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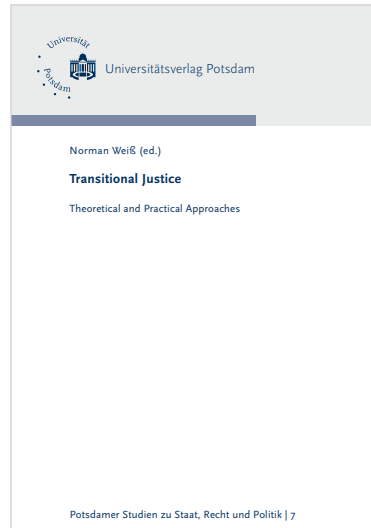
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Transitional Justice and Nonviolent Resistance

Mutually Reinforcing Frameworks
for the Consolidation of Democracies?

Lucas Maaser

Abstract At different times and places, civic engagement in nonviolent resistance (NVR) has repeatedly shown to be an effective tool in times of conflict to initiate societal change from below. History teaches us that there have been successes (Mahatma Gandhi in India) and failures (the Tiananmen Square protests in China).

Along with the recognition of the duality between transformative potential and stark consequences, the historical development of NVR was accompanied by the emergence of scholarly debate, fractured along disputes around purpose, character and effectivity of nonviolent actions taken by civil society stakeholders engaged in making their voices heard. One of the field's current points of interest is the examination of the long-term effects of NVR movements resulting in societal transformation on the stability and adequacy of a subsequently altered or emerging democracy, suggesting that NVR contributes positively to the sustainable and representative design of an egalitarian governing system.

The conclusion of the Nepalese civil war in 2006 should pose as an unambiguous example for the illustration of this phenomenon, but simultaneously raises the question why there was no successful implementation of a transitional process focusing on the needs of the victims.

Introduction

From India's non-cooperation movements in the 1920s[1] to Armenia's "velvet revolution" in 2018,[2] civic engagement in nonviolent resistance (NVR) has repeatedly shown to be an effective tool in times of conflict to initiate societal change from below. While prominent movement figures like Mahatma Gandhi and Nikol Pashinyan have had a significant impact in shaping social and political conduct within their respective contexts through the application of NVR strategies, cases like the Tiananmen Square protests of 1989—leaving several hundreds dead at the hands of the Chinese army[3]—illustrate the severity of possible risks and the questionability of NVR's success.

   Along with the recognition of the duality between transformative potential and stark consequences, the historical development of NVR was accompanied by the emergence of scholarly debate, fractured along disputes around purpose, character and effectivity of nonviolent actions taken by civil society stakeholders engaged in making their voices heard.[4] One of the field's current points of interest is the examination of the long-term effects of NVR movements resulting in societal transformation on the stability and adequacy of a subsequently altered or emerging democracy, suggesting that NVR contributes positively to the sustainable and representative design of an egalitarian governing system.[5] Commonly mentioned as an NVR campaign successfully leading from authoritarianism to democratic governance, the conclusion of the Nepalese civil war in 2006 should pose as an unambiguous example for the illustration of this phenomenon. As the adequate conceptualization and conduct of post-conflict measures can be seen as an integral component in the solidification of a

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[1]   Low, 'The Government of India and the First Non-Cooperation Movement—1920–1922', 25 (2) The Journal of Asian Studies 1966, 241–259.

[2]   Demytrie, 'Why Armenia 'Velvet Revolution' won without a bullet fired' (2018), in URL: https://www.bbc.com/news/world-europe-43948181; last accessed 31 July 2018.

[3]   Stieren, 'Facing down the guns: When has nonviolence failed?' (2001), in URL: http://carl-ink.com/wp-content/uploads/2011/03/When-nonviolence-failed.pdf, last accessed 31 July 2018. Additional cases: East Timorese peaceful procession at the Dilian Santa Cruz Cemetery in 1991, in which 270 peaceful protesters were killed by the Indonesian Army.

[4]   Cp. Dudouet, *Nonviolent Resistance and Conflict Transformation in Power Asymmetries,* Berghof Research Center for Constructive Conflict Management, 2011.

[5]   Cp. e.g. Bayer et al. (2016): 'The democratic dividend of nonviolent resistance', 53 Journal of Peace Research 2016, 758–771.

functioning sustainable democracy, the hypothesis arises that the NVR-induced Nepalese transition would be followed by the implementation of transitional processes commonly accepted as representatively reflecting the needs of those affected most by conflict, in order to allow the development of a cohesive society built on a mutually agreed-upon set of core values. Yet, the Transitional Justice measures entrusted with this task cannot be characterized as such, with responsible commissions having investigated none of the approximately 63,000 cases brought before them until December 2017, over ten years after the conflict's resolution.[6] In order to explore this purportedly paradoxical dynamic in more detail, this chapter seeks to answer the following lead question:

Which factors of the nonviolent mobilization and engagement of civil society actors leading to the abolishment of the Nepalese authoritarian rule in 2006 contributed in the inadequacy of Transitional Justice mechanisms implemented by the subsequently emerging democratic government despite the supposedly successful initiation of a peaceful, bottom-up transition through the application of NVR strategies?

To do so, the following subchapters first introduce basic concepts behind NVR theory, to then discuss them in light of the Nepalese transition and their potential relevance for the subsequent Transitional Justice process. Notably, the ongoing research of Véronique Dudouet has proven particularly valuable in considering a multitude of perspectives within the scholarly debate around NVR and thus crucially contributed to building a theoretical framework through which the critical analysis of core issues has been made possible.[7]

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[6]   Cp. Peace Insight, 'Nepal: Conflict Profile' (2017), in URL: https://www.peacein sight.org/conflicts/nepal/, last accessed 5 March 2018; Adhikari, 'Revealing Disappeared Numbers' (2014); in URL: http://opennepal.net/blog/revealing-disap peared-numbers, last accessed 5 March 2018.

[7]   Especially Dudouet (note 4); Dudouet, 'Powering to peace: Integrated Civil Resistance and Peacebuilding Strategies'; 1 ICNC Special Report Series, 2017, 1–44.

1. Theoretical Framework

1.1   The Concept of Nonviolent Resistance

While the above-mentioned Gandhi-led non-cooperation movements popularized the concept of NVR through the leader's development and application of the principle-focused resistance form of *satyagraha* against the British rule, traces of NVR can be found as early as the mid-19th century. Denounced as an essentially counter-revolutionary practice of the bourgeoisie aimed at the maintenance of social class benefits and strengthening of the elites, Marx first coined the term "passive resistance" *(passiver Widerstand)* in 1848. Whereas Gandhi's ideas would inspire the actions of figures like Martin Luther King Jr. during the US-American civil rights movement of the 1950s and '60s, Marxist scholars like Fanon and Sartre recurrently stressed the transformative relevance of tactical violence; "[f]or violence, like Achilles' lance, can heal the wounds that it has inflicted."[8] While these opposing perspectives may be seen as contradictory extremes of a more nuanced spectrum portraying resistance strategies in general, they emphasize the necessity of a definition of how violence and nonviolence are considered preceptually in the context of this chapter as well as the terms' relation to the concept of NVR. Violence as a strategic tool for societal transformation as conceptualized by Fanon and Sartre builds on the application of physical force against those who apply structural violence, e.g. through governance and class privileges.[9] Commonly serving as a reference point in NVR theory, Doug Bond similarly defines it as "the use of physical force against another's body, against that person's will, and that is expected to inflict physical injury or death upon that person".[10] It is notable that other forms like psychological and cultural violence[11] are not included here, reinstating the Neo-Marxist perspective on "violent resistance" as a direct, physical action. The definition of nonviolence, on the other hand, is often directly derived from the Sanskrit

[8]   Fanon, *Wretched of the Earth, Grove Press, 1961.*; as quoted in: Hardiman, 'Towards a History of Non-violent Resistance', 48 (23) Economic & Political Weekly 2013, 41–48, 42.

[9]   Cp. ibid.

[10] Bond, 'Nonviolent Direct Action and the Diffusion of Power', in Wehr, Burgess and Burgess (eds.), Justice without Violence (1994), 59–79, 62.; as quoted in: Dudouet (note 4), 4.

[11] Violence Prevention Initiative of the Government of Newfoundland and Labrador, 'Defining Violence and Abuse' (undated), in URL: https://www.gov.nl.ca/VPI/types/index.html, last accessed 31 July 2018.

word *"ahimsa"*,[12] which is commonly translated to encompass the "respect for all living things and avoidance of violence towards others."[13] While this avoidance of violence implies the ability to passively apply *ahimsa* by not engaging or participating in violent agitation, nonviolent resistance is to be seen "as a direct substitute for violent behavior: it implies deliberate restraint from expected violence, in a context of contention between two or more adversaries."[14] Hence, claiming a space of opposition or resistance through a directed action while adhering to the principles set forth by the term of *ahimsa* will be considered nonviolent resistance within the scope of this chapter's analysis. Thus, while NVR strategies could be employed with the sole intention of a demonstrative countermovement against the use of physical force, they are often utilized as direct supplements for more hazardous types of resistance to address structural violence like discriminative legislation, misuse of authority or institutionalized disadvantage of societal minorities and/or interest groups. Gene Sharp distinguishes between three types of methodologies commonly employed in NVR, differentiated by the intent they follow:

- **Nonviolent Protest and Persuasion**—Aimed at the peaceful communication of demands and convictions as well as the display of opposition within a societal discourse through the use of "symbolic gestures and actions […] [in order] to persuade others."[15] Concrete examples include "formal statements", "symbolic public acts" as well as "public assemblies and protests."[16]
- **Non-cooperation**—Aimed at the alteration of societally relevant relationships through the directed non-participation or acts of denial within the social, economic and political sphere. They include "student and labour strikes", the "withdrawal from social institutions" and "political boycott."[17]
- **Nonviolent Intervention**—Aimed at accomplishing change through "direct physical obstructions",[18] altering social relations by dissolving existing or forging new ones. These obstructions entail "psychological

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12   Dudouet (note 4), 3.
13   Oxford Dictionary, 'ahimsa' (undated), in URL: https://en.oxforddictionaries.com/definition/ahimsam last accessed 23 November 2018.
14   Dudouet (note 4), 4.
15   Ibid., 5.
16   After ibid.
17   After ibid., 5–6.
18   After ibid., 6.

intervention[s]" such as "self-inflicted pain", "physical intervention[s]" like "sit-ins" and "nonviolent invasions" as well as the establishment of alternate institutions and societal conventions, such as "parallel governments" and alternate education systems.[19]

As the main focus of this chapter lies on the implications of NVR on institutionalized post-conflict mechanisms for the insurance of a sustainable and peaceful societal order, it will only be considered as a grassroots tool of resistance within the boundaries of a state or region undergoing a structural societal transition. Widening the focus from applied methods and intents to underlying ideals, four main characteristics are commonly employed within the scope of the divergent scholarly debate surrounding NVR theory, often treated dichotomously by vocal proponents and opponents on each side of the discourse:[20]

- **Pragmatic vs. Principled**—While principled leaders like Gandhi and Martin Luther King Jr. referred to a higher purpose or entity to engage civil society members in their movements and achieve their goals, studies indicate that NVR movements in recent history commonly choose nonviolent approaches not out of systemic conviction, but out of mere strategic calculation. In contrast to principled approaches, this pragmatism does therefore ordinarily not aim to transform societal dependencies beyond the scope of predetermined objectives, as it is commonly founded in the assessment of available means to reach above-mentioned targets. While there is no clear particular stock of distinguishable characteristics uniting initiators of pragmatic movements, proponents of principled approaches are commonly affiliated with a spiritual or religious school of thought. In addition to activities of the public figures mentioned above, one prominent example of principled NVR campaigns is the involvement of Desmond Tutu in South Africa's transition from the Apartheid regime to a non-discriminatory constitutional democracy, which heavily relied on his role in the Christian church as a resource for societal change.[21]

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[19]   After Sharp, *The Politics of Nonviolent Action. Boston: Porter Sargent, 1973.;* as mentioned in Dudouet (note 4), 5–6.

[20]   Cp. e.g. ibid., 6.

[21]   After ibid., 6–10.

- **Revolutionary vs. Resolutionary**—As pragmatism and principle are to a large extent concerned with the ideology behind the scope of NVR activities, discourse around revolutionary and resolutionary strategies attributes a stronger focus to the relationship between parties involved in the transformation process within the context of a particular conflict at hand. While resolutionary actions build on the maxim of societal reconciliation, revolutionary approaches essentially invoke the necessity of change through supersedence. Through the acknowledgement of the cruciality of societal cohesion, proponents of resolutionary ideologies hence commonly stress the vital importance of existing governmental structures and therefore employ negotiating and diplomatic strategies among all actors of a certain conflict scenario to reach their objectives. This is in stark contrast to revolutionary practices, which emphasize strategies to counteract, undermine and replace pre-existing governance structures due to their oppressive and asymmetrical use of power.[22]

Contrary to scholarly convention,[23] these purportedly opposing categories are not considered as mutually exclusive, but limiting values of an ideological spectrum in the scope of this chapter's analysis. With this approach, an attempt is made to acknowledge the complexity and multiplicity of transformations on a societal scale, with ideological influences constantly shifting through the variety of groups and individual key actors involved in shaping the main characteristics of the transitory process as well as the continuously evolving conflict stages with varying degrees of challenges and opportunities available to actors within the particular nonviolent movement in question. Coincidentally, the recognition of this complexity commonly serves as a basis for the definition of the preconditions that are to be met to substantially increase the probability of an NVR undertaking to be successful in achieving self-determined objectives. Namely, these include:

- "the level of mobilization,
- social cohesion and unity of the movement,
- the degree of legitimacy and popular support which it receives,

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[22] Cp. ibid.
[23] As suggested by e.g. Bharadwaj, 'Principled versus pragmatic nonviolence', 10 Peace Review 1998, 79–81; Martin, 'Dilemmas in Promoting Nonviolence', 31 (3) Gandhi Marg 2009, 429–453.

- the range of tactics and types of methods selected,
- the presence of effective leadership, and
- the degree of nonviolent discipline."[24]

As the intent of this chapter is not to examine the success of the Nepalese NVR movement of 2006 per se—but rather to evaluate the relevance certain factors represented within the scope of the above-mentioned categories might have had in the establishment of measures aimed to sustainably stabilize and organize an emerging parliamentary democratic state—the consideration of these categories will be limited to serving as reference points for the differentiation of certain aspects of applied NVR strategies and the identification of possible obstacles and resources for the adequate design and implementation of transitory mechanisms. Therefore, the measurability of stated preconditions will not be considered further in the scope of this chapter's analysis.

1.2   NVR and Transitional Justice—Synergies and Dysergies in the Establishment of a Sustainable Democratic Post-Conflict Environment

With this general knowledge of fundamental NVR concepts in mind, a focus will now be laid on their relevance in shaping processes beyond the boundaries of conflict transformation. In the case of Nepal, Transitional Justice mechanisms were entrusted with the continued support of a sustainable societal reconfiguration. A brief introduction of basic ideas behind Transitional Justice theory will be provided, to then analyze them against the backdrop of scholarly assessments of NVR strategies' potential impact on the successful implementation of post-conflict measures. This will allow for the identification of a more nuanced frame of reference for the subsequent analysis of concrete components relevant in the Nepalese transition from constitutional monarchy to parliamentary democracy.

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24   Dudouet (note 4), 8.

1.2.1 The Concept of Transitional Justice as a Scholarly Field

While principal mechanisms of the model are often traced back to the German Nuremberg Trials from 1945–46,[25] the emergence of Transitional Justice as a concept can essentially be observed during the "third wave of democratization", a period Samuel P. Huntington delimits as the interval between the Portuguese Carnation Revolution in 1974 and the collapse of the Soviet Union in 1989.[26] With a notable number of states transitioning from authoritarian rule to systems adhering to democratic core principles as well as a scholarly debate reemphasizing the cruciality of democracy as the only governance structure allowing a sustainable, agency-driven societal organization in line with Western thought,[27] a "turn away from 'naming and shaming' and toward accountability for past abuse among human rights activists was taken up at the international level."[28]

As the concept of accountability implies an intention to determine and punish those responsible for this "past abuse", the diplomatic evolution from denunciation to collaboration was accompanied by the development of a framework of practices which prioritized "legal-institutional reforms and responses—such as punishing leaders, vetting abusive security forces, and replacing state secrecy with truth and transparency—over other[s] […] that were oriented toward social justice and redistribution."[29]

The agglomeration of cases which required a response to the individual challenges regimes faced in their respective states of transition condensed in an academic discourse to bring forward a theoretical basis for thus far often action-driven approaches, culminating in the emergence of Transitional Justice as a discipline of academic interest. As this scholarly debate can be considered a mere reflection of dynamics observable on the ground, a majority of scholars mirrored the tendency of favoring legalism over consequentialism.[30] Yet, the deliberation of additional cases in which

[25] Weller, 'What Are The Nuremberg Trials And Why Do They Still Matter Today?' (2016), in URL: https://rightsinfo.org/nuremberg-trials-still-matter/, last accessed 31 July 2018.

[26] Cp. Huntington, *The Third Wave: Democratization in the Late Twentieth Century, University of Oklahoma Press, 1991.*

[27] Prominent examples include: Rawls, *Political Liberalism, Columbia University Press, 1993.* and Fukuyama, *The End of History and the Last Man, Penguin, 1992.*

[28] Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice', 31 Human Rights Quarterly 2009, 321–367, 321.

[29] Ibid.

[30] E.g. Kritz (ed.), *Transitional Justice—How Emerging Democracies Reckon with Former Regimes—Volume I: General Considerations,* USIP Press Books, 1995.

non-legalist approaches[31] led to favorable results stresses the relevance of methodologies beyond jurisprudence. Through the enhanced evolution of this alternative perspective on Transitional Justice mechanisms, theoretical frameworks emerged which amended the principle of accountability with maxims surrounding truth, reconciliation, memory and justice, the proportions between which heavily rely on specific needs in respective contexts.[32] Following these core ideals that contrast with previous conventions, Nir Eisikovits identifies four main objectives of non-legalist transitional concepts:

1.   the "[c]reat[ion of] a reliable record of past human rights abuses",
2.   the establishment of "a functional, professional bureaucracy and civil service",
3.   the support of "victims [to] restructure and repair their lives" and
4.   the discontinuation of "violence and [the] consolidati[on] of stability."[33]

It is notable, however, that—while these objectives commonly serve for the legitimization of Transitional Justice measures—the examination of participatory opportunities for civil society stakeholders in times of transition by scholars like Simon Robins suggests that

> *institutional approaches to transitional justice that emerge from the standard global framework, despite making [...] extravagant claims for victim engagement, can be seen to be almost exclusively nominal or instrumental in how victims participate, delivering little to victims but often being necessary for a process to occur.*[34]

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[31]   Most prominently South Africa in their establishment of the Truth and Reconciliation Commission in 1996. For a more in-depth analysis cp. e.g. Magistad, 'South Africa's imperfect progress, 20 years after the Truth & Reconciliation Commission' (2017), in URL: https://www.pri.org/stories/2017-04-06/south-africas-imperfect-progress-20-years-after-truth-reconciliation-commission, last accessed 31 July 2018.

[32]   Eisikovits, 'Transitional Justice' (2014), in URL: https://plato.stanford.edu/entries/justice-transitional/, last accessed 31 July 2018.

[33]   Ibid.

[34]   Robins, 'Towards Victim-Centered Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal', 5 (1) The International Journal of Transitional Justice 2011, 75–98, 55.

1.2.2 Nonviolent Resistance and its Relevance
in Transitional Justice Adequacy

While this limited portrayal of Transitional Justice history and theory already indicates the concept's much contested nature, its main purpose of stabilizing and guiding transitional development through processes built on democratic core values can be seen as the underlying unifying factor within applied and scholarly debate. As the assessment of the necessary steps to successfully facilitate this guiding process is directly determined by the nature of the struggle which initiated societal transformation prior to the establishment of Transitional Justice mechanisms, the application of NVR strategies for reaching self-determined objectives within this very struggle should hypothetically support the transitional guiding process by default. Indeed—among others, Robert Burrowes[35] and Diana Francis[36] stress the capability of NVR to transform asymmetrical power structures into more dialogue-centered relations in conflict settings, providing the capacity for constructive collaboration and enhanced societal cohesion within post-conflict processes. The foundation of this line of argumentation lies in the assumed impact of NVR on individuals accomplished simply by their participation in nonviolent movements, as their contribution implies an active claim of power over their circumstances under often exacerbating external conditions.[37] Dudouet has observed this act of self-empowerment as occurring in two stages:

- **Education**—Since declaring and defending space within contexts questioning established societal relations and collectively legitimized order requires the identification of deficiencies and definition of positions, the awareness of political dependencies and generation of relevant knowledge is necessary to build a sustainable foundation for meaningful change.
- **Mobilization**—With these acquired resources available, actions are required to illustrate the relevance of identified positions within the respective conflict context, continuously generating supporters of the wider general public acknowledging represented positions as

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[35]   Burrowes, *The Strategy of Nonviolent Defense: A Gandhian Approach,* State University of New York Press, 1996.
[36]   Francis, *People, Peace and Power: Conflict Transformation in Action,* Pluto Press, 2002, 44.
[37]   Cp. Dudouet (note 4), 15.

viable and necessary in order to sustainably improve the livelihoods of the collective.[38]

With a movement harnessing enough traction to create significant counter-pressure against oppressive forces, the potential for the initiation of a transformative societal process from conflict to post-conflict is amplified. Simultaneously, this grassroots engagement in NVR encourages political participation and hence contributes to an agency-driven transitional environment. This is, however, only true when the amplified potential for the initiation of change successfully translates into an actual transformation. As a successful NVR campaign and hence a supposedly promising environment for the implementation of Transitional Justice measures, regardless of whether the intentions are resolutionary or revolutionary, inherently requires an agreement of the conflict party in power to trade authority against legitimacy, the nature in which this trade occurs is fundamental to the implications on post-conflict processes. Due to this central role of the strategic positioning of those equipped with power during the advancement of societal transition, a differentiation between positioning forms appears necessary to assess their possible impact on Transitional Justice measures. In his work "The Politics of Nonviolent Action", Gene Sharp does so by distinguishing between three "mechanisms of change":[39]

- **Nonviolent conversion**—A process in which oppressors actively recognize the validity of the positions proposed by the NVR movement, resulting in a power trade based on the conviction that the incorporation of the movement's demands in a common stock of values crucially contributes to the greater good of society. This outcome is ordinarily strived for by proponents of a principled approach towards NVR, as it suggests a strong potential for sustainable change through a common belief system.
- **Nonviolent coercion**—On the opposite end of the spectrum, nonviolent coercion describes the willingness to surrender power due to an inability to maintain it. Hence, those equipped with authority do not acknowledge the value of proposed demands, but are forced to surrender prior advantages through a movement's pressure. This out-

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[38] Cp. ibid., 13–14.
[39] Cp. Sharp (note 19).

come suggests a strong potential of continued societal fragmentation in post-conflict settings.

- **Nonviolent accommodation**—Definable as an intermediate form between the two mechanisms described above, nonviolent accommodation is the outcome most commonly observable in practice. While oppressors do not agree or agree to a very limited extent with an NVR movement's demands, they choose to forfeit (a certain part of) their authority as a strategic action based on an assessment of the dynamics governing the shifting political and societal environment as well as resources available to maintain the prior power configuration.[40]

- **Nonviolent disintegration**—Posing an amendment to his original evaluative framework, Sharp introduces the concept of "disintegration" in his revised edition of "La Lucha Politíca Noviolenta: Criterios y Técnicas" in 1997.[41] Popovic et al. define it as "[a] mechanism of change in nonviolent action in which the opponent is not simply coerced, but rather its system or government is disintegrated and falls apart as a result of massive non-cooperation and defiance. The sources of power are restricted or severed by the noncooperation so completely that the opponents' system or government simply collapses."[42]

As a total sustainable, adequate and cohesive transformation from one societal order to the other through the sole application of NVR strategies—as imagined probable in a nonviolent conversion setting—is deemed highly unlikely in practice, the literature suggests that while the outcome of an NVR undertaking and the subsequent mechanism of change highly impact the post-conflict environment, follow-up processes adhering to similar core values as NVR are required to productively initiate change.[43] These processes' success is, following the logic of the portrayed methods of change as indicators of probable societal cohesion and therefore collaborative potential in post-conflict settings, highly dependent on the degree of "nonviolent conversion" dynamics within "nonvio-

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40   Cp. Dudouet (note 4), 15.
41   Cp. Sharp, *How Nonviolent Struggle Works, The Albert Einstein Foundation,* 2013, xi.
42   Popovic et al., CANVAS Core Curriculum (2007), in URL: http://canvasopedia. org/wp-content/uploads/2015/08/CANVAS-Core-Curriculum_EN.pdf, last accessed 22nd of November 2018, 61; 273.
43   Cp. Dudouet (note 4), 21.

lent accommodation" practices likely to be observed in a conflict setting of interest. Therefore, while overarching maxims of Transitional Justice theory and societal effects of NVR seem highly compatible as subsequent steps for the establishment of an agency-driven, dialogue-centered society founded on core democratic values, particular attention is to be paid to NVR's impact on power asymmetries for the adequate design of Transitional Justice measures.

2. The Case of Nepal

Based on this theoretical framework, the current subchapter will now introduce the particular case of the Nepalese transition from conflict to post-conflict and make an attempt to identify factors contributing to the inadequacy of the Transitional Justice process following the conflict's conclusion in 2006. To do so, key occurrences of the Nepalese conflict history will be portrayed, to then serve as a foundation for the investigation of NVR's role in the process.

2.1   Resistance and Transformation—
A Historical Contextualization

2.1.1 From Tribhuvan to Birendra—Nepal's Pre-
Insurgency History of Democratic Struggle

The struggle for democracy has been a recurring theme of central relevance throughout Nepalese history. While authoritarian rule has long been able to persist as the legitimate form of governance, this legitimacy has periodically been questioned by civil society groups and political actors alike. As such, the first establishment of a constitutional multi-party system dates back as far as 1959, finding its roots in an unlikely alliance between king Tribhuvan and civil society actors for the reconfiguration of power distribution within systems of governance—syphoning authority away from the hereditary prime ministers (or *Ranas*) back to the royal family. Non-violent political organization, strikes and student movements[44] resulted in

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[44]   Cp. University of Central Arkansas, 'Nepal (1946–present)' (undated), in URL: http://uca.edu/politicalscience/dadm-project/asiapacific-region/nepal-1946-present/, last accessed 31 July 2018.

the establishment of the Nepali Congress party (NCP) in 1946, followed by the promulgation of the first Nepalese constitution in 1948.[45] His open support of *Rana*-critic mobilizations urged the king to seek asylum in India, which consequently led to the establishment of the Congress Mukti Sena, a military arm of the Nepali Congress party. Adding public pressure to the nonviolent organizers' work through military operations, the *Ranas* allowed for negotiations, out of which a triparty agreement was reached between the prime ministers, king Tribhuvan and the NCP, resulting in the redistribution of ultimate power to the king while allowing the unrestricted formation of political organizations. The most central component of the so-called Delhi Accord, however, was the commitment to developing and adopting a democratic constitution within two years. Four years after king Tribhuvan had died and passed the throne on to his son, Mahendra, the constitution was finally promulgated in 1959, allowing the country's first democratic elections with the NCP confidently winning absolute majority. This first bloom of Nepalese democracy was, however, highly impersistent, as king Mahendra forbade all political parties and seized absolute power through a coup d'état in 1960.[46] This state was maintained beyond the rule of Mahendra, who was superseded by king Birendra in 1972, and first fundamentally challenged again in 1985, when the still-forbidden NCP launched a nonviolent civil disobedience campaign against the authoritarian regime. While the joint undertaking in cooperation with communist factions was determined to initiate a second democratic awakening by mobilizing the civil society, the endeavor in line with NVR strategies was undermined by several bombings in Kathmandu, leaving seven dead and more than 20 injured purportedly at the hands of more radical communist faction affiliates,[47] ultimately leading to the dissolution of the NVR campaign as a consequence. While unsuccessful, the 1985 movement laid the foundation for the Jana Andolan, the first People's Movement in 1990. Similar in its nonviolent design and composition of initiating actors, members of the NCP and the Maoist coalition United Left Front (ULF) launched a civil disobedience campaign on

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[45]   Reuters, 'TIMELINE—Milestones in political history of Nepal' (2008), in URL: https://www.reuters.com/article/us-nepal-chronology/timeline-milestones-in-po litical-history-of-nepal-idUSL281216020080528, last accessed 31 July 2018.

[46]   Cp. University of Central Arkansas (note 44).

[47]   Cp. e.g. Branigin: 'Nepal's Shangri-La Image Shattered by Bombings' (1985), in URL: https://www.washingtonpost.com/archive/politics/1985/07/07/nepals-shan gri-la-image-shattered-by-bombings/0d3fda38-e3ce-48fe-ab2d-68394731d092/? noredirect=on&utm_term=.082356d00f53, last accessed 31 July 2018.

the 18 February, the Nepalese Day of Democracy. With the movement gaining traction and calling for general strikes (bandhs) with increasing success, royal forces repeatedly resorted to the use of force to answer the peaceful protests, leaving twelve dead at a demonstration in Bhaktapur later that month. After another incident in Patan with several civilian casualties caused by the military, the movement's strength peaked in April at an estimated 200,000 protesters, surrounding governmental buildings and calling for the reinstatement of a multiparty system based on the Tribhuvan model of the 1950s. On the 8 April, king Birendra lifted the ban on political parties, allowing the reestablishment of a democratic congress. A constitutional monarchy emerged, granting congress substantial power for the co-determination in key political decisions. Most essential authorities like the command over the army and the power to dissolve congress, however, remained with the royal family.[48] As the purpose of the campaign was achieved, a number of groups participating in the ULF left the coalition to become independent parties to then reorganize as the United People's Front of Nepal (UPFN) in congress, which was mostly dominated by NCP and UPFN affiliates after its restoration in May 1991.[49] While a considerable number of political and civil society actors perceived the emerging system as bearing great potential for the establishment of a more participative and equal collective order, leftist factions were torn in their vision of a new Nepal, leading to a prompt refragmentation of the UPFN. When party affiliates formerly collaborating under the Maoist coalition umbrella clashed in the socially-disadvantaged Eastern regions of Rolpa and Rukum in 1994, police forcefully dissolved the confrontation. The so-called "Operation Romeo", backed by the two major political parties in congress and critiqued for its inadequate degree of application of force and questionable legal basis by the international community, pressured the following of Maoist leader Pushpal Kamal Dahal underground, leading to the founding of the Communist Party of Nepal—Maoists (CPN-M) in 1995. With the firm conviction of an entirely parliamentary democratic system and core demands surrounding gender and caste equality as well as the amplification of Nepalese indigenous populations' rights, the splinter

[48] Cp. University of Central Arkansas (note 44).
[49] Cp. Global Nonviolent Action Database, 'Nepalese force king to accept democratic reform, 'Jana Andolan' (People's Movement), 1990' (undated), in URL: https://nvdatabase.swarthmore.edu/content/nepalese-force-king-accept-democratic-reform-jana-andolan-peoples-movement-1990, last accessed 31 July 2018.

group declared the "people's war" in February 1996 through the assault of a bank and three police stations in Nepal's western regions.[50]

2.1.2 Of Maoist Agitators and Forceful Response—
    The Nepalese Civil War

While initially being limited to a comparably low number of armed encounters between the CPN-M's People's Liberation Army (PLA) and the Royal Armed Police (RAP), events in 2001 provided the insurgency with more traction. On the 1 June, crown prince Dipendra killed king Birendra and nine members of the royal family under the influence of substances in occurrences commonly denoted as the "royal massacre", ultimately leaving the former king's brother Gyanendra as the only heir to the throne.[51] Based on the claim of congress's unfitness to resolve the Maoist insurgency effectively, Gyanendra first seized executive power in October 2002, claiming direct authority in January 2005 after peace talks repeatedly not translating into projected resolutionary outcomes. With the king's increased emphasis on the use of military force in responding to the PLA's agitations, the number of disappearances, casualties and other human rights violations committed on both sides grew considerably. Especially targeting the general population in rural areas, civilians were often forced to voice their support for either side of the conflict, contributing to an amplified societal divide. Simultaneously, the then forbidden former congressional parties formed the Seven Party Alliance (SPA) as an entity of resistance against the illegitimately perceived regression to an absolute monarchy. Through the establishment of Gyanendra as a common enemy, negotiations between the PLA and the SPA accompanied the increasingly violent civil war, leading to the joint invocation of bandhs from 5–9 April 2006 in protest of the king's hostile conflict resolution strategy, questioning the legitimacy of his authority over the country.[52] Accompanied by a ceasefire

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[50] Cp. e.g. OCHA, 'Nepal—Chronology of decade-long conflict' (2006), in URL: https://reliefweb.int/report/nepal/nepal-chronology-decade-long-conflict, last accessed 31 July 2018.

[51] Staff and Agencies, 'Nepal inquiry blames crown prince for royal massacre' (2001), in URL: https://www.theguardian.com/world/2001/jun/14/nepal, last accessed 31 July 2018.

[52] Cp. Global Nonviolent Action Database, 'Nepalese general strike to protest monarchic rule, 2006' (undated), in URL: https://nvdatabase.swarthmore.edu/content/nepalese-general-strike-protest-monarchic-rule-2006, last accessed 31 July 2018.

unilaterally declared by the Maoist rebels and demands requesting the full restoration of democratic bodies, a multi-party government and elections to a Constituent Assembly,[53] a nonviolent movement emerged, gaining additional traction through the support of two of the largest Nepalese trade union confederations.[54] With the increasing gain of legitimacy outside of the political realm, more and more civilians were inclined to join the general strike and participate in the collective call for the initiators' demands. On the 8 April, the SPA extended its strategic application of nonviolent strategies through the proclamation of a nationwide tax boycott, further contributing to the already significant limitation of the Nepalese economic capabilities. Meanwhile, the international community reacted to the events, with India and the USA issuing statements demanding Gyanendra to open negotiations with protest parties immediately. Despite the rising pressure, royal forces continued to counteract the movement by means of force, causing 13 casualties and over 1000 injuries in the course of the campaign. In a final mobilization effort, the SPA called for the continuation of the strike and the opening of negotiations on the 19 April. Despite the government's imposition of a daytime curfew to mitigate the protesters' efforts on the 20 April, several hundred thousand protesters filled the streets on the 21st, ultimately leading to the surrender of political authority to the people on the same day and the reestablishment of the Nepalese parliament on the 24 April. With the reinstatement of democratic authority, a truce agreement was reached between the SPA and the CPN-M—now representing a legitimate congressional party—on the 27 April, followed by the unanimous parliamentary vote to deprive the king of the vast majority of his powers on the 18 May, leaving the royal family as a mere public representative of the Nepalese state.[55]

With an estimated 17,000 casualties, more than 100,000 displaced and 1,400 disappeared,[56] the need for post-conflict processes to account for these transgressions of human rights committed by the conflict parties against the Nepalese civil society was reflected in the Comprehensive Peace Accord (CPA), the agreement between CPN-M and SPA

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[53]   Cp. ibid.
[54]   Namely, the involved confederations were the General Federation of Nepalese Trade Unions (GEFONT), and the Nepal Trade Union Congress-Independent (NTUC-I), cp. ibid.
[55]   Ibid.
[56]   Cp. Peace Insight (note 6).

legitimately ending the civil war on the 22nd of November 2006.[57] While contained provisions imply a swift implementation of Transitional Justice measures modeled after the South African Truth and Reconciliation Commission (TRC),[58] the enactment of legal provisions allowing their establishment was continually delayed due to a substantial parliamentary divide, repeatedly leading to a political stalemate. This fragmentation inherent in the newly established democracy's main governing body did not only deny Nepalese citizens their right to deal with past offenses through an adequate and timely progression of Transitional Justice processes; it inhibited the advancement of the young republic towards the establishment of a common core value framework and hence the stabilization of the hard-won reconfiguration of societal order itself. As such, parliamentary discordance led to deferrals in…

- …the promulgation of an interim constitution and the dethronement of Gyanendra until 2008,
- …the implementation of the final draft constitution until 2015 and
- …the enactment of the above-mentioned legislative framework for the foundation of institutions entrusted with the Transitional Justice process, The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act (TRC Act) until 2014.[59]

2.2 Nonviolence and Post-Conflict Parliamentary Fission— Contributing Factors to Nepal's Political Divide

While the lead question could be investigated further by analyzing specific propositions set forth by the TRC Act in consideration of the effect NVR strategies might have had on their design and execution, the depiction of the historical cornerstones of Nepal's struggle for democracy

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[57] Cp. Security Council Report, 'Chronology of Events—Nepal' (2015), in URL: http://www.securitycouncilreport.org/chronology/nepal.php, last accessed 31 July 2018. Lutz Getzschmann, 'Kein Zurück mehr | Der lange Weg der nepalesischen Maoisten vom Untergrund ins Parlament' (2008), in URL: https://www.iz3w.org/zeitschrift/ausgaben/308_tuerkische_literatur/faa, last accessed 5 March 2018.

[58] Cp. e.g. Tutu, 'Truth and Reconciliation Commission, South Africa' (2010), in URL: https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa, last accessed 31 July 2018.

[59] Cp. e.g. Human Rights Watch, 'Nepal: Fix Flawed Truth, Reconciliation Act' (2014), in URL: https://www.hrw.org/news/2014/07/08/nepal-fix-flawed-truth-reconciliation-act, last accessed 31 July 2018.

indicates the central cruciality of the distinctive divide between factions within the country's political environment not only regarding post-conflict processes, but the democratic order itself, despite the purportedly successful attainment of societal transformation through the application of NVR approaches. Therefore, this chapter attempts to answer the lead question through the examination of interdependencies between NVR procedures leading to Gyanendra's delegitimization and the subsequent fission between governing parties, potentially offering insights not only in NVR's relevance for Transitional Justice measures employed in the Nepalese context, but in the sustainability of the governing system at its core. Conceptually, contributing factors to the post-conflict environment can be divided into three interconnected categories relevant in NVR theory, which will be elaborated on further in the subsections below.

2.2.1 Heterogeneous Ideologies

While one might presume that the SPA and CPN-M's joint revolutionary nonviolent campaign against absolute hereditary rule in April 2006 could have led to a resolutionary effect on the relationship between the former political and ideological adversaries, the parliament's reoccurring inability to transcend the gap between the CPA's two signees in parliamentary discourse indicates that this effect has not been accomplished. One reason for this can be found in the mutually opposing, but respectively intrinsically cohesive and, to large extent, principled motivations of the factions. While each party follows its vision of a societal order benefitting the greater Nepalese population individually, the recognition of a collective effort across partisan and ideological lines as a requirement for gaining the institutional authority to realize this vision leads to the willingness to form a temporary, objective-based and therefore pragmatic alliance for the abolition of king Gyanendra as head of state and the reinstatement of a parliamentary democracy. This dynamic can be identified as a recurring theme in Nepalese resistance history, as a similar lack of ideological cohesion is observable in the dissolution of the ULF after the successful Jana Andolan campaign in 1990, highlighting the historic legitimization of pragmatic bonds for the elimination of structural obstacles without sustainable ambitions to contribute to a collective societal project collaboratively.

2.2.2 Shifting Dependencies and Multi-staged Conflict Scenarios

Additionally, the relations between actors involved in the conflict shifted considerably throughout its progress, most notably before and after the coronation of Gyanendra as Birendra's successor. While always directed against the preservation of the royal family's degree of authority, the Maoist insurgency was initiated by a group forced underground through measures heavily sanctioned by key members of what later became the SPA. Conceptualizing the NVR campaign of 2006 as a movement driven by initial demands of the CPN-M, one could argue that, while acknowledging that the Maoist rebels' violence-driven approach towards realizing their goals has to be accounted for, the SPA must be considered one of the oppressing forces in the evaluation of the conflict. Examining the establishment of congress through the transition from absolute to constitutional monarchy in 1991 as an achievement in favor of democracy, however, congressional parties—even when sanctioning forceful measures like Operation Romeo—can be conceived as actors strengthening democratic legitimacy not through NVR or conflict, but through their given institutional power, potentially mitigating authoritarian influence in the long term through available structural means. As such, the CPN-M may conflictingly be considered a key oppressing actor, ultimately causing a political environment which offered Gyanendra the opportunity to seize democratic accomplishments of the Jana Andolan. Analyzing these dependencies through Sharp's "models of change", this multiplicity of possible perspectives suggests the need for dismissing the supposed static bilateral relationship between oppressor and oppressed by differentiating between above-depicted cases within the actor triangle: royal family—SPA—CPN-M.

Since both the SPA and CPN-M's efforts motivating the bandhs of April 2006 were directed towards the royal family's conflict response and use of authority, their relationship with the Gyanendra-led regime may be considered as inherently founded on their experienced oppression. While the course of events depicted in subchapter 3.1.2 indicates the king's strong inclination towards a nonviolent coercion positioning, his post-conflict deprivation of authority and subsequent ousting as a politically relevant figure through a democratically legitimized process, however, makes the consideration of his influence on the Nepalese parliamentary divide obsolete. As the relationship between the two remaining actors is characterized by the mutually assigned attribute of the oppressor while claiming themselves as the oppressed, the conception of the respective

oppressor's response to the conflict's conclusion may be classified as non-violent accommodation with considerable tendencies towards nonviolent coercion. As such, this dynamic is to be recognized as a decisive factor contributing to the fractured Nepalese political environment.[60]

2.2.3 The Effect of Violence on Nonviolence

Yet, the most influential contribution to this analysis of interdependencies between applied conflict strategies and post-conflict challenges may be the degree of nonviolent discipline adhered to in the course of the Nepalese transition from constitutional monarchy to parliamentary democracy. While the SPA and CPN-M's strategic advancement of demands through the application of NVR approaches to respond to violence committed by royal forces under Gyanendra's command can only be seen as a strong unifying resource contributing to the sustainability of blooming democratic conduct, the collectively defined adversary cannot be identified as the first or only party to the conflict attempting to achieve self-determined goals through the power of arms. Deemed factions enjoying full legitimacy as political actors within parliamentary discourse in Nepal's post-conflict setting, the CPN-M and several parties within the SPA are to be seen as major contributors to the perpetration of human rights violations against citizens they now represent through their governing duties. While these circumstances might have direct implications on design and conduct of Transitional Justice mechanisms in their own right, this chapter attempts to emphasize direct structural effects on the credibility and sustainability of the newly established democratic Nepalese system. The degree to which central leaders of 2006's general strike had form-

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[60] Conservatively considering the political ouster of Gyanendra as a bilateral process between an oppressive authoritarian regime on one side and a disobedient civil society alliance on the other, it is arguable that the Nepalese general strike on the 21 April 2006 constitutes an act of non-cooperation leading to the failure of the then form of state and consequently to the dissolution of the existing government. While this would inevitably require the process to be classified as nonviolent disintegration in Sharp's extended evaluative framework, the king's promulgation of a reinstated parliamentary system implies the guided, if severely pressured, transition from one model of governance to the other. Along with the power dynamics inherent in the coalition between SPA and CPN-M requiring an individual assessment of their relationship towards one another, the localization of the three major actors involved in the campaign within the spectrum of the original "mechanisms of change" is therefore considered more adequate in the context of this chapter.

erly attempted to induce a community built on the common belief in equal values through coercion, forced societal fragmentation and violence directly undermines the legitimacy of proposed demands. Moreover, the perceived plausibility of the actors' reliability in adhering to democratic maxims and due conduct is substantially weakened through ideological inconsistencies, with the CPN-M openly promulgating principled visions of change while opportunistically agreeing to a political deal with the SPA in order to reach self-defined goals. Hence, it is not ideology that dictates the actor's strategic shift from violence to nonviolence; it is the pragmatically motivated outlook on the enjoyment of legitimacy within a potentially newly established government. The magnitude of this lack of fundamental integrity is amplified through its relevance in wider Nepalese conflict history, as actions of the Congress Mukti Sena are popularly thought to have contributed crucially to the opening of negotiations with the Ranas and hence the promulgation of Nepal's first democratic constitution in 1959, hazarding the consequences of force for the unsustainable establishment of democracy.

3. Conclusion

While NVR strategies may bear a high resource density for a productive and peaceful transition from conflict to post-conflict environments, this chapter has shown that even when successful, the nonviolent approaches applied to facilitate societal change are to be contextualized and evaluated in respect to particular historical and sociopolitical relevancies in order to assess their long-term impact on civic conduct. In the case of Nepal, it has been found that discrepancies in ideologies, shifting relationships between key actors and the inconsequent adherence to nonviolent conduct—while temporarily negligible in the examination of NVR's capabilities to initiate a transformative process itself—crucially thwart the development not only of an adequate Transitional Justice process, but the growth of a sustainable democracy itself. Honoring the complexity of any transitional process, however, it is of note that a myriad of issues related to the Nepalese societal transformation have yet to be taken into consideration in order to allow a holistic evaluation of its development, including…

- …an assessment of alternatives to the paths taken with an arguably higher (and lower) potential for inducing societal cohesion, allowing the development of a best-to-worst case scenario reference frame,

- …the severity of identified destabilizing factors for the long-term progression of democratic conduct in general and cases filed within Transitional Justice mechanisms established after the implementation of the TRC Act in particular and
- …the identification of additional crucial factors contributing to the destabilization of the political environment as well as the inadequate design and inefficient conduct of commissions following the passing of the TRC Act in parliament, such as political will, resources available for the implementation of Transitional Justice measures and an assessment of what would qualify as a representative design of Transitional Justice mechanisms, given the constraints at hand.

While accounting for these factors would have exceeded the scope of this chapter's analysis, it represents an invitation to explore limitations and opportunities of NVR strategies through their deconstruction, amplifying discourse around applicability and exploration of nonviolent approaches towards transition and thereby contributing to conduct honoring human rights and dignity.

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