are undoubtedly worthy and valuable in their own right, but rather to consider these impasses as indicative of some major challenges of political resistance in contemporary times. If hegemony refers to political domination based on the consent of the governed, and acquired through the imposition of the “way of thought” of the ruling class on all social forces (Gramsci 1971, 10), then peoples’ tribunals do not seem counter-hegemonic in essence, because they are precisely preoccupied with a state’s coercive—and not consent-binding—dimensions (i.e., state crimes, or the reframing of structural, environmental violence as “crimes”). Yet tribunals embody resistance by using specific tools. Their first premise for action is the idea that situations of impunity are anomalies in an international order ruled by the universalism of human rights and international public law, a founding discourse for the international community and the global order. The second premise is to redress these breaches into the cosmopolitan order by relying on the work of a global community of legal experts. Peoples’ tribunals evolve in a constant tension between two realities. That is, the uniquely reflexive character of tribunals lies in their conscious and simultaneous adoption and rejection of the law (and by extension legal authorities) as vessels and purveyors of justice, respectively. They highlight the impotence and/or unwillingness of the mandated. On the one hand are the inherently hegemonic dimensions of the legal discourses and practices that are used to shake up architectures of impunity. On the other hand, within these legal fora, are the venues opened by these transnational networks and movements. Such venues are against the current of “the human rights movement’s shift (of the) post-Cold War neoliberalism”; that is, the turn to criminal law in a culture of fighting against impunity (Engle 2015, 1072). Engle argues against this shift, exploring how “as advocates increasingly turn to international criminal law to respond to issues ranging from economic injustice to genocide, they reinforce an individualized and decontextualized understanding of the harms they aim to address, even while relying on the state and on forms of criminalization of which they have long been critical” (1071). Peoples’ tribunals are experimental initiatives and impure practices of prosecution and adjudication that shift the focus on to civil society. As such, they open up alternatives to these hegemonic uses and practices of the law (the turn to criminal law), and question again the relationships among truth, peace, and justice. These interrogations amplify the necessity for anthropologists’ attention and acknowledgment, as well as further investigations into tribunals’ increasing and polymorphic manifestations, and the powerful paradoxes they have to overcome as sites of global

Introduction by Chowra Makaremi and Pardis Shafafi, in « Desire for Justice, Desire for Law: An Ethnography of Peoples' Tribunals », **PoLAR: Political and Legal Anthropology Review**, [Vol. 42, Number 2](#), pp. 181–190, November 2019

resistance. More than this, these expressions of creative resistance, challenges to global hegemony, and bottom-up pursuits of justice demand a proper examination that allows for sharper tools with which to approach a fraught international climate.

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