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Transitional justice and liberal post-conflict governance: Synergies and symmetries, frictions and contradictions

Sharp, D.N.

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Author: Sharp, Dustin Nachise

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Transitional Justice and Liberal Post-Conflict Governance

Synergies and Symmetries, Frictions and Contradictions

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Dustin Nachise Sharp

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Promotor: prof. dr. C. Stahn

Promotiecommissie: dr. E.C.P.D.C. de Brabandere
prof. dr. L.J. van den Herik
prof. dr. C.L. Sriram (University of East London, UK)
prof. dr. W.G. Werner (VU University, Amsterdam)

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Introduction¹

What does it mean to do “justice” in times of transition? Justice for what, justice for whom, and to what ends?² Attempts to answer these and other related questions have often aroused debate, from antiquity,³ to the so-called “third wave” of democratic transitions in the 1980s and 90s, up through the present day.⁴ They are profoundly political, ideological, ethical, philosophical, religious, and, yes, legal questions. Over the last thirty years, these questions have become increasingly associated with the field of transitional justice, an area of policy, practice, and study that has become the “globally dominant lens”⁵ through which we grapple with legacies of violence and mass atrocity. Since the initial explosion of transitional justice practice in the 1980s, the programs and institutions associated with it have in some respects moved from the exception to the norm,⁶ embraced by the United Nations (UN) and major international donors alike. Yet the fundamental questions of justice evoked above have not always become easier with the passage of time. If these controversies persist, it is at least in part because “justice” remains an elusive and essentially contested concept often deeply rooted in context-specific history and culture.⁷

Transitional justice is often defined in part by reference to a set of practices—including prosecutions, truth-seeking, vetting and dismissals, reparations, and institutional reform—now associated with responses to widespread human rights

¹ Unlike the other chapters in this articles-based dissertation, this introductory chapter is unpublished. As a summary and synthetic chapter, it borrows heavily from concepts and language from other chapters throughout this dissertation, together with two other works I have published that are not formally included in this dissertation project: Dustin Sharp, “From Foreground to Periphery: Where Does Policy Go from Here?,” in *Justice and Economic Violence in Transition*, ed. Dustin Sharp (New York: Springer, 2014). (2014); Dustin Sharp, “Interrogating the Peripheries; The Preoccupations of Fourth Generation Transitional Justice,” *Harvard Human Rights Journal* 26 (2013): 149-78.

² See Rosemary Nagy, “Transitional Justice as a Global Project: Critical Reflections,” *Third World Quarterly* 29, no. 2 (2008): 276.

³ See generally Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004) (reviewing historic practices now associated with the modern field of transitional justice).

⁴ The “third wave” refers to a period of global democratization beginning in the mid-1970s that touched more than sixty countries in Europe, Latin America, Asia, and Africa. See generally Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991).

⁵ Paul Gready and Simon Robins, “From Transition to Transformative Justice: A New Agenda for Practice,” *International Journal of Transitional Justice* (2014) (Advance Access).

⁶ One can now point to over 40 truth commissions around the world (and many times more human rights prosecutions) carried out both nationally and internationally, as evidence of a global “justice cascade.” See Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W. W. Norton and Co., 2011)

⁷ Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field,’” *International Journal of Transitional Justice* 3, no. 1 (2009): 27.

violations.⁸ However, viewing transitional justice as an apolitical “toolbox,” or simple set of “best practices,” a notion implicit in UN and other definitions, would be a mistake as it fails to account for the important historical, cultural, and ideological underpinnings of the field.⁹

When it first took the global stage in the 1980s and 1990s, transitional justice was largely thought of as a vehicle for helping to deliver important liberal goods in post-conflict and post-authoritarian societies, including political/procedural democracy, constitutionalism, the rule of law, and respect for human rights. If it was hoped that transitional justice could help to strengthen transitions to Western liberal democracy, its practices were also seen by some as bound up with a legal imperative to provide an effective remedy for a somewhat narrow (if not egregious) band of international human rights and international humanitarian law violations.¹⁰ The conceptualization of the field as an expression of these twin normative aims and its subsequent global dissemination

⁸ According to a famous UN definition, “[transitional justice comprises] the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.” See United Nations Secretary General, “The Rule of Law and Transitional Justice in Post-conflict Societies,” UN Doc. S/2004/616 (August 23, 2004), ¶ 8.

⁹ See Abdullahi Ahmed An-Na’im, “Editorial Note: From the Neocolonial “Transition” to Indigenous Formations of Justice,” *International Journal of Transitional Justice* 7, no. 2 (2013): 197.

¹⁰ All violations of international human rights law entail legal consequences, including the right to redress and compensation—a fact that has without doubt given impetus to the field of transitional justice. Theo van Boven has noted that the “United Nations Principles and Guidelines on the Right to a Remedy” were developed in the shadow of expanding transitional justice practice. See Theo van Boven, “Basic Principles and Guidelines on the Right to a Remedy for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” Introductory Note, December 16, 2005, http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html. Today, the “normative framework supporting transitional justice [includes] the right to justice, truth and guarantees of non-recurrence.” See United Nations Secretary General, “The Rule of Law and Transitional Justice in Post-Conflict Societies,” UN Doc. S/2011/634 (October 12, 2011), ¶ 8. Yet it is also true that the bulk of international institutional capital has been invested in examining and articulating remedies for “gross” violations, a category heavily associated with genocide, torture, crimes against humanity, disappearances and other extremely serious violations of physical integrity, and civil and political rights more generally. See van Boven, Introductory Note, 2-3. Many early transitional justice scholars had these sorts of violations in mind when they analyzed the intersection between international legal duties and transitional justice policy, particularly as regards to duty to prosecute. See *generally* Diane Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *Yale Law Journal* 100, no. 8 (1991): 2537. As I discuss in *Part II* of this dissertation, the narrow legalism and focus of transitional justice on physical integrity and civil and political rights violations is increasingly questioned, and the conceptualization of rights violations as either “gross” or “simple,” must itself be interrogated as a potential political and ideological construct.

can thus be linked to the broader globalization of international human rights and Western governance ideals, especially those civil and political rights norms strongly associated with liberalism and neoliberalism.¹¹

Some three decades after the Latin American and Eastern European democratic transitions associated with the field's naissance, the idea of transitional justice as handmaiden to liberal political transitions—the “paradigmatic transition” of transitional justice—remains a deeply embedded narrative that has helped to shape dominant practices and conceptual boundaries up through the present day.¹² Together with post-conflict peacebuilding, transitional justice has, since the end of the Cold War, been an important feature of liberal post-conflict governance, a means by which Western liberal values are pushed from core to periphery.¹³

Examined closely, therefore, the core narratives of the field contain something of a contradiction. Transitional justice is at times imagined as a post-political and post-ideological enterprise, part of “the end of history,”¹⁴ and yet is also heavily associated with liberal democratic political transitions and has been dominated by largely Western conceptions and modalities of justice. Thus, even a brief *tour d'horizon* of the history of the field reveals that transitional justice theory and practice have typically failed to reflect the complex depth and pluralism of the many varied notions of justice across the globe.¹⁵

A. This Dissertation Project and the Trajectory of the Field

As transitional justice has become institutionalized and mainstreamed,¹⁶ there has been an increasing willingness to interrogate some of the boundaries, blindspots, frictions, and contradictions of the field.¹⁷ Even as the field has been pushed to the nerve centers of international policymaking, other voices push outward, questioning dominant liberal scripts, templates, and toolboxes. This dissertation project, therefore, comes at a time normative ferment within the field, a time when foundational paradigms and assumptions are increasingly questioned: *Should we continue to think of transitional justice along narrowly liberal lines, tasked with facilitating transitions to liberal (market) democracy? Should transitional justice apply to situations involving non-liberal transitions or to*

¹¹ Gready and Robins, “From Transition to Transformative Justice,” 3.

¹² See generally Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009).

¹³ Philip Cunliffe, “Still the Spectre at the Feast: Comparisons between Peacekeeping and Imperialism in Peacekeeping Studies Today,” *International Peacekeeping* 19, no. 4 (2012): 428.

¹⁴ See generally Francis Fukuyama, *The End of History and the Last Man* (New York: Avon Books, 1992).

¹⁵ Gready and Robins, “From Transition to Transformative Justice,” 3.

¹⁶ See Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34, no. 4 (2007): 412 (observing that “[t]ransitional justice has emerged from its historically exceptionalist origins to become something which is normal, institutionalized and mainstreamed”). This is perhaps best exemplified in high-level reports by the UN Secretary General. See, e.g., United Nations Secretary General, “The Rule of Law and Transitional Justice in Post-Conflict Societies.”

¹⁷ Dustin Sharp, “Interrogating the Peripheries.”

already consolidated liberal democracies for that matter? Would a transition to “peace” look different than a transition to “democracy”? What is the utility of using the “transitions” lens altogether?

This dissertation project does not claim to provide any simple answers to such immense questions, but can be situated as part of the ongoing process of contestation surrounding them. As elaborated in greater detail below, it seeks more specifically to contribute to the literature in its interrogation of some of the field’s historic blindspots and peripheries as a prelude grappling with its central research question: *might a (re)conceptualization of the field of transitional justice around frames of peace and peacebuilding help to address longstanding critiques and limitations of the field and, at the same time, serve as useful tool for re-orienting theory and practice in ways more reflective of a genuinely pluralistic and global project?* Whatever the answer to this question, one can hope that the centripetal and centrifugal forces currently influencing the field will be a source of creative energy and tension in the years to come, moving transitional justice practice and policy into new and at times uncharted waters in an attempt to find better and more context-appropriate approaches to questions of justice in transition.¹⁸

B. Research Gap and Methodology

Though efforts are increasing to close the gaps, transitional justice as a field has been both under-empiricized and under-theorized.¹⁹ The great bulk of transitional justice literature is normative, tending to describe, critique, or compare individual country experiences or transitional justice mechanisms across several countries. Transitional justice policies are often critiqued or asserted because of what is considered to be normatively good or unacceptable, yet the articulation of more robust theoretical constructs and paradigms that might help to provide deeper context and substance to these specific critiques has been largely lacking.²⁰ Thus, for example, it is often taken for granted that transitional justice practice somehow helps to build democracy, increases

¹⁸ Ibid.

¹⁹ For an example of efforts on the theoretical front, see, e.g., Susanne Buckley-Zistel et al, eds., *Transitional Justice Theories* (New York: Routledge, 2014). For efforts on the empirical front, see, e.g., Tricia Olsen, Leigh Payne, Andrew Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficiency* (Washington: USIP, 2010); Oskar Thoms et al., “State-Level Effects of Transitional Justice: What Do We Know?,” *International Journal of Transitional Justice* 4, no. 3 (2010): 332; Hugo van der Merwe, Victoria Baxter, and Audrey Chapman, eds., *Assessing the Impact of Transitional Justice* (Washington: USIP, 2009); Phuong Pham and Patrick Vinck, “Empirical Research and the Development and Assessment of Transitional Justice Mechanisms,” *International Journal of Transitional Justice* 1, no. 2 (2007): 231.

²⁰ Perhaps it is not so surprising then that Eric Posner and Adrian Vermeule’s 2003 assertion the so-called dilemmas of transitional justice are no different—theoretically or empirically—from the dilemmas of domestic (non-transitional) justice has gone largely unanswered. See generally “Transitional Justice as Ordinary Justice,” *Harvard Law Review* 117, no. 3 (2003): 761.

accountability, and contributes to the rule of law.²¹ Yet these often appear to reflect more sloganeering than depth or rigor. What, for example, is the theory by which transitional justice produces reconciliation, accountability, etc? What empirical evidence is there than any of these magic-making claims are justified?

In general, a critical theory of transitional justice has also been largely lacking and transitional justice has mostly been assumed to be a non-ideological “good” for post-conflict societies.²² This is not to say that there have not been many specific critiques of transitional justice mechanisms and experiences. Indeed, the literature is replete with arguments that transitional justice is “top-down,” that it has failed to be inclusive or participatory, that a particular transitional justice initiative was a failure due to poor implementation, etc. However, efforts to link these specific critiques of transitional justice practice with the deeper undercurrents of transitional justice ideology and assumptions—exploring the ways in which transitional justice practice might even legitimate or obfuscate forms of injustice while legitimating other political and ideological purposes—have not been as numerous. If transitional justice is often “good,” might it also occasionally be “part of the problem”?²³ The latter question has not received as much attention in the literature as it deserves.

This dissertation project has no ambition to contribute to the empirical gap in the transitional justice literature. Rather, it seeks to make a particular contribution to the critical theory gap in the literature by examining the birth and trajectory of transitional justice through a lens largely resonant with the “critical legal studies” movement of the late twentieth century;²⁴ I apply that same lens in examining the intersection of transitional justice and peacebuilding. My approach also has parallels with the so-called “Third World Approaches to International Law” (TWAIL) scholarship.²⁵ Taken together, this critical theory methodology attempts to do for transitional justice what scholars such as Duncan Kennedy and others once did for domestic private law: to bring to the surface the politics and ideological assumptions of regimes and practices that are often presented as technocratic, apolitical, and non-ideological, and to examine the implicit tradeoffs and distributional consequences that often go undiscussed.²⁶ In this sense, it

²¹ For a critique of similarly simplistic assumptions in the context of truth commissions, see generally David Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?,” *International Studies Review* 6, no. 3 (2004): 356.

²² Thomas Obel Hansen, “Transitional Justice: Toward a Differentiated Theory,” *Oregon Review of International Law* 13 (2011): 17; see also Siphiwe Ignatius Dube, “Transitional Justice Beyond the Normative: Towards a Literary Theory of Political Transitions,” *International Journal of Transitional Justice* 5, no. 2 (2011): 181.

²³ See, e.g., David Kennedy, “The International Human Rights Movement: Part of the Problem?,” *Harvard Human Rights Journal* 15 (2002): 101.

²⁴ In this regard, I find myself indebted to the work of Duncan Kennedy, David Kennedy, Martii Koskeniemi, Morton Horwitz, Roberto Unger, and many others.

²⁵ In this regard, I find myself indebted to the work of Upendra Baxi, Anthony Anghie, Balakrishnan Rajagopal, Makau Wa Mutua, Obiora Vhinedu Okafor, Vasuki Nesiah, and many others.

²⁶ See, e.g., Duncan Kennedy, “Form and Substance in Private Law Adjudication,” *Harvard Law Review* 89 (1976): 1685.

falls in the tradition of scholars of public international law such as David Kennedy, Makau Mutua, and others.²⁷

Another major gap in the transitional justice literature is an examination and critique of the relationship between transitional justice and liberal peacebuilding more generally. For the most part, transitional justice has been dominated by lawyers engaged more in constructs of accountability and the rule of law than peace or peacebuilding. To the extent that it is engaged with at all, peace has often been treated rather simplistically, an uncontested and non-ideological construct. Yet even outside of the legal literature, there has been relatively little formal connection between transitional justice initiatives and the staples of post-conflict peacebuilding programming, either in theory or practice.²⁸ This is a bit surprising given the shared temporal origins and ideological assumptions of both transitional justice and liberal peacebuilding. In recent years, a small but growing literature looking at potential linkages between peacebuilding and transitional justice generally,²⁹ and in particular with respect to specific initiatives like Security Sector Reform (SSR) and Disarmament, Demobilization, and Reintegration (DDR), has started to emerge.³⁰ However, much of this literature adopts more of a “problem-solving” or policy-based lens than a critical-theory lens.

Thus, this dissertation project adds value to this small but emerging literature by bringing a critical theory approach to questions, both practical and conceptual, regarding the emerging nexus between transitional justice and post-conflict peacebuilding. The over-arching goal of this methodology is to question the assumptions undergirding transitional justice and liberal peacebuilding that liberal democracy and capitalism—as *they have been narrowly and simplistically understood*—are somehow a unique pathway to grappling with legacies of violent conflict. In doing so, it builds on the work of scholars working within the critical studies vein of peacebuilding scholarship, including Timothy Donais, Roger Mac Ginty, Edward Newman, Roland Paris, Oliver Richmond, and others.³¹ This is one of the first works to bring these two related threads (transitional

²⁷ See, e.g., David Kennedy, “The ‘Rule of Law,’ Political Choices and Development of Common Sense,” in *The New Law and Economic Development*, eds. David M. Trubek, and Alvaro Santos (Cambridge: Cambridge University Press, 2006); Makau Wa Mutua, “The Ideology of Human Rights,” *Virginia Journal of International Law* 36 (1996): 589.

²⁸ See Paul van Zyl, “Promoting Transitional Justice in Post-Conflict Societies,” in *Security Governance in Post-Conflict Peacebuilding*, eds., Alan Bryden and Heiner Hänggi, (Geneva: DCAF, 2005).

²⁹ See, e.g., Chandra Sriram, Olga Martin-Ortega, Johanna Herman, “Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice,” JAD-PbP Working Paper Series No 1. (May 2009), 13 (discussing increasing linkages between transitional justice and a broader set of peacebuilding activities).

³⁰ See, e.g., Alan Bryden, Timothy, and Heiner Hänggi, *Shaping a Security-Governance Agenda in Post-Conflict Peacebuilding* (Geneva: DCAF, 2005).

³¹ See, e.g., Timothy Donais, “Haiti and the Dilemmas of Local Ownership,” *International Journal* 64 (2008-2009): 759; Roger Mac Ginty, *International Peacebuilding and Local Resistance. Rethinking Peace and Conflict* (New York: Palgrave MacMillan, 2011); Oliver Richmond, *The Transformation of Peace* (New York: Palgrave MacMillan, 2005); Edward

justice and peacebuilding) of critical theory together, though the work of Chandra Lekha Sriram is an important exception to which I am indebted.³²

As with most pieces of critical theory and perhaps critical legal studies in particular, this dissertation project does not seek to provide any kind of definitive answer to the many conundrums that are posed, though I do offer several pragmatic policy proposals throughout the various chapters. The chief hope, rather, is to stimulate new thinking by attempting to deconstruct aspects of the transitional justice and peacebuilding enterprises, and thereby *strip them of their sense of naturalness and inevitability*—to reassert what to some may be obvious and others less so: that like everything else they inhabit the domain of politics and ideology. To remain honest, and hopefully more productive, future debates need to move forward with a cognizance of that fact in mind.

C. Chapter Overviews and Central Arguments

This articles-based dissertation project consists of five recently published journal articles and book chapters that explore the increasingly contested nature of the dominant narratives and assumptions at the heart of the transitional justice and the frictions and contradictions generated by transitional justice as a form of liberal post-conflict governance. A central argument uniting these chapters—a “red thread” if you will—is that while the liberal ideological narratives undergirding and shaping the field have had many positive dimensions, they have also served to limit and constrain the transitional justice enterprise, by (a) heavily shaping the modalities of transitional justice (approaches that are generally state-centered, top-down, privileging the global over the local) and (b) serving to limit our sense of what the “justice” of transitional justice should reasonably include (generally addressing civil and political rights rather than economic and social rights, physical violence rather than questions of economic or structural violence). As an ideological enterprise with a deeply liberal and Western cultural fingerprint, I argue that this may ultimately hinder the emergence of a more pluralistic global project reflective of the diversity of humanity and its many peace and justice traditions.

i. *Parts I and II*

Parts I and II (which include Chapters I-III) of the dissertation are therefore dedicated to an exploration of the ways in which the dominant liberal lens of transitional justice has shaped our sense of what it means to do justice in times of transition. In *Part I*, I explore the frictions and contractions generated by the interface point between a largely liberal internationalist transitional justice enterprise and dimensions of “the local” (local ownership, local values, local practices, etc). I argue that the dominance of law,

Newman, Roland Paris, and Oliver P. Richmond, eds., *New Perspectives on Liberal Peacebuilding* (New York: United Nations University, 2009).

³² See, e.g., Chandra Lekha Sriram, “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,” *Global Society* 21, no. 4 (2007): 580.

legalism, liberalism and western conceptions of justice associated with the field has resulted in rather clumsy and at times tense engagement with questions of non-conventional (i.e., non-Western) justice. In the contemporary academic and policy literature, the importance of giving primacy to the local is repeatedly asserted as a sort of mantra.³³ Yet ultimately most transitional justice interventions and debates reflect a profound ambivalence and distrust of the local reflecting a clash of normative commitments: between liberal internationalism and international human rights on the one hand, and principles of local sovereignty and autonomy on the other. Rather than simply assert that giving greater weight to the local in questions of post-conflict justice is both important and hard (a persistent trope in most of the policy literature),³⁴ this *Part* seeks to analyze and deconstruct the concept of the local in the transitional justice context, exploring its promises and pitfalls. In particular, I argue that understanding global-local dilemmas requires one to unpack the concept of local ownership, distinguishing concerns about actual control (agency, decision making, funding), process (bottom-up, participatory, homegrown), and substance (values, practices, priorities), even if those concerns are in practice highly related. Deconstruction of the concept of the local, in turn, tends to destabilize, breaking down simple binary notions of global and local. Going forward, I argue, achieving a better global-local balance along the multiple dimensions of local ownership may help to generate new and innovative approaches that take us beyond the transitional justice “toolbox.” Ultimately, I suggest that while the local is as problematic as it is promising, making transitional justice more of a true global project will likely require an unconformable degree of legal pluralism for many Western human rights lawyers and a large margin of appreciation, even if that pluralism is still probably best managed within the values of a loosely liberal system.

In *Part II* (which includes Chapters II and III), I turn to explore the ways in which the liberal frames at the heart of the field of transitional justice have served to limit our sense of what the “justice” of transitional justice should cover. I argue that while there is increasing momentum behind the notion that the tools of transitional justice should be marshaled in response to large-scale human rights atrocities and physical violence—including murder, rape, torture, disappearances, and other crimes against humanity—the proper role of transitional justice with respect to economic violence—including violations of economic and social rights, corruption, and plunder of natural resources—is far less certain. Historically, if mass atrocities and physical violence have been placed in the transitional justice spotlight, issues of equally devastating economic and social justice

³³ See, e.g., U.N. Secretary General, *Report of the Secretary General on Peacebuilding in the Immediate Aftermath of Conflict*, UN Doc. A/63/881-S/2009/304 (June 11, 2009), ¶ 7 (Observing that “[t]he imperative of national ownership is a central theme of the present report.”); U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶¶ 16-17 (arguing that the UN must “learn better how to respect and support local ownership, local leadership and a local constituency for reform.”); Simon Chesterman, “Walking Softly in Afghanistan: The Future of UN Statebuilding,” *Survival* 44 (2002): 41 (noting that “[e]very UN mission and development program now stresses the importance of local ‘ownership.’”).

³⁴ Benjamin de Carvalho and Niels Nagelhus Schia, *Local and National Ownership in Post-Conflict Liberia: Foreign and Domestic Inside Out?*, NUPI Working paper 787 (Oslo: NUPI, 2011).

have received little attention.³⁵ The marginalization of the economic within the transitional justice agenda serves to distort our understanding of conflict, and the policies thought to be necessary in the wake of conflict.

In *Chapter II* I argue that a more nuanced, contextualized, and balanced approach to a wider range of justice issues faced by societies in transition is necessary. To this end, I propose that one way to achieve a more balanced approach would be to re-conceptualize and reorient the “transition” of transitional justice not simply as a transition to democracy and the “rule of law,” the paradigm under which the field originated, but as part of a broader transition to “positive peace” in which justice for both physical violence and economic violence receive equal pride of place.³⁶ The utility of frames of peace and peacebuilding in reshaping transitional justice narratives is a theme I return to in greater depth in *Part III*.

A paradigm shift in the direction of positive peace would not dictate a particular approach to economic violence in transition, or even ensure that economic violence would be addressed at all. As with all transitional justice mechanisms and modalities, the needs and limits of the context would have to be considered. Depending on the context, addressing economic violence might not always be necessary, or even desirable. In other contexts, addressing legacies of economic violence may appear to key constituencies as having *more* relevance than other more traditional transitional justice concerns.³⁷ The key point, however, is that whatever is to be the dividing line between what is included or not included within transitional justice mandates, it should not be drawn upon lines of civil and political and economic and social rights. Besides being simplistic and unnecessary, to do so where economic violence has been intimately associated with the logic of a conflict or the abuses suffered would be to stymie the

³⁵ This is of course beginning to change, and in recent years there has been increased attention in the academic and policy literature to questions of economic justice in transition. See, e.g., Louise Arbour, “Economic and Social Justice for Societies in Transition,” *New York University Journal of International Law and Politics* 40, no. 1 (2007): 1; The entire volume of *International Journal of Transitional Justice* 2 (2008); Pablo de Greiff and Roger Duthie, eds., *Transitional Justice and Development: Making Connections* (New York: ICTJ, 2009); Dustin Sharp, ed. *Justice and Economic Violence in Transition* (New York: Springer, 2014). For a thoughtful but skeptical take on calls to broaden the mandates of transitional justice institutions, see Lars Waldorf, “Anticipating the Past: Transitional Justice and Socio-Economic Wrongs,” *Social and Legal Studies* 21 (2012): 171-86.

³⁶ The term “negative peace” refers to the absence of direct violence. It stands in contrast with the broader concept of “positive peace,” which includes the absence of both direct and indirect violence, including various forms of “structural violence” such as poverty, hunger, and other forms of social injustice. See generally Johan Galtung, “Violence, Peace, and Peace Research,” *Peace Research* 6, no. 3 (1969): 167.

³⁷ Consider in this regard the example of Kenya where it has been argued that economic issues actually have a longer pedigree and are more central to most victimization accounts than civil and political rights, which “were late entrants to the Kenyan debate.” Godfrey Musila, “Options for Transitional Justice in Kenya: Autonomy and the Challenge of External Prescriptions,” *International Journal of Transitional Justice* 3, no. 3 (2009): 460.

ability of transitional justice institutions to lay at least some of the groundwork for long-term positive peace.

In *Chapters II and III*, I also explore the possibilities and practicalities of integrating questions of economic violence into transitional justice practice. *Chapter III* looks specifically at those few truth commissions that have addressed questions of economic violence and attempts to draw lessons for future work, one of the only academic articles to have done so. In particular, I argue that one way of opening the field to questions of economic violence while at the same time addressing the very real possibility for overbreadth and dilution of efforts would be to focus on an “economic violence-human rights nexus,” which would involve looking primarily at those aspects of economic violence that most directly and egregiously impact economic and social rights recognized under national and international law. In this, I am very much attempting to strike a middle ground between those who would push transitional justice in the direction of almost boundless “transformative” approach, and those who advocate that transitional justice continue to hew to its narrower roots.

In sum, the liberal ideological impulses undergirding mainstream transitional justice practice have over time tended to push certain questions and themes into the spotlight, while marginalizing and largely rendering other matters invisible:

Set in the Foreground	Set in the Background³⁸
the global, the Western the modern, the secular the legal civil and political rights physical violence the state, the individual formal, institutional, “top-down” change	the local, the non-Western “other” the religious, the traditional the political economic and social rights economic and structural violence the community, the group informal, cultural, social, “bottom-up” change

The intent animating *Parts I and II* of this dissertation project is to bring some of the ideological assumptions and blindspots of the field to the surface—to bring some of the historic periphery into the foreground—so that they can be better engaged as part of a process for remaking the field going forward.

To be clear, the central “problem” being analyzed is not that human rights, the rule of law, good governance, democracy or other key liberal goods are themselves undesirable or unworthy goals of the transitional justice enterprise. To contest some of the liberal ideological assumptions of transitional justice is not therefore to jettison liberalism itself. Many aspects of the ideology are invaluable and, indeed, many of the critiques found throughout this dissertation project are based on decidedly liberal principles.³⁹ Thus, there are certainly readings of the liberal tradition that would give greater weight to local autonomy, participation, and decision making and which would

³⁸ Chart adapted from, Dustin Sharp, “Addressing Economic Violence in Times of Transition,” 15.

³⁹ See Roland Paris, “Saving Liberal Peacebuilding,” *Review of International Studies* 2 (2010): 354.

reflect greater contextual openness and adaptability (themes I take up in *Part I*). And there are also strands of the liberal tradition that would pay greater attention to everyday needs, economic and social rights, and questions of distributive justice (themes I explore in *Part II*). Much of the critique leveled here therefore stems from the reductionism, chauvinism, and arrogance of a particularly narrow liberal form of transitional justice (and liberal peacebuilding for that matter, which I address below) that tends to privilege certain forms of expertise and knowledge, promotes reductionist “justice” over broader forms of justice irrespective of context, has too often been associated with exogenous imposition, and which tends not to question its own assumptions and checkered history.

ii. Part III

In view of some of the aforementioned blindspots and limitations that have characterized the field, and at a time when some have begun to ask the question “does transitional justice have a future,”⁴⁰ now is the time, I argue, to consider alternative narratives and paradigms. Thus, having probed some of the central blindspots of transitional justice as a form of liberal post-conflict governance associated with the globalization of human rights and market democracy in *Parts I and II*, I then turn in Part III to greater focus on the question of possible alternative paradigms or groundings for the field, and specifically to the interface between transitional justice and post-conflict peacebuilding.

The departure point for this inquiry is an observation that the central narrative of transitional justice is beginning to change. While the idea of transitional justice as handmaiden to liberal political transitions remains a deeply embedded narrative, in recent years, it has become increasingly intertwined with a view of transitional justice as a component of post-conflict peacebuilding more generally, including in societies not undergoing a paradigmatic liberal transition.⁴¹ In some respects, this is a striking development insofar as, historically, transitional justice has at times been seen as being in competition with the demands of peace, and not as a potentially important component of peacebuilding itself. We can then ask whether “transitional justice as peacebuilding” as an alternative frame to “transitional justice as liberal democracy building” might provide a fruitful alternative to explore at the level of policy, practice, and study. How could or would it differ from what came before? Might it serve to strike a better balance between this historic foreground and background of the field, as highlighted in the chart above?

To the extent that “peace” invokes more holistic sets of objectives than the narrower goals associated with facilitating liberal political transitions, the turn to peacebuilding might be seen to represent a broadening and a loosening of earlier paradigms and moorings, making this a significant moment in the normative evolution of

⁴⁰ Consider, for example, the 2013 call to papers for a special issue of the International Journal of Transitional Justice with the theme “Transitional Justice: Does It have a Future?,” http://www.oxfordjournals.org/our_journals/ijtj/call_for_papers_2015.html.

⁴¹ Examples of transitional justice outside of paradigmatic liberal transitions include Rwanda, Kenya, Uganda, Chad, Canada, Australia, and elsewhere.

the field. Yet with few exceptions, there has thus far been little scrutiny as to what “transitional justice as peacebuilding” might actually mean, how it might be different than “transitional justice as liberal democracy building,”⁴² or how transitional justice can and should relate to existing components of the post-conflict peacebuilding recipe-book (including efforts to disarm previously warring parties, re-integrate former soldiers into society, demine and destroy weapons, reform the formal “security sector,” repatriate or resettle refugees, and various forms of democracy, governance, and rule of law assistance, including monitoring elections).⁴³ In many instances, analysis of the linkages between transitional justice and peacebuilding goes little further than the loose sloganeering of “no peace without justice” or simplistic assertions that peace and justice go hand in hand.⁴⁴

I argue that (re)conceptualizing transitional justice as a form of peacebuilding has the *potential* to reinvigorate the field, challenge longstanding blindspots and assumptions, and open the doors to more creative thinking, policies, and practices that take us beyond the confines of the increasingly rote transitional justice “toolbox,” but this cannot be taken for granted. It is worth recalling that concepts of both peace and justice have emancipatory dimensions, yet both have also been associated with colonial logics and dominant ideologies and power structures throughout history. While both concepts are often presented as neutral and apolitical, devoid of inherent ideological content, they have at times been used to legitimate a world order characterized by structural and economic violence enforced by military interventionism. In this light, one must note that, historically, the “peace” associated with international post-conflict peacebuilding efforts spearheaded by the United Nations and major international donors has typically been conceived of as a narrow liberal peace predicated on free markets and Western-style democracy.⁴⁵ Thus, insofar as the goals of liberal international peacebuilding and the historic goals of transitional justice are essentially one and the same, without more, “transitional justice as peacebuilding” may be little more than a dressed up tautology.

I set the stage for my inquiry in *Chapter IV* with an analysis of the parallels between transitional justice and liberal international peacebuilding. I observe that the growing sense of shared space between transitional justice and post-conflict peacebuilding initiatives has sparked new interest in sounding out potential connections between both

⁴² For the most part, transitional justice scholars have not framed their work in terms of peace or peacebuilding. Kora Andrieu, “Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm,” *Security Dialogue* 41, no. 5 (2010): 439.

There are, of course, notable exceptions to this trend, including Chandra Lekha Sriram and Rama Mani. See, e.g., Chandra Lekha Sriram, “Justice as Peace?”; Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Blackwell, 2002).

⁴³ See United Nations, *United Nations Peacekeeping Operations: Principles and Guidelines* (United Nations, 2008), 26.

⁴⁴ See U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, ¶ 8 (arguing that “[j]ustice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives”).

⁴⁵ See generally Roland Paris, *At War's End: Building Peace After Civil Conflict* (Cambridge: Cambridge University Press, 2004).

fields. If transitional justice has its own “toolbox,” one might then ask whether it cannot simply be subsumed into the larger post-conflict peacebuilding template. However, while the pursuit of synergies is a worthwhile goal, I argue that in developing these connections we must also be attentive to mutual shortcomings. Transitional justice and post-conflict peacebuilding have historically proceeded on separate tracks, yet there has been a remarkable similarity in the critiques and concerns that have been leveled against both fields: that they are too often externally driven, being planned and implemented in a top-down and state-centric manner that gives insufficient voice and agency to those most affected by the conflict;⁴⁶ that they are biased toward Western approaches, giving too little attention to local or indigenous peace and justice traditions;⁴⁷ that they are presented as technocratic, neutral, and apolitical solutions to highly contested or contestable political issues and choices;⁴⁸ and that they ultimately reflect not local needs and realities, but a dominant “liberal international peacebuilding” paradigm that seeks to foster Western, market-oriented democracies in the wake of conflict without considering the tensions this may unleash in the immediate aftermath of conflict.⁴⁹

Considered together, there is reason to worry that better integration and coordination between peacebuilding and transitional justice might exacerbate some of the tendencies that have given rise to these parallel critiques rather than alleviate them. There is also a danger that as transitional justice is mainstreamed into emerging best practices for post-conflict reconstruction, it will increasingly come to be seen as yet one more box to tick on the “post-conflict checklist,” a routine part of the template deployed in the context of post-conflict peace operations.⁵⁰ I therefore argue that to the extent that we seek to promote coordination or even synthesis, we should seek synergies with thorough cognizance of the historic concerns and critiques leveled against both fields, and this may in turn serve as one technique of resistance to the tendencies that gave rise to the critiques in the first place. As an example, I suggest how transitional justice initiatives and Demobilization Disarmament and Reintegration (DDR) programs might be better

⁴⁶ See, e.g., Kora Andrieu, “Civilizing Peacebuilding,” 541 (noting that “transitional justice seems to be strongly under the influence of [a] top-down state-building approach.”)

⁴⁷ See, e.g., Wendy Lambourne, “Transitional Justice and Peacebuilding After Mass Violence,” *International Journal of Transitional Justice* 3, no. 1 (2009): 28 (calling for a revalorization of local and cultural approaches to justice and reconciliation).

⁴⁸ See, e.g., Patricia Lundy and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35, no. 2 (2008): 276-77 (arguing that “wider geo-political and economic interests too often shape what tend to be represented as politically and economically neutral post-conflict and transitional justice initiatives”).

⁴⁹ See generally Roland Paris, *At War's End*; Chandra Sriram, “Justice as Peace?”

⁵⁰ The problem of template-based or one-size-fits-all peacebuilding initiatives is a frequent trope in both academic and policy literature. See, e.g., Roger Mac Ginty, “Indigenous Peace-Making Versus the Liberal Peace,” *Cooperation and Conflict: Journal of the Nordic Studies Association* 43, no. 2 (2008): 144 (observing the existence of “set templates” and a “formulaic path” in internationally sponsored peacebuilding).

coordinated in ways which run counter to the historical liberal ideological bias of both transitional justice and liberal peacebuilding.⁵¹

Chapter V helps to conclude this dissertation project, bringing together a number of strands developed in the preceding chapters with an attempt to deconstruct the emerging transitional-justice-as-peacebuilding narrative in the hopes that what emerges might prove more emancipatory, freed from the bonds of the paradigmatic transition and, one hopes, from some of the tendencies that gave rise to the trenchant critiques discussed in *Chapter IV*. I begin with the observation that, bearing in mind Robert Cover's observation that institutions and prescriptions do not exist apart from the narratives that locate and give them meaning,⁵² the particular "peace" and the particular "justice" that serve to undergird any emerging transitional-justice-as-peacebuilding narrative matter a great deal. Thus, whether "transitional justice as peacebuilding" takes on a more emancipatory or reductive dimension depends in large measure on what we mean by "transition," "justice" and "peace." Therefore, the emergence of the "transitional justice as peacebuilding" narrative calls upon us to deconstruct several key assumptions that might implicitly undergird it, including: (1) the idea of "transition" as necessarily suggestive of a narrow liberal teleology; (2) ideas of "justice" as synonymous with human rights and atrocity justice; and (3) the idea of "peacebuilding" as synonymous with what has come to be known as "liberal international peacebuilding." I offer several concepts from critical peacebuilding theory—including "the everyday," "popular peace," and "hybridity"—that might serve as useful correctives to these narrow assumptions.⁵³ Taken together, I argue, critical reflection along these lines can help to lay the groundwork for a transitional-justice-as-peacebuilding paradigm that reflects a commitment to human rights ideals and the consolidation of a more open-textured, contextually relevant, and genuine positive peace. It may also lead to approaches to transitional justice that better balance the historic foreground and periphery of the field.

⁵¹ This is a possibility I discuss at much greater length in a book chapter not included as part of this dissertation project. See Dustin Sharp, "Bridging the Gap: the United Nations Peacebuilding Commission and the Challenges of Integrating DDR and Transitional Justice," in *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants*, eds. Chandra Lekha Sriram, et al (London: Routledge, 2012), 23.

⁵² Robert Cover, "Nomos and Narrative," *Harvard Law Review* 97 (1983): 4.

⁵³ On "popular peace" and "the everyday," see David Roberts, "Post-Conflict Peacebuilding, Liberal Irrelevance and the Locus of Legitimacy," *International Peacekeeping* 18 (2011): 411; on hybridity, see Roger Mac Ginty and Gurchathen Sanghera, "Hybridity in Peacebuilding and Development: an Introduction," *Journal of Peacebuilding and Development* 7, no. 2 (2012): 3-8.

**Part I: Transitional Justice and its Engagement
with “the Local”**

Chapter I: Addressing Dilemmas of the Global and the Local in Transitional Justice¹

The importance of “the local” (local ownership, local values, local practices, etc.) is an increasingly common trope in post-conflict peacebuilding and transitional justice discourse.² While transitional justice solutions have at times been imposed from the outside, it is now acknowledged that the United Nations (UN) must better support “local ownership” in matters of post-conflict justice and that “due regard” must be given to local justice and reconciliation traditions.³ Paeans to the value of the local in policy circles are paralleled by a growing body of scholarship on the topic that has sought to explore the complexities of bringing dimensions of the local from the periphery to the foreground of transitional justice work.⁴ Put succinctly, the current moment in transitional justice is marked by a veritable “fascination with locality.”⁵

While the reasons for this growing attention are complex, it could be said to reflect the commonsense understanding that peace processes and justice mechanisms not embraced by those who have to live with them are unlikely to be successful in the long term.⁶ Interventions perceived as being imposed “from the outside” may spark backlash and resentment that undermines both legitimacy and effectiveness.⁷ In that

¹ This dissertation chapter was originally published in the *Emory International Law Review* 29 (2014): 71-117.

² See, e.g., U.N. Secretary General, *Report of the Secretary General on Peacebuilding in the Immediate Aftermath of Conflict*, UN Doc. A/63/881-S/2009/304 (June 11, 2009), ¶ 7 (Observing that “[t]he imperative of national ownership is a central theme of the present report.”); U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616 (Aug. 23, 2004), ¶¶ 16-17, 36 (arguing that the UN must “learn better how to respect and support local ownership, local leadership and a local constituency for reform.”); Simon Chesterman, “Walking Softly in Afghanistan: The Future of UN Statebuilding,” *Survival* 44 (2002): 41 (noting that “[e]very UN mission and development program now stresses the importance of local ‘ownership.’”).

³ U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (2004), ¶¶ 16-17, 36; Chandra Lekha Sriram, “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,” *Global Society* 21, no. 4 (2007): 591.

⁴ See, e.g., Deborah Isser, ed., *Customary Justice and the Rule of Law in War-Torn Societies* (Washington: USIP, 2011); Rosalind Shaw and Lars Waldorf, eds., *Localizing Transitional Justice: Interventions and Priorities After Mass Violence* (Stanford: Stanford University Press, 2010); Alexander Hinton, ed., *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence* (Newark: Rutgers University Press, 2010); Erin Baines, “Spirits and Social Reconstruction After Mass Violence: Rethinking Transitional Justice,” *African Affairs* 109, no. 436 (2010): 409; Elizabeth Stanley, “Transitional Justice: From the Local to the International,” in *The Ashgate Research Companion to Ethics and International Relations*, ed. Patrick Hayden (Farnham, UK: Ashgate, 2009).

⁵ Rosalind Shaw and Lars Waldorf, “Introduction,” in *Localizing Transitional Justice*.

⁶ See Timothy Donais, “Haiti and the Dilemmas of Local Ownership,” *International Journal* 64 (2008-2009): 759.

⁷ See Andrea Talentino, “Perceptions of Peacebuilding: The Dynamic of Imposer and Imposed Upon,” *International Studies Review* 8, no. 2 (2007): 153.

sense, grappling with the dilemmas of the global and the local is not an option, but a profoundly pragmatic imperative.⁸ Yet despite the acknowledged centrality of the local, concepts like local ownership remain vague and poorly understood, being marshaled in different ways by different actors for different ends,⁹ often being associated more with aspirational rhetoric than concrete policy reality.¹⁰ Moreover, in the transitional justice context—a context permeated with international normative frameworks, institutions, donors, and technocratic expertise—the odds are often stacked against giving primacy to the local in a meaningful sense.¹¹ It is perhaps, therefore, unsurprising that transitional justice interventions have been and continue to be a frequent locus of tensions between the global and the local.¹²

Examined more deeply, the seeming consensus about the importance of the local masks a profound ambivalence.¹³ Building upon local ownership, priorities, practices, and values is often recognized as among the keys to the success in transitional justice interventions,¹⁴ and yet local practices and solutions can also lead to stark clashes with international human rights standards.¹⁵ The appeal to the local can

⁸ See U.N. Secretary General, *Report of the Secretary General on Peacebuilding in the Immediate Aftermath of Conflict*, ¶ 7 (Observing that “[t]he imperative of national ownership is a central theme of the present report.”)

⁹ See Daniel Bendix and Ruth Stanley, “Deconstructing Local Ownership of Security Sector Reform: A Review of the Literature,” *African Security Review* 17, no. 2 (2010): 101.

¹⁰ Timothy Donais, “Empowerment or Imposition? Dilemmas of Local Ownership in Post-Conflict Peacebuilding Processes,” *Peace and Change* 34, no. 1 (2009): 5 (observing that in the broader field of peacebuilding, “local ownership has rarely moved beyond the level of rhetoric.”); Simon Chesterman, “Ownership in Theory and in Practice: Transfer of Authority in UN Statebuilding Operations,” *Journal of Intervention and Statebuilding* 1, no. 1 (2007): 9 (noting that in the fields of post-conflict reconstruction and development, ownership “has frequently been of more rhetorical significance than anything else.”)

¹¹ See Jaya Ramji-Nogales, “Designing Bespoke Transitional Justice: A Pluralist Process Approach,” *Michigan Journal of International Law* 21 (2010-2011): 21 (noting that “[i]n transitional justice mechanisms to date, the international justice proponents’ concerns have generally been paramount, perhaps because they often provide much of the funding and technical support for transitional justice mechanisms in the developing world.”)

¹² See Alexander Hinton, “Introduction,” in *Transitional Justice: Global Mechanisms and Local Realities*, 9 (observing that “transitional justice mechanisms almost always have unexpected outcomes that emerge out of ‘frictions’ between . . . global mechanisms and local realities.”)

¹³ See Oliver Richmond, *A Post-Liberal Peace* (Milton Park: Routledge, 2011), 153.

¹⁴ In an oft-cited comment on the topic, Kofi Annan noted that “no rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable.” U.N. Secretary-General, *The Rule of Law and Transitional Justice*, ¶ 17. Leopold von Carlowitz has observed that while policy-makers, academics and practitioners generally agree with this principle, local ownership has nevertheless proven difficult to operationalize in practice. *Local Ownership in Practice: Justice System Reform in Kosovo and Liberia*, Occasional Paper No. 23 (Geneva: DCAF, 2011), 1.

¹⁵ See Peter Uvin, “Difficult Choices in the New Post-Conflict Agenda: the International Community in Rwanda After the Genocide,” *Third World Quarterly* 22, no. 2 (2001): 185-86

also be used by local elites to reinforce oppressive power structures, some of which may have led to the conflict in the first place.¹⁶ For these and others reasons, there is a deep distrust of local agency in the post-conflict context.¹⁷ Ultimately, the dilemmas of the local therefore reflect a clash of normative commitments: between liberal internationalism and international human rights on the one hand, and principles of local sovereignty and autonomy on the other.¹⁸ The result of this ambivalence, as played out through global-local power disparities, has typically been accommodation of the local to the extent of conformity with the global, co-option and not co-existence.¹⁹

Conflicting commitments call for a complicated balancing act. In some contexts, too much local may be as problematic as too much global.²⁰ While it may be an all-but-impossible needle to thread,²¹ finding the right balance between global and local agency, priorities, practices, and values stands out as one of the key policy challenges of 21st century transitional justice.²² To this end, this article seeks to analyze and deconstruct the concept of the local in the transitional justice context, exploring its promises and pitfalls. In doing so, I attempt to make three key points.

First, a better understanding of the role of the local in transitional justice discourse and practice requires that we think carefully about why transitional justice should have so often become the locus for such vivid global-local tensions in the first place. While cautioning against unduly rigid notions path dependency, I offer the

(noting that “when internal or local solutions emerge, they often take forms that do not conform to Western ethnical ideals of international legal principles.”)

¹⁶ See Patricia Lundy, “Paradoxes and Challenges of Transitional Justice at the ‘Local’ Level: Historical Enquiries in Northern Ireland,” *Contemporary Social Science* 6, no. 1 (2011): 93 (reviewing arguments in the literature that “transitional justice can be used by elites for a variety of purposes and to serve or conceal other very different political agendas.”)

¹⁷ Florian Kuhn, “The Peace Prefix: Ambiguities of the Word ‘Peace’,” *International Peacekeeping* 19, no. 4 (2012): 402.

¹⁸ See Donais, “Haiti and the Dilemmas of Local Ownership,” 755-56. Global frictions arise in part due to a clash between universalism and particularism—a dynamic at the heart of the cultural relativism debate in human rights. Yet it is important to note here that values like participation, inclusion, and local agency are themselves often held out as universal values intended to trump others, and at times are even as a shield against local or traditional practices that might discriminate or otherwise fail to be fully inclusive. Thus, the clash of normative commitments I speak of here is much more complex than frictions between a cosmopolitan liberalism and vigorous localism, and could also be thought of a tension between different (purportedly universal) liberal commitments.

¹⁹ See Stephanie Vielle, “Transitional Justice: A Colonizing Field?,” *Amsterdam Law Forum* 4, no. 3 (2012): 66.

²⁰ See Donais, “Empowerment or Imposition?,” 21.

²¹ See Roland Paris and Timothy Sisk, *Managing Contradictions: The Inherent Dilemmas of Postwar Statebuilding* (International Peace Academy/Research Partnership on Postwar Statebuilding, 2007), 5 (suggesting that insofar as the dilemmas of postwar statebuilding stem from “compelling but mutually conflicting imperatives,” they may prove unresolvable).

²² I have elsewhere outlined this and other key dilemmas that characterize what I call “fourth generation transitional justice.” Dustin Sharp, “Interrogating the Peripheries; The Preoccupations of Fourth Generation Transitional Justice,” *Harvard Human Rights Journal* 26 (2013): 149.

historical and ideological origins of transitional justice in Western liberalism and legalism as one partial explanation for the global-local “frictions” experienced today.²³ I also sketch the contours of several decades of transitional justice practice to highlight the continued relevance of those origins.

Second, because concepts like local ownership present a loose and often confusing theme in academic and policy discourse that subsumes a wide range of critiques and concerns, understanding global-local dilemmas requires one to unpack the concept, distinguishing concerns about actual *control* (agency, decision making, funding), *process* (bottom-up, participatory, homegrown), and *substance* (values, practices, priorities), even if those concerns are in practice highly related. Given the rise of transitional justice interventions in recent decades, tensions and conflict between global and local will inevitably continue for the foreseeable future. At the same time, approaches to post-conflict justice that take into account the need for a better global-local balance along the multiple axes of local ownership (control, process, and substance) may help to generate new and innovative approaches to trying to achieve peace with justice in the wake of mass atrocity that take us beyond the increasingly rote transitional justice “toolbox.”²⁴

Finally, I observe that breaking down concepts like local ownership tends to destabilize, deconstructing simple binary notions of global and local. In reality, transitional justice processes typically involve complicated interplay between multiple varied levels, resulting in a dialectic process where global and local are transformed by their encounter with each other.²⁵ This has led some scholars to question the value of the concept of the local, arguing instead for more complicated notions of “glocality,” “translocality,” and “local and larger local.”²⁶ Yet as an ideal, the concept of the local

²³ As Miller et al. have noted, the “frictions” concept helps to stress the unexpected, unintended, and extremely complex nature of what happens when global meets local. See Gearoid Millar, Jair Van Der Lijn, and Willemijn Verkoren, “Peacebuilding Plans and Local Reconfigurations: Frictions between Imported Processes and Indigenous Practices,” *International Peacekeeping* 20, no. 2 (2013): 139.

²⁴ The phrase “transitional justice toolbox” refers to the mechanisms and interventions most associated with the field: prosecutions, truth telling, reparations, vetting and dismissals, institutional reform, etc. The toolbox metaphor is increasingly critiqued as suggesting a set, one-size-fits-all template ignorant of context, and because the tool idea implies that transitional justice interventions are somehow neutral, acultural, and apolitical.

²⁵ See Sally Engle Merry, “Legal Pluralism and Transnational Culture: The Ka Ho’okolokolonui Kanaka Maoli Tribunal, Hawai’i, 1993,” in *Human Rights, Culture and Contest: Anthropological Perspectives*, ed. Richard Wilson (London: Pluto Press, 1997), 30 (arguing that “human rights is an open text, capable of appropriation and redefinition.”); Sally Engle Merry, “Global Human Rights and Local Social Movements in a Legally Plural World,” *Canadian Journal of Law and Society* 12 (1997): 249 (noting that “global rights discourses are appropriated in local communities [and] are themselves constructed out of local struggles.”)

²⁶ See Lundy, “Paradoxes and Challenges,” 93 (reviewing perspectives that seek to move beyond the “stark and mutually exclusive binary oppositions of ‘local’ and ‘global’ that tend to dominate transitional justice literature.”); Bruce Mazlish, “The Global and the Local,” *Current Sociology* 53, no. 1 (2005): 99 (discussing the idea of “local and larger local”).

continues to provide an important counterweight to the centralizing and universalizing tendencies of transitional justice and liberal international peacebuilding more generally. Concepts of local and global therefore retain utility for purposes of both analysis and policymaking, even if they do not accurately describe the full complexity of transitional justice processes.

This article consists of six sections. In Section II, I examine the ideological and historical origins of the field of transitional justice, with a view to how these origins have shaped some of the boundaries, tensions, and dilemmas of field. In Section III, I discuss some of the frequent critiques of mainstream transitional justice practice, particularly the idea that it is largely a top-down and state-centric enterprise that pays insufficient attention to questions of local ownership, agency, priorities, practices, and values. In Section IV, I examine some of the promises and pitfalls of greater engagement with the local in matters of transitional justice. In Section V, I argue for the need to break down concepts of local ownership as a means of striking a better global-local balance. Section VI concludes the article.

A. The Historical and Ideological Origins of Transitional Justice

Transitional justice can be conceived of as a set of moral, legal, and political dilemmas involving how best to respond to mass atrocities and other forms of profound injustice in the wake of conflict or in times of political transition.²⁷ It is often defined in part by reference to a set of practices—including prosecutions, truth-seeking, vetting and dismissals, reparations, and institutional reform—now associated with responses to widespread human rights violations.²⁸ In the last three decades, these practices have become increasingly widespread. Priscilla Hayner, for example, has documented the existence of some 40 modern-day truth commissions.²⁹ Kathryn Sikkink has demonstrated an increasing crescendo of human rights prosecutions taking place at national and international levels leading, she argues, to the emergence of a new global

²⁷ Sriram, “Justice as Peace?,” 582-83. For a review of how definitions of transitional justice have evolved over time, see Rosemary Nagy, “Transitional Justice as a Global Project: Critical Reflections,” *Third World Quarterly* 29, no. 2 (2008): 277-78; see also Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009): 329-32 (tracing the history of the use of the term “transitional justice”).

²⁸ According to a famous UN definition, “[transitional justice comprises] the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.” U.N. Secretary-General, *The Rule of Law and Transitional Justice* (2004), ¶ 8.

²⁹ Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2011), 256-62.

norm of accountability, at least for certain harms.³⁰ In a relatively brief span of history, therefore, transitional justice has in a sense gone mainstream, with the question no longer being whether there will be some kind of transitional justice, but what particular interventions will be deployed, and what their scope and sequencing might look like.³¹ Though it continues to be shaped by the broader field of international human rights, transitional justice has emerged as its own field of theory, policy, and practice, with dedicated NGOs, job descriptions, academic journals, and itinerant expert consultants.³²

Practices now associated with what we call transitional justice can be traced back millennia,³³ yet the origins of the modern field have firm roots in the 1980s and 90s and the attempts of nascent democracies during the so-called “third-wave” of democratic transitions³⁴ to grapple with historical legacies of repression and widespread human rights abuses.³⁵ Born out of the euphoria of the immediate post Cold-War era, an era pregnant with the rhetoric of Francis Fukuyama’s “end of history,”³⁶ transitional justice was shaped not just by a preoccupation with accountability for past human rights violations, but by the notion that grappling with the legacies of the past would also help to facilitate a democratic political transition.³⁷ Implicit in these twin impulses and the

³⁰ See Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W. W. Norton and Co., 2011), 21.

³¹ See Nagy, “Transitional Justice as a Global Project,” 276; see also Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34 (2007): 412.

³² See Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field,’” *International Journal of Transitional Justice* 3, no. 1 (2009): 7 (arguing that transitional justice emerged as a distinct field sometime after 2000); Laura Arriaza and Naomi Roht-Arriaza, “Social Reconstruction as Local Process,” *International Journal of Transitional Justice* 2, no. 2 (2008): 152 (noting that “[a] whole agenda—and a whole set of institutions and professionals—has emerged to implement ‘transitional justice’ interventions.”)

³³ See generally Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004) (reviewing historic practices now associated with the modern field of transitional justice).

³⁴ The “third wave” is a term used by political scientist Samuel Huntington to describe a period of global democratization beginning in the mid-1970s that touched more than sixty countries in Europe, Latin America, Asia, and Africa. See generally Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991).

³⁵ See Arthur, “How ‘Transitions’ Reshaped Human Rights,” 325-26. The definitive source that captures the thinking and spirit of the period is Neil Kritz’s seminal three-volume work. See generally Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington: USIP, 1995).

³⁶ See generally Francis Fukuyama, *The End of History and the Last Man* (New York: Avon Books, 1992).

³⁷ Influential scholars from the period attempted to predict to what extent the scope of transitional justice would be determined by a set of bargains between the various elite groups facilitating the democratic transition, with more or less justice possible depending on the extent to which previous elites retained a grip on the levers of power. Samuel P. Huntington, “The Third Wave: Democratization in the Late Twentieth Century,” in Kritz, *Transitional Justice*, 54-81; Guillermo

ideology of the era was a sort of teleological or “stage-theory” view of history.³⁸ As part of this narrative, transitional justice mechanisms become a sort of secular right of passage symbolizing evolution³⁹ as countries progress from barbarism, communism, and authoritarianism to Western liberal democracy. Thus, viewing transitional justice as an apolitical “toolbox,” a notion implicit in UN and other definitions, fails to account for the important historical and ideological underpinnings of the field.⁴⁰ While transitional justice is a dynamic and evolving field, these origins remain key to understanding some of its modern conceptual boundaries, assumptions, and blindspots, shaped as they have been by a particular faith in the ability of key liberal goods, including the rule of law, democracy, legalism, and human rights, to create peace.⁴¹

Origins also help to explain in part the dominance of certain disciplines, approaches, and professional sensibilities in the field today. In the abstract, the question of how best to respond to mass atrocities is one well-suited to a range of disciplines, including philosophy, history, religion, anthropology, and psychology, yet in practice the field has for the most part been dominated by lawyers and political scientists.⁴² Given the dominance of lawyers in particular, it is perhaps not surprising that mass atrocities have been largely analogized as a form of mass crime,⁴³ and that the tools that have been marshaled in response have had a heavily legal character, often focusing more on retributive justice via formal courts and tribunals rather than other forms of justice.⁴⁴ This “prosecution preference,” under which anything short of Western-style courtroom justice is often seen as comprised justice, is seemingly hardwired into the DNA of mainstream transitional justice.⁴⁵ It has been and continues to be persistent source of debate and global-local frictions.⁴⁶ Though truth commissions as a form of restorative justice are

O'Donnell and Philippe Schmitter, “Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies,” in Kritz, *Transitional Justice*, 57-64.

³⁸ See Hinton, “Introduction,” in *Transitional Justice: Global Mechanisms*, 6-7.

³⁹ See Michael Rothberg, “Progress, Progression, Procession: William Kentridge and the Narratology of Transitional Justice,” *Narrative* 20, no. 1 (2012): 5.

⁴⁰ To An-Na'im, these historical and ideological underpinnings include an implicit neocolonial logic that places dominant conceptions of “transitional justice” within “the grand ‘modernizing’ mission of North Atlantic societies.” See Abdullahi Ahmed An-Na'im, “Editorial Note: From the Neocolonial ‘Transition’ to Indigenous Formations of Justice,” *International Journal of Transitional Justice* 7, no. 2 (2013): 197.

⁴¹ Sririam, “Justice as Peace?,” 579. On the dominance of law and legalism in transitional justice, see generally McEvoy, “Beyond Legalism.”

⁴² See Arthur, “How ‘Transitions’ Reshaped Human Rights,” 333.

⁴³ Miriam Aukerman, “Extraordinary Evil, Ordinary Crimes: A Framework for Understanding Transitional Justice,” *Harvard Human Rights Journal* 15 (2002): 94-97.

⁴⁴ Rama Mani stands as an early exception to this trend, arguing for a more balanced approach to post-conflict reconstruction that would include three dimensions of justice: retributive, rectificatory, and distributive. See Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Malden: Blackwell Publishers, 2002);

⁴⁵ Aukerman, “Extraordinary Evil,” 39-44 (describing the “prosecution preference”).

⁴⁶ The prosecution preference can be seen in debates that raged in the late 1990s concerning whether a truth commission alone could constitute an adequate form of justice. See, e.g., Reed

arguably an exception to the historic emphasis on retributive responses to mass atrocities, it has been argued that they are still fundamentally rooted in Western modes of truth telling and traditions of public confession and may not be appropriate in cultures with a different historical grounding.⁴⁷ Other items routinely considered as among the standard tools of transitional justice such as reparations, which could be considered a limited form of distributive justice, have in practice been given comparatively little emphasis and funding in many transitional processes.⁴⁸

As a thought experiment, Arthur observes, one might consider the possible orientation of theory and praxis if the intellectual origins of transitional justice had been rooted in paradigmatic transitions to socialism and the dominant disciplines had been history and developmental economics.⁴⁹ While it is impossible to say for sure, it seems likely that the perceived dilemmas and preoccupations, together with the tools marshaled to address them would look considerably different. As an example, one could note the historic preoccupation of transitional justice with civil and political rights rather than economic and social rights, with acts of egregious physical violence such as murder, torture, and rape, rather than equally devastating acts and policies of economic and structural violence.⁵⁰ Greater attention to questions of distributive justice in transition—

Brody, "Justice: The First Casualty of Truth?," *The Nation*, April 30, 2001, 25 (arguing that truth commissions can serve as "a soft option for avoiding justice.") More recently, one can look to controversies sparked by ICC indictments of leaders of the Lord's Resistance Army rebel group in Uganda where some members of the Acholi community in Northern Uganda would prefer to forgo prosecutions in favor of *Mato Oput*, a local ritual that emphasizes reconciliation and reintegration rather than simple retribution. See generally Adam Branch, "Uganda's Civil War and the Politics of ICC Intervention," *Ethics and International Affairs* 21, no. 2 (2007): 179.

⁴⁷ See Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions; Lessons from Sierra Leone*, United States Institute for Peace Special Report 130 (Washington: USIP, 2005); see also Tim Kelsall, "Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone," *Human Rights Quarterly* 27 (2005): 361.

⁴⁸ See Naomi Roht-Arriaza, "Reparations in the Aftermath of Repression and Mass Violence," in *My Neighbor, My Enemy*, eds. Eric Stover and Harvey Weinstein (Cambridge: Cambridge University Press, 2004), 121 (noting that "[o]utside the context of the Second World War, examples of large-scale reparations programs become scarcer.")

⁴⁹ See Arthur, "How 'Transitions' Reshaped Human Rights," 359.

⁵⁰ There is a growing literature examining the extent to which transitional justice can and should grapple with economic and social rights and questions of distributive justice more generally. See, e.g., Dustin Sharp, ed., *Justice and Economic Violence in Transition* (New York: Springer, 2014); Gaby Oré Aguila and Felipe Gómez Isa, eds., *Rethinking Transitions: Equality and Social Justice in Societies Emerging from Conflict* (Cambridge, Intersentia, 2011); Morten Bergsmo et al, eds., *Distributive Justice in Transitions* (Oslo: PRIO, 2010); Pablo de Grieff and Roger Duthie, eds., *Transitional Justice and Development: Making Connections* (New York: ICTJ, 2009); Louise Arbour, "Economic and Social Justice for Societies in Transition," *New York University Journal of International Law and Politics* 40, no. 1 (2007): 1. The importance of greater engagement questions of economic justice has also been recognized by the UN. See, e.g., U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, U.N. Doc. S/2011/634 (Oct. 12, 2011) ¶ 24 (observing "growing recognition that truth commissions should also address the economic, social and cultural rights dimensions of conflict to enhance

something that might have come more naturally if the field had different historical, ideological, and professional grounding—might well have entailed a focus on prosecutions for corruption and other economic crimes, together with a push for policies involving redistributive taxation or land-tenure reform in the wake of conflict. Yet as the field has evolved, these issues have been largely pushed to the margins.⁵¹ Thus, the Western liberal roots of transitional justice together with the professional orientations of those first drawn to the field helped to shape conceptions of both problems and solutions, circumscribing and stunting the nature of what counts as an injustice, who counts as a victim, as well as the nature of and emphasis within the “toolbox” itself.⁵²

While the historical and ideological origins of transitional justice may have predisposed the field to privilege certain forms of harm and certain ways of responding to those harms, it can be argued that the field’s roots in Western liberalism do not necessarily dictate internationally imposed solutions, “top-down” responses, or the more general marginalization of the local that has featured in many transitional justice interventions over time.⁵³ At the same time, the historic association between transitional justice and largely Western and legalistic responses to mass atrocity, when coupled with the field’s grounding in international law and international human rights more generally, has served to privilege international institutions, norms, practices, knowledge, and expertise.⁵⁴ The early dominance of lawyers and legalism may also help to explain a tendency to view social change as a function of elite bargaining and top-down legal-institutional reforms.⁵⁵ The result is an emphasis on a constrained yet institutionally demanding understanding of transitional justice that some have argued is not consistent

long-term peace and security”); United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice* (March 2010), 7 (noting that “Successful strategic approaches to transitional justice necessitate taking account of the root causes of conflict or repressive rule, and must seek to address the related violations of all rights, including economic, social, and cultural rights.”)

⁵¹ See generally Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *International Journal of Transitional Justice* 2, no. 3 (2008): 266.

⁵² For example, under the South African TRC Act, a “victim” was limited to individuals who had suffered “gross violations of human rights, including killing, abduction, torture, or ill-treatment.” The poverty, racism, and structural violence of the Apartheid system itself were thereby excluded. Pablo De Greiff and Roger Duthie, “Repairing the Past: Reparations for Victims of Human Rights Violations,” in *The Handbook on Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 8.

⁵³ Roland Paris has made this point with respect to similar critiques that have been leveled against the broader field of post-conflict peacebuilding. See Roland Paris, “Saving Liberal Peacebuilding,” *Review of International Studies* 36, no. 2 (2010): 363. I outline these critiques in more detail below.

⁵⁴ See generally Sharp, “Interrogating the Peripheries.”

⁵⁵ See Sandra Rubli, *Transitional Justice: Justice by Bureaucratic Means?* (Geneva: Swiss Peace Working Paper 4 – 2012), 11.

with the quality and capacity of state institutions in many post-conflict countries, to say nothing of cultural congruence.⁵⁶

Against this backdrop, the felt need for prosecutions and truth commissions “in conformity with . . . international standards”⁵⁷ often leads to the involvement of international donors, NGOs, and experts, placing a further thumb on the scales favoring the primacy of the global rather than the local. Indigenous or homespun solutions come to appear rough around the edges, second-best approaches to questions of how to do justice in times of transition.⁵⁸ Mirroring the savages-victims-saviors paradigm at the heart of some human rights advocacy, these dynamics produce a situation where the locals (savages) need to be assisted by international experts and institutions (saviors) not just from the abuses they have committed against victims during the conflict, but from the “mistakes” locals would make in attempting to devise their own post-conflict solutions as well.⁵⁹ Internationally constructed categories of “perpetrator” and “victim” are essential to justifying such interventions. (Who after all will defend the rights of “victims” if not members of the “international community”?)⁶⁰ The international assistance offered in such a context is projected as apolitical and technocratic, yet it carries with it heavy implications for the distribution of power (political, legal, social, etc.) in the post-conflict context.⁶¹

Of course, origins are not destiny, and the biases and blindspots of the early years of transitional justice need not necessarily be those of today. Thus, in seeking to understand contemporary challenges, unduly rigid notions of path dependency must be avoided. There are signs of limited but increasing openness to more diverse and culturally-grounded approaches to justice and a growing reconsideration of the need to

⁵⁶ See Lydiah Bosire, “Overpromised, Underdelivered: Transitional Justice in Sub-Saharan Africa,” *Sur International Journal on Human Rights* 5, no. 5 (2006): 72.

⁵⁷ U.N. Secretary-General, *The Rule of Law and Transitional Justice* (2004), ¶ 36.

⁵⁸ See An-Na'im, “Editorial Note,” 197 (observing that “preference is given to a standard of justice that is mandated by the international community over indigenous or ‘traditional’ practices.”)

⁵⁹ See generally Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights,” *Harvard International Law Journal* 42 (2001): 201.

⁶⁰ For a useful deconstruction of the problematic term “international community,” see generally Berit Bliesemann de Guevara and Florian Kuhn, “‘The International Community Needs to Act’: Loose Use and Empty Signaling of a Hackneyed Concept,” *International Peacekeeping* 18, no. 2 (2011): 135.

⁶¹ See Lundy and McGovern, “Whose Justice?,” 276-77 (noting that “wider geo-political and economic interests too often shape what tend to be represented as politically and economically neutral post-conflict and transitional justice initiatives”); Bronwyn Anne Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30, no. 1 (2008): 98-106 (arguing that a superficial consensus as to the goals of transitional justice can serve to mask a deeper level of politicization and debate, and that assessment of the tensions, trade-offs, and dilemmas associated with transitional justice has become difficult to the extent that they have been conceptualized in apolitical terms); Sririam, “Justice as Peace?,” 587-88 (discussing the ways in which post-conflict institutional reform strategies relating to the judiciary, constitution, and security forces may be seen by key protagonists as permanently cementing new power arrangements and therefore not as neutral or apolitical processes).

address questions of economic justice.⁶² The field is also increasingly being shaped by perspectives from disciplines other than law and political science. Yet it is also true that once sets of practices and assumptions come to dominate a field, more than superficial change can prove difficult and slow going. As James Cavallaro and Sebastián Albuja have argued, the early years of transitional justice helped to establish a “dominant script” that has gone on to be replicated irrespective of how suited it has been to some new contexts.⁶³

Over time, the democratic transitions paradigm in which the field was originally grounded has become less explicit, and transitional justice is increasingly associated with the much broader field of post-conflict peacebuilding.⁶⁴ One could ask whether this newfound association will help to break through the conceptual boundaries and dominant scripts that have developed over time.⁶⁵ However, as many have noted, the field of international post-conflict peacebuilding is itself largely rooted in the belief that free markets and Western liberal democracies are the surest path to peace.⁶⁶ As I have argued elsewhere, the critiques of what has become known as “liberal international peacebuilding” share much in common with critiques of transitional justice, including that they both frequently involve top-down and state-centric interventions that serve to

⁶² See generally Sharp, “Interrogating the Peripheries.”

⁶³ James Cavallaro and Sebastián Albuja, “The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond,” in *Transitional Justice from Below, Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor (Oxford and Portland, Oregon: Hart Publishing, 2008), 125. The problem of set templates and formulaic paths is of course not unique to transitional justice, but has dogged the broader work of post-conflict peacebuilding as well. See Ole Sending, *Why Peacebuilders Fail to Secure Ownership and be Sensitive to Context*, Security in Practice, NUPI Working Paper 755 (2009), 7. It is important to note, however, that even established and dominant scripts can and do change (as evident in the growing work of certain African truth commissions on questions of economic justice), even if it typically involves a very slow and uneven process. See generally, Dustin Sharp, “Economic Violence in the Practice of African Truth Commissions and Beyond,” in *Justice and Economic Violence in Transition*, 79.

⁶⁴ Thus, for example, transitional justice practices are now associated with countries and regime changes such as Rwanda that can hardly be considered democratic. See generally Phil Clark and Zachary Kaufman, eds, *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (New York: Columbia University Press, 2009).

⁶⁵ Many have questioned the utility of the transitions paradigm altogether. See, e.g., Moses Chrispus Okello, “Afterword: Elevating Transitional Local Justice or Crystallizing Global Governance?,” in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, 278-79 (questioning the “unintended consequences of assuming that we are all progressing towards the same destination”); Harvey M. Weinstein et al., “Stay the Hand of Justice: Whose Priorities Take Priority?,” in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, 36 (stating that “[i]t is time to reconsider whether the term *transitional justice* accurately captures the dynamic processes unfolding on the ground”).

⁶⁶ See generally Roland Paris, *At War's End: Building Peace After Civil Conflict* (Cambridge: Cambridge University Press, 2004).

marginalize local ownership, agency, priorities, practices, and values.⁶⁷ There is reason to worry that the concerns that have given rise to these parallel critiques will be exacerbated by greater association between transitional justice and post-conflict peacebuilding, not made better.⁶⁸ Thus, one should not expect global-local frictions in transitional justice to disappear as the historical and ideological origins of the field slip further below the surface. On the contrary, the lingering perception that transitional justice and post-conflict peacebuilding more generally share a common project to remake illiberal and imperfectly liberal states in the image of Western liberal democracies⁶⁹ helps to contribute to the tendency of post-conflict interventions with a strong international component to produce some of the global-local frictions discussed in the following Section.⁷⁰

B. Critiques of Transitional Justice Practice *Vis-à-Vis* the Local

While the ideological and professional origins of transitional justice theory and practice helped to shape the conceptual boundaries of the field and to set in motion some of the global-local frictions experienced today, it would be too simple to attribute everything to those origins. We must also look to several decades of transitional justice practice to better understand the dilemmas of the local. Transitional justice practice is, of course, not a monolith, and where trenchant critiques have been raised, there are always notable exceptions to the more general trend.⁷¹ And to be clear, much of the work of transitional justice—be it national-level human rights prosecutions or locally initiated and driven restorative justice practices—is carried out without significant tension with the global.⁷² Yet a persistent critique of many transitional justice initiatives is that they pay insufficient attention to questions of locality and have been distant from the

⁶⁷ See generally, Dustin Sharp, “Beyond the Post-Conflict Checklist: Linking Peacebuilding and Transitional Justice Through the Lens of Critique,” *Chicago Journal of International Law* 14, no. 1 (2013): 165.

⁶⁸ Ibid.

⁶⁹ See Lundy and McGovern, “Whose Justice?,” 276-77.

⁷⁰ As with development and transitional justice, there is a burgeoning peacebuilding literature analyzing the dilemmas of the local. See, e.g., Oliver Richmond, “The Romanticisation of the Local: Welfare, Culture, and Peacebuilding,” *International Spectator: Italian Journal of International Affairs* 44, no. 1 (2009): 161-63; Roger Mac Ginty, “Indigenous Peace-Making Versus the Liberal Peace,” *Cooperation and Conflict: Journal of the Nordic Studies Association* 43, no. 2 (2008): 139; Donais, “Empowerment or Imposition?,” 3.

⁷¹ See Jenny Peterson, “A Conceptual Unpacking of Hybridity: Accounting for Notions of Power, Politics and Progress in Analyses of Aid-Drive Interfaces,” *Journal of Peacebuilding and Development* 7, no. 2 (2012): 12 (noting the tendency of assessments of liberal interventions to homogenize).

⁷² At the same time, as I note in the following Section, great caution with categories of global and local is warranted. What may look like a purely “local” effort or initiative may turn out to have been in part initiated by internationals, and receive international funding, framing, and technical assistance. Thus, in practice, there is often a blurring of categories.

victims and larger communities they were at some level intended to serve. Examples here will be largely drawn from transitional justice initiatives with a significant international component or where global-local frictions have otherwise risen to the surface most palpably. International prosecutions, in particular, have tended to set global-local frictions in sharpest relief, and will be examined in some detail before turning more briefly to the work of truth commissions.⁷³

In many ways, the paradigm for modern-day international tribunals can be found in the Nuremburg International Military Tribunal (IMT) established by the victorious allied powers shortly after the Second World War in order to try senior Nazi leaders for aggression, war crimes, and crimes against humanity.⁷⁴ From the outset, the tribunal was dogged with criticism that it exemplified a form of victor's justice and made little attempt to secure what we might today call local ownership, drawing both judges and prosecutors from the ranks of the victors.⁷⁵ Indeed, quite apart from a preoccupation with such niceties, one of the chief policy debates in the lead up to the creation of the tribunal was whether to summarily execute senior Nazi leaders, with options ranging from 50 to 50,000 executions.⁷⁶ The trial option prevailed, however, and unlike some modern international tribunals the IMT was located in country, and in Nuremburg no less, the ceremonial birthplace of the National Socialist (Nazi) party and site of annual propaganda rallies. The choice of a trial (rather than executions) and a symbolic location in Germany were intended to help to generate a sense of defeat amongst the vanquished (*i.e.*, the locals), but also to serve an educational function for ordinary Germans in conveying some sense of the scope of the atrocities committed by the Nazis

⁷³ By "international prosecutions" I include purely international tribunals such as the international criminal tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) and the International Criminal Court (ICC) and the so-called "hybrid" tribunals, such as the Special Court for Sierra Leone (SCSL). Though one could argue for a distinction between "international criminal justice," limited primarily to international and hybrid criminal tribunals, and the broader work of "transitional justice," the fact remains that since Nuremburg international tribunals have often been associated with transitional and post-conflict contexts, and tend to generate similar legal, political and moral dilemmas. Because it has the potential to hear cases from a great variety of countries, the International Criminal Court is not of course limited to addressing crimes in post-conflict or transitional contexts, yet its work in places like Uganda and Côte d'Ivoire has become central to post-conflict dynamics in both countries. Even when operating where there is no political transition to speak of, the ICC has demonstrated a capacity to generate very sharp global-local frictions. Thus, for purposes of analyzing global-local frictions at least, a sharp line between international criminal justice, on the one hand, and transitional justice on the other need not be drawn.

⁷⁴ For a fascinating account of the establishment of the Nuremburg tribunal and recap of the debates that it engendered, see Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2002), 147-205.

⁷⁵ With respect to the victor's justice charge, Chief Justice Stone of the United States Supreme Court famously called the trials a "high-grade lynching party" and a "sanctimonious fraud." Louise Arbour, "The Rule of Law and the Reach of Accountability," in *The Rule of Law*, eds. Cheryl Saunders and Katherine Le Roy (Annandale: Federation Press, 2003), 104.

⁷⁶ Gary Bass, *Stay the Hand of Vengeance*, 158-95.

in their name.⁷⁷ Ultimately, though better than the alternatives debated at the time, there can be little doubt that the Nuremburg (and lesser known Tokyo) tribunals were an imposed justice and that the ability of local constituencies to have meaningful input into the process was limited to nonexistent.⁷⁸

Despite some of the controversy generated by the Nuremburg and Tokyo tribunals, they helped to spark an interest in the creation of a permanent international criminal court.⁷⁹ However, Cold War frictions soon made consensus on the parameters of such an institution impossible.⁸⁰ Nevertheless, the Nuremberg model remains important because it was in some respects resurrected in the mid 1990s with the creation of the ad-hoc tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). The first major post-Cold War experiments in international justice, both tribunals served as a lightning rod for critiques and concerns relating to their engagement with the local. Neither tribunal was fully supported by the national governments most concerned, and the tribunals themselves were set up far from the victim communities and publics on whose behalf, at least in part, they ostensibly worked.⁸¹ Focusing on this sense of almost imperial remoteness, one early critic argued that the tribunals “orbit in space, suspended from political reality and removed from both the individual and national psyches of the victims as well as the victors in those conflicts.”⁸²

Perhaps predictably, the distanced and isolated nature of the tribunals led to a lack of understanding of their work in both regions.⁸³ Nationals of the affected states were

⁷⁷ See Ibid., 154 (noting President Roosevelt’s desire that “every person in Germany should realize that this time Germany is a defeated nation” and speculating that the aspect of the Nuremburg trials that may have most appealed to President Roosevelt was their educational value for the local population in terms of conveying some of the truth of what was done during the war). Beyond its symbolic value, Nuremburg was also chosen out of convenience since its Palace of Justice was large and relatively undamaged by the war.

⁷⁸ The majority of defense counsel were German lawyers.

⁷⁹ See John Dugard, “Obstacles in the Way of an International Criminal Court,” *Cambridge Law Journal* 56, no. 2 (1997): 329 (noting that “[t]he enthusiasm generated by Nuremberg and Tokyo for a permanent court”).

⁸⁰ See Ibid. Between 1949 and 1954, the International Law Commission prepared several draft statutes that would have led to the creation of a permanent international criminal court, but they were eventually shelved.

⁸¹ The ICTY is located in The Hague, The Netherlands, far from the killing fields of Bosnia. The ICTR is located in Arusha, Tanzania. Unlike the ICTY, the Rwandan government actually asked the Security Council to create a tribunal, though it eventually cast the sole dissenting vote against the tribunal due to its location outside of Rwanda, its primacy over Rwandan courts, and its lack of ability to impose the death penalty. Its relations with the tribunal have ranged from coolness to hostility. See Alison Des Forges and Timothy Longman, “Legal Responses to Genocide in Rwanda,” in *My Neighbor, My Enemy*, 54.

⁸² Makau Mutua, “Never Again: Questioning the Yugoslav and Rwanda Tribunals,” *Temple International and Comparative Law Journal* 11 (1997): 168.

⁸³ See Laurel Fletcher and Harvey Weinstein, “A World Unto Itself? The Application of International Justice in the Former Yugoslavia,” in *My Neighbor, My Enemy*, 29; Timothy Longman et al., “Connecting Justice to Human Experience: Attitudes Toward Accountability and Reconciliation in Rwanda,” in *My Neighbor, My Enemy*, 206.

excluded from holding high-level positions on the tribunals, further eroding a sense of ownership, and leading to a situation where those doing the prosecuting and judging not only did not share the traditions of the alleged perpetrators, but in many cases were almost totally ignorant about local history and culture.⁸⁴ Despite expectations that the tribunals would contribute to peace in the respective regions, it has been argued that, in the case of the ICTY, the tribunal's architects "gave little thought to how it would relate to those most affected by the carnage" ultimately threatening "the legitimacy of the court in the eyes of the society it was trying to help."⁸⁵ Given the misunderstandings and lack of local legitimacy, it is perhaps not surprising that some local constituencies have come to see the work of the ICTY as a form of victor's justice.⁸⁶ While the ICTR has provoked less overt hostility among ordinary Rwandans, many see it as largely useless, an affair conducted by the international community for the international community.⁸⁷

Mounting criticism of the ad-hoc tribunals eventually led to the creation of "community outreach" units, though turning around perceptions of the tribunals' work has proved to be a tall order, and such outreach and other community-centered objectives have always been ancillary to the primary task of securing convictions.⁸⁸ Writing in 2003, some five years after the creation of the ICTR's outreach program, Uvin and Mironko note that "[t]he main sentiment in Rwanda regarding the ICTR may well be massive ignorance: ordinary people know or understand next to nothing about the tribunal's work, proceedings, or results."⁸⁹ These are disappointing results, and it is hard to see how a

⁸⁴ See Fletcher and Weinstein, "A World Unto Itself?," 32; Des Forges and Longman, "Legal Responses to Genocide in Rwanda," 53 (noting that in the early years of the ICTR, "[v]irtually none of the tribunals staff . . . knew anything about the history and culture of Rwanda.")

⁸⁵ See Fletcher and Weinstein, "A World Unto Itself?," 32-33.

⁸⁶ *Ibid.*, 40. With regards to the ICTR, the tribunal's failure to prosecute crimes committed by the Rwandan Patriotic Front has been seen by some as a form of victor's justice. International Crisis Group, *International Criminal Tribunal for Rwanda: Justice Delayed*, Africa Report No. 30 (Brussels: ICG, 2001), iii.

⁸⁷ *Ibid.* See also Bert Ingelare, "The Gacaca Courts in Rwanda," in *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, eds. Luc Huyse and Mark Salter (Stockholm: IDEA, 2008), 31-45 (arguing that "[o]n Rwandan soil, the International Criminal Tribunals for Rwanda is portrayed and perceived as an instance of the Western way of doing justice—highly inefficient, time-consuming, expensive and not adapted to Rwandan custom.")

⁸⁸ See David Cohen, "'Hybrid' Justice in East Timor, Sierra Leone, and Cambodia: 'Lessons Learned' and Prospects for the Future," *Stanford Journal of International Law* 43 (2007): 5-6; Varda Hussain, "Sustaining Judicial Rescues: The Role of Judicial Outreach and Capacity-Building Efforts in War Crimes Tribunals," *Virginia Journal of International Law* 45 (2005): 551; see also Victor Peskin, "Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme," *Journal of International Criminal Justice* 3 (2005): 950-61.

⁸⁹ Peter Uvin and Charles Mironko, "Western and Local Approaches to Justice in Rwanda," *Global Governance* 9 (2003): 221. This ICTR is not alone in this regard. Though hailed as modestly innovative, it has been argued that the Outreach Section of the Special Court for Sierra Leone "largely failed in its primary goal of educating Sierra Leoneans about the Special Court." Stuart Ford, "How Special is the Special Court's Outreach Section?," in *The Sierra Leone Special*

tribunal could contribute to broader efforts at reconciliation and post-conflict peacebuilding when so many are not familiar with its work in the first place.⁹⁰ Lack of information likely also contributes to distortions promoted by those opposed to the work of the tribunals, including elites and former perpetrators attempting to sway public opinion against them.⁹¹

Much has therefore been said about the potential for more and better outreach.⁹² However, even a well staffed, well funded, and brilliantly executed outreach program can only do so much to bridge the substantial gap that can exist between local populations and international justice efforts. In and of itself, outreach does little to address the marginalization of local agency, priorities, values, and practice in the set up and operation of the tribunals, and carries with it a subtext of locals as passive recipients of international justice discourse and practice. Outreach does not, for example, change the fact that Rwandans are being judged outside of Rwanda by non-Rwandans using Western-style judicial practices not all Rwandans agree with or understand in an international tribunal that has primacy over national proceedings within Rwanda, the very creation of which was opposed by the Rwandan government in the first place.⁹³ It also does not change the fact that defendants found guilty by the ICTR will serve their sentences outside of Rwanda in conditions far superior to that of anyone found guilty on similar charges by Rwanda's national courts.⁹⁴ Outreach does not change the fact that, at the end of the day, neither the Rwandan government nor the so-called international community solicited the views of the Rwandan people regarding how justice should best be achieved in post-genocide Rwanda.⁹⁵ Thus, while being better informed about a distant process is better than being wholly ignorant, it is still very different than having a meaningful say about the setup and implementation of justice processes that might deeply affect a community.

Court and Its Legacy: The Impact for Africa and International Law, ed. Charles Jalloh (Cambridge: Cambridge University Press, 2013), 505.

⁹⁰ The preamble to the United Nations Security Council resolution establishing the ICTR provides that "the prosecution of persons responsible for serious violations of international humanitarian law, would enable this aim [bringing effective justice] to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace." UNSCR 955, S/RES/955, November 8, 1994.

⁹¹ See Fletcher and Weinstein, "A World Unto Itself?," 32.

⁹² See, e.g., Ramji-Nogales, "Designing Bespoke Transitional Justice," 29-38; Etelle Higonnet, "Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform," *Arizona Journal of International and Comparative Law* 23 (2005-06): 363-76, 387-88, 410-13, 425.

⁹³ The reasons for the Rwandan government's opposition to the creation of the tribunal are discussed in footnote 81, *infra*.

⁹⁴ The disparate treatment of defendants and those convicted has been a source of some resentment in Rwanda as it gives the impression that the "big fish" who orchestrated the genocide are being given better treatment than "rank-and-file" offenders. See Jennie Burnet, "The Injustice of Local Justice: Truth, Reconciliation, and Revenge in Rwanda," *Genocide Studies and Prevention* 3, no. 2 (2008): 175.

⁹⁵ Longman et al., "Connecting Justice," 206.

Of course, one could debate to what extent international tribunals *should* spend valuable time and resources trying to be more communicative, be more connected to local communities, and pursue wider social aims beyond delivering judgments.⁹⁶ There may indeed be cause to be modest in our expectations for what a tribunal can meaningfully accomplish given historic resource limitations and established bureaucratic incentives and priorities.⁹⁷ Yet one danger in not doing a better job engaging in questions of locality than the ICTY and ICTR is a potential loss of legitimacy and a sense that the tribunals are little more than a “theoretical exercise in developing international humanitarian law.”⁹⁸ While scrupulously run proceedings and eventual convictions are unquestionably important, a process viewed by locals with indifference (at best) to hostility (at worst) would seem to represent a lost opportunity when it comes to deeper projects of accountability and the rule of law associated with long-term peacebuilding.

Following the many challenges, success, and failures of the ad-hoc tribunals, a new international tribunal model emerged, that of the so-called “hybrid” or “mixed” tribunals of Sierra Leone (Special Court for Sierra Leone), Kosovo (“Regulation 64” Panels in the Courts of Kosovo), East Timor (the Serious Crimes Panels of the District Court of Dili), and Cambodia (the Extraordinary Chambers in the Courts of Cambodia).⁹⁹ Unlike the ICTY and ICTR, hybrid tribunals are generally located in the country most affected by the conflict, and are comprised of national and international judges and staff.¹⁰⁰ This model was initially greeted with some enthusiasm, being thought to hold the promise of greater local legitimacy, greater norm penetration at the local level, and the ability to do more local capacity building, including strengthening domestic judicial systems.¹⁰¹ In the literature, they are often presented as a sort of evolution from and response to the failures and critiques of the ad-hoc tribunals,¹⁰² representing a sort of middle ground that

⁹⁶ See e.g., Marlies Glasius, “Do International Criminal Courts Require Democratic Legitimacy?,” *European Journal of International Law* 23, no. 1 (2012) (reviewing critiques of international courts).

⁹⁷ See Padraig McAuliffe, “Hybrid Tribunals at Ten: How International Criminal Justice’s Golden Child Became an Orphan,” *Journal of International Law and International Relations* 7 (2011): 64 (arguing that without a significant re-orientation of the priorities of international criminal justice policymakers, expectations for tribunals should be dampened.)

⁹⁸ See Fletcher and Weinstein, “A World Unto Itself?,” 30.

⁹⁹ A great deal has been written about the establishment, functioning, and failures of hybrid tribunals. See, e.g., McAuliffe, “Hybrid Tribunals at Ten”; Cohen, “‘Hybrid’ Justice in East Timor”; Higonnet, “Restructuring Hybrid Courts.”

¹⁰⁰ There have been slight deviations from this norm. The trial of Charles Taylor before the Special Court for Sierra Leone was held in The Hague, due primarily to fears about security. See generally Giulia Bigi, “The Decision of the Special Court for Sierra Leone to Conduct the Charles Taylor Trial in The Hague,” *The Law and Practice of International Courts and Tribunals* 3 (2007): 303.

¹⁰¹ McAuliffe, “Hybrid Tribunals at Ten,” 10-22.

¹⁰² See Cohen, “‘Hybrid’ Justice in East Timor,” 1; Olga Martin-Ortega and Johanna Herman, “Hybrid Tribunals: Interaction and Resistance in Bosnia and Herzegovina and Cambodia,” in *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism*, eds. Oliver Richmond and Audra Mitchell (New York: Palgrave Macmillan, 2012), 73.

harnesses the power and legitimacy of international law, remains connected to local expertise and populations, while avoiding the staggering costs of purely international prosecutions.¹⁰³ Yet closer study of the creation of the various hybrid tribunals reveals a process of quick decisions and tough compromises more than a conscious process of experimentation as part of an effort to improve upon past failures.¹⁰⁴ It should also be noted that the exceptional cost of the ad-hoc tribunals (which represented a full 15 percent of the UN budget at the time of the creation of the hybrid tribunals) made the possibility of creating additional courts modeled on the ICTY and ICTR impossible as a practical matter.¹⁰⁵ Thus, the narrative of progress and institutional learning regarding the best relationship between tribunals and the local may not be as straightforward as once imagined.

Over a decade after the enthusiasm that greeted the first hybrid tribunals, evaluations of their success have become more circumspect. McAuliffe argues that some of the hybrid tribunals were often more hybrid in principle than in practice.¹⁰⁶ That is, far from being paragons of shared or local ownership, in the case of a number of the tribunals, “domestic authorities were largely marginalized or disengaged” while internationals dominated the process.¹⁰⁷ This may have resulted in part from ambiguity over allocation of responsibility and in part out of a seeming reluctance by some national governments to share blame and responsibility.¹⁰⁸ Compounding matters, tribunals in Sierra Leone, East Timor, and Cambodia have also been severely underfunded, particularly when it comes to activities such as outreach.¹⁰⁹

If the ad hoc tribunals orbited in space,¹¹⁰ the hybrid tribunals have been described as a “spaceship phenomenon,” with the tribunals’ physical headquarters a strange and alien hive of activity largely seen as an irrelevant curiosity by the local population.¹¹¹ In practice, some critics argue, far from being the goldilocks solution some had hoped for

¹⁰³ Higonnet, “Restructuring Hybrid Courts,” 349 (outlining the potential power of hybrid tribunals in theory if not reality); Ellen Stensrud, “New Dilemmas in Transitional Justice: Lessons from the Mixed Courts in Sierra Leone and Cambodia,” *Journal of Peace Research* 46, no. 1 (2009): 7 (arguing that “[t]he combination of international standards through UN involvement and local ownership through physical proximity and national participation may increase the legitimacy of these mechanisms.”)

¹⁰⁴ McAuliffe, “Hybrid Tribunals at Ten,” 23

¹⁰⁵ George Yacoubian, “Evaluating the Efficacy of the International Tribunals for Rwanda and the Former Yugoslavia: Implications for Criminology and International Criminal Law,” *World Affairs* 165 (2003): 136.

¹⁰⁶ See McAuliffe, “Hybrid Tribunals at Ten,” 36 (noting that the hybrid tribunals were “hybrid in form but never in ethos.”); Higonnet, “Restructuring Hybrid Courts,” 349.

¹⁰⁷ McAuliffe, “Hybrid Tribunals at Ten,” 36.

¹⁰⁸ *Ibid.*, 35; see also Cohen, “‘Hybrid’ Justice in East Timor,” 36 (discussing challenges arising from unclear or contested ownership).

¹⁰⁹ Cohen, “‘Hybrid’ Justice in East Timor,” 36.

¹¹⁰ Makau Mutua, “Never Again,” 168.

¹¹¹ Tom Perriello and Marieke Wierda, *The Special Court for Sierra Leone Under Scrutiny* (New York: ICTJ, March 2006), 2 (defining the spaceship phenomenon as “a Court that is perceived as a curiosity and an anomaly with little impact on citizens’ everyday lives.”)

that brings together the best of the global and the local, hybrid tribunals may sometimes turn out to be the worst of both worlds, bringing together the remoteness of purely international tribunals like the ICTR and ICTY with the shoestring budgets and occasional lack of rigor that can at times stymie purely local efforts.¹¹² Thus, while hybrid tribunals as a *model* continue to hold much promise,¹¹³ some have argued that without a radical shift in priorities and funding, we may need to be modest in our expectations as to what they can accomplish beyond the fairly straightforward work of trying defendants and rendering judgments.¹¹⁴

Given that enthusiasm for hybrid tribunals has waned and additional ad hoc tribunals modeled on the ICTR and ICTY seem unlikely for the foreseeable future, the ability of the International Criminal Court (ICC) to better engage with questions of locality and to avoid some of the failures of the past becomes especially important.¹¹⁵ Yet as a model, the institution created by the Rome Statute seems to harken back to Nuremburg and the ad hoc tribunals, suggesting, even in the absence of any practice, that the potential to generate significant global-local frictions would be high.¹¹⁶ Indeed, with a headquarters far removed both physically and culturally from the conflicts and perpetrators it has thus far addressed, the ICC's first decade of practice has been regularly punctuated by what one could characterize as a clash between global and local.¹¹⁷ In Uganda, for example,

¹¹² See, e.g., Caitlin Reiger, "Hybrid Attempts at Accountability for Serious Crimes in Timor Leste," in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, eds. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 143-70.

¹¹³ Higonnet, "Restructuring Hybrid Courts," 349.

¹¹⁴ McAuliffe, "Hybrid Tribunals at Ten," 53-65.

¹¹⁵ This is not to deemphasize the importance of national-level or "domestic" human rights prosecutions. Indeed, Kathryn Sikkink has shown that the worldwide crescendo of human rights prosecutions in recent decades rests upon a bedrock of national trials. See Sikkink, *The Justice Cascade*, 21.

¹¹⁶ See generally Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 (July, 2002). One obvious but notable distinction between the ad hoc tribunals and the ICC is that while the former were created by fiat of the United Nations Security Council (UNSC), accession to the Rome Statute is voluntary, even if the UNSC retains the power to refer cases involving non states parties to the Court under Article 13(b). In addition, provisions in the Rome Statute relating to victim access, participation, and compensation, as well as some flexibility as to where the court may sit represent a distinct improvement compared to the ad hoc tribunals, at least in principle. For review of the Court's outreach work in practice, see Marlies Glasius, "What is Global Justice and Who Decides? Civil Society and Victim Responses to the International Criminal Court's First Investigations," *Human Rights Quarterly* 31, no. 2 (2009): 509-20.

¹¹⁷ Thus far, all of the Court's official investigations are in Africa: Central African Republic, Côte d'Ivoire, Democratic Republic of Congo, Kenya, Libya, Mali, Sudan (Darfur), and Uganda. Though it has yet to take advantage of it, it should be noted that a degree of flexibility has been built into the Rome Statute, allowing the Court to sit in locations outside of The Hague. See Rome Statute of the International Criminal Court, Art. 3 (While "[t]he seat of the Court shall be established at The Hague in the Netherlands," "[t]he Court may sit elsewhere, whenever it considers it desirable . . ."). Judges at the ICC have recently suggested that it might be desirable to hold portions of a trial against Kenyan officials in either Kenya or neighboring Tanzania. BBC News,

some members of Acholi constituencies in the North have expressed a strong preference for using local reconciliation and reintegration practices to address crimes committed by former members of the Lord's Resistance Army rather than the ICC's retributive justice.¹¹⁸ With respect to Kenya, a variety of African states and the African Union (AU) have attempted to pressure the Court to drop charges against Kenyan President Uhuru Kenyatta, with the AU chairman going so far as to accuse the ICC of being racist for only prosecuting cases in Africa.¹¹⁹ With respect to Sudan, members of the African Union voted to refuse cooperation with the indictment of Omar Al-Bachir.¹²⁰ Taken together, declining enthusiasm for the Court, particularly in Africa, constitutes a serious challenge to the future health and legitimacy of the fledgling institution, highlighting the importance of taking questions of locality seriously.¹²¹

It would be easy to write off some criticism of the ICC as a sort of rearguard effort by autocratic leaders and regimes to preserve some of the privileges and impunity associated with power. Indeed, as demonstrated in Kenya, support for the work of the Court may at times be higher among ordinary citizens than in segments of a self-interested political class, even if the views of the former are eventually susceptible to elite manipulation.¹²² At the same time, one should note that the possibility of having a former president or senior official tried for human rights abuses in a foreign country or before an international tribunal has almost always generated significant tensions and feelings of ambivalence, from Augusto Pinochet, to Charles Taylor, to Laurent Gbagbo today.¹²³ Thus, one should expect that prosecutions of the type carried out by the ICC will generate controversy even in the best of circumstances.

"ICC Delays Cases of William Ruto and Laurent Gbagbo," June 3, 2013, <http://www.bbc.co.uk/news/world-africa-22762283>.

¹¹⁸ See Tim Murithi, "African Approaches to Building Peace and Social Solidarity," *African Journal on Conflict Resolution* 6 (2006): 23–27.

¹¹⁹ BBC News, "ICC Delays Cases"; Jenny Vaughan and Aude Genet, "Africa Closes Ranks to Condemn 'Racist' ICC on Kenya Cases," AFP, May 27, 2013. Perspectives among ordinary Kenyans are highly varied, ranging from support for the ICC's work in Kenya, to ambivalence, to opposition. See generally Thomas Obel Hansen, "Kenya's Power-Sharing Arrangement and Its Implications for Transitional Justice," *International Journal of Human Rights* 17 (2013): 307.

¹²⁰ See "African Union in Rift with Court," BBC NEWS, July 3, 2009, <http://news.bbc.co.uk/2/hi/africa/8133925.stm>.

¹²¹ See William Schabas, "The Banality of International Justice," *Journal of International Criminal Justice* 11, no. 3 (2013): 545.

¹²² See generally Obel Hansen, "Kenya's Power-Sharing Arrangement."

¹²³ Consider in this regard the potential controversy if George W. Bush or Donald Rumsfeld were arrested and put on trial outside of the United States. The possibility of similar scenarios helped spawn the American Service-Members Protection Act of 2002, 22 U.S.C. § 7427, a federal law adopted with a stated purpose "to protect United States military personnel and other elected and appointed officials of the United States government against criminal prosecution by an international criminal court to which the United States is not party." It authorizes the President to use "all means necessary and appropriate to bring about the release of any US or allied personnel being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court." Because "all means necessary" would not seem to preclude the use of force, the

However, though important, overemphasis of these factors would serve to ignore some of the deeper issues driving the global-local frictions that seem to plague the Court's work, issues stemming from the way global and local responsibilities and powers are structured under the Rome Statute. Put simply, the very architecture the Rome Statute hinges on a delicate compromise between global and local sovereignty in matters of justice.¹²⁴ Under the principle of complementarity, sometimes described as the "cornerstone" of the Rome Statute, member states exercise primary but only conditional sovereignty in matters of justice, with power effectively ceded to the ICC where a member is "unwilling or unable" to prosecute a case itself.¹²⁵ The "unwilling or unable" standard echoes other emerging international norms and practices associated with the "responsibility to protect" and the US war on terror that are serving to reconfigure the relationship between global and local by replacing traditional notions of sovereignty with a sense of conditionality.¹²⁶

law has been nicknamed the "Hague Invasion Act." See Human Rights Watch, "US: 'Hague Invasion Act' Becomes Law," Press Release, August 4, 2002, <http://www.hrw.org/en/news/2002/08/03/us-hague-invasion-act-becomes-law>.

¹²⁴ See Shaw and Waldorf, "Introduction," in *Localizing Transitional Justice*, 19 (describing the ICC as "an uneasy and unstable compromise between international justice and state sovereignty").

¹²⁵ Rome Statute of the International Criminal Court, Art. 17. Thomas Obel Hansen, "A Critical Review of the ICC's Recent Practice Concerning Admissibility Challenges and Complementarity," *Melbourne Journal of International Law* 13 (2012): 217 (noting that "the principle of complementarity has often been pointed to as the cornerstone of the Rome Statute.") The phrase "unwilling or unable" is defined in only the broadest terms in the Statute, but under the Court's emerging jurisprudence, it has largely come to pivot on a determination of inactivity. See *ibid.*, 218.

¹²⁶ Consider, for example, the various formulations of the emerging principle of the responsibility to protect, or "R2P," where a nation state's sovereignty effectively becomes conditional on its ability or willingness to protect its people from mass atrocities. See The International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (2001), xi (providing that while "primary responsibility" for protection lies with each individual state, "the principle of non-intervention yields to the international responsibility to protect" where the state is "unwilling or unable" to protect its people from serious harm); U.N. Secretary-General, Report of the High-level Panel on Threats, Challenges and Change, UN Doc. A/59/565 (December 2, 2004), ¶ 201 (noting that there "is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens . . . when they are unable or unwilling to do so that responsibility should be taken up by the wider international community...."). The threshold for intervention was arguably raised in 2005 with the language adopted in the World Summit Outcome Document where it was agreed that national authorities must "manifestly fail" to protect before intervention is warranted. United Nations General Assembly, A/60/L.1 (September 15, 2005), ¶ 139. Beyond R2P, a similar construction of a conditional sovereignty can be seen in the Obama Administration's controversial claim to the right to unilaterally pursue and kill targets in states without consent if that country is deemed "unable or unwilling to suppress" what the United States believes to be a threat. See Department of Justice White Paper, *Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or An Associated Force*, copy leaked to NBC news, 2013,

While the principle of complementarity is in many ways a form of deference to the local, and stands in contrast to the primacy of jurisdiction exercised by the ad hoc tribunals, it also establishes a potential tension between the global and the local insofar as it invites the Court to stand as ultimate arbiter as to the adequacy of local effort and capacity.¹²⁷ The principle of complementarity would also seem to preclude local approaches to atrocity that differ from a retributivist approach in some instances.¹²⁸ Consider in this regard the possible response of the ICC not just to a local pardon or grant of amnesty, but an effort to address offenses using restorative, “traditional,” or otherwise alternative local practices of justice and reconciliation.¹²⁹ In instances without concurrent prosecutions, would such alternative approaches to justice be tantamount to “unwilling or unable” under the terms of the Rome Statute? While former Chief Prosecutor Louis Moreno-Ocampo has suggested that there should be great flexibility when it comes to lower-level offenders and the modalities of justice applied, the possibility for deviating from international retributivism when it comes to high-level offenders is less clear.¹³⁰

Building upon the principle of complementarity and the notion of the primary responsibility of national governments, the ICC has no enforcement mechanisms of its own, but is completely dependent on state cooperation to carry out investigations and enforce its judgments.¹³¹ Particularly in cases of self-referral under Article 14 of the Rome Statute, this can create special challenges to the Court’s legitimacy as ICC intervention is played through the prism of local politics.¹³² In Uganda, for example, a

http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf. Both R2P and the Obama administration’s terrorism policy might be considered to be an expression of a larger post Cold War trend where the “transformation of the adversary into a criminal [has] permitted, in the name of protecting humanity, intervention beyond state boundaries.”) Pierre Hazan, “Transitional Justice after September 11,” in *Localizing Transitional Justice*, 52.

¹²⁷ See William Schabas, *An Introduction to the International Criminal Court* (Cambridge: Cambridge University Press, 2007), 175 (observing that the relationship between international justice and national justice established under the principle of complementarity is “far from ‘complementary,’” with the two systems functioning “in opposition and to some extent with hostility *vis-à-vis* each other.”) Aside from deference, it should be noted that the principle of complementarity also acknowledges the reality that the ICC is a court of limited jurisdiction without the resources to address the great bulk of the world’s human rights atrocities.

¹²⁸ See Alexander Greenawalt, “Complementarity in Crisis: Uganda, Alternative Justice, and the International Criminal Court,” *Virginia Journal of International Law* (2009): 141-44.

¹²⁹ Some scholars take exception to the word “traditional” as a description of such practices because it can imply that local are static and because it can also have pejorative implications. As noted in Section C, *infra.*, “traditional” practices used in the modern-day transitional justice context tend to be adaptations of much older forms of local justice and reconciliation practices.

¹³⁰ See Greenawalt, “Complementarity in Crisis,” 141-44.

¹³¹ See Charles Jalloh, “What Makes a Crime Against Humanity a Crime Against Humanity,” *American University Law Review* (2013): 419.

¹³² Under Article 14(1), a “State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more

2003 referral by the Ugandan government has resulted in the indictment of senior-level commanders in the Lord's Resistance Army.¹³³ This has proven divisive for several reasons. First, because it is arguably subverting local judicial and reconciliation practices in Northern Uganda where segments of the population would prefer the use of customary justice practices to the Western retributive justice of the ICC.¹³⁴ Second, because it would seem to turn a blind eye to violations committed by the Ugandan army at the height of the civil war in Northern Uganda, potentially giving the impression that the ICC is taking sides in a conflict rather than meting out impartial justice.¹³⁵ Similarly, in Côte d'Ivoire, former President Laurent Gbagbo stands indicted as an indirect co-perpetrator of crimes against humanity while crimes committed by forces loyal to his erstwhile political opponent, current president Alassane Ouattara, are largely overlooked.¹³⁶ In this and other cases, it may prove difficult for the ICC to serve as a credible check on state power while needing to tread lightly enough to ensure local cooperation.¹³⁷

Both the Ugandan and Ivorian cases illustrate one of the key challenges for the ICC and international tribunals more generally *vis-à-vis* the local. To stand wholly aloof and independent from the local invites mistrust and misunderstanding, ultimately undercutting the potential to do more than develop abstract international legal precedents. Yet the ICC is also dependent on the local for its day-to-day work, and this carries with it the possibility of playing into local political agendas that may further notions of victor's justice, besmirch the impartiality and credibility of the ICC, and play into narratives that would see in the ICC a Western project that picks winners and plays

specific persons should be charged with the commission of such crimes." Rome Statute of the International Criminal Court, Art. 14(1).

¹³³ See generally, Tim Allen, *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (London: Zed Books, 2006).

¹³⁴ See Adam Branch, "Uganda's Civil War and the Politics of ICC Intervention," *Ethics and International Affairs* 21, no. 2 (2007): 195. It should be noted, however, that the Acholi population is not a monolith, and there are also segments of the population that support ICC intervention. See *Ibid.*, 192.

¹³⁵ See *Ibid.*, 187-90 (2007). The suggestion of partiality was not helped when then Chief Prosecutor Louis Moreno-Ocampo appeared at a joint press conference in London with President Museveni in January 2004. See Michael Otim and Marieke Wierda, "Justice at Juba: International Obligations and Local Demands in Northern Uganda," in *Courting Conflict? Justice, Peace and the ICC in Africa*, eds. Nicholas Waddell and Phil Clark (London: The Royal African Society, 2008), 22. There are also suggestions that it was actually Moreno-Ocampo who first persuaded Museveni to file the "self-referral" in the first place, further giving the impression of some kind of unseemly partnership. See Phil Clark, "Law, Politics and Pragmatism: The ICC and Case Selection in the Democratic Republic of Congo and Uganda," in *Courting Conflict?*, 43.

¹³⁶ See Human Rights Watch, *Turning Rhetoric into Reality: Accountability for Serious International Crimes in Cote d'Ivoire* (New York: HRW, 2013), 10; see also Pascal Airault, "Côte d'Ivoire – CPI: Gbagbo ou le Bénéfice du Doute," *Jeune Afrique*, June 14, 2013.

¹³⁷ See Janine Clark, "Peace, Justice and the International Criminal Court: Limitations and Possibilities," *Journal of International Criminal Justice* 9 (2011): 527-29.

favorites.¹³⁸ What seems clear is that an international tribunal that ignores the complexity of local context (history, politics, culture, etc.) does so at its own peril.¹³⁹ Building the legitimacy of transitional and post-conflict justice interventions over time will likely require an exquisite sensitivity to context, and this may, as Greenawalt has argued, “call for as much, if not more, open-ended political assessment and balancing than for legal expertise.”¹⁴⁰

While the dilemmas of the global and the local are perhaps most acute in the realm of international and mixed tribunals, truth commissions often raise similar issues, though perhaps in more subtle ways. Over the last thirty years, the truth commission has become a truly global phenomenon, with some forty commissions having been created, and new ones emerging on a fairly regular basis.¹⁴¹ Though their mandates, composition, and powers vary greatly, most truth commissions attempt to accomplish three essential tasks: (1) diagnosing “what went wrong” in the lead up to the conflict or period of abuses; (2) documenting and analyzing the human rights abuses that were perpetrated; and (3) offering prescriptions for the future with a view to preventing recurrence of conflict.¹⁴²

These tasks would seem to require an approach that is much more open-ended, context sensitive, and participatory than most tribunals. And indeed, truth commissions tend to be located in the affected region, largely staffed by locals, and typically involve the direct participation of a greater number of members of the affected public than a tribunal.¹⁴³ At the same time, as Rama Mani has noted, owing to restricted mandates

¹³⁸ See Glasius, “What is Global Justice,” 519 (arguing that “[o]n the basis of current indictments he [the ICC prosecutor] could even be accused of exercising victor’s justice . . . He has helped governments, including some that are none too friendly to human rights, to constrain rebels and rogue states under the banner of international law.”)

¹³⁹ For this reason, it has been argued that a “stakeholder assessment” employing qualitative interviews, ethnographies, focus groups, or population-based surveys should be carried out prior to a transitional justice intervention in order to discern local preferences, values, and cultural knowledge. See Ramji-Nogales, “Designing Bespoke Transitional Justice,” 63-67. Nogales argues that under this model, the ICC prosecutor “would issue an indictment only if the population expresses a preference for international prosecutions in a distance location.” *Ibid.*, 70. While efforts along these lines to gain a greater appreciation of context would be a welcome step forward in many instances, at the same time, in the case of a potential ICC intervention based on a self-referral by a national government, this would raise some serious questions about sovereignty in the context of international justice. Even where a government might not be fully representative or a population divided, one could ask whether it is appropriate for an international treaty-based institution to do an end run around a state party in this way.

¹⁴⁰ See Greenawalt, “Complementarity in Crisis,” 159.

¹⁴¹ In her authoritative book on the topic, Priscilla Hayner documents the existence of forty modern-day truth commissions. Hayner, *Unspeakable Truths*, 256-62. Since that volume’s publication, new commissions have emerged in Côte d’Ivoire and Brazil.

¹⁴² Sharp, “Economic Violence in the Practice of African Truth Commissions,” in *Justice and Economic Violence in Transition*.

¹⁴³ There has been at least one call for a permanent international truth commission. See generally, Michael Scharf, “The Case for a Permanent International Truth Commission,” *Duke Comparative and International Law Journal* 7 (1997): 375. That said, as Hayner has noted, “[m]ost truth commissions are predominantly national, in both commission members and staff.” Hayner,

and budgets, participation of the local population can still be quite limited, and the dissemination of reports can be erratic, incomplete, or even nonexistent.¹⁴⁴ Nevertheless, truth commissions have, by and large, been spared the trenchant critiques directed toward tribunals *vis-à-vis* their rather clumsy engagement with the local. Yet there is also a sense in which truth commissions have become part of a global project rather than a local initiative, a box to tick on post-conflict checklist funded by international donors and assisted by a shadow staff of international consultants, rather than the result of a home-grown push for the particular type of truth and accountability that a truth commission can deliver.¹⁴⁵ One might consider in this regard the truth commission in East Timor, established not by domestic actors, but by a legal act of the UN's Human Rights Unit,¹⁴⁶ or the extremely close association between the International Center for Transitional Justice and the work of the Moroccan Equity and Reconciliation Commission (*Instance Équité et Réconciliation*, IER).¹⁴⁷ The result may often be a truth-seeking process that is not as attuned to local needs and realities as one might expect. Thus, Cavallaro and Albuja observe that in some respects truth commissions tend to hew to a "dominant script" that has been established over time not because it was necessarily perfectly attuned to each new context, but as a result of "repeated information exchange and consultations."¹⁴⁸ Funding from international donors, training workshops by international NGOs, and the occasional "technical assistance" provided by international consultants likely contribute to this phenomenon.

More fundamentally, anthropologist Rosalind Shaw has argued that the truth commission as a global phenomenon is rooted in Western modes of truth telling and traditions of public confession and may not be appropriate in cultures with a different historical grounding.¹⁴⁹ In Sierra Leone, for example, many people preferred a "forgive and forget" approach grounded in local practices of memory, healing, and social forgetting.¹⁵⁰ Similarly, in Mozambique, Mani argues, the desire to remember to the truth

Unspeakable Truths, 214-15. A notable exception is El Salvador where the truth commission was under the administration and oversight of the United Nations, with an entirely foreign staff and set of commissioners. Ibid, 214.

¹⁴⁴ Rama Mani, "Rebuilding an Inclusive Political Community after War," *Security Dialogue* 36, no. 4 (2005): 519.

¹⁴⁵ See David Mendeloff, "Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?," *International Studies Review* 6 (2004): 355-56 (noting that truth-telling is increasingly considered a necessary component of the post-conflict peacebuilding process, together with demobilization, disarmament, and the holding of postwar elections).

¹⁴⁶ See Carsten Stahn, "Justice Under Transitional Administration: Contours and Critique of a Paradigm," *Houston Journal of International Law* 27 (2004-2005): 335-36.

¹⁴⁷ See Mark Freeman and Veerle Opgenhaffen, *Transitional Justice in Morocco: A Progress Report* (New York: ICTJ, 2005); see also International Center for Transitional Justice, *Morocco, ICTJ's Role*, <http://ictj.org/our-work/regions-and-countries/morocco>.

¹⁴⁸ Cavallaro and Albuja, "The Lost Agenda," 125.

¹⁴⁹ See generally Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*, United States Institute for Peace Special Report 130 (Washington: USIP, 2005).

¹⁵⁰ See Ibid., 9.

did not even exist.¹⁵¹ The prevailing sentiment seemed to be that “the less we dwell on the past, the more likely reconciliation will be,” and traditional cleansing rituals were used to help reintegrate combatants into their communities and at the sites of massacres.¹⁵² Assumptions about the purportedly universal benefits of verbally remembering violence that appear to undergird the work of most truth commissions, Shaw argues, may undermine and serve to displace these alternative approaches to dealing with the past.¹⁵³ This may explain why many Sierra Leoneans attending truth commission hearings appeared to be less than enthusiastic about the process, though Kelsall notes that some hearings may have had unintended benefits once locals started to transform them through the incorporation of a process of community ritual.¹⁵⁴

From this, it can be said that many of the assumptions of truth commissions—including the notion that personal healing promotes national healing, that truth-telling promotes reconciliation, and that forgetting the past necessarily leads to war—even if valid in some contexts and cultures, may not hold in others. For these and other reasons, Mendeloff argues that one should not be so quick to proclaim the necessity of truth commission in the aftermath of violent conflict.¹⁵⁵ As with tribunals, the need for context-specific approaches that take into account questions of local ownership, agency, priorities, values, and practices must be given greater weight if truth-seeking practices and institutions are to live up to their many promises.¹⁵⁶

C. The Promises and Pitfalls of the Local

“Ultimately, no rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable ... [w]e must learn better how to respect and support local ownership, local leadership and a local constituency for reform, while at the same time remaining faithful to United Nations norms and standards.”

--U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, ¶ 17 (Aug. 23, 2004).

If an imperious global justice has in some contexts been stymied by a ham-fisted engagement with the local that has served to blunt both legitimacy and effectiveness, making the global in some ways part of the problem, can it be that giving greater weight to principles like “local ownership” will lead to better solutions in the transitional justice

¹⁵¹ Mani, “Rebuilding an Inclusive Political Community,” 519.

¹⁵² Hayner, *Unspeakable Truths*, 197-203.

¹⁵³ See Shaw, *Rethinking Truth and Reconciliation Commissions*, 1.

¹⁵⁴ See generally Kelsall, “Truth, Lies, Ritual,” 361.

¹⁵⁵ See Mendeloff, “Truth-Seeking,” 355.

¹⁵⁶ See *Ibid.*, 358-361 (2004) (outlining claims made with respect to the beneficial effects of truth commissions on social healing and reconciliation, justice, the official historical record, public education, institutional reform, democracy, and deterrence).

context? In the UN policy literature in particular, the concept of local ownership has become nearly sacrosanct, with incantations to the local found across range of policy documents.¹⁵⁷ Some see in the prominence of the concept an attempt to paper over the legitimacy crisis in UN peacekeeping and peacebuilding, sparked in part by criticism emphasizing their neo-colonial and overly Western character.¹⁵⁸ But whatever the exact impetus, it is painfully clear that rhetorical tribute to local ownership has often failed to translate into meaningful changes “on the ground,” making the concept superficial and slippery in practice.¹⁵⁹ At the same time, because of the intellectual currency that the concept has achieved in donor and policy circles, it continues to be invoked by different actors in different ways to assert influence over post-conflict policy processes.¹⁶⁰ Bendix and Stanley, for example, observe that in the context of security sector reform donors demand local ownership to legitimize donor-driven policy prescriptions, local governments demand local ownership to secure their own power and influence, and non-state actors want local ownership as a means to give themselves access to the policy process.¹⁶¹

Taken together, local ownership has become something of an empty signifier, employed by nearly everyone while at the same time remaining vague and poorly

¹⁵⁷ A 2011 UN report on the rule of law together with annexes invokes the word “ownership” no less than 17 times. See U.N. Secretary-General, *Strengthening and Coordinating United Nations Rule of Law Activities*, UN Doc. A/66/133 (August 8, 2011). While this may be an extreme example, Simon Chesterman, who has written widely about the concept of ownership in post-conflict peacebuilding, has noted that “[e]very UN mission and development program now stresses the importance of local ‘ownership.’” See Chesterman, “Walking Softly,” 41. The concept itself is often traced to the field of economic development, and represents the evolution in some ways of concepts like “participatory development.” See Simon Chesterman, “Ownership in Theory and in Practice: Transfer of Authority in UN Statebuilding Operations,” *Journal of Intervention and Statebuilding* 1, no. 1 (2007): 7; see also Benjamin de Carvalho and Niels Nagelhus Schia, *Local and National Ownership in Post-Conflict Liberia: Foreign and Domestic Inside Out?*, NUPI Working paper 787 (Oslo: NUPI, 2011), 6. For an example of what one might call a backlash to the growing discourse of local ownership, see Edward Joseph, “Ownership is Over-rated,” *SAIS Review* 27 (2007): 109.

¹⁵⁸ See Carvalho and Schia, *Local and National Ownership*, 1-6.

¹⁵⁹ See Donais, “Empowerment or Imposition?,” 5; see also Chesterman, “Ownership in Theory and in Practice,” 9. Indeed, far short of giving meaningful content to “ownership,” Longman has argued that “[g]overnments and international institutions, such as the United Nations, rarely, if ever, consult affected populations when formulating policies aimed at rebuilding post-war societies.” Longman et al., “Connecting Justice to Human Experience,” 206. But see Anna Triponel and Stephen Pearson, “What do You Think Should Happen? Public Participation in Transitional Justice,” *Pace International Law Review* 22 (2010): 103 (examining a trend toward increasing public consultation in the set up phase of transitional justice mechanisms).

¹⁶⁰ See Patricia Lundy, “Exploring Home-Grown Transitional Justice and Its Dilemmas: A Case Study of the Historical Enquiries Team, Northern Ireland,” *International Journal of Transitional Justice* 3, no. 3 (2009): 329 (arguing that “the concept of local/home-grown transitional justice is capable of being expropriated and manipulated to mask or serve other interests and ‘unjust practices’”).

¹⁶¹ Bendix and Stanley, “Deconstructing Local Ownership,” 101.

understood.¹⁶² Yet the opacity of the concept does not diminish its importance. As Donais has argued, “there are real limits on the ability of outsiders to shape, direct, and influence events within states emerging from conflict,” meaning that there is no real alternative to substantive local ownership over the longer term.¹⁶³ International experts can run an international or hybrid tribunal in the short term and donors can fund a truth commission, but ultimately only “deep and locally owned social and political dynamics” can guarantee “well functioning institutions that produce substantive results.”¹⁶⁴ Compounding matters, successful initiatives require the kind of profound local knowledge of context and culture that international actors almost never possess.¹⁶⁵ Yet even with ample awareness of context, interventions felt to be imposed “from the outside” are more likely to be seen as illegitimate, raising the possibility of backlash and ill will towards reforms.¹⁶⁶ In this sense, the struggle to give greater significance to local ownership can be seen as profoundly pragmatic.

More fundamentally, however, the concept of local ownership raises important normative questions, asking us to consider whether people have the right to determine their own destiny and make their own mistakes.¹⁶⁷ As Stahn observes, to even ask the question suggests a certain paternalism,¹⁶⁸ and could risk pathologizing and infantilizing entire post-war populations.¹⁶⁹ The normative pull of principles of self-determination and democratic control emanating from the concept of local ownership is especially strong when you consider that even with the best of intentions, errors of intervention are likely, yet it is locals who must live with and bear the costs of these errors over the long term.¹⁷⁰ International actors, in contrast, will pack their bags and move on to the next crisis. In this sense, the concept of local ownership asks us to recognize that if the goals of post-conflict peacebuilding include classic liberal goods of democracy, good governance, and the rule of law, divorcing control and agency over a set of post-conflict initiatives from accountability and cost bearing is ultimately a self-defeating exercise in contradiction.¹⁷¹

¹⁶² Chesterman, “Ownership in Theory and in Practice,” 7-10.

¹⁶³ See Donais, “Haiti and the Dilemmas of Local Ownership,” 772.

¹⁶⁴ See Uvin, “Difficult Choices in the New Post-Conflict Agenda,” 186.

¹⁶⁵ von Carlowitz, *Local Ownership in Practice*, 54 (observing that while they often possess technical knowledge and professional skills, international actors mostly lack sufficient knowledge of local structures and traditions).

¹⁶⁶ Talentino, “Perceptions of Peacebuilding,” 153.

¹⁶⁷ See Stahn, “Justice Under Transitional Administration,” 326; von Carlowitz, *Local Ownership in Practice*, 54 (observing that “local ownership might remain rhetoric because international actors are unwilling to allow their local counterparts to make their own mistakes.”); An-Na’im, “Editorial Note,” 199 (arguing that “the practice of justice for every society can only emerge through an indigenous process of trial and error.”)

¹⁶⁸ Stahn, “Justice Under Transitional Administration,” 326.

¹⁶⁹ See Vanessa Pupavac, “Pathologizing Populations and Colonizing Minds: International Psychosocial Programs in Kosovo,” *Alternatives: Global, Local, Political* 27 (2002): 490

¹⁷⁰ See Uvin, “Difficult Choices in the New Post-Conflict Agenda,” 185; Stahn, “Justice Under Transitional Administration,” 330.

¹⁷¹ See Gerald Knaus and Felix Martin, “Travails of the European Raj,” *Journal of Democracy* 14, no. 3 (2003): 64 (exploring tensions between unaccountable international intervention and the

Despite its obvious importance, the turn to the local in matters of post-conflict justice and peacebuilding is no panacea. In calling for better engagement with questions of locality, there is danger of propagating the myth of a virtuous local that may lead to a tendency to overlook its complexities.¹⁷² Even without such romanticization, making local ownership meaningful in the post-conflict context is extraordinarily challenging. The more intrusive international peace and justice interventions often occur in regions where there has been a profound breakdown in local political and normative structures and ordering.¹⁷³ In some cases, the formal institutions of governance have been hollowed out or collapsed entirely, and much of the expertise that may have helped to re-build the country has fled, resulting serious deficits in terms of capacity and technical expertise.¹⁷⁴ Complicating matters further, with the ethnic, political, and economic cleavages that often lead to and continue in the aftermath of conflict, there is often no coherent set of “local owners” in the first place.¹⁷⁵ Indeed, it has been argued that “[p]ostconflict spaces, almost by definition, are characterized far more by diversity and division than by unity.”¹⁷⁶ In this context, post-conflict justice, like other interventions affecting distributions of power, can be utilized by post-war elites as a means of jockeying for gain, furthering partisan political agendas, and attempting to re-impose pre-conflict power structures that may be discriminatory or otherwise not in keeping with international human rights standards.¹⁷⁷ Ultimately, therefore, as one set of waggish commentators put it, “the local ownership championed by the international community is not local

need to plant the seeds of democratic politics in Bosnia); see also Stahn, “Justice Under Transitional Administration,” 330 (exploring how the United Nations Mission in Kosovo absolved itself of legal checks on its power, making accountability a one-way street where locals are expected to bear the costs).

¹⁷² See Richmond, “The Romanticisation of the Local,” 149; Mazlish, “The Global and the Local,” 95.

¹⁷³ Examples are not in short supply, but post-war Sierra Leone and Liberia would be among the more challenging of such contexts.

¹⁷⁴ As an example, the brutal Liberian civil war spanned more than a decade, resulting in the loss of as many as 250,000 lives and the displacement of one million individuals. These are staggering numbers for a country whose pre-war population numbered just over two million. See Sharp, “Economic Violence in the Practice of African Truth Commissions and Beyond,” 98. In Rwanda, 10% of the population of eight million had been killed and over two million had fled to neighboring countries. See Barbara Oomen, “Donor-Driven Justice and its Discontents: the Case of Rwanda,” *Development and Change* 36, no. 5 (2005): 900.

¹⁷⁵ See Donais, “Haiti and the Dilemmas of Local Ownership,” 759; see also Joseph, “Ownership is Over-rated,” 119 (contending that in some instances locals “do not take ownership of their problems primarily because they do not agree on who ought to be the owner.”)

¹⁷⁶ See Donais, “Haiti and the Dilemmas of Local Ownership,” 759.

¹⁷⁷ Of course, the dangers of insertion of self-interest by international elites into the peacebuilding process can be equally problematic. See Kristoffer Liden, Roger Mac Ginty, and Oliver Richmond, “Introduction: Beyond Northern Epistemologies of Peace: Peacebuilding Reconstructed?,” *International Peacekeeping* 16, no. 5 (2009): 594; see also Knaus and Martin, “Travails of the European Raj,” 66 (noting that like all institutions, international peacebuilding missions have a tendency to pursue self-interest).

ownership *tout court* but local ownership of a *specific* kind: the good kind.”¹⁷⁸

If the post-conflict waters are sewn with mines that serve to make local ownership difficult in practice, navigation is made all the more complex by the role, expectations, and financial power of the international actors drawn to the scene. Taking concepts like local ownership seriously necessarily involves significant additional time and expense, yet international actors and donors tend to be impatient and anxious for results.¹⁷⁹ At the same time, international standards for transitional justice interventions are institutionally demanding, tending privilege technocratic expertise over deep local contextual knowledge.¹⁸⁰ When coupled with global-local imbalances in terms of financial capacity, the end result is that all too often post-conflict justice interventions tend to place less of a premium on local ownership in practice than the global policy rhetoric would suggest.

Taken together, in many instances it might be said that true local ownership in the sense of full local agency and control is simply unrealistic.¹⁸¹ In the context of international and hybrid tribunals in particular, it may well be impossible.¹⁸² How, for example, could one truly have local ownership—again in the sense of agency and control—of a prosecution by the ICC, ICTY, or SCSL?¹⁸³ Even outside the context of such tribunals, global power and funding structures, together with the momentum and politics of the international justice advocacy movement would seem to suggest that some degree of international involvement is inevitable as a practical matter.

Building on this, it has been argued that in some cases full local ownership may not even be desirable, and that some degree of international involvement is necessary in at least a supporting role if not more.¹⁸⁴ In many instances for example, “local violent conflicts are no longer local or traditional in their causation or dynamics,” having been

¹⁷⁸ de Carvalho and Schia, *Local and National Ownership in Post-Conflict Liberia*, 5.

¹⁷⁹ See Lucius Botes and Dingie van Rensburg, “Community Participation in Development: Nine Plagues and Twelve Commandments,” *Community Development* 35 (2000): 50-51 (discussing the tensions in the context of development projects between pressures for results and the process demands of community participation); Stahn, “Justice Under Transitional Administration,” 336-37 (noting that greater local ownership with respect to judicial reconstruction in Afghanistan led to a slower process that was less protective of individual rights.)

¹⁸⁰ See Bosire, “Overpromised, Underdelivered,” 72.

¹⁸¹ See Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building* (Oxford: Oxford University Press, 2004), 242.

¹⁸² See Matthew Saul, “Local Ownership of the International Criminal Tribunal for Rwanda: Restorative and Retributive Effects,” *International Criminal Law Review* 12 (2012): 434 (arguing that one cannot always assume that “more local ownership will always be desirable.” Rather, “it is possible that in some contexts where it is self-evident that there is a need for an international criminal tribunal, it might be in the best interests of the situation overall for there to not be any particular effort to incorporate local ownership into the establishment process.”)

¹⁸³ In the case of the ICC, one might say that the opportunity for full local ownership effectively disappears the moment a state is deemed “unwilling or unable” to prosecute under the terms of Article 17 of the Rome Statute.

¹⁸⁴ See Joseph, “Ownership is Over-rated,” 115-16.

transformed by “interventions of regional and global actors.”¹⁸⁵ In such cases, simple concepts of “local solutions to local problems” would seem to fail to capture the complexity of the situation. There are also arguments that some kind of global-local balance is required due to “capacity gaps” and the possibility of excessive parochialism.¹⁸⁶ Might it be, for example, that a better global-local balance in the trial of Saddam Hussein could have resulted in something less like a show-trial?¹⁸⁷ Similar weaknesses in the national judiciaries of Kosovo, East Timor, Sierra Leone, and Cambodia led in part the creation of international hybrid tribunals.¹⁸⁸ Finally, outside of the courtroom, other local experiments in transitional justice such as *Gacaca* in Rwanda, described in greater detail below, can and do conflict with international human rights standards—raising difficult question about whether and how to balance individual freedoms against principles of self-determination.¹⁸⁹

For these and other reasons, while the local is often seen as one of the keys to the legitimacy of transitional justice initiatives, perceived legitimacy is in practice quite complex and there are no guarantees that a process will be seen as legitimate at any level simply because there is a high degree of local ownership.¹⁹⁰ In some instances, local constituencies might actually express a preference for an international prosecution, for example, due to perceptions that national courts are corrupt and lack independence.¹⁹¹ In the end, therefore, too much local may raise as many questions as too much global.¹⁹² As Mazlish argues, the local cannot simply be used as a talisman to ward off all possible intervention.¹⁹³ The world over, someone’s local has often given way to a larger local—with the dismantling of segregation in the Southern United States being one example—the results of which are hard to disagree with in the long term.¹⁹⁴

Simply put, while there is no alternative to local ownership in the long run, in the short-run at least, local ownership may at times be an impossible ideal. If this makes for

¹⁸⁵ An-Na’im, “Editorial Note,” 202.

¹⁸⁶ See Joseph, “Ownership is Over-rated,” 115-16.

¹⁸⁷ Ibid.

¹⁸⁸ See McAuliffe, “Hybrid Tribunals at Ten,” 24-28; see also Stahn, “Justice Under Transitional Administration,” 318-20 (reviewing some of the challenges of national courts that may bolster an argument for some international involvement).

¹⁸⁹ This dilemma is particularly acute in the case of *Gacaca* given the strong argument that it would have been impossible for Rwanda to comply with all international standards relating to accountability norms, victims’ rights, and due process.

¹⁹⁰ See Saul, “Local Ownership of the International Criminal Tribunal for Rwanda,” 434 (noting that an increase in local ownership could come with complications that can actually reduce legitimacy). Consider in this regard the example of *Gacaca* in Rwanda, which though locally owned in the sense of literal control by the Rwandan government, has minimal legitimacy in the eyes of many local constituencies. See Burnet, “The Injustice of Local Justice,” 188.

¹⁹¹ Observation based on the author’s experience documenting human rights violations in Guinea and Côte d’Ivoire for Human Rights Watch.

¹⁹² Such preferences were often expressed to the author during his time documenting human rights violations in Guinea and Côte d’Ivoire for Human Rights Watch.

¹⁹³ Mazlish, “The Global and the Local,” 98-99.

¹⁹⁴ Ibid.

a very difficult needle to thread in terms of post-conflict programming, it may explain why so much of the literature on local ownership does little more than say that it is both important and hard.¹⁹⁵ At the policy level, the tendency in the face of these dilemmas is to elide complexity, with local ownership becoming a sort of cheap bureaucratic trope to signal the need for local “buy in” and support rather than meaningful input or control.¹⁹⁶ Moving past this state of affairs in order to strike a better balance between global and local requires that we look more deeply into constructions of “global” and “local.”

D. Striking a Better Balance Between Global and Local

For all of their importance, there is a sense in which the dilemmas of the global and the local are false dilemmas created by rigid intellectual categories.¹⁹⁷ As Goodale has observed, outside of the academic and policy literature, there is no place called “local” or “global”—any more than there is an “international plane,” an “international community,” or places called “on the ground” and “in the field,” yet these concepts are often spoken of as if they actually existed.¹⁹⁸ The global-local binary is also problematic insofar as it implies that there are only two levels at which social processes emerge or unfold, and insofar as it implicitly invokes a normative hierarchy and teleology.¹⁹⁹ Thus, both categories tend to essentialize and depoliticize sets of actors that are neither ideologically monolithic nor politically homogenous. For these and other reasons, some scholars have questioned the value of the concept of the local, arguing instead for more complicated notions of “glocality” and “translocality.”²⁰⁰

Despite these problems, the global-local distinction remains a central theme in human rights discourse, and is useful for its ability to underscore power asymmetries in the transitional justice context.²⁰¹ Similarly, as a policy trope and as an ideal, the concept of the local can provide an important counterweight to the centralizing and universalizing tendencies of transitional justice and liberal international peacebuilding more generally.²⁰² There may be therefore be times when it is useful to categorize and essentialize to avoid pushing power differentials to the background, somewhat in

¹⁹⁵ de Carvalho and Schia, *Local and National Ownership in Post-Conflict Liberia*, 5.

¹⁹⁶ See Chesterman, *You, the People*, 242 (arguing that in practice “ownership . . . is usually not intended to mean control and often does not even imply a direct input into political questions.”)

¹⁹⁷ See Lundy, “Exploring Home-Grown Transitional Justice,” 329 (cautioning against using the local in simply binary terms).

¹⁹⁸ See Mark Goodale, “Locating Rights, Envisioning Law Between the Global and the Local,” in *The Practice of Human Rights: Tracking Law Between the Global and the Local*, eds. Mark Goodale and Sally Engle Merry (Cambridge: Cambridge University Press, 2007), 15-16.

¹⁹⁹ See Goodale, “Locating Rights,” 14-15.

²⁰⁰ See Lundy, “Paradoxes and Challenges,” 93; Mazlish, “The Global and the Local,” 99.

²⁰¹ See Goodale, “Locating Rights,” 23.

²⁰² See Susan Thomson and Rosemary Nagy, “Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda’s Gacaca Courts,” *International Journal of Transitional Justice* 5, no. 1 (2010): 11 (positioning the turn to the local in transitional justice as a “corrective to the shortcomings of internationalized, ‘one-size-fits-all’ approaches.”)

keeping with Spivak's concept of "strategic essentialisms."²⁰³ Thus, concepts of the local and the global retain utility for purposes of both analysis and policymaking, even if they do not accurately describe the full complexity of all transitional justice processes as they emerge and unfold. Working through the dilemmas of the local therefore requires a complicated analytical tightrope act. On the one hand, the global-local binary remains a useful construct for the reasons articulated. At the same time, understanding the complexity of global-local dynamics requires some deconstruction and destabilization, breaking down simple binary notions.

The analytical utility of breaking down simple binary notions of local and global can be illustrated by examining the *Gacaca* process in Rwanda.²⁰⁴ Historically, *Gacaca* served as a form of community-based informal arbitration employed to resolve minor disputes at the village level.²⁰⁵ Following the arrests of suspected *génocidaires* in the years that followed the 1994 genocide, Rwanda's prisons population swelled to well over 130,000.²⁰⁶ These figures grossly overwhelmed the capacity of Rwanda's legal system, creating the very realistic possibility that thousands of individuals would either die in Rwanda's severely overcrowded prisons before they would be granted a trial, or need to be released without trial.²⁰⁷ This led to pressure from a variety of actors to solve a very palpable human rights problem, and the idea adapting *Gacaca* to address genocide-related crimes emerged.²⁰⁸

While its exact provenance is somewhat murky, the idea of using *Gacaca* may have arisen out of a conversation between a researcher for Human Rights Watch and some professors from the National University.²⁰⁹ Alternatively, Oomen points to "evidence that it was representatives of the donor community who first raised the

²⁰³ See Peterson, "A Conceptual Unpackaging of Hybridity," 14.

²⁰⁴ If focusing on the case of *Gacaca*, I do not mean to conflate the local with customary law and tradition or to suggest that the dilemmas of the local can be solved by mere incorporation of local ritual. Ultimately, giving greater weight to the local in matters of post-conflict justice must address the deeper and fundamental privileging of Western liberal responses to atrocity that may crowd out other ways of understanding and doing justice. Nevertheless, examination of the tensions associated with the embrace of local ritual and tradition as seen in the *Gacaca* process is useful to help complicate simplistic binary notions of global and local, and as an antidote to the romanticization of the local that initially accompanied *Gacaca*. See Oomen, "Donor-Driven Justice," 903 (noting that there was "an element of Orientalism" in the appeal that *Gacaca* held for the international community).

²⁰⁵ There is an ample literature on *Gacaca*, including its historical origins and evolution. See, e.g., Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda; Justice without Lawyers* (Cambridge: Cambridge University Press, 2010); Burnet, "The Injustice of Local Justice," 177; Lars Waldorf, "Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice," *Temple Law Review* 79 (2006): 1; Longman, "Justice at the Grassroots? *Gacaca* Trials in Rwanda," in *Transitional Justice in the Twenty-first Century*, 206-28.

²⁰⁶ See Burnet, "The Injustice of Local Justice," 177.

²⁰⁷ See Des Forges and Longman, "Legal Responses to Genocide in Rwanda," 58.

²⁰⁸ See Burnet, "The Injustice of Local Justice," 175.

²⁰⁹ *Ibid.*, 176.

idea.”²¹⁰ Others point to a 1996 report by the United Nations High Commission for Human Rights, which concluded that *Gacaca* might play a role in dealing with genocide-related crimes, but only as a sort of truth-seeking adjunct to the work of tribunals or a community reconciliation mechanism that should be buffered from too much government interference.²¹¹ Whatever the precise origins, the idea of drafting *Gacaca* into national service to address Rwanda’s post-genocide justice challenges was eagerly seized upon by the Rwandan government and members of the international donor community.²¹²

As adopted and adapted, the *Gacaca* of “tradition” was effectively transformed by the Rwandan government from a relatively informal community-driven conflict-resolution mechanism to a modernized and formalized public punitive justice institution backed by the power of the state.²¹³ Whereas pre-genocide *Gacaca* was not applied in cases of cattle theft, murder, or other serious crimes, it was adapted to complex circumstances involving mass atrocities and genocide.²¹⁴ This proved especially troubling to international human rights groups who questioned the lack of protections for the accused, minimal training for *Gacaca* judges, and issues of corruption, among other things.²¹⁵

Despite some of the controversy, *Gacaca* was initially welcomed by many outside Rwanda in the as an creative and pragmatic means to address a troubling backlog of cases relating to the 1994 genocide.²¹⁶ It also appeared to enjoy widespread support by ordinary Rwandans.²¹⁷ From a distance, it seemed to be the embodiment of a homegrown, locally owned, culturally embedded process—a Rwandan solution to

²¹⁰ See Oomen, “Donor-Driven Justice and its Discontents,” 902.

²¹¹ See Bert Ingelare, “The *Gacaca* Courts in Rwanda,” 31-36.

²¹² See Oomen, “Donor-Driven Justice,” 897 (noting the “massive support” on the part of donors for *Gacaca*).

²¹³ In describing the ways in which *Gacaca* was adapted, I do not mean to suggest that its pre-genocide or “traditional” form was static. As noted by Luc Huyse, “traditional techniques, in Rwanda and in other African post-conflict countries, have been greatly altered in form and substances by the impact of colonization, modernization, and civil war.”). Luc Huyse, “Introduction: Tradition-based Approaches in Peacemaking, Transitional Justice, and Reconciliation Policies,” in *Traditional Justice and Reconciliation after Violent Conflict*, eds. Huyse and Salter, 6-7. In this sense, the label “traditional” is potentially problematic insofar as it suggests a practice not subject to constant change. See *ibid.* at 7. Bert Ingelare argues that the “new” *Gacaca* is such a radical departure from the “old” that it represents an “invented tradition.” Ingelare, “The *Gacaca* Courts in Rwanda,” 32. Others have suggested terms such as “reinvented tradition” and “neo-traditional.”

²¹⁴ See Waldorf, “Mass Justice for Mass Atrocity,” 48 (noting that “traditional *gacaca* generally did not treat cattle theft, murder, or other serious crimes, which were handled by chiefs or the king’s representatives”).

²¹⁵ See Human Rights Watch, *Justice Compromised: The Legacy of Rwanda’s Community Based *Gacaca* Courts* (New York: HRW, May 2011), 4.

²¹⁶ For a more upbeat, though cautious assessment at the outset of the implementation of *Gacaca*, see generally Longman, “Justice at the Grassroots?”; see also Oomen, “Donor-Driven Justice,” 902 (noting that *Gacaca* was once heralded as “ground-breaking” and “revolutionary.”)

²¹⁷ Paul Gready, “Reconceptualizing Transitional Justice: Embedded and Distanced Justice,” *Conflict, Security, and Development* 5, no. 1 (2005): 13.

Rwandan problems—yet this obfuscates some of the complex reality.²¹⁸ As noted, while loosely based on a traditional dispute resolution process and championed by the Rwandan government as the only possible solution, the impetus for *Gacaca* also owes much to discussion generated by Rwandan scholars, international human rights activists, UN reports, and donors to say nothing of sustained pressure from international NGOs and other entities to address Rwanda's serious prison overcrowding problem. It was carried out in large part as a result of support from international donors.²¹⁹ What was presented as "traditional" and "community based" was really a hybrid that moved back and forth between historical origins and capture by the nation state.²²⁰ Thus, to adopt the neologism of some scholars, it might indeed be correct to say that the origins and unfolding of the *Gacaca* process were very much "glocal" or "translocal."²²¹ In this way, the emergence and shaping of transitional justice processes might be seen as part of a continued dialectical process between multiple "levels"—global, regional, national, and community. Simple categories of global and local fail to capture this complexity.

The complex reality of transitional justice processes only serves to further illustrate just how problematic simple notions of local ownership really are. Just as the global-local binary must be questioned and blurred, making better sense of global-local dilemmas and interactions also requires us to break down and unpack concepts like "local ownership" into constituent parts. In practice, I argue, the term has become a sort-of catch all for concerns relating to actual *control* (agency, decision making, funding), *process* (whether a transitional justice initiative is "bottom-up," participatory or homegrown, being shaped by input from "the grassroots," or "top-down" and imposed; whether it is driven by the state or "the community"), and *substance* (whether a transitional justice initiative honors and resonates with local values and practices). While the control, process, and substance dimensions of local ownership are in practice often going to be highly related, it may not be necessary to satisfy concerns relating to all three for a transitional justice program to be perceived as legitimate. For example, hypothetically, a UN or otherwise "externally" controlled and funded program might be seen as legitimate by many local constituencies if it were heavily shaped by a bottom-up participatory process that put local priorities and practices at the heart of the program. In contrast, a transitional justice program might be fully controlled by a national government or other locals, and yet still be part of a state-centric solution imposed from the top-down upon local peasant communities without significant input, and ultimately be seen by many locals as lacking legitimacy.

Both hypotheticals presented here would seem to suggest that the process dimension of local ownership is especially key to the design of transitional justice

²¹⁸ See Christine Venter, "Eliminating Fear through Recreating Community in Rwanda: the Role of the Gacaca Courts," *Texas Wesleyan Law Review* 13 (2007): 580 (describing Gacaca as a "uniquely Rwandan . . . grassroots [effort] to deal with the genocide . . . from the bottom up.") Of course, the Rwandan government itself was also at some pains to present *Gacaca* as homegrown and locally devised. See Oomen, "Donor-Driven Justice," 902.

²¹⁹ See generally Oomen, "Donor-Driven Justice."

²²⁰ Huyse, "Introduction: Tradition-based Approaches in Peacemaking, Transitional Justice," 8.

²²¹ See Lundy, "Paradoxes and Challenges," 93.

interventions, not simply because process can help to generate feelings of (il)legitimacy, but also because, in practice, satisfying process concerns may tend to lead to transitional justice modalities that hit positive notes on the substance axis.²²² At the same time, undue focus on the process dimension alone is potentially problematic as it has been observed in other contexts that ideas like “participatory development” can easily be co-opted by states and international institutions to their own ends.²²³ In the transitional justice context, it has similarly been noted that where efforts at “consultation” do take place, local communities are often asked for input into project implementation long after more fundamental questions of design and set-up have already been established, suggesting that process concerns are often treated as a shallow, technical exercise.²²⁴ There is therefore a danger that as notions of process, including participation, are mainstreamed, they become yet another bureaucratic planning tool, muddying useful distinctions between genuinely people-centered, bottom-up processes and top-down, technocratic ones.²²⁵ Finally, beyond process, one should not dismiss the importance of the control dimension, which—being intimately linked to the power and politics of transitional justice interventions—still plays an important role in global-local frictions and feelings of legitimacy.

By offering this schema, the intent is not to suggest that categories of control, process, and substances are in any way definitive, or that local ownership could not be broken down into alternative or additional categories. The key point is that thinking of local ownership *multi-dimensionally* based on the unique history of each particular context is a much more useful exercise than the loose sloganeering that often takes place around the concept today. Again, the *Gacaca* process serves as a useful real-world illustration of some of these complex dynamics.

At the most superficial level, the *Gacaca* process was very much “locally owned” as compared to the ICTR, for example, in the sense that formal control was retained by Rwandans. Yet to end there would be to confuse local ownership with ownership by the national government, a distinction that is potentially problematic in a context where the government cannot be assumed to represent many local constituencies or to be subject to checks and balances if it fails to consider their input.²²⁶ The results of the *Gacaca* process illustrate that this kind of national ownership alone will often not be sufficient to

²²² See generally, Triponel and Pearson, “What do You Think Should Happen” (examining trend toward increasing public consultation in the set up phase of transitional justice mechanisms.

²²³ See Lundy, “Exploring Home-Grown Transitional Justice,” 329. The concept of participation has a long history in the field of development, and is both revered and reviled in the literature for its power to both empower and co-opt. For a review of the history and trajectory of the concept, see generally Sam Hickey and Giles Mohan, “Towards Participation as Transformation: Critical Themes and Challenges,” in *Participation: From Tyranny to Transformation?*, eds. Samuel Hickey and Giles Mohan (New York: Zed Books, 2004).

²²⁴ See Rubli, *Transitional Justice: Justice by Bureaucratic Means*, 12.

²²⁵ See Hickey and Mohan, “Towards Participation as Transformation,” 4.

²²⁶ Oomen, “Donor-Driven Justice,” 899-902 (discussing the “increasingly oppressive” and authoritarianism climate in Rwanda).

create legitimacy in the eyes of many local constituencies.²²⁷ Thus, the process dimension of local ownership, including whether a transitional justice initiative is carried out in a manner that is “bottom-up,” drawing upon meaningful input and participation by affected communities, remains critical.²²⁸ While the *Gacaca* process certainly involved a lot of participation by ordinary Rwandans in the hearings themselves, attendance at *Gacaca* hearings eventually dwindled and had to be coerced, and Rwandans had little space to contest dimensions of the larger *Gacaca* process itself.²²⁹ Thus, there was a very real sense in which the process was imposed from the top-down (with the top being Kigali rather than New York or Geneva).²³⁰

Beyond control and process, there is also a substantive dimension to questions of local ownership, including the extent to which a transitional justice initiative honors and resonates with local values and practices. Even on this score, the *Gacaca* process receives mixed results. While initially greeted with enthusiasm by the Rwandan population as a distinctively Rwandan approach to post-conflict justice in contrast with the remote and Western ICTR, many Rwandans were ultimately alienated by the process and felt that it lacked legitimacy.²³¹ In many respects, the process appeared to be more in tune with national (or government) values and priorities than community-based ones in the sense that it was engineered to reinforce longstanding partisan narratives favored by the Rwandan Patriotic Front (RPF) political party by excluding crimes committed by the RPF from the *Gacaca* process.²³² Thus, *Gacaca* illustrates that adapting the trappings of local practices, traditions, and rituals alone is not sufficient to generate a sense of legitimacy and good will toward a transitional justice program.

With the process concluded as of 2012, *Gacaca* leaves an ambiguous legacy.²³³ While it constitutes an important experiment in post-conflict justice programming, its glaring gaps and deficiencies also serve as something of a cautionary tale.²³⁴ Initially

²²⁷ Many ordinary Rwandans prefer the *Gacaca* courts over Rwanda’s national courts and the ICTR. See Ingelare, “The *Gacaca* Courts in Rwanda,” 51. At the same time, other Rwandans see it as an imposition from Kigali. See Burnet, “The Injustice of Local Justice,” 188; see also Oomen, “Donor-Driven Justice,” 904 (noting that “the public at large seemed to increasingly consider the [*Gacaca*] meetings as mandatory events to sit through, just like community service.”)

²²⁸ See generally, Triponel and Pearson, “What do You Think Should Happen?”

²²⁹ See Ingelare, “The *Gacaca* Courts in Rwanda,” 31, 46-47

²³⁰ See Burnet, “The Injustice of Local Justice,” 188

²³¹ See *Ibid.*

²³² See Christopher Le Mon, “Rwanda’s Troubled *Gacaca* Courts,” *Human Rights Brief* 14 (Winter 2007): 16. The RPF was the military victor in the Rwandan conflict and has effectively set the agenda for post-genocide Rwanda without much restraint. See Ingelare, “The *Gacaca* Courts in Rwanda,” 31-32.

²³³ Phil Clark has written a comprehensive review of *Gacaca*, delving into strengths and weaknesses in great detail. See generally Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda*; see also Ingelare, “The *Gacaca* Courts in Rwanda,” 51-57 (evaluating the strengths and weaknesses of *Gacaca*).

²³⁴ These include the fact that the *Gacaca* process actually led to *increases* in the numbers of the accused and detained. See Burnet, “The Injustice of Local Justice,” 178. It may have also increased conflict in some communities. See *ibid.*, 74.

projected as an exemplar of local ownership in transitional justice, Gacaca was in practice another top-down, state-based solution imposed on affected communities, and ultimately suffered a loss of legitimacy as a result.²³⁵ Given the authoritarian political climate in Rwanda, this should not be surprising.²³⁶ Rather than transcending Rwanda's post-genocide political culture, Gacaca was simply played out through its prism.²³⁷

At a deeper level, Gacaca illustrates the almost inescapable pull of both universalism and particularism in transitional justice processes, with notions of what it means to do justice in the aftermath of conflict invariably shaped by contested global and local standards.²³⁸ More than that, however, it represents a clash of purportedly universal commitments, between liberal internationalism and international human rights, on the one hand, and conceptions of local autonomy, self-determination, and sovereignty on the other. Given the seeming inevitability of these competing forces in many transitional justice interventions, the disappointments and politics of Gacaca point not to the need to abandon alternative or "hybrid" approaches to post-conflict justice, but to consider possibilities that offer a better balance, including global-local balance, along the multiple axes of local ownership: control, process, and substance.²³⁹

²³⁵ See Oomen, "Donor-Driven Justice and its Discontents," 906-07; see also Thomson and Nagy, *Law*, "Power and Justice," 13 (describing Gacaca as a "state-imposed" project).

²³⁶ See Thomson and Nagy, "Law, Power and Justice," 13 (noting that legal systems, traditional or otherwise, "inescapably embody prevailing constellations of power.")

²³⁷ See Andrew Iliff, "Root and Branch: Discourses of 'Tradition' in Grassroots Transitional Justice," *International Journal of Transitional Justice* 6, no. 2 (2012): 8 (arguing that Gacaca was used to "bolster[] the current Rwandan government's framing of the genocide as a singular event legitimating its authoritarian rule.")

²³⁸ For a review of the ways in which the universality debate in human rights can inform dilemmas of the global and the local that arise in the transitional justice context, see generally Lieselotte Viaene and Eva Brems, "Transitional Justice and Cultural Contexts: Learning from the Universality Debate," *Netherlands Quarterly of Human Rights* 28 (2010): 199; see also Alexander Betts, "Should Approaches to Post-conflict Justice and Reconciliation be Determined Globally, Nationally, or Locally?," *European Journal of Development Research* 17 (2005): 740-44 (discussing the ways in which the universalism-versus-relativism debate played out in post-genocide Rwanda).

²³⁹ It is important to note that not all attempts to integrate local or "traditional" approaches to post-conflict justice and reconciliation have been as controversial as Gacaca. These efforts have not typically substituted for trials and truth commissions, but have served as an important complement to them. For example, in East Timor's Community Reconciliation Process, reconciliation between perpetrators and former combatants with members of their estranged communities was facilitated by drawing upon elements of local ritual, arbitration, and mediation practice. See generally Patrick Burgess, "A New Approach to Restorative Justice – East Timor's Community Reconciliation Process," in *Transitional Justice in the Twenty-first Century*, eds. Roht-Arriaza and Mariezcurrena, 176-205. In Sierra Leone, the formal, state-sanctioned truth commission incorporated aspects of local ritual into its work. See generally Kelsall, "Truth, Lies, Ritual." The non-governmental organization Fambul Tok ("Family Talk" in the Krio language) has also worked to facilitate a context-specific response to reconciliation. See generally Park, "Community-Based Restorative Transitional Justice." All of these efforts have been marked by significant elements of global-local hybridity.

As noted in the area of hybrid courts, practices of genuine global-local hybridity hold promise, yet have not been adequately tested in practice, suggesting the need for further innovation.²⁴⁰ For all of their promise, however, future experiments in alternative or hybridized justice and reconciliation are unlikely to involve easy compromise or simple solutions to the dilemmas of the global and the local. Better global-local balance requires a give and take on *both* “sides,”²⁴¹ something that goes well beyond the lip service paid to tokenistic concepts of local ownership today.²⁴² Moving beyond superficial concepts of local ownership will necessarily entail a fundamental re-consideration of the primacy of Western approaches to mass atrocity.²⁴³ Thus, reimagining the foreclosed possibilities will require more than a simple call to place greater emphasis on the local or non-Western,²⁴⁴ requiring instead a more fundamental re-consideration of what it means to

²⁴⁰ The concept of hybridity has been offered in the broader context of peacebuilding as one way to begin to move beyond simple global-local debates and to better capture the complexity of the relationships between the many actors involved. See generally Roger Mac Ginty, *International Peacebuilding and Local Resistance. Rethinking Peace and Conflict* (New York: Palgrave MacMillan, 2011). Hybridized forms of peacebuilding that involve a mixture of conventional and local practices and models are also offered as one way to begin to move beyond the confines of liberal international peacebuilding. See Edward Newman et al, “Introduction,” in *New Perspectives on Liberal Peacebuilding*, eds. Edward Newman et al (United Nations University, 2009), 16. In addition to being a useful analytical tool, in some cases the concept is portrayed as “a desirable political project[] that could stimulate alternatives and counter what is perceived to be hegemonic, externally driven liberal programming.” Peterson, “A Conceptual Unpackaging of Hybridity,” 7. For the application of a hybridity lens to post-conflict justice more specifically, see generally, Chandra Lekha Sriram, “Post-Conflict Justice and Hybridity in Peacebuilding: Resistance or Cooptation,” in *Hybrid Forms of Peace*, eds. Richmond and Mitchell.

²⁴¹ Existing UN doctrine does not really allow for this. In a landmark 2004 report on transitional justice, for example, former Secretary General Kofi Annan notes that “due regard must be given to indigenous and informal traditions” yet suggests in the same sentence that “due regard” will only be extended insofar as there is “conformity” with international standards. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (2004), ¶¶ 16-17, 36. As I suggest below, space must be made for a substantial “margin of appreciation.”

²⁴² See Lundy and McGovern, “Whose Justice?,” 279 (noting that “[d]espite being identified as key issues in international reports and development circles for years, the virtues of local ownership, empowerment, and participatory approaches have tended only to be implemented in a vague, weak, and ad hoc manner.”)

²⁴³ See Weinstein et al, “Stay the Hand of Justice,” 35 (noting that “there has been little room for consideration of broader or alternative approaches, especially those that might emerge out of different or non-western conceptions of justice.”)

²⁴⁴ See Moses Chrispus Okello, “Afterword: Elevating Transitional Local Justice,” 277 (noting that a call for greater weight to be placed on the local “does not in itself represent a shift in the underlying assumptions of the field—at most, it is a shift in emphasis.”)

do “justice” in times of transition.²⁴⁵ After all, it would be all too easy for mainstream transitional justice programs and professionals to embrace the local to the extent that it resonates with and resembles Western norms and institutions, using the trappings of the local in an attempt to boost legitimacy and buy-in to a larger set of projects.²⁴⁶ Yet this would represent at best a form of co-option, a leveraging of the local only insofar as it stands in conformity with the global.

In the end, giving more than rhetorical weight to principles of local ownership in matters of post-conflict justice will require a significant “margin of appreciation”²⁴⁷ and acceptance of an at-times uncomfortable pluralism²⁴⁸—forcing us to stand on that tenuous yet inevitable middle ground between universalism and relativism.²⁴⁹ However, striking a global-local balance also means that one particular local will at times have to give way to a larger local.²⁵⁰ This reflects the simple recognition that neither global nor local dimensions of justice holds a monopoly on emancipatory projects, possibilities, and wisdom.

E. Conclusion

Dilemmas of the global and the local are now firmly entwined in transitional justice narratives, sticky strands that we can neither remove nor let go. Those dilemmas call on

²⁴⁵ See An-Na'im, “Editorial Note,” 197 (observing that the dominant transitional justice paradigms are so strong that “even the possibility of an indigenous alternative conception of justice is not taken seriously at a theoretical or empirical level.”)

²⁴⁶ See Erin Baines, “Spirits and Social Reconstruction,” 411-12, 414-15.

²⁴⁷ See Viaene and Brems, “Transitional Justice and Cultural Contexts,” 210 (reviewing the margin of appreciation doctrine that has developed under the European Convention on Human Rights).

²⁴⁸ On the complexities of legal pluralism in international law more broadly, see generally Brian Tamanha, “Understanding Legal Pluralism: Past to Present, Local to Global,” *Sydney Law Review* 30 (2008): 375.

²⁴⁹ Using different terminology, scholars from a range of disciplines have made attempts to carve out a position between strong universalism and strong relativism. See, e.g., Paul Healy, “Human Rights and Intercultural Relations,” *Philosophical and Social Criticism* 32 (2006): 513 (arguing for a middle ground between ethnocentric universalism and radical cultural relativism); Gérard Cohen-Jonathan, “Universalité et Singularité des Droits de l'Homme,” *Revue Trimestrielle des Droits de l'Homme* 53 (2003): 11 (discussing a “pluralist” conception of human rights); Anne Hellum, “Women’s Human Rights and African Customary Laws: Between Universalism and Relativism – Individualism and Communitarianism,” in *Development and Rights; Negotiating Justice in Changing Societies*, ed. Christian Lund (New York: Frank Cass, 1999), 96 (using the idea of “cultural pluralism” to create a space between universalism and relativism); Ronald Cohen, “Human Rights and Cultural Relativism: The Need for A New Approach,” *American Anthropologist* 91, no. 4 (1989): 1015-16 (calling for a middle ground between “simplistic polarities of relativism versus universalism.”).

²⁵⁰ See Mazlish, “The Global and the Local,” 99 (discussing the idea of local giving way to larger local);

us to interrogate the historical and ideological origins of the field, grounded as it has been in Western liberalism and legalism, and may even point to the need to abandon paradigms of “transition” altogether.²⁵¹ While one should avoid simplistic notions of path dependency, an examination of origins remains useful in helping to identify some of the lingering assumptions and blindspots that have in part helped to generate many of the global-local frictions so often associated with transitional justice interventions today.

At one level, attempts to resolve or at least manage these dilemmas reflect a healthy pragmatism and acknowledgement that transitional justice efforts are unlikely to contribute to larger aims of post-conflict reconstruction if they are not embraced by those who have to live with them, making questions of legitimacy and sustainability paramount. Yet beyond pragmatism, increasing attention paid to concepts like local ownership may reflect a deeper ambivalence with the imperiousness of international justice and some measure of discomfort with the *sotto voce* imperialism of liberal international peacebuilding more generally.²⁵² Few Western countries or world powers, for example, would accept some of the more intrusive dimensions of international justice. At the same time, the local also inspires another sort of moral ambivalence. Global institutions now insist that the local must be given “due regard,” but wring hands over where due regard must give way to international standards and best practices.²⁵³ In the end, the dilemmas of the global and the local therefore express tensions between different normative commitments, between liberal internationalism and international human rights on the one hand, and principles of local sovereignty and autonomy on the other.

Yet if we are to do more than repeat that addressing the dilemmas of the global and local is both important and hard, we must start by questioning simple categories and narratives of global and local, coming to understand transitional justice processes instead as part of a more complicated dialectical process that moves between multiple levels. At the same time, we must carefully parse what we mean by local ownership. The normative currency of the local is now such that concepts like local ownership can be used as a legitimate shield—as a form of resistance to the hegemony of liberal international peacebuilding and a way to carve out a legitimate sphere of autonomy in matters of post-conflict justice—but also as a talisman by enterprising elites who would seek donor dollars while furthering their own partisan political agendas.²⁵⁴ Coming to understand local ownership along its multiple dimensions or axes—including control, process, and substance—might help to clarify thinking in crafting future experiments in transitional justice. Such experiments will hopefully build upon more equitable global-local partnerships, reflecting an acceptance of genuine practices of hybridity that take us beyond the self-imposed parameters of the transitional justice “toolbox.”

²⁵¹ See generally An-Na'im, “Editorial Note.”

²⁵² See Uvin, “Difficult Choices in the New Post-Conflict Agenda,” 186 (arguing that “[t]aken to its extreme, the new post-conflict agenda, then, amounts to a license for interventionism so deep and unchecked it resembles colonialism.”)

²⁵³ For an argument that so-called “best practices” tend to promote an undesirable uniformity and bias interventions towards the global rather than the local, see generally, Warren Feek, “Best of Practices?,” *Development in Practice* 17 (2007): 653.

²⁵⁴ See Iliff, “Root and Branch,” 8.

Part II: Transitional Justice and the Invisibility of the Economic

Chapter II: Addressing Economic Violence in Times of Transition¹

An increasing consensus has arisen at the level of practice, policy, and theory that the various mechanisms of transitional justice should be mobilized as part of a response to violent conflict and must serve as a pillar of postconflict peacebuilding.² More than ever, the question is not whether there will be some kind of transitional justice, but what the timing, modalities, and sequencing might be and which of the mechanisms from the transitional justice “toolbox”—including trials, truth commissions, vetting and lustration, reparations, and broader institutional reform—will be put in place. Together with demobilization, disarmament, and reintegration of ex-combatants, security sector reform, broader “rule of law” programs, and elections, transitional justice initiatives have become a routine part of the postconflict checklist.³ Viewed from an historical perspective, the emergence of this transitional justice consensus some twenty years after the term was coined is nothing short of remarkable.⁴

Despite the seeming consensus as to the necessity to “do something,” the increasingly privileged place of justice in international affairs and postconflict reconstruction begs some very important questions: *justice for what, for whom, and to what ends?*⁵ In particular, while there is increasing momentum behind the notion that the tools of transitional justice must be marshaled in response to large-scale human rights atrocities and *physical violence*—including murder, rape, torture, disappearances, and

¹ This dissertation chapter was published as a contribution to my edited volume: Dustin Sharp, ed., *Justice and Economic Violence in Transition* (New York: Springer, 2014). That contribution in turn was adapted from an article I first published in the *Fordham International Law Journal* 35, no. 3 (2012): 780-814.

² See Ruti G. Teitel, “Transitional Justice in a New Era,” *Fordham International Law Journal* 26, no. 4 (2002): 894 (noting the emergence of a “steady State” phase of transitional justice in which “the post-conflict dimension of transitional justice is moving from the exception to the norm”); see also Rosemary Nagy, “Transitional Justice as a Global Project: Critical Reflections,” *Third World Quarterly* 29, no. 2 (2008): 276 (noting the standardization of transitional justice).

³ See International Crisis Group, *Liberia and Sierra Leone: Rebuilding Failed States*, Africa Report no. 87 (Dakar/Brussels: International Crisis Group, December 2004), 9 (criticizing a mechanistic “operational checklist” approach to postconflict peacebuilding in which the international community assumes it can safely withdraw after rote implementation of a series of initiatives: deployment of peacekeeping troops, disarmament, demobilization and reintegration of ex-combatants, the repatriation and return of refugees and internally displaced persons, security sector and judicial reform, transitional justice initiatives, and, finally, a first election).

⁴ For an interesting discussion of how this seeming consensus masks a deeper politicization and debate, see generally Bronwyn Anne Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly* 30, no. 1 (2008): 95.

⁵ See Nagy, “Transitional Justice as a Global Project,” 280–86 (employing the categories of when, whom, and what in order to challenge the “standardization” of field of transitional justice). For a discussion of the idea that it may not always be the case that we need to “do something” in the transitional justice context, see Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2011), 183-205.

other crimes against humanity—the proper role of transitional justice with respect to *economic violence*—including violations of economic and social rights, corruption, and plunder of natural resources—is far less certain. Indeed, historically, economic violence and economic justice have sat at the periphery of transitional justice work.⁶ To the extent that transitional justice has dealt with economic issues, these concerns have been treated as little more than useful context in which to understand the perpetration of physical violence.⁷

In recent years, the need to address economic violence in times of transition has been the subject of increasing attention by academics, policymakers, and a handful of truth commissions, yet for the most part ignorance of economic violence continues to be one of the principle blindspots of the field of transitional justice. While the blindspots of transitional justice mirror historic divisions and hierarchies within international human rights law, they also parallel the liberal international peacebuilding consensus in which Western liberal market democracy is assumed to be the wished-for end product of postconflict reconstruction and a “package” of interventions is tailored to suit.⁸ This parallel suggests that despite some thirty years of evolution, the field of transitional justice has not moved far from its origins in which the “transition” in question was assumed to be a transition to a Western-style liberal market democracy.

As the field of transitional justice moves beyond its historic origins in the wave of democratic transitions in Eastern Europe and Latin America in the 1980s and 1990s, and away from its roots in law and legalism, to a United Nations (UN)-sanctioned global phenomena tied to peacebuilding and conflict prevention more generally, the almost exclusive emphasis on civil and political rights and justice for physical violence appears increasingly untenable. As has been noted by Zinaida Miller, such an emphasis leads to a distorted narrative of conflict premised on the notion that economics and conflict can be neatly separated.⁹ When seen through this lens, conflicts become one dimensional, when in reality they are a messy and complicated mix of political, social, economic, and cultural factors. Compounding matters, relegating economic issues to the background of transitional justice concern serves to limit and bias the range of policies imagined to be necessary in the wake of conflict. Because poverty and economic violence can be associated with the onset of conflict, exacerbated by conflict, and continue afterwards as a legacy of conflict, failure to strike a better balance between a range of justice concerns in transition is unlikely to generate policies and interventions that respond to “root

⁶ See Louise Arbour, “Economic and Social Justice for Societies in Transition,” *New York University Journal of International Law and Politics* 40, no. 1 (2007): 4 (discussing why “economic, social, and cultural rights have not traditionally been a central part of transitional justice initiatives”).

⁷ See Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *International Journal of Transitional Justice* 2, no. 3 (2008): 275-76.

⁸ See Roland Paris, “Peacebuilding and the Limits of Liberal Internationalism,” *International Security* 22, no. 2 (1997): 56; see also Chandra Lekha Sriram, “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,” *Global Society* 21, no. 4 (2007): 580-81.

⁹ See Miller, “Effects of Invisibility,” 268.

causes” and may serve to obfuscate and legitimate very serious human rights abuses.¹⁰ The language of “never again” has little meaning if the self-imposed blindspots of the field distort our understanding of the conflict and limit our range of possible solutions.

While greater inclusion of economic issues within the transitional justice agenda therefore seems necessary, it also raises difficult questions that have yet to be worked out at the level of theory, policy, and practice. For example, some would find unobjectionable the idea that transitional justice mechanisms should address accountability for egregious violations of economic and social rights that rise to the level of war crimes.¹¹ In many ways, such a narrow approach to questions of economic violence would but mirror the traditional modalities of transitional justice that have tended to focus on accountability for egregious violations of physical integrity. Yet the question arises as to whether transitional justice should also engage deeper issues of distributive justice and structural violence that predate conflict and which may have in part helped to precipitate it. If we find ourselves focusing on issues of deep-rooted structural violence, is this the proper work of the field of transitional justice, or should it be left to the work of “development” and longer-term political and social processes?¹² In sum, at what point would we be asking too much of transitional justice by suggesting that it grapple with larger and deeper dimensions of economic violence?

This chapter seeks not to answer any of these questions definitively, but argues that a more nuanced, contextualized, and balanced approach to a wider range of justice issues faced by societies in transition is necessary. To this end, this chapter proposes that one way to achieve a more balanced approach is to reconceptualize and reorient the “transition” of transitional justice not simply as a transition to democracy and the “rule of law,” the paradigm under which the field originated, but as part of a broader transition to “positive peace,” in which justice for both physical violence and economic violence receives equal pride of place.¹³ Such a reorientation would not guarantee or even

¹⁰ See Paul Collier et al., *Breaking the Conflict Trap: Civil War and Development Policy* (Washington: World Bank and Oxford University Press, 2003), 22 (arguing that civil wars are more likely in low-income countries, have disastrous effects on poverty rates, and have negative effects that persist well after formal cessation of hostilities). Collier once famously argued that over fifty percent of civil wars reignite within a period of five years of their supposed settlement. See Paul Collier and Anne Hoeffler, “On the Incidence of Civil War in Africa,” *Conflict Resolution* 46, no. 1 (2002): 17. However, both figures have been disputed by some, and revised by Collier himself. See, e.g., Astri Suhrke and Ingrid Samset, “What’s in a Figure? Estimating Recurrence of Civil War,” *International Peacekeeping* 14, no. 2 (2007): 197-98 (explaining how they and others have arrived at figures closer to twenty percent after using the Correlates of War data set, and citing Collier’s 2006 working paper, which established a twenty-three percent war recurrence rate for the first four years after the cessation of conflict).

¹¹ See Evelyn Schmid, “War Crimes Related to Violations of Economic, Social and Cultural Rights,” *Heidelberg Journal of International Law* 71, no. 3 (2011): 3, 5, 9-17.

¹² See Roger Duthie, “Transitional Justice, Development, and Economic Violence,” in this volume.

¹³ As discussed in greater detail below, the term “negative peace” refers to the absence of direct violence. It stands in contrast with the broader concept of “positive peace,” which includes the absence of both direct and indirect violence, including various forms of “structural violence” such

mandate greater emphasis on economic concerns in all cases. The notion of “positive peace” could ultimately be subjected to limiting constructions and understandings that would in effect re-impose a version of liberal international peacebuilding, and thereby exclude many economic and distributive justice issues from its purview. Nevertheless, I argue that insofar as the very idea of “positive peace” has at its core issues of structural violence, it calls upon one to attend to a broader set of concerns than has historically been considered in transitional justice practice. Reorientation around the concept could be an important step in the direction of bringing economic violence into the foreground of transitional justice practice and policy.

This chapter proceeds in three parts. The first part sets forth the traditional focus and preoccupations of transitional justice, a field which has historically been rooted in law, human rights, and the felt imperatives of a political transition to Western liberal democracy, but which is increasingly allied with broader notions of peacebuilding. The next part discusses the relationship between transitional justice and economic violence, a broad constellation of issues that have largely been excluded from transitional justice work to date. It articulates some of the arguments against inclusion of economic violence and argues that any costs are largely outweighed by the benefits. The final part examines the relationship between transitional justice and the emerging field of peacebuilding, including the critique of liberal international peacebuilding, and sets forth the heart of my argument that one way to promote greater focus on issues of economic justice in transition would be to reconceptualize the field of transitional justice as a transition to “positive peace.”

A note about terminology is in order before proceeding. In this chapter, together with others in the volume, the terms “physical violence” and “economic violence” are used as shorthand to refer to a range of phenomena. “Physical violence” refers to murder, rape, torture, disappearances, and other classic violations of civil and political rights. In contrast, “economic violence” refers to violations of economic and social rights, corruption, and plunder of natural resources. While the violence that characterizes what I call “physical violence” is often direct, “economic violence” is typically more indirect. Both terms are clearly oversimplifications. For example, not all violations of civil and political rights involve direct physical violence, and many violations of economic and social rights—hunger and starvation, for example—are arguably a form of physical violence. While most of the “physical violence” discussed in this chapter constitutes a violation of civil and political rights under international law, the concept of “economic violence” includes, but is broader than, violations of economic and social rights under international law.¹⁴ Nevertheless, as a form of shorthand, both terms constitute loose categories that are useful to a discussion of the historical emphasis and blindspots of the field of transitional justice. In addition, the conceptualization of things like corruption as a form of violence is intended to convey the very real harm and suffering that it brings to

as poverty, hunger, and other forms of social injustice. See generally Johan Galtung, “Violence, Peace, and Peace Research,” *Peace Research* 6, no. 3 (1969): 167.

¹⁴ See, e.g., chapter by Chris Albin-Lackey in this volume, which explains how corruption may in some instances be tantamount to a violation of economic and social rights under international law, while in other instances such a case may be impossible to make.

individuals and societies, akin to the devastation caused by widespread acts of physical violence.

A. The Origins and Preoccupations of Transitional Justice

Many of the practices associated with the modern field of transitional justice—trials, truth commissions, reparations schemes, and broader reform of abusive institutions—have deep historical roots.¹⁵ Nevertheless, transitional justice, as a domain of policy, practice, and academic study, has its origins in the late 1980s and early 1990s with the wave of transitions in both Eastern Europe and Latin America that followed in the wake of the end of the Cold War.¹⁶ Definitions of transitional justice vary and have evolved and broadened over time.¹⁷ Broadly speaking, “transitional justice” relates to a set of legal, political, and moral dilemmas about how to deal with past violence in societies undergoing some form of political transition.¹⁸ Arguments for the necessity of some form of transitional justice are often grounded in notions of atrocity prevention and deterrence (“never again”), nation building (building or restoring democracy and the “rule of law”), and moral necessity (just deserts).¹⁹ While the precise type of political transition to be undergone is not always made explicit, the transitional justice practice, policy, and scholarship in the 1990s largely focused on the felt necessities and dilemmas of a transition from more authoritarian forms of government to Western-style democracy, with a consequent focus on those mechanisms thought best to bring about the specific

¹⁵ For a review of the use of what have become known as the tools of transitional justice dating back to more than 2000 years ago in ancient Athens, see generally Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004). Other authors looking to the historical underpinnings of transitional justice practice identify the Nuremberg tribunal as a key juncture initiating the first “phase” of transitional justice. See Ruti G. Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16 (2003): 70.

¹⁶ See generally Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume I. General Considerations* (Washington: United States Institute of Peace, 1995). While the term “transitional justice” was coined some twenty years ago, it has been argued that transitional justice did not coalesce as a distinct “field” until sometime after 2000. See Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009): 329-32 (tracing the history of the use of the term “transitional justice”); Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field,’” *International Journal of Transitional Justice* 3 (2009): 7 (arguing that transitional justice did not emerge as a distinct field until after 2000).

¹⁷ Many of these definitions have been quite narrow and legalistic. For example, Ruti Teitel defines transitional justice as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.” Teitel, “Transitional Justice Genealogy,” 69. For a review of how some of these definitions have broadened over time, see Nagy, “Transitional Justice as a Global Project,” 277-78.

¹⁸ See Sriram, “Justice as Peace?,” 582-83.

¹⁹ See Bell, “Interdisciplinarity,” 13 (discussing the different overlapping conceptions of the field of transitional justice).

political transition in question.²⁰ As discussed in greater detail below, the notion of transition as transition to democracy was “crucial to structuring the initial conceptual boundaries for the field.”²¹

Although a number of the concerns and preoccupations of transitional justice were similar to those of the human rights community from which many early transitional justice scholars and practitioners were drawn, including particularly concerns with accountability and impunity for massive human rights violations, the field of transitional justice distinguished itself in its attempt to balance twin normative aims: the demands of justice and accountability on the one hand, and the assumed needs of a political transition on the other.²² Thus, formative debates in the field focused on the possible dilemmas and trade-offs associated with justice in times of political transition, including the so-called peace versus justice debate.²³ Influential articles by Guillermo O'Donnell and Samuel Huntington, canonized in Neil Kritz's seminal three-volume work, viewed the parameters of justice in times of transition to democracy as a function of a series of bargains between elite groups, with more or less justice available depending on the extent to which elite perpetrator groups were able to dictate the terms of the transition.²⁴

Although dealing with massive human rights violations while undergoing a political transition might arguably call for the range of expertise of a variety of professions and disciplines, including history, psychology, economics, education, and religion, to name only a few, early transitional justice advocates were largely drawn from the legal and human rights communities, and early transitional justice scholarship was primarily anchored in law and political science.²⁵ Today, the field of transitional justice is increasingly interdisciplinary, yet law, legalism, and human rights approaches to the

²⁰ See Arthur, “How ‘Transitions’ Reshaped Human Rights,” 325 (arguing that transition to democracy was the “dominant normative lens” through which political change was viewed in the early years of transitional justice practice and scholarship); see also Patricia Lundy and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35, no. 2 (2008): 273 (arguing that “[t]ransition”, as normally conceived within transitional justice theory, tends to involve a particular and limited conception of democratization and democracy based on liberal and essentially Western formulations of democracy”).

²¹ See Arthur, “How ‘Transitions’ Reshaped Human Rights,” 326.

²² *Ibid.*, 358.

²³ In recent years, transitional justice advocates have tended to see the various and sometimes contradictory goals of transitional justice as complementary. See Leebaw, “Irreconcilable Goals,” 98. The mutual complementarity of peace, justice, and democracy has also become a United Nations (“UN”) doctrine at least since the 2004 publication of a report on transitional justice. See United Nations Secretary General, “The Rule of Law and Transitional Justice in Post-conflict Societies,” UN Doc. S/2004/616 (August 23, 2004), 1 (arguing that “[j]ustice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives”).

²⁴ See Samuel P. Huntington, “The Third Wave: Democratization in the Late Twentieth Century,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume I. General Considerations*, ed. Neil Kritz (Washington: United States Institute of Peace, 1995), 65-81; Guillermo O'Donnell and Philippe Schmitter, “Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies,” in Kritz, *Transitional Justice*, 57-64.

²⁵ See Arthur, “How ‘Transitions’ Reshaped Human Rights,” 333.

questions and dilemmas of transition continue to dominate in many ways, leading to a continued critique of the “narrowness” or “thinness” of traditional transitional justice work and calls to give greater attention to those issues often set in the background of legal and human rights discourse, including religion, culture, economics, and local tradition.²⁶

Since the birth of the field in the 1980s and 1990s, the more overt preoccupation with transition as transition to democracy has receded. Increasingly, transitional justice is associated with nation building and peacebuilding in the postconflict context more generally.²⁷ Once considered a jurisprudence of exception and deviation from rule of law standards in times of political transition, transitional justice has been normalized, institutionalized, and mainstreamed.²⁸ In attempting to trace “three generations” of transitional justice, starting with Nuremburg and moving into the present, Ruti Teitel refers to this latest phase as “steady-state” transitional justice in which the postconflict dimension of transitional justice is moving from the exception to the norm.²⁹ The “transition” in transitional justice today is “ostensibly neutral” and the goals promoted, including conflict resolution and the rule of law, are less explicitly political.³⁰ Other more recent and influential definitions of transitional justice make little use of the concepts of “transition” at all, rooting the field instead in the promotion of a number of goals, including accountability and reconciliation.³¹

²⁶ See Kora Andrieu, “Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm,” *Security Dialogue* 41, no. 5 (2010): 541 (noting the “strong and persistent influence of legalism on transitional justice”); Bell, “Interdisciplinary,” 9 (discussing the broadening of the field to include disciplines beyond law); Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34, no. 4 (2007): 417 (criticizing the legalistic penchant of transitional justice and arguing that “legalism tends to foreclose questions from other complementary disciplines and perspectives which transitional lawyers should be both asking and asked”). See generally Wendy Lambourne, “Transitional Justice and Peacebuilding After Mass Violence,” *International Journal of Transitional Justice* 3, no. 1 (2009): 28 (calling for a revalorization of local and cultural approaches to justice and reconciliation).

²⁷ Chandra Sriram, Olga Martin-Ortega, Johanna Herman, “Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice,” JAD-PbP Working Paper Series No 1. (May 2009), 13 (discussing increasing linkages between transitional justice and a broader set of peacebuilding activities).

²⁸ McEvoy, “Beyond Legalism,” 412. For an argument that the “dilemmas” of transitional justice are not exceptional, but in fact resemble those of “ordinary justice,” see generally Eric A. Posner and Adrian Vermeule, “Transitional Justice as Ordinary Justice,” *Harvard Law Review* 117, no. 3 (2003): 761.

²⁹ See Teitel, “Transitional Justice in a New Era,” 894; Teitel, “Transitional Justice Genealogy,” 89-92.

³⁰ Leebaw, “Irreconcilable Goals,” 103, 106.

³¹ For example, according to a landmark UN report, transitional justice “comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking,

The most iconic mechanisms associated with transitional justice continue to be prosecutions and truth commissions.³² Beyond this, however, the field has broadened a great deal since the early 1990s to include a range of mechanisms and practices designed to encourage reconciliation and forms of accountability far short of a prison sentence. Thus, fostering community-level dialogue between former perpetrators and survivors of human rights abuses and the construction of public memorials to preserve memory of the conflict are as much a part of transitional justice as a prosecution before a war crimes tribunal. Despite new and innovative practices around the margins, however, “steady state” transitional justice is persistently criticized for being “top-down” and “one-size-fits-all,” rote application of a mere template to contexts and situations to which it is perhaps ill-suited.³³ It is perhaps to be expected that as transitional justice becomes mainstream, scholars and practitioners attempt to deconstruct the assumptions, constructed boundaries, limitations, and blindspots implicit in the template.³⁴

After several decades of evolution, transitional justice practice and policy is today stitched together from strands of overlapping and at times competing narratives. It is, at various times, a battle against impunity rooted in human rights discourse, a set of conflict resolutions techniques related to the formation of a new social and political compact in the wake of conflict, and a tool for international intervention and state building.³⁵ The multiplicity of narratives suggests an open-textured project subject to contest and reconceptualization. At the same time, many transitional justice narratives share a common denominator of being firmly grounded in neutral, technical, and apolitical vocabularies of human rights and the rule of law that have the potential to obscure the politics of the transitional justice project itself.³⁶ The decision to use the mechanisms associated with the transitional justice template—prosecutions, truth commissions, vetting and lustration, reform of abusive security institutions—and not other mechanisms, just like the decision to focus on abuses of civil and political rights and not economic and social rights is itself a political choice with important policy consequences that have implications for distributive justice in the postconflict context. The next Part explores the relationship between transitional justice and “economic violence,” a category that subsumes a wide range of issues rarely brought to the core of transitional justice work.

institutional reform, vetting and dismissals, or a combination thereof.” See United Nations Secretary-General, “The Rule of Law and Transitional Justice,” ¶ 8.

³² See Ruben Carranza, “Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?,” *International Journal of Transitional Justice* 2, no. 3 (2008): 315.

³³ See, e.g., Lundy and McGovern, “Whose Justice?,” 271 (criticizing the “one-size-fits-all” and “top-down” approaches to transitional justice).

³⁴ See Dustin Sharp, “Interrogating the Peripheries; The Preoccupations of Fourth Generation Transitional Justice,” *Harvard Human Rights Journal* 26 (forthcoming, 2013).

³⁵ Bell, “Interdisciplinarity,” 13-15.

³⁶ McEvoy, “Beyond Legalism,” 420-21 (positing that “a crude characterization of human rights in contemporary transitional justice discourses would suggest that human rights talk lends itself to a ‘Western-centric’ and top-down focus; it self-presents (at least) as apolitical; [and] it includes a capacity to disconnect from the real political and social world of transition through a process of ‘magical legalism’”).

B. Transitional Justice and Economic Violence

As the Cold War recedes in time, conflicts across the globe are increasingly intrastate in nature, less fueled by a grand global ideological battle than by local struggles for resources and control of government.³⁷ The majority of these conflicts now take place in some of the poorest countries on earth. As the reports of media, human rights, and conflict resolution organizations vividly illustrate, societies emerging from civil war and other forms of conflict are often completely devastated: civilians have been killed and traumatized; critical infrastructure—from roads and the electric grid to schools and hospitals—has been destroyed; and key institutions of governance have been hollowed out by years of conflict, corruption, and mismanagement. Despite the best efforts of local and international communities to build peace in the wake of conflict, a significant number of these conflicts will reignite in the years following their apparent settlement.³⁸

Transitional justice and international prosecutions are, of course, global phenomena. Nevertheless, for a number of reasons, both political and economic, it seems likely that much of their application in the coming years will be in the poorer countries of the global south, particularly sub-Saharan Africa.³⁹ The causes of the conflicts that lead to calls for the application of transitional justice are multiple and complex, the full extent of which is beyond the scope of this chapter. While poverty and economic violence are only pieces of this larger conflict resolution puzzle, they remain important ones, central to conflict dynamics in many countries.⁴⁰ It is against this backdrop of poverty and the persistent failure to resolve violent conflict in so many parts of the world that greater engagement with questions of economic violence by transitional justice institutions should be considered today.

³⁷ This is not to minimize the legacies of colonialism and Cold War politics, or the role of the modern-day scramble for resources in shaping many conflicts in the developing world. Indeed, there has been a persistent failure of transitional justice mechanisms to account for the effects of “outside actors” on the course of conflict. See Hayner, *Unspeakable Truths*, 75–77. There are exceptions to this trend, however, including the work of truth commissions in Chad, Chile, El Salvador, and Guatemala.

³⁸ Paul Collier et al., *Breaking the Conflict Trap*, 155.

³⁹ Indeed, the sheer number of indictments emanating from the International Criminal Court involving African countries has generated significant controversy on the continent, leading in part to an African Union vote to halt cooperation with the Court with respect to the indictment of Sudan’s Omar al-Bashir. See BBC News, “African Union in Rift with Court,” July 3, 2009, <http://news.bbc.co.uk/2/hi/africa/8133925.stm>. Although countries such as China, Israel, Russia, and the United States also would likely benefit from the application of transitional justice practices, great-power politics and Security Council vetoes continue to make this appear less likely than in the smaller, poorer countries of the world.

⁴⁰ See Paul Collier et al., *Breaking the Conflict Trap*, 20–31, 53 (arguing that civil wars are more likely in low-income countries, have disastrous effects on poverty rates, and cause negative effects which persist well after formal cessation of hostilities).

i. *Economic Violence in Transitional Justice Practice*

Violent conflict devastates both lives and livelihoods, yet ways of understanding what constitutes “violence” and who counts as a “victim” vary a great deal. From the trials at Nuremburg to the international tribunals for the former Yugoslavia and Rwanda, to truth commissions in South Africa and elsewhere, the conception of violence implicit in most transitional justice initiatives has been an exceedingly narrow one. The overwhelming focus of most transitional justice interventions across time has been on accountability for physical violence—murder, rape, torture, disappearances—and violations of civil and political rights more generally.⁴¹ A broader conception of violence that would encompass often equally devastating forms of “economic violence”—including violations of economic and social rights, endemic corruption, and large-scale looting of natural resources such as oil, diamonds, and timber—has been largely absent.

To take a famous example, under the South African Truth and Reconciliation Commission (“TRC”) Act, the category of “victim” is limited to individuals who suffered gross violations of human rights, including killing, abduction, torture, or ill-treatment.⁴² The social, economic, and political system of apartheid, in many ways the very embodiment of the concept of structural violence, was largely treated as context to instances of egregious bodily harm that became the TRC’s principal focus. When viewed through this lens, the quotidian violence of poverty and racism, and the victims and beneficiaries of the apartheid system itself, receded into the background.⁴³ As we approach two decades since the end of white rule in South Africa, apartheid has ended, but the de facto economic and social status quo has not changed to the degree many would have hoped. Poverty, inequality, and crime remain high.⁴⁴ Although transitional justice has addressed horrific forms of violence in South Africa that took place under the apartheid system, it may have also had the perverse effect of obfuscating and legitimating other abuses of power, leaving many of those who benefitted most from the apartheid economic system comfortable in the status quo.

The “constructed invisibility” of economic concerns can have serious long-term effects, both in terms of our understanding of conflict itself and in terms of the remedies thought necessary to prevent recurrence.⁴⁵ As Zinaida Miller argues, pushing economic issues to the periphery of transitional justice concerns helps to shape a distorted and one-dimensional narrative of conflict in which economics and conflict can be neatly separated.⁴⁶ At best, economic issues become part of the context, helping to explain

⁴¹ See Nagy, “Transitional Justice as a Global Project,” 284.

⁴² See Pablo de Greiff, “Repairing the Past: Compensation for Victims of Human Rights Violations,” in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 8.

⁴³ See Nagy, “Transitional Justice as a Global Project,” 284 (discussing the standardization of transitional justice).

⁴⁴ See Patrick Bond, “Reconciliation and Economic Reaction: Flaws in South Africa’s Elite Transition,” *International Affairs* 60, no. 1 (2006): 141.

⁴⁵ See Miller, “Effects of Invisibility,” 280-87.

⁴⁶ *Ibid.*, 268.

why the physical violence that is the focus of a truth commission's work may have occurred, but are of little further policy relevance. At worst, a truth commission's work may be almost completely decontextualized, presenting a diagnosis of human rights violations that is abstracted from reality and the dynamics of social power and conflict.⁴⁷

If the dynamics that produced massive human rights violations are poorly understood, creating a distorted narrative of conflict that relegates economic issues to the background, this may in turn limit and bias the range of policies imagined to be necessary in the wake of conflict. When conflicts are viewed through a one-dimensional lens, prevention of human rights abuses becomes a simplistic function of punishment and impunity. At the same time, the emphasis on physical violence and violations of civil and political rights more generally likely means that the issues of economic violence and inequality that may have in part helped to generate the conflict will go unaddressed by the various mechanisms of transitional justice. Thus, we are more likely to see a focus on prosecution of a handful of members of abusive security services, vetting and dismissals, and perhaps more general judicial and security sector reform rather than things like affirmative action, redistributive taxation, or land-tenure reform.⁴⁸

Even where the mechanisms of transitional justice have looked to economic violence as part of their work, the human toll of economic violence rarely receives equal treatment when it comes to the recommendations and policies that are articulated as part of the work of prevention and follow-up. For example, the Commission for Reception, Truth, and Reconciliation in East Timor actually documented violations of economic and social rights in some depth, yet when it came time to decide who was a "victim" for purposes of receiving reparations, the definition was limited to victims of violations of civil and political rights.⁴⁹ Whether justified under the banner of resource constraints or not, such practices have the effect of promoting hierarchies of rights and granting de facto impunity to the architects and authors of economic violence.

Where transitional justice mechanisms do grapple with the economic impacts of conflict and abusive governments, they rarely do so using a human rights paradigm, even though many of the abuses in question may constitute violations of international law.⁵⁰ Lisa Laplante, for example, explores how truth commissions in Guatemala and

⁴⁷ Lisa Laplante, "Transitional Justice and Peacebuilding: Diagnosing and Addressing the Socioeconomic Roots of Violence Through a Human Rights Framework," *International Journal of Transitional Justice* 2, no. 3 (2008): 337.

⁴⁸ See Arthur, "How 'Transitions' Reshaped Human Rights," 362.

⁴⁹ See Commission for Reception, Truth and Reconciliation in Timor Leste (CAVR), *Chega!, The Report of the Commission for Reception, Truth and Reconciliation in Timor Leste, Final Report* (2005), 40-41, 140-45.

⁵⁰ Beyond the International Covenant on Economic, Social and Cultural Rights, economic, social, and cultural rights have the status of binding law in a number of international human rights treaties. Examples include the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; the European Social Charter; and the African Charter on Human and Peoples Rights.

Peru exposed decades of structural violence and other socioeconomic injustices as one of the causes of wars in their countries, but did not frame their analysis or recommendations in terms of violations of economic and social rights.⁵¹ While the work of these truth commissions is important in that it can help provide “a causal connection between violence and structural inequalities,” Laplante argues that the failure to help different constituencies understand that in many instances economic violence also constitutes a violation of economic and social rights deprived “national groups a powerful lobbying tool to challenge the government’s inaction or resistance.”⁵² Without rights-based scaffolding, subsequent development programs and other initiatives targeting inequality then become mere charity or government largesse rather than responses to concrete violations of international human rights law to which individuals are entitled. By framing instances of physical violence in terms of violations of rights, yet failing to do the same with respect to violations of economic and social rights, this approach further contributes to the conception that economic and social rights are not “real rights,” but mere aspirations.

ii. Understanding the Marginalization of Economic Violence in Transition

From the potential for deterrence inherent in criminal prosecutions to the cries of “never again,” transitional justice has long been rooted in the rhetoric of the prevention of future abuses. Given the potential to misdiagnose the causes of conflict and bias the necessary remedies, understanding why an entire subset of issues so central to conflict dynamics has historically been so far from the core of transitional justice work and preoccupation is no easy task. While the factors underpinning historically narrow approaches to questions of justice in transition are many, there are at least two factors that are central to understanding the marginalization of economic violence in transitional justice work: (1) an importation of implicit distinctions and hierarchies from mainstream human rights discourse and practice, and (2) the consequences of viewing transitional justice as a transition to a Western-style democracy rather than a transition to positive peace.

International human rights discourse and practice self-consciously wraps itself in an aura of impartiality and universality. It is part of an ostensibly apolitical project, and the rights contained in the core international covenants relating to both civil and political as well as economic and social rights are repeatedly said to be “indivisible,” as per the UN mantra.⁵³ In practice, the seeming consensus regarding universality and indivisibility masks a series of deep and abiding controversies and debates relating to the proper

⁵¹ See Laplante, “Transitional Justice and Peacebuilding,” 335; see also Lisa J. Laplante, “On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development,” *Yale Human Rights and Development Law Journal* 10 (2007): 148, 159-61 (providing a more detailed analysis of the work of the Peruvian truth commission).

⁵² Laplante, “Transitional Justice and Peacebuilding,” 350.

⁵³ See World Conference on Human Rights, June 14–25, 1993, “Vienna Declaration and Programme of Action,” UN Doc. A/CONF.157/23, July 12, 1993; see also United Nations General Assembly, Resolution 55/2, “Millennium Declaration,” UN Doc A/RES/55/ 2, Sept. 18, 2000.

place of economic and social rights under international law. The Cold War roots of this debate, which split the atom of the Universal Declaration of Human Rights into two separate covenants to be championed by competing world powers are well known and will not be rehearsed here in detail.⁵⁴ Key for current purposes is the fact that the ripple effects of the implied hierarchical distinction between so-called “first generation” and “second generation” rights continue to be felt many years after the Cold War’s end.

During much of the 1990s, the “formative years” for the field of transitional justice, even the world’s largest human rights organizations, Amnesty International and Human Rights Watch, were slow to include documentation of violations of economic and social rights in their work and did so only gradually. Although some of this reluctance has been attributed to “methodological difficulties,” it is also true that a number of high-profile activists of the time, including Aryeh Neier, were publically skeptical as to whether economic and social rights were “real,” and staunchly believed that civil and political rights should be the exclusive focus of human rights organizations such as Human Rights Watch.⁵⁵ One might add that the historic ambivalence towards economic and social rights within the human rights community mirrors a similar ambivalence within mainstream justice and criminal law about social justice more generally.⁵⁶ It is perhaps not surprising, therefore, that many of the lawyers drawn into the early human rights movement may have brought this ambivalence with them. As previously discussed, many transitional justice scholars and advocates were drawn from the human rights community of this period.⁵⁷

While the implicit hierarchies of rights created by decades of human rights practice are only slowly starting to unravel,⁵⁸ the backgrounding and foregrounding of

⁵⁴ See Arbour, “Economic and Social Justice,” 6 (discussing the Cold War roots of the current status of economic and social rights).

⁵⁵ See Kenneth Roth, “Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization,” *Human Rights Quarterly* 26, no. 1 (2004): 64 (explaining the particular methodological challenges associated with trying to apply a “naming and shaming” documentation strategy to violations of economic and social rights); See generally Curt Goering, “Amnesty International and Economic, Social, and Cultural Rights,” in *Ethics in Action: The Ethical Challenges of International Human Rights Nongovernmental Organizations*, eds. Daniel Bell and Jean-Marc Coicaud (Cambridge: Cambridge University Press, 2006).

⁵⁶ See Arbour, *supra* note 5, at 5.

⁵⁷ See Arthur, “How ‘Transitions’ Reshaped Human Rights,” 333.

⁵⁸ Human Rights Watch, for example, has in recent years published a number of reports looking at the linkages between natural resources, corruption, and violations of economic and social rights. See, e.g., Human Rights Watch, *Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria*, vol. 19, no. 2(A) (New York: Human Rights Watch, January 2007), 15-18, 40-53 (contending that the local government in Rivers State, Nigeria, has violated its duty to progressively realize rights to health and education through widespread and flagrant corruption and mismanagement of oil revenues); Human Rights Watch, *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights*, vol. 16, no. 1(A) (New York: Human Rights Watch, January 2004), 57-59 (arguing that, due at least in part to mismanagement and corruption, the government of Angola has impeded Angolans’ ability to enjoy their economic, social, and cultural

economic and social rights and civil and political rights in many ways mirror broader trends in human rights discourse and practice, which were also imported into transitional justice work. The following chart summarizes the various historic dichotomies and oppositions that have been broadly reflected in both human rights discourse and practice and in transitional justice policy and practice.⁵⁹

Set in the Foreground	Set in the Background
civil and political rights	economic and social rights
the public	the private
the state, the individual	the community, group, corporation
the legal	the political
the secular	the religious
the international	the local
the modern	the traditional
form, process, participation, procedure	substance
formal, institutional enforcement	informal, cultural, social enforcement

Critical literature in both transitional justice and human rights has attempted to bring elements of the background into the foreground of thinking and policy. Thus, one persistent trope in the critique of mainstream transitional justice is the need to re-emphasize local rather than international agency, and local cultural traditions of justice and reconciliation rather than Western and international approaches.⁶⁰ Similarly, there is a critique of the more technocratic and legalistic bent of mainstream transitional justice, and an effort to underscore the importance of considering local political contexts as well as the political and distributional consequences of certain approaches.⁶¹ In this way, one

rights, including healthcare and education, in violation of the government's own commitments and human rights treaties to which it is a party). This is in stark contrast to their work in the previous decade when violations of economic and social rights would only be examined to the extent that they were associated with violations of civil and political rights such as racial or gender-based discrimination.

⁵⁹ While in some ways a gross oversimplification, the implicit politics of human rights discourse and practice that is embedded in these oppositions has long been the subject of criticism. See, e.g., David Kennedy, "The International Human Rights Movement: Part of the Problem?," *Harvard Human Rights Journal* 15 (2002): 109-10 (discussing the foregrounding and backgrounding of human rights discourse); Makau Wa Mutua, "The Ideology of Human Rights," *Virginia Journal of International Law* 36, no. 3 (1996) 604-07 (criticizing the peripheral nature of economic and social rights and local and traditional approaches to justice under the mainstream Western approach to human rights thinking and practice).

⁶⁰ For a review of some of the debates regarding the incorporation of local justice mechanisms into transitional justice initiatives, see generally Roger Duthie, "Local Justice and Reintegration Processes as Complements to Transitional Justice and DDR," in *Disarming the Past: Transitional Justice and Ex-Combatants*, eds. Ana Cutter Patel, Pablo de Greiff, and Lars Waldorf (New York: Social Science Research Council, 2009), 228.

⁶¹ See, e.g., Lundy and McGovern, "Whose Justice?," 273-74; McEvoy, "Beyond Legalism," 417-18.

might situate the emerging critique of the “constructed invisibility” of economic concerns within transitional justice as part of a wider project of resistance to mainstream transitional justice.⁶²

Beyond importation of implicit hierarchies from human rights discourse and practice, the second factor key to understanding the peripheral status of economic violence in the transitional justice agenda is found in the notion of transition itself. The idea of transition suggests a journey from a starting point towards an unspecified destination. It suggests a period of exception, of time-bounded rupture. While the exact duration of the transition in question is never made explicit, the very notion of transition might have the tendency to narrow one’s temporal focus to a relatively brief period of the most egregious abuses, excluding the potentially deep and complex socioeconomic roots of conflict, and to suggest measures that are themselves narrowly time limited. Thus, transitional justice institutions are more likely to view human rights abuses—torture, for example—as functions of the excesses of certain segments of the security sector or possibly on the orders of higher-level government officials in an attempt to cling to power, and not as deeper expressions of racism, rampant inequality, historic deprivations, or other issues of structural violence.

Because transition can also suggest a particular destination, it may dictate in part the exceptional measures necessary to reach the intended goal. Not only does the diagnosis affect the prescribed remedy, but our very notion of what it means to be healthy also helps determine the course or treatment. Thus, Paige Arthur queries, how might the transitional justice “toolbox” look different if the paradigmatic transitions in the 1990s were considered to be transitions to socialism rather than transitions to democracy, and largely Western forms of democracy at that?⁶³ Might there have been a greater emphasis on issues of distributive justice, including the need for progressive taxation in countries experiencing radical inequality, land-tenure reform in countries where land-based conflict has been a driver of violence, and affirmative action in countries with historically-marginalized classes? While one can only speculate, what can be said is that the notion of transition as transition to liberal Western democracy surely had a limiting and narrowing effect on the “toolbox” that exists today.

iii. Potential Objections to Greater Focus on Economic Violence in Transition

Putting these historical constructions and limitations aside, even while greater emphasis on issues of economic violence within the transitional justice agenda seems necessary, striking a better balance between physical and economic violence also raises difficult questions that have yet to be worked out at the levels of theory, policy, and practice. For example, while some would find unobjectionable the idea that transitional justice mechanisms should include in their ambit economic and social rights violations that took place during the conflict itself—a group of rebels stealing food from a village, for

⁶² For a much more detailed exploration of this point, see Dustin Sharp, “Interrogating the Peripheries.”

⁶³ See Arthur, “How ‘Transitions’ Reshaped Human Rights,” 359.

example, in violation of the laws of war, or a warlord who sold off diamonds and timber to buy weapons—should we also include broader distributive justice and structural violence issues that predate the conflict, and which may have, in part, helped to precipitate it?

We might characterize these two approaches as broad and narrow means of addressing economic violence in the transitional justice context. Taking a relatively narrow approach and looking only at the economic violence perpetrated during the conflict itself might prove to be relatively uncontroversial. Suppose, however, that in a given country there is an attempt during a transitional period to address some of the deeper legacies of abusive systems of governance, such as income inequality, the need for deeply redistributive taxation, and wide-scale land-tenure reform. Such was arguably the case in South Africa at the end of apartheid, yet it is also recognized that leaving the economic status quo largely intact was one of the “bargains” struck and the price paid for a bloodless transition.⁶⁴ While some have argued that addressing economic legacies of conflict in transition might in fact enlist more support from the general population and therefore be even more feasible than seeking accountability for violations of civil and political rights, this does not account for the role of elites.⁶⁵ A group of elites might be willing to see a handful of army officers or warlords prosecuted, but attempting radical revision of the political and economic status quo that has existed for decades might be another story. In the end, many transitions depend in some measure on the “buy-in,” or at least on the lack of resistance on the part of elite constituencies. Thus, relatively robust or broad approaches to addressing historical economic violence might create the possibility of backlash, re-animating the “peace versus justice” debate along economic lines.

While more thinking and research would be needed to predict the potential for backlash based on configurations of elites and their role in the transition itself, it should be noted that the risk of a hostile and possibly even violent response is not a dilemma unique to addressing economic violence in transition. Indeed, much has already been said about how the parameters of transition justice may be shaped by the extent to which elites and perpetrator groups dictate the terms of the transition.⁶⁶ One might note, however, that in those few instances where truth commissions have made recommendations related to addressing socioeconomic inequalities, those recommendations tend to be ignored by policy makers.⁶⁷ This may be a more likely outcome than backlash, though if framed properly, such recommendations might

⁶⁴ See Bell, “Interdisciplinarity,” 14.

⁶⁵ See Roger Duthie, “Toward a Development-Sensitive Approach to Transitional Justice,” *International Journal of Transitional Justice* 2, no. 3 (2008): 307.

⁶⁶ See, e.g., Huntington, “The Third Wave,” 65-81; O’Donnell and Schmitter, “Transitions from Authoritarian Rule,” 57-64.

⁶⁷ See, e.g., Laplante, “Transitional Justice and Peacebuilding,” 350 (discussing how the Guatemalan government largely ignored key recommendations of the Guatemalan Commission on Historical Clarification, including a progressive tax system and increased state spending on human necessities).

nevertheless serve as a strong lobbying platform for civil society actors who wish to press for reforms.⁶⁸

Beyond the potential for backlash, one of the most frequently noted objections relates to the additional cost and complexity that would stem from an expansion of the mandates of transitional justice mechanisms to include economic violence.⁶⁹ It is a fact widely noted that the costs of even a narrow approach to transitional justice, particularly prosecutions, can be enormous, especially at a time when most governments, reeling from the effects of conflict, have little money to spare.⁷⁰ Compounding the cost issue is the risk of expanding the mandate of truth commissions and other transitional justice mechanisms so broadly that it will be nearly impossible to fulfill in the limited time typically allotted.⁷¹ It would seem sensible to question whether this is really the context for trying to grapple with “broad-based development or distributive justice policies that aim to redress widespread violations of the economic and social rights of poor citizens.”⁷² But while the cost and time issues are far from specious, it should be noted that many transitional justice mechanisms are already funded in part by outside actors.⁷³ It is quite possible that measures to address economic violence in the transitional justice context would find support from complementary constituencies, particularly insofar as they touch upon questions of national economic development. Some have also argued that attempting to recoup money lost to economic violence in the form of embezzlement and corruption could be one way to help fund transitional justice initiatives focusing on economic issues.⁷⁴

There are also broader concerns associated with the dilution of the transitional justice enterprise.⁷⁵ If one were to take a robust or broad approach to legacies of economic violence in times of transition, shifting the paradigm from transition to what some have called “transformation,” at what point does this better suit the work and expertise of traditional economic development actors and longer-term political and social processes?⁷⁶ Seeking accountability for violations of physical integrity alone has been a monumental task, but over several decades, this work has made an impact on the

⁶⁸ *Ibid.*, 333-34, 350.

⁶⁹ See Rama Mani, “Dilemmas of Expanding Transitional Justice, or Forging the Nexus Between Transitional Justice and Development,” *International Journal of Transitional Justice* 2, no. 3 (2008): 256 (discussing the problems with the high cost of transitional justice measures in development).

⁷⁰ *Ibid.*

⁷¹ See Duthie, “Toward a Development-Sensitive Approach,” 306-07.

⁷² *Ibid.*, 299.

⁷³ *Ibid.*, 302-03.

⁷⁴ See Carranza, “Plunder and Pain,” 324-25.

⁷⁵ For a powerful articulation of some of these concerns, see generally Lars Waldorf, “Anticipating the Past: Transitional Justice and Socio-Economic Wrongs,” *Social and Legal Studies* 21 (2012): 171-86.

⁷⁶ See Lambourne, “Transitional Justice and Peacebuilding,” 46 (advocating a “transformative” justice model of transitional justice); see also Laplante, “Transitional Justice and Peacebuilding,” 332 (arguing that truth commissions might contribute to longer-term processes of political and economic transformation).

normative and institutional global landscape.⁷⁷ That is no small achievement, and trying to do too much could risk even the modest change that has been achieved. As Naomi Roht-Arriaza has argued, “broadening the scope of what we mean by transitional justice to encompass the building of a just as well as peaceful society may make the effort so broad as to become meaningless.”⁷⁸

While concerns that transitional justice efforts may become too diffuse are entirely legitimate and need to be taken seriously, ignoring a significant portion of the drivers of conflict and resulting violations of international law carries its own risks. There will always be a risk of trying to do too much, risking the legitimacy and capital of the transitional justice enterprise by reaching beyond the possibilities for social and political change at any given time. The point, however, is that the dividing line between “too much” and “too little” transitional justice should not be an arbitrary one based on distinctions between physical and economic violence. Rather, it should be based on a careful analysis of the drivers of conflict and the social, political, and financial capital that can be marshaled to effect change via the various mechanisms of transitional justice in the wake of conflict.

In the end, working through these and other questions related to greater engagement with legacies of economic violence will require years of effort, experimentation, and study. In this sense, they are little different than the dilemmas and trade-offs associated with civil and political rights in the transitional justice context, most of which have yet to be fully worked out some thirty years after the birth of the field. Key to providing the impetus for such a complex and sustained process will be a change in thinking about the nature of the transitional justice enterprise and the notion of transition itself. The following Part explores what it might mean to reframe transitional justice not as a transition to democracy, the rule of law, or some kind of post-conflict stability, but as a transition to “positive peace.”

C. Transitional Justice, Peace, and Peacebuilding

In the context of transitional justice debates, the concept of “peace” has at times been mobilized as one of resistance to the advance of particular transitional justice mechanisms and policies.⁷⁹ This is manifest most clearly in the so-called “peace versus justice” debate, in which some form of transitional justice, typically a prosecution, is

⁷⁷ See Naomi Roht-Arriaza, “The New Landscape of Transitional Justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, eds. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 1-8. See generally Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W. W. Norton and Co., 2011) (discussing accountability in the context of prosecutions for human rights abuses).

⁷⁸ *Ibid.*, 2.

⁷⁹ See, e.g., Chandra Lekha Sriram, *Confronting Past Human Rights Violations: Justice vs Peace in Times of Transition* (New York: Frank Cass, 2004).

imagined to stymie or preclude chances for a negotiated peace agreement.⁸⁰ The debate also arises when it comes to the choice as among different elements of the transitional justice “tool box,” including whether to have prosecutions or a truth commission and whether to have international prosecutions or mechanisms of accountability rooted in local tradition and custom.⁸¹ While there are an increasing number of concrete examples in which prosecutions have arguably advanced the cause of peace, and while the UN has officially embraced the notion that peace and justice are mutually complementary, the “peace versus justice” debate has proved to be an enduring one, resurfacing most recently in International Criminal Court indictments of Omar al-Bashir of Sudan and Joseph Kony of the Lord’s Resistance Army in Uganda.⁸²

The concept of peace is not part of the daily working vocabulary of many lawyers and human rights advocates who comprise the communities that provided the initial intellectual capital to the transitional justice enterprise, and few transitional justice scholars today situate their work in the context of peace or peacebuilding.⁸³ Nevertheless, the notion of peace is perhaps no more or less nebulous than the concepts of “justice,” “accountability,” “reconciliation,” and the “rule of law” that typically pepper transitional justice discourse. Although rarely defined as such, the concept of peace that is put in opposition to justice in the context of the “peace versus justice”

⁸⁰ As an example of this phenomenon, in 2003, the then chairman of the Economic Community of West African States, President John Kufuor of Ghana, urged the UN to set aside the indictment of Charles Taylor by the Special Court for Sierra Leone on the grounds that it was necessary to facilitate a negotiated settlement to Liberia’s civil war. See IRIN Humanitarian News and Analysis, “*Liberia: ECOWAS Chairman Urges UN to Lift Taylor Indictment*,” June 30, 2003.

⁸¹ Increasingly, there is a recognition that no one mechanism of transitional justice can hope to fulfill the many aspirations ascribed to it, and multiple overlapping mechanisms are thought to be necessary. For an exploration of the “truth versus justice” debate, see *generally* Miriam Aukerman, “Extraordinary Evil, Ordinary Crimes: A Framework for Understanding Transitional Justice,” *Harvard Human Rights Journal* 15 (2002): 39; Reed Brody, “Justice: The First Casualty of Truth?,” *The Nation*, April 30, 2001, 25. For an argument that international prosecutions can subvert local judicial and reconciliation practices while unwittingly playing into national-level politics, see *generally* Adam Branch, “Uganda’s Civil War and the Politics of ICC Intervention,” *Ethics and International Affairs* 21, no. 2 (2007): 179.

⁸² See, e.g., United Nations Secretary-General, “The Rule of Law and Transitional Justice,” 1 (positing that “[j]ustice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives”); Priscilla Hayner, *Negotiating Peace in Liberia: Preserving the Possibility for Justice* (Geneva: Centre for Humanitarian Dialogue, November 2007), 8-9 (arguing that the indictment of Charles Taylor advanced the peace process in Liberia, even though it was criticized at the time as potentially undermining peace negotiations); Louise Arbour, “Justice v. Politics,” *The New York Times*, Sept. 16, 2008. (justifying her decision to indict Slobodan Milošević by showing that it ultimately advanced the cause of peace, even though it was criticized at the time for threatening the peace process).

⁸³ Andrieu, “Civilizing Peacebuilding,” 539 (noting that “few transitional justice scholars have yet situated their research in the context of peacebuilding, seeing it instead through the dominant lens of legalism and human rights”); see Lambourne, “Transitional Justice and Peacebuilding,” 29 (noting that “few researchers have analysed the relationship between justice, reconciliation and peacebuilding”).

debate is typically that of “negative peace,” meaning the absence of direct physical violence.⁸⁴ Thus, if the threat of prosecution is feared to prevent a group of rebels from signing a peace agreement, and the guns may keep firing, justice could be said to undermine (negative) peace.⁸⁵ A similarly narrow view of peace can be found when Ruti Teitel expresses the fear that as transitional justice mechanisms become increasingly associated with nation building, they will give up on the “ambitious goals of establishing the rule of law and democracy” in favor of the more modest aims of “maintaining peace and stability.”⁸⁶

The notion of negative peace that has often been employed in transitional justice discourse and debates is a much narrower concept of peace than the notion of positive peace discussed in this chapter, which involves not just the silence of AK-47s and the absence of the direct violence of hot conflict, but also the absence of more indirect forms of violence, including forms of structural violence such as poverty, corruption, radical economic, social, civil, and political inequalities, and other forms of social injustice.⁸⁷ Positive peace may well embrace, but is broader than, many of the traditional goals of transitional justice, including establishing democracy and building the rule of law. After all, there are many modern democracies in which the rule of law is firmly established that nevertheless manifest high levels of poverty and other forms of structural violence.

Without making use of the term, transitional justice advocates often seem to assume that accountability will lead to a type of positive peace.⁸⁸ Thus, for example, the concept of peace might be marshaled by the advocates for transitional justice as part of an argument that a potential amnesty agreement will not secure “lasting peace” or that the particular type of justice to be meted out by transitional justice mechanisms is necessary to “long-term peace.” It is perhaps then assumed that the transition that is set in motion will allow the type of social and economic development that may lead to positive peace. As Alexander Boraine has argued, “[t]he overall aim [of transitional justice] should be to ensure a sustainable peace, which will encourage and make possible social and economic development.”⁸⁹ More typically, however, transitional justice advocates debate issues of amnesty and prosecutions in a more legalistic idiom, asking, for example, whether there is a duty to prosecute under international law, or

⁸⁴ See Galtung, “Violence,” 167; Lambourne, “Transitional Justice and Peacebuilding,” 34.

⁸⁵ See, e.g., Jeffrey Gettleman and Alexis Okeowo, “Warlord’s Absence Derails Another Peace Effort in Uganda,” *The New York Times*, Apr. 12, 2008 (discussing the refusal of Joseph Kony, leader of a rebel group known as the Lord’s Resistance Army that is responsible for widespread human rights abuses in Uganda and neighboring countries, to attend peace negotiations due in part to indictments from the International Criminal Court).

⁸⁶ Teitel, “Transitional Justice in a New Era,” 898.

⁸⁷ See generally Galtung, “Violence,” 167 (discussing different constructions of “positive peace” and “negative peace”).

⁸⁸ See Alexander Boraine, “Transitional Justice: A Holistic Interpretation,” *Journal of International Affairs* 60, no. 1 (2006): 26.

⁸⁹ *Ibid.*

whether amnesties are compatible with international law.⁹⁰ In these discussions, broader notions of peace are often relatively absent.

i. International Peacebuilding

The concept of positive peace overlaps but is not synonymous with the evolving concept and field of peacebuilding. At the international institutional level,⁹¹ the field and practice of peacebuilding in the postconflict context evolved out of the much more limited peacekeeping operations of the Cold War in which neutrality, consent, and minimum force were considered paramount (often referred to as “first-generation” peace keeping).⁹² With the end of the Cold War, these limited operations soon gave way to more complex and multidimensional initiatives in which the UN was called upon to address underlying economic, social, cultural, and humanitarian problems inextricably linked with local politics. The seemingly inevitable involvement in increasingly complex postconflict initiatives culminated in the 2005 creation of the United Nations Peacebuilding Commission, which has been tasked with facilitating integrated approaches to postconflict reconstruction throughout the UN system and beyond.

The term “peacebuilding” was not defined as part of the Peacebuilding Commission’s creation, but has continued to evolve along with emerging policy and practice. According to a working definition adopted by the UN Secretary-General’s Policy Committee in 2007, it “involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundation for sustainable peace and development.”⁹³ Despite the apparent breadth of this working definition, at the level of major international institutions, including the UN and multi- and bi-lateral donors, peacebuilding today typically consists of a more-or-less standardized package of initiatives that include demobilization, disarmament, reintegration, security sector reform, broader “rule of law” initiatives, elections, and, increasingly, the various mechanisms of

⁹⁰ See generally Diane Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *Yale Law Journal* 100, no. 8 (1991): 2537 (discussing the duty to prosecute or grant amnesty under international law).

⁹¹ I distinguish here between what I am calling peacebuilding at the “international institutional level,” which emanates from the United Nations and other international institutions, and the various types of interpersonal, community-level, and “track-two” peacebuilding that are done by individuals, religious groups, and NGOs.

⁹² Some refer to three different generations of peace keeping, which evolved in quick succession in the early 1990s. See, e.g., Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building* (Oxford: Oxford University Press, 2004), 238. Others, such as Roland Paris, distinguish between “traditional peace keeping” and “peace operations.” See Roland Paris, “Peacekeeping and the Constraints of Global Culture,” *European Journal of International Relations* 9, no. 3 (2003): 448-50.

⁹³ United Nations Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (New York: United Nations, 2008), 18.

transitional justice.⁹⁴ In this way, transitional justice initiatives have become a routine part of the “postconflict checklist” that is associated with liberal international peacebuilding.⁹⁵

ii. Using a Positive-Peace Paradigm

The principal contention of this chapter is that one way of giving equal pride of place to justice for both physical and economic violence in the transitional justice context, thereby creating a more balanced approach to both civil and political, and economic and social rights, would be to reconceptualize transitional justice not as a simply political transition, democratic or otherwise—the paradigm out of which the field evolved—but as part of a broader transition to positive peace. Grounding the field in such a conception would be one way of helping to push past the boundaries of mainstream transitional justice and liberal international peacebuilding.

Anchoring the field of transitional justice in the concept of positive peace could potentially have at least three positive effects. First, it would likely broaden the approach from a relatively narrow and legalistic one focused on physical violence and civil and political rights to one that would also grapple, where appropriate, with questions relating to legacies of economic violence. Second, as the achievement of positive peace is a long-term endeavor, the notion of justice for positive peace implies preventative strategies that look beyond the confines of an unspecified political transition. In doing so, transitional justice mechanisms may be conceptualized more holistically and implemented in ways that build synergies with broader development and peacebuilding initiatives associated with postconflict reconstruction.⁹⁶

Third, the notion of justice for positive peace suggests that the determination of the modalities and mechanisms of transitional justice should be grounded in a context-based inquiry into the particular roots and drivers of the conflict in question. This stands in contrast to a package of mechanisms drawn from a toolbox of “best practices” with some sort of predetermined political endpoint, be it elections or democracy, or based on a more abstract set of deontological goals, including accountability and just deserts. Best practices, packages, and toolboxes in one country might have little relevance to building positive peace in another. For example, Paige Arthur has speculated that while many of the dominant themes and responses to violence of mainstream transitional justice

⁹⁴ See Nagy, “Transitional Justice as a Global Project,” 280 (noting various transitional justice initiatives associated with peacebuilding).

⁹⁵ See Andrieu, “Civilizing Peacebuilding,” 538 (describing how transitional justice has become “an apparatus within the wider peacebuilding ‘package’”); Sriram, “Justice as Peace?,” 585 (arguing that “responses to recent mass atrocities or human rights abuses are now an integral part of peacebuilding by bilateral donors, regional organisations, and international institutions such as the United Nations and the World Bank”).

⁹⁶ For a more detailed look at potential connections between transitional justice and development, see *generally* Duthie, “Transitional Justice, Development, and Economic Violence”; Pablo de Greiff and Roger Duthie, eds., *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council, 2009).

evolved out of the Latin American experience, these responses might not be optimal for countries with “different histories, cultures, and positions within the world economy.”⁹⁷ Many countries in Africa with a history of neopatrimonial government, corruption, and very weak state institutions might need to focus on a different set of issues through a different set of mechanisms.⁹⁸ Focusing on positive peace as the ultimate goal of the mechanisms of transitional justice could be one way to refocus attention on the context-specific interventions needed to move in that direction.

A paradigm shift in the direction of positive peace would not dictate a broad or narrow approach to economic violence in transition, or even ensure that economic violence would be addressed at all. As with all transitional justice mechanisms and modalities, the needs and limits of the context would have to be considered. Depending on the context, addressing economic violence might not always be necessary, or even desirable. As Chandra Lekha Sriram argues, simply presuming that more justice necessarily generates or equates to more peace is potentially problematic.⁹⁹ This presumption should be avoided with respect to both mainstream transitional justice and a more holistic form of traditional justice that would also grapple with legacies of economic violence.

iii. The Critique of Liberal International Peacebuilding

In attempting to ground the field of transitional justice in a paradigm of positive peace, it is important to be wary of limiting constructions in which the notion of positive peace would simply be reshaped to fit and support existing practices and paradigms. Despite the potentially expansive nature of the field and concept of peacebuilding as discussed above, a trenchant critique has been that actual peacebuilding practice, if not theory as well, tends to reflect a paradigm of liberal internationalism in which faith in market economies and Western-style liberal democracy is conceived as the unique pathway to peace.¹⁰⁰ Because many developing countries have little experience with democracy, the emphasis on elections, democracy, and free markets associated with the typical package of postconflict peacebuilding interventions can be both dangerous and destabilizing.¹⁰¹ In a number of ways, the critique of liberal international peacebuilding parallels the critique of mainstreamed transitional justice, in which the transition is implicitly conceived of as a transition to Western liberal democracy and elements of economic violence and social justice are moved to the periphery.¹⁰²

These historic constructions of the fields of transitional justice and peacebuilding illustrate how the concepts of peace, peacebuilding, and justice can be marshaled in

⁹⁷ Arthur, “How ‘Transitions’ Reshaped Human Rights,” 360.

⁹⁸ *Ibid.*, 361.

⁹⁹ Sriram, “Justice as Peace?,” 580.

¹⁰⁰ See Paris, “Peacebuilding and the Limits,” 56; see also Sriram, “Justice as Peace?,” 580.

¹⁰¹ For this reason, Roland Paris advocates what he calls “institutionalization before liberalization,” which would prioritize strengthening institutions and regulations before any rush to elections. See Paris, “Peacebuilding and the Limits,” 57-58.

¹⁰² For a more elaborate discussion of this point, see generally Sriram, “Justice as Peace?,” 579.

ways that are both limiting and expansive; ways that can empower but also can obfuscate hierarchies of power and further perpetuate inequalities. Thus, any attempt to build the notion of transitional justice as transition to positive peace requires special attentiveness to these dynamics. Nevertheless, one might argue that the benefit of the positive-peace paradigm is not that it offers a concrete goal that is any more precise or less subject to being co-opted than “justice,” “democracy,” “reconciliation,” or the “rule of law.” In the end, these may all be “essentially contested concepts.”¹⁰³ At the same time, because the very core import of the concept of positive peace calls upon one to attend to a broader set of concerns than has historically been the practice of both liberal international peacebuilding and mainstreamed transitional justice, it may offer a better starting point than existing paradigms.

D. Conclusion

In recent decades, the field of transitional justice has distinguished itself from its parent field of international human rights, in part due to its more overt grappling with the hard policy choices that lie at the intersection of law and politics and of justice and peace. At the same time, there has been an implicit politics at work in the backgrounding and foregrounding of various aspects of transitional justice concern. If mass atrocities and physical violence have been placed in the spotlight, issues of equally devastating economic and social justice have received little attention.

The choice of which justice issues to focus on in a given context, be it physical violence, economic violence, or some combination of the two, is itself a political choice with distributional consequences. The goal of reorienting transitional justice as a transition to positive peace is not to remove politics or pretend that transitional justice is or ever could be an apolitical project. Rather, the concept of positive peace calls upon us to be attentive to these choices, whether justice is imagined to serve the needs of a political transition to liberal market democracy, or something else. Thus, the goal is not to do away with politics, but to bring them back to the surface and free them from the confines of a technocratic and legalistic discourse that too often serves to obscure and legitimize the implicit politics at work.

While addressing a wider range of justice concerns than has previously been the case will create serious challenges, failure to address these concerns may ultimately undermine the goals of transitional justice itself, including the prevention of a relapse into conflict. The hope therefore is to replace the historic emphasis and exclusion of economic violence with a more nuanced, contextualized, and balanced approach to the full range of justice issues faced by societies in transition. In this, we would take one step forward in moving beyond the constructed and self-imposed blindspots and biases of the field of transitional justice.

¹⁰³ Bell, “Interdisciplinarity,” 27.

Chapter III: Economic Violence in the Practice of African Truth Commissions and Beyond¹

Over the last three decades, truth commissions in their various forms, together with other transitional justice mechanisms, have become an increasingly popular means of attempting to address legacies of violence.² While mandates vary, the core mission of most truth commissions includes an attempt to diagnosis “what went wrong” in the lead up to the conflict or period of abuses, to document and understand the human rights abuses that were perpetrated, particularly from the perspective of those defined as “victims,” and to offer prescriptions for the future with a view to preventing recurrence of conflict. Given the tangled political, economic, and social roots of many conflicts, this is no easy task. Conflicts do not begin in a vacuum, isolated from deeper socioeconomic and historical forces, and their ripple effects rarely cease when the guns fall silent. While there is a tendency to associate conflict with the most extreme forms of physical violence, murder, rape, and torture for example, the violence of conflict is often carried out at multiple levels. “Economic violence” in various forms, including widespread corruption, theft and looting from civilians, plunder of natural resources to fuel wartime economies and fill warlords’ pockets, and other violations of economic and social rights, is also deeply woven into the narrative of many modern conflicts, as both driver and sustainer. In addition to violations of bodily integrity, many individuals lose life savings, homes, and the ability to sustain themselves in the future. For many victims, it is the combination of both physical and economic violence that makes conflict utterly devastating. As a result, the poverty and lack of access to basic social services that may have pre-dated the conflict are all the more crippling in the conflict’s aftermath.

But while forms of economic violence are part and parcel of many modern conflicts, the great majority of truth commissions created in the wake of violent conflict have chosen to place almost exclusive emphasis on documenting and analyzing acts of physical violence and other civil and political rights violations. Issues of equally devastating economic and social justice have received comparatively little attention. In the 1980s and 1990s, for example, Latin American truth commissions in Argentina, Uruguay, and Chile, largely prioritized violations of civil and political rights, passing over the role of economic crimes in the violence that was perpetrated.³ The much-lauded

¹ This dissertation chapter was originally published as a chapter in my edited volume: Dustin Sharp, ed., *Justice and Economic Violence in Transition* (New York, Springer, 2014).

² A few portions of this chapter, particularly the case study on Sierra Leone, are drawn from an article first published in the *Harvard Human Rights Journal*. See Dustin Sharp, “Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice,” *Harvard Human Rights Journal* 26 (2013).

³ James Cavallaro and Sebastián Albuja, “The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond,” in *Transitional Justice from Below, Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor (Oxford and Portland, Oregon: Hart Publishing, 2008), 122.

South African truth commission focused on murder, torture, and other egregious acts of bodily harm, but not on the economic and structural violence of the apartheid system itself. Where some of these truth commissions have grappled with economic violence in limited ways, it has often been treated as context, useful in helping to understand why physical violence took place, but little more.⁴ Whatever merits the truth narrative woven by a commission following such an approach might have, it will inevitably be a truth distorted by the notion that there is a tidy and clean division between economics and politics, between some of the key drivers and sustainers of conflict, and its most egregious effects. Ultimately, the marginalization of the economic within the transitional justice agenda can also serve to distort the policies thought to be necessary in the wake of conflict.⁵

In contrast with these historical patterns, an increasing number of truth commissions in the last decade, many of them African, have taken steps to shift economic violence into the foreground of their work. A few have even identified forms of economic violence as a “root cause” of the conflict in question and included among their recommendations measures intended to address the underpinnings of economic violence. This chapter will explore the pioneering work of five African truth commissions—Chad, Ghana, Sierra Leone, Liberia, and Kenya—using the case studies as a prism to explore some of the practical, legal, and policy dilemmas raised by the greater inclusion of economic violence in the transitional justice agenda. I argue that while these efforts have varied in terms of quality, rigor, and the amount of attention paid to economic violence, they nevertheless represent an important step in moving economic violence into the foreground of the transitional justice agenda, and in linking analysis and understanding of some of the drivers and sustainers of conflict with necessary peacebuilding initiatives in the wake of conflict. At the same time, while African truth commissions have made great strides in moving economic violence into the foreground, they have rarely chosen to frame the issues in question as human rights issues, even where claims of violations of economic and social rights would be strong. This represents a lost opportunity for addressing poverty and other issues of economic violence in the post-conflict context. Going forward, I argue that truth commissions choosing to address economic violence will need to find ways to retain focus despite broadening mandates. Focusing on an “economic violence-human rights nexus” would be one way to achieve such focus.

This chapter will proceed in three parts. In part one, I discuss the role of truth commissions in transitional justice generally, describing their functions, ascribed purposes, and a few broad streams of critique that have been raised relating to their work. I analyze the historic focus of many truth commissions—what Cavallero and Albuja have called the “dominant script”—and the relative invisibility of economic issues therein. I also discuss the spectrum of approaches a truth commission might choose to take in addressing economic violence if it wished to counter these historic patterns. In the

⁴ See Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *International Journal of Transitional Justice* 2, no. 3 (2008): 275-76.

⁵ *Ibid.*, 266-268.

second part, I look at economic violence in the practice of five African truth commissions and beyond, using the case studies to outline the promises and pitfalls of attempting to move economic violence into the foreground of transitional justice work. The third and final part concludes the chapter with recommendations for improving the quality and rigor of work on economic violence.

A note about terminology is in order before continuing. In this chapter, I use the terms “physical violence” and “economic violence” as shorthand to refer to a range of phenomena. “Physical violence” refers to murder, rape, torture, disappearances, and other classic violations of civil and political rights. In contrast, “economic violence” refers to violations of economic and social rights, plunder of natural resources, and various forms of economic crime carried out by authorities in violation of generally applicable criminal law, including large-scale embezzlement, fraud, tax crimes, and other forms of corruption. While most of the “physical violence” discussed in this article constitutes a violation of civil and political rights under international law, the concept of “economic violence” includes but is also broader than violations of economic and social rights under international law.⁶ Though they discuss the phenomena I have grouped under the category of “economic violence,” the truth commissions I discuss in this chapter do not use the term as such. Many of them do not even refer to economic and social rights explicitly, preferring instead to talk about “economic crimes” under national law. I am therefore using the phrase “economic violence” in a relatively broad sense that encompasses the varied economic crimes and economic and social rights violations at issue in the work of the truth commissions used as case studies in this chapter.

A. Truth Commissions and Transitional Justice

Though many of the mechanisms associated with transitional justice have origins and parallels going back centuries if not millennia, as a domain of policy, practice, and academic study, the modern field of transitional justice emerged in the 1980s and 90s with the surge of political transitions in both Eastern Europe and Latin America that followed in the wake of the end of the Cold War.⁷ The field encompasses the diverse ways in which societies attempt to grapple with a legacy of widespread human rights abuses as part of a transition to a more democratic and peaceful future. In recent years,

⁶ Beyond the International Covenant on Economic, Social and Cultural Rights, economic, social, and cultural rights have the status of binding law in a number of international human rights treaties. Examples include the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; the European Social Charter; and the African Charter on Human and Peoples Rights.

⁷ See generally, Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume I. General Considerations* (Washington: United States Institute of Peace, 1995).

transitional justice has come to be associated not just with narrow political transitions to democracy, but with post-conflict reconstruction and peacebuilding more generally.⁸ As endorsed by the United Nations in a landmark 2004 report, transitional justice is said to comprise

*the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.*⁹

Despite the increasingly open-ended nature of transitional justice, the paradigmatic “third wave” transitions at the origins of the field, transitions from authoritarianism and communism to Western liberal democracy, were “crucial to structuring the initial conceptual boundaries of the field,” and remain relevant today to understanding the field’s constructed boundaries and limitations.¹⁰

Transitional justice is often said to be at once backward looking, insofar as it is preoccupied with abuses committed by various factions prior to the transition or conflict, and forward looking, insofar as it attempts to prevent recurrence and lay the groundwork for long-term peace by promoting accountability, reconciliation, and institutional reform. While the transitional justice “toolbox” has broadened to include a range of mechanisms and practices designed to encourage reconciliation and various forms of accountability, the most iconic, and perhaps most dominant mechanisms associated with transitional justice are prosecutions and truth commissions.

i. The Rise of the Truth Commission

When in 1984 Argentina’s Sábato Commission (*Comisión Nacional sobre la Desaparición de Personas*, CONADEP) charged with investigating disappearances in the course of Argentina’s dirty war published its final report, *Nunca Más* (or “Never Again”), it could hardly know that it was in the vanguard of a worldwide trend.¹¹ In the nearly three decades that have followed, the concept of the truth commission has been exported throughout the world, with an average of over one new truth commission being

⁸ See Chandra Sriram, Olga Martin-Ortega, Johanna Herman, “Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice,” JAD-PbP Working Paper Series No 1. (May 2009), 13 (discussing increasing linkages between transitional justice and a broader set of peacebuilding activities).

⁹ United Nations Secretary General, “The Rule of Law and Transitional Justice in Post-conflict Societies,” UN Doc. S/2004/616 (August 23, 2004), para. 8.

¹⁰ Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31 (2009): 326.

¹¹ *Nunca Más, Report of the Argentine National Commission on the Disappeared* (New York: Farar, Strauss and Giroux, 1986).

created per year since the early 1980s.¹² Priscilla Hayner, perhaps the world authority on the subject, has documented the existence of some 40 modern-day truth commissions.¹³ While truth commissions have spanned the globe, ranging from South Africa and South Korea, to Morocco, Germany, and Greensboro, North Carolina, at least 65 percent of them have been split almost equally between Latin America and Sub-Saharan Africa. With the recent creation of truth commissions in Brazil and Côte d'Ivoire, the worldwide list will likely only continue to grow in the coming years. Truth commissions, together with other transitional justice mechanisms appear to have become a routine part of the "post-conflict checklist" that includes security-sector reform, judicial reform, and national elections. Increasingly, both rhetoric and actual policy choices suggest that the question is no longer *whether* something will be done in the wake of large-scale human rights abuses, but *what* should be done. Truth commissions in their various forms have been and will likely continue to be a consistent part of the response to that question in the years to come.

At the most general level, truth commissions across the world have a remarkable similarity. As defined by Hayner, a truth commission:

*(1) is focused on the past, rather than ongoing events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; (5) is officially authorized or empowered by the state under review.*¹⁴

The purposes and goals ascribed to such bodies are far ranging, though some claims appear to be anchored more in articles of faith than rooted in robust empirical evidence. It is often assumed, for example, that establishment of "the truth" is a necessary precursor to reconciliation and national and individual healing, though the historical record and individual experience certainly provides examples that might lead one to question such claims. Others argue with more modesty that while they may be an imperfect mechanism for justice, truth commissions can at least help to create a bulwark against later denial of the abuses that took place, and of forgetting.¹⁵ Beyond establishing a historical record of events, truth commissions can also provide a national forum in which victims' experience of conflict can be heard and publically acknowledged, often for the first time. Truth commissions have also been instrumental in articulating

¹² While Uganda and others can arguably lay the claim to having held the first truth commission, Argentina's commission is of unquestionably higher influence in the spread of truth commissions around the world, and was the first to publish a report that became a best seller.

¹³ Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2011), 11-12.

¹⁴ Hayner, *Unspeakable Truths*, 11-12.

¹⁵ See, for example, Alexander Boraine, "Truth and Reconciliation in South Africa," in *Truth v. Justice*, eds. Robert Rotberg and Dennis Thompson (Princeton: Princeton University Press, 2000), 141-157.

policy platforms for necessary change in the wake of conflict, occasionally leading to the implementation of reparations programs and a number of significant prosecutions.¹⁶

Yet despite their popularity and the powers ascribed to them, truth commissions have not been without their disappointments, failures, and critics. Some truth commissions, including one of the case studies used in this chapter, Chad, have been seen as too partisan to do credible work and establish an unvarnished historical record of events. Others, including commissions in Bolivia, Zimbabwe, and the Philippines, have failed to even publish a report. Still others, such as the Liberian commission, have produced lengthy reports that are groundbreaking in certain respects, but nevertheless considered to lack the requisite rigor that the subject matter requires.¹⁷ Even when their work has been of relatively high caliber, the bulk of recommendations issued by truth commissions are in many cases simply ignored by governments. Finally, advocates from the mainstream human rights community have often argued against the use of truth commissions in the absence of prosecutions, calling them a “soft option” for avoiding hard justice, a choice all too readily welcomed by warlords intent on avoiding “real” forms of accountability.¹⁸

As should come as no surprise, truth commissions have also faced withering criticism from academics. When it comes to the question of conflict prevention, political scientist David Mendeloff has argued that many of the core claims and assumptions underlying the creation of truth commissions—including the notion that personal healing promotes national healing, that truth-telling promotes reconciliation, and that forgetting the past necessarily leads to war—are flawed, and that “truth-telling advocates claim far more about the power of truth-telling than logic or evidence dictates.”¹⁹ In view of some of the questionable claims made, Mendeloff argues, one should not be so quick to proclaim the necessity of truth commission in the aftermath of violent conflict. Other critics like anthropologist Rosalind Shaw have argued that the particular model of truth commission that has been exported throughout the world, rooted as it is in Western traditions of public confession, sin, and forgiveness, may at times conflict with and even serve to displace local traditions of memory, healing, and social forgetting and that more context-specific approaches may be required.²⁰ Yet despite these trenchant critiques from activists and academics, the truth commission as a worldwide phenomenon continues to flourish.

ii. The Practice of Truth Commissions; Following a Dominant Script

¹⁶ Hayner, *Unspeakable Truths*, 5.

¹⁷ For a critical take on the work of the Liberian truth commission, see, e.g., Jonny Steinberg, “Liberia’s Experiment with Transitional Justice,” *African Affairs* 109 (2009): 136.

¹⁸ Reed Brody, “Justice: The First Casualty of Truth?,” *The Nation*, April 30, 2001, 25.

¹⁹ David Mendeloff, “Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?,” *International Studies Review* 6 (2004): 356.

²⁰ Rosalind Shaw, “Rethinking Truth and Reconciliation Commissions; Lessons from Sierra Leone” (United States Institute for Peace Special Report 130, 2005); see also Tim Kelsall, “Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone,” *Human Rights Quarterly* 27 (2005): 361.

Truth commissions are, of course, not a monolith and there is no single model that has been used throughout the world. With many different iterations across the globe, truth commissions have demonstrated variability and adaptability across a number of dimensions. They have varied as to the enacting authority establishing them, the scope of abuses addressed, the time and budget allocated to their work, whether they could pardon violators in exchange for a confession, whether to name names and use photos of those responsible in their final report, whether to provide compensation to victims, the scope of investigative powers, and the legally binding nature of any recommendations that they might issue. As variations in form, composition and powers demonstrate, the truth commission is an open-ended institution, combining some of the features of a court, an investigative legislative committee, and community therapy body, its ultimate form and power determined only by the institutional imagination of its creators, and the political and financial realities they face.

Yet despite their variability and adaptability across the world, when it comes to the scope of abuses that they address, most truth commissions have generally worked within fairly established parameters that emphasize physical violence and civil and political rights violations, with dimensions of economic violence, including violations of economic and social rights, corruption, and other economic crimes pushed to the margins, if they are addressed at all. For example, one of the world's first truth commissions, the Sábato Commission in Argentina focused exclusively on forced disappearances, despite the range of civil and political rights abuses in which the military had engaged, to say nothing of economic crimes and corruption. Truth commissions created shortly thereafter in Uruguay (1985) and Chile (1990-91) focused exclusively on disappearances. Though their mandates were somewhat broader, truth commissions in El Salvador (1992-93) and Guatemala (1997-99) focused on a relatively narrow band of the human rights spectrum. In South Africa (1995-2002), only those who had suffered "gross violations of human rights, including killing, abduction, torture, or ill-treatment" qualified as "victims."²¹ The apartheid system itself, in some ways perhaps the embodiment of structural and economic violence, was largely treated as context to instances of egregious bodily harm that became the commission's principal focus. As Cavallaro and Albuja have argued, the near invisibility of economic violence in the work of these truth commissions cannot be attributed to an absence of corruption and economic crimes in the countries and political regimes at issue.²²

That this pattern should be so marked notwithstanding geographic distance and great variability in the underlying conflicts at issue is in a sense remarkable. In tracking this pattern across the truth commissions of Latin America, Cavallero and Albuja have posited that the narrow focus of these early truth commissions developed not because it was particularly well suited to context specific needs, but due to a process of "acculturation" whereby a dominant script is replicated again and again as a result of

²¹ Pablo De Greiff and Roger Duthie, "Repairing the Past: Reparations for Victims of Human Rights Violations," in *The Handbook on Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 8.

²² Cavallaro and Albuja, "The Lost Agenda," 128.

“repeated information exchange and consultations with prior commission members and a cadre of international scholars and practitioners in the area.”²³ Paige Arthur has similarly documented the vital importance of conferences and information exchanges to the early development of transitional justice norms, practices, and institutional parameters.²⁴ Once a dominant paradigm for truth commissions as “denouncing only a limited set of human rights violations developed legitimacy in world society,” Cavallero and Albuja argue, “modifying the script to include economic crimes and corruption—and thus undoing the process of socialization of the model—became extremely difficult.”²⁵

The script developed in Latin America subsequently became the model for export throughout the world. Perhaps most importantly in terms of truth commission genealogy, the narrow Latin American model was largely the one adopted in South Africa. As explained by Alexander Boraine, former vice chairperson for the South African commission: “In the work leading up to the appointment of the TRC, we were greatly influenced and assisted in studying many of these commissions, particularly those in Chile and Argentina.”²⁶ The South African commission remains today perhaps the most famous truth commission in the world, and certainly the most influential in sub-Saharan Africa. In my dealings with human rights activists across sub-Saharan Africa over the last ten years, I have found that many are not even aware that the South African commission was preceded by other truth commissions, having come to see it as a uniquely “African” approach to addressing transitional justice issues.

The narrow script of these early Latin American truth commission is of course not unique to the field of transitional justice, but reflects a deeper ambivalence regarding the proper status of economic and social rights within the international human rights community.²⁷ Though formally universal and “indivisible”²⁸ from civil and political rights, economic and social rights have long lingered at the periphery of the focus and action of the key players in the international human rights movement, including the largest and most influential NGOs, Amnesty International and Human Rights Watch.²⁹ This was particularly true in the 1980s and 1990s when the Latin American script for truth commissions was being developed.

²³ *Ibid.*, 125.

²⁴ See generally, Arthur, “How ‘Transitions’ Reshaped Human Rights.”

²⁵ Cavallero and Albuja, “The Lost Agenda,” 125.

²⁶ Boraine, “Truth and Reconciliation in South Africa,” 142-143.

²⁷ Louise Arbour, “Economic and Social Justice for Societies in Transition,” *International Law and Politics* 40 (2007), 5.

²⁸ World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, UN Doc A/CONF.157/23 (July 12, 1993); United Nations Millennium Declaration, G.A. Res. 55/2, UN Doc A/RES/55/2 (Sept. 13, 2000).

²⁹ Kenneth Roth, “Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization,” *Human Rights Quarterly* (2004): 63; Curt Goering, “Amnesty International and Economic, Social, and Cultural Rights,” in *Ethics in Action: The Ethical Challenges of International Human Rights Nongovernmental Organizations*, eds. Daniel Bell Jean-Marc Coicaud (Cambridge: Cambridge University Press, 2006), 204 (tracing the history of Human Rights Watch and Amnesty International’s early ambivalence towards economic and social rights).

iii. The Costs of Undue Narrowness

Whatever the precise historic reasons for the exclusion of economic violence from the ambit of truth commissions, the invisibility of the economic in their work is not without its costs. As one of the means of defining the historical record and creating the officially sanctioned narrative of conflict, exclusion of the economic has the potential to distort our understanding of the governance regimes that helped in part to precipitate the conflict, and impoverish our understanding of the conflict dynamics themselves. For example, the impression shared by some that corruption was limited during some Latin American dictatorships may be due in part to the fact that truth commissions created to document abuses committed by these regimes paid little attention to issues of corruption, in spite of the economic mismanagement and abuses by elites that served as among the driving forces of the underlying conflicts.³⁰ Looking back, regimes that perpetrated both economic violence and physical violence may come to be remembered as firm, perhaps occasionally abusive, but strict, orderly, and fiscally clean. There could be a danger of romanticizing such figures in the messy and often crime-ridden world of some modern Latin American democracies.

As the number of truth commissions across the world has grown, many of them have come to play an increasingly important agenda-setting role for post-conflict governments, issuing detailed policy recommendations to a variety of actors on matters touching the rule of law, human rights, and broader governance more generally. In some cases, these recommendations are even binding as a matter of law, with Liberia and Sierra Leone being two examples. Where economic violence has played a key role in driving abuses both during and in the lead up to the conflict, excluding these issues as a matter of course risks producing a set of recommendations that are not well tailored to the crisis at issue, and which do not lay the proper groundwork to prevent recurrence of the dynamics that led to the conflict.

The risk of such distortions will likely vary from country to country, and conflict to conflict. For example, whatever the relevance to certain Latin American countries of a more narrow approach to transitional justice that largely excludes economic violence, one might particularly question its applicability to other regions of the world with completely different legacies of conflict and governance. It has been argued, for example, that for many countries in Sub-Saharan Africa, with their history of neopatrimonial governance regimes based on systems of patronage and clientalism, dimensions of economic violence such as corruption might logically arise “as one of the central justice issues of such transitions.”³¹ In such cases, the seemingly self-replicating nature of the dominant script carries with it the risk of excluding issues that are potentially fundamental to post-conflict peacebuilding. In countries such as Liberia, Sierra Leone, and the Democratic Republic of the Congo where plunder of natural resources, corruption, and looting from civilians have featured so prominently, any truth commission

³⁰ Cavallaro and Albuja, “The Lost Agenda,” 129.

³¹ Arthur, “How ‘Transitions’ Reshaped Human Rights,” 359.

that would choose to ignore such major features of the conflict would produce a seriously distorted narrative and set of policy recommendations.

In sum, exclusion of economic violence from the ambit of truth commissions carries the risk of distorting the historical record, hindering understanding of the drivers of conflict, and biasing the reforms and initiatives thought necessary in the wake of conflict. Whether dealing with conflicts in Africa, Latin America, or elsewhere, there is simply no compelling a priori reason that economic violence should be excluded from the ambit of transitional justice mechanisms. Rather, the scope of inquiry and work should be based on a highly contextualized understanding of the roots of the conflict in question and the needs of the transition.³² In many instances, I argue, such an analysis would lead to what has been alternately called a “deeper, richer, and broader vision of justice” and a “thicker” or more holistic version of transitional justice in which economic and physical violence are placed in the foreground.³³

iv. Writing a New Script

To say that a truth commission should not exclude economic violence from the ambit of its work as a matter of course does not answer the question of how and to what extent economic violence should be addressed. As reflected in the case studies discussed later in this chapter, a truth commission might choose to take a relatively broad or narrow approach to issues of economic violence in transition. At the broadest end of the spectrum, a truth commission with a wide temporal and subject matter mandate might look deep into history, examining the socioeconomic underpinnings and structural violence that often predate conflicts by decades if not centuries. Such an approach might involve looking at instances of corruption and other economic crimes not only during a particular conflict period, including sale of natural resources and other national assets to fuel violent conflict, but in the years leading up to the violent conflict as well. At its most direct, such an approach would involve framing many such issues not simply as useful background to understand why fighting broke out, but as independent violations of international and national law, including violations of economic and social rights. If such a commission were to take a similarly broad and deep approach to its recommendations for legal, policy, and institutional reforms, one could imagine measures that would include, among others, affirmative action, land-tenure reform, redistributive taxation, the creation of anti-corruption commissions endowed with serious power, and special development assistance to regions most economically affected by the conflict. At the most extreme end, such measures might be hard to distinguish from the work of the field of economic development.

³² Miriam Aukerman, “Extraordinary Evil, Ordinary Crimes: A Framework for Understanding Transitional Justice,” *Harvard Human Rights Journal* 15 (2002): 91-97 (calling for a goal and culture specific response to mass atrocities).

³³ Alexander Boraine, “Transitional Justice: A Holistic Interpretation,” *Journal of International Affairs* 60 (2006), 18; Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34 (2007): 417.

Of course, to say that in addressing economic violence a truth commission might choose such an approach does not mean that it would necessarily be wise to do so. At its most extreme, an especially broad approach to economic violence might risk political backlash from entrenched elites, dooming even more modest recommendations made by the commission to irrelevancy. Such a broad approach would also bring costs in terms of the extra time, expertise, and finances needed to address the range of both physical and economic violence that took place.

At the narrow end of the spectrum, a truth commission might include economic violence within its ambit, but do so in a relatively restricted way, looking perhaps only to egregious violations of economic and social rights that rise to the level of war crimes committed during a relatively restricted period.³⁴ One could also imagine an approach where a commission would choose to document violations of economic and social rights only to the extent they were concomitant with civil and political rights violations (seizure of assets from political prisoners, for example). Relatively narrow approaches to addressing economic violence in transition would be less likely to risk political backlash, and would be less of a strain on a commission pushing up against resource constraints, both temporal and financial.

B. Economic Violence in the Practice of African Truth Commissions and Beyond

While the dominant script described above has shaped the narrative of the majority of the world's truth commissions, an increasing number of truth commissions, many of them African, have taken steps to shift economic violence into the foreground of their work. A few of them, Liberia and Sierra Leone, have even gone so far as identify forms of economic violence as among the "root causes" of the conflict in question and included in their recommendations measures intended to address the underpinnings of economic violence. In this section, I will present case studies examining the background and work of five African truth commissions, Chad, Ghana, Sierra Leone, Liberia, and Kenya. I will also briefly look at the work of two truth commissions outside of Africa, East Timor and the Solomon Islands. While they may not be the only examples of truth commissions that have focused on economic violence to more than a small degree, they represent many of the most prominent examples in the world today, and serve a prism to explore some of the practical, legal, and policy dilemmas raised by the greater inclusion of economic violence in the transitional justice agenda.

*i. Chad: The Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories (1990-1992)*³⁵

³⁴ See Evelyne Schmid, "War Crimes Related to Violations of Economic, Social and Cultural Rights," *Heidelberg Journal of International Law* 71, no. 3 (2011): 3, 5, 9-17.

³⁵ Commission d'Enquête du Ministère Chadien de la Justice sur Les Crimes et Détournements de l'ex-Président Habré et de ses Complices.

Chad's post-independence history has been tumultuous, punctuated at seemingly regular intervals by internal conflict and *coups d'état*. Though the relatively recent discovery of oil and the construction of a pipeline to facilitate its export have filled national coffers to unprecedented levels, landlocked and isolated, Chad remains one of Africa's poorest, worst-governed, and most conflict-ridden countries.³⁶ Chad's most notorious military leader, Hisssein Habré, served as president from 1982 until 1990, receiving significant support during his reign from both France and the United States who saw in Habré a bulwark against Libyan expansion in the region. Habré's reign "was marked by paranoia, clanism, severe political repression, and torture."³⁷ The chief arm of terror in the police state created by Habré was the Directorate of Documentation and Security (DDS), the security force chiefly responsible for torture and other acts of political repression. Brought to the pinnacle of power in a bloody coup, Habré's fall from power came when one of his former lieutenants, Idriss Déby (still serving as Chad's president over two decades later) mounted a successful insurgency.

Almost immediately after Habré's fall from power, President Déby authorized the creation of a "Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories." As suggested by the name given, the commission's mandate included both classic violations of physical integrity, including "illegal imprisonments, detentions, assassinations, disappearances, torture, and acts of barbarity," as well as crimes of an economic nature, including embezzlement and theft of public and private goods.³⁸ From the start, however, the ambitious goals assigned to the commission were not matched by the resources or time allocated to it. With a total of eight months to do its work (after an extension was granted), a miniscule budget, the loss of two of its four vehicles for a period of time due to ongoing combat in parts of the country, and threats from members of the security forces they were investigating, the commission's efforts were greatly hampered and delayed.³⁹ Complicating matters further, due to a shortage of space, the commission was assigned to work in the former headquarters of Habré's secret police, the DDS, an institution described by the commission as "the principal organ of repression and terror" of the Habré regime, perhaps the worst possible place to locate a truth commission in all

³⁶ Chad currently ranks 175 of 182 on the United Nations Human Development Index, 173 of 180 on Transparency International's Corruption Perception Index, and 46 of 48 on the Mo Ibrahim Index of African Governance. Life expectancy is 47.7 years and 80% of the population lives on less than one U.S. dollar a day. For a discussion of the Chad-Cameroon oil pipeline, see Dustin Sharp, "Requiem for a Pipedream; Oil, the World Bank, and the Need for Human Rights Assessments," *Emory International Law Review* 25 (2011): 379.

³⁷ Sharp, "Requiem for a Pipedream," 387.

³⁸ Decree Creating the Commission of Inquiry into the Crimes and Misappropriations Committed by ex-President Habré, His Accomplices and/or Accessories, Decree No. 014/P.CE/CJ/90 (December 29, 1990), Article 2.

³⁹ *Les Crimes et Détournements de l'ex-Président Habré et de ses Complices* (Chadian TRC Report) (Paris: L'Harmattan, 1993), 9.

of Chad.⁴⁰ The negative effects of this location on the willingness of former political prisoners to testify cannot have been eased when the commission began to use prisoners from the jails to perform mass exhumations at the sites of Habré's largest atrocities.⁴¹ The commission's report was published in early 1992.

To some, the work of the commission was little more than a political hatchet job designed to make Habré look worse than the man who replaced him, a type of victor's justice.⁴² Indeed, the loose language of the report's opening pages does little to dispel this impression, with passages likening Habré to a "camel thief" with innate criminal penchants.⁴³ The failure to fully account for the round figures offered in the report regarding the number of victims—Habré is said to be responsible for 40,000 victims, 80,000 orphans, and 30,000 widows—might also lead one to question the report's rigor.⁴⁴ But despite its many shortcomings, the Chadian commission's report is groundbreaking in a number of respects: it was the first truth commission report to name names, publishing the actual photos of key torturers, many of whom were still serving in government at the time.⁴⁵ The commission called for the prosecution of Habré, as well as torturers serving in government.⁴⁶ Finally, the report also took an open look at the role of foreign powers (France, the United States, and others) in supporting the Habré regime, including the budgetary support and training provided to the DDS itself.

Beyond these notable achievements, a perhaps underappreciated innovation in the commission's work is the degree to which the report addressed a range of economic issues, going so far as to divide its report, and indeed its staff, into two sections, one looking at violations of physical integrity and the other at the embezzlement of public goods. As published in the commission's final report, the efforts of the economic crimes section are a little disappointing. For the most part, it appears that the commission could not make sufficient sense of the maze of presidential accounts, national and international, to tease out the full workings of Habré's financial system. The most concrete evidence of personal pillage appears to be the scramble for money on the eve of Habré's fall from power when millions of dollars were stolen from the state's coffers. The commission makes no attempt to link any of these large-scale financial crimes to economic and social rights and the general poverty that has plagued Chad during the

⁴⁰ *Chadian TRC Report*, 21.

⁴¹ *Chadian TRC Report*, 150.

⁴² Priscilla Hayner, "Fifteen Truth Commissions—1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16 (1994): 625.

⁴³ *Chadian TRC Report*, 18.

⁴⁴ *Chadian TRC Report*, 97.

⁴⁵ Hayner, "Fifteen Truth Commissions," 625.

⁴⁶ While the government of Chad has done little to follow these recommendations, a coalition of Habré's victims and human rights NGOs have been attempting to prosecute Habré for violations of the Convention Against Torture since 1999. For a look at the genesis of these efforts, see Dustin Sharp, "Prosecutions, Development, and Justice; The Trial of Hissène Habré," *Harvard Human Rights Journal* 16 (2003). For a review of more recent developments in the Habré case, see Laura Bingham, "Trying for a Just Result? The Hissène Habré Affair and Judicial Independence in Senegal," *Temple International and Comparative Law Journal* 23 (2009).

Habré regime and after. Given the complexity of the work, short staffing, and the limited amount of time allotted, the quality of the economic section's work is perhaps not surprising.

Despite the apparent inability of the financial crimes unit to do the type of forensic accounting that would crack the code of Habré's alleged personal embezzlements, the Commission's report nevertheless breaks ground in illustrating the links between political repression and violence, on the one hand, with economic violence on the other. In documenting the widespread torture and disappearances that characterized Habré's brutal reign, the report documents in some detail the DDS practice of routinely seizing the family wealth of Habré's thousands of political prisoners, including bank accounts, houses, cars and other physical goods. The proceeds were used not only to line the pockets of the members of the DDS and provide houses to Habré regime loyalists, but also to bridge DDS budgetary gaps.⁴⁷ In a very real sense then, political terror in Habré's Chad was directly fueled by economic violence. The combination of political and economic violence had huge implications for the extended families of political prisoners. To illustrate this, the commission attempted to estimate the number of indirect victims of Habré's political violence by looking at the number of orphans and widows who lost all economic support as a result of the disappearance of a father or mother, together with the seizure of all of the family's goods and eviction from their home. In doing so, the Chadian truth commission broke new ground in helping to illustrate the socioeconomic ripple effects of political violence.⁴⁸

ii. *Ghana: The National Reconciliation Commission (2003-2004)*

Though Ghana is often known today for relative prosperity and stability in a troubled region, its post independence history has at times been overshadowed by authoritarian and military rule, including four military *coups d'état* since 1966. Human rights abuses occurred under all periods of military rule, but intensified under Jerry John Rawlings' two socialist-inspired military regimes spanning a total period of 11 years from the late 1970s until the early 1990s. These periods were characterized by killings, abductions, disappearances, torture, and confiscation of property.⁴⁹ While periods of civilian rule were generally associated with increased, if imperfect, respect for rights, such administrations were generally too short-lived to counter the impunity that had taken root. Ghana's experience with military rule came to a formal close in 1993 after a new constitution came into effect and democratic elections were held returning Rawlings to power in a civilian capacity. The new constitution included an amnesty provision for past abuses.

The second democratic elections of 2000, which replaced Rawlings with John Kufor brought a definitive close to Ghana's experience with military rule. In the lead up to the elections, John Kufor promised an active policy of national reconciliation intended to

⁴⁷ *Chadian TRC Report*, 27-28.

⁴⁸ *Chadian TRC Report*, 97.

⁴⁹ Robert Ameh, "Doing Justice after Conflict: The Case for Ghana's National Reconciliation Commission," *Canadian Journal of Law and Society* 21 (2006): 96.

address Ghana's troubled past.⁵⁰ In early 2003, a National Reconciliation Commission (NRC) began its work in the same building where Kwame Nkrumah declared Ghana's independence 46 years earlier. The NRC would be the first national initiative to provide Ghanaians opportunities to publically relate their experiences of abuse and to seek redress.

The creation of the NRC proved controversial in several respects. Some questioned the need for a commission some nine years into Ghana's democratic transition. There was also a lively debate surrounding the time period and types of violations that would constitute the commission's mandate, particularly whether the commission would focus only on periods of military rule, or, as ultimately decided, abuses under both military and civilian rule. With respect to the commission's subject matter mandate, "Many raised the issue of whether the violations examined by the commission should be confined to violations of bodily integrity or extend to socio-economic violations and the reproduction of structural injustice."⁵¹ In the end, the commission was instructed to investigate violations and abuses of human rights relating to seven categories—"killings, abductions, disappearances, detentions, torture, ill-treatment and seizure of properties"⁵²—but it was also given the flexibility in investigate "any others matters" it deemed necessary to promote reconciliation.⁵³

To outsiders looking at the seven enumerated categories of abuses within the commission's mandate, the addition of "seizure of properties" might appear anomalous, coming as it does after some of the most egregious violations of civil and political rights abuses imaginable. Seen through the lens of Ghanaian history, however, particularly periods of military rule under Rawlings' two socialist-inspired regimes where contested economic narratives were central to the story of military repression, it would have been strange to exclude dimensions of economic violence from the work of any such commission. Under Rawlings' military regimes, much of the political violence targeted economic actors accused of "kalabule," or corruption and profiteering. Those thought to be rich and politically conservative, including the market women who controlled private trading businesses, were particularly targeted. Abuses against such figures included severe physical violence as well as property seizure. Such targeted violence may have reached its peak in 1979 with the execution without trial of two former heads of state and six senior military officers accused of corruption.⁵⁴

In documenting the economic violence perpetrated by soldiers during Ghana's military regimes, the commission's report helps to illustrate the complicated interplay between economic and political violence. Indeed, as presented in the report, forms of economic violence and political violence are almost inextricably intertwined during

⁵⁰ Nahla Valji, "Ghana's National Reconciliation Commission: A Comparative Assessment," International Center for Transitional Justice, Occasional Paper Series (September 2006).

⁵¹ *Ibid.*, forward.

⁵² The commission understood seizure of property to include "confiscation of factories, houses, vehicles, goods, cash crops and food crops, and various sums of money." *National Reconciliation Commission Report (Ghana NRC Report)* (2004), Vol I, 92.

⁵³ *Ghana NRC Report*, Vol. I, 10-14.

⁵⁴ *Ibid.*, 96.

certain periods of Ghana's history. In tailoring its recommendations to the abuses documented, the commission ultimately urged a range of policies relating to the economic violence that was meted out, ranging from restitution, to a special memorial for traders, one of the groups heavily brutalized by a combination of physical and economic violence.⁵⁵ Beyond property seizures, the commission also looked at labor violations as forms of economic violence. Unlike some dimensions of economic violence such as property seizure and the infamous burning of the central market in Tamale, which the commission does not generally conceptualize as violations of economic and social rights per se, it describes summary dismissals of public servants by various military regimes as "one form of human rights abuse."⁵⁶

Despite its many achievements, the Ghanaian commission was criticized for being narrowly legalistic in its approach to truth and reconciliation, something reflected in the final report's narrative style.⁵⁷ The commission's report does not, for example, contain a particularly deep analysis of the broader social conditions of wealth and poverty that may have in part inspired the abusive practices of "revolutionary" governments. Rather, it largely seeks to detail a rather atomized catalogue of abuses perpetrated by soldiers, from killing and abductions to property seizure. Unlike the work of the Chadian truth commission, there is little effort devoted to detailing the ripple effects of both economic and political violence on the lives of families and their ability to support themselves. Thus, although the report breaks important ground in documenting aspects of economic violence, in some ways it continues to represent a more decontextualized and conventional human rights approach to reporting on violations. The story told in the commission's report becomes primarily a narrative of unchecked indiscipline by young rogue soldiers who mete out revolutionary zeal. The remedy to the problems evoked by such a narrative in turn tends to focus on the need to reign in unchecked security forces rather than to address broader social and economic conditions. This stands in contrast to the work of truth commissions analyzed later in this chapter such as Liberia and Sierra Leone that have explicitly identified large meta-drivers of the conflicts and abuses in question such as poverty, disenfranchised youth, and the scramble for natural resources, and tailored recommendations to address these "root causes."

iii. Sierra Leone: Truth and Reconciliation Commission (2002-2004)

In March 1991, a rag-tag group of disaffected students and would-be revolutionaries, led by Foday Sankoh and supported by Charles Taylor in neighboring Liberia, launched their first attacks in Eastern Sierra Leone under the banner of the Revolutionary United Front (RUF). Though the RUF was in its earliest days loosely united against the endemic corruption and inept governance of President Momoh's government, their efforts quickly degenerated into what appeared to be a war against the civilian population as drug-

⁵⁵ *Ghana NRC Report*, Vol. II, 42.

⁵⁶ *Ghana NRC Report*, Vol. I, 76.

⁵⁷ Valji, "A Comparative Assessment," 10.

added child soldiers raped, pillaged, maimed, and killed with impunity. In the eleven years that followed, the civil war enveloped the entire country, killing as many as 50,000 people.⁵⁸ Though notorious for its extreme brutality and mass amputations, it was also a conflict that gave the world a new vocabulary for thinking about the linkages between natural resources and violent conflict as factions vied for control of Sierra Leone's lucrative alluvial diamond fields, the so-called "blood diamonds" that helped in part to sustain the conflict. The war only came to an end in 2002 with the intervention of the United Nations, Guinea, and the British army. The Lomé Peace Accord that brought a formal end to the conflict called for the creation of a Truth and Reconciliation Commission. Subsequently, the government also asked the United Nations for help in setting up a Special Court for Sierra Leone in order to try those who "bear the greatest responsibility."⁵⁹

Tasked with making sense of a war that seemed to many to be without purpose, the Sierra Leone Truth and Reconciliation Commission took a historically deep and thematically broad view of the roots and drivers of the conflict. In interpreting its mandate, the commission adopted a broad view of the concept of human rights, comprising civil and political, economic and social, "as well as other categories such as the right to development and the right to peace."⁶⁰ It emphasized in its analysis dimensions of both physical and economic violence, going so far as to place corruption, poverty, and structural violence as the core building blocks for the conflict: "the central cause of the war was endemic greed, corruption, and nepotism that deprived the nation of its dignity that reduced most people to a state of poverty."⁶¹ Rather than treat facets of economic and structural violence as mere context, the commission traces the intertwined nature of economic, physical, and political violence both before and during the conflict itself. Thus, for example, in documenting violence that took place in the course of the conflict, the commission lists destruction of property, looting of goods, and extortion, along with serious violations of bodily integrity such as killing, assault, and rape as among the most common "violations" that took place with no attempt to create hierarchies of suffering.⁶² It also examined the secondary economic and social rights impacts of the conflict, such as the impact on the health and education of women and children.⁶³

The inseparable nature of economic and physical violence in the course of the Sierra Leonean conflict is perhaps expressed most clearly in the way that natural resources played into conflict dynamics, both before and during the conflict itself. While to many outsiders the conflict in Sierra Leone was often seen as little more than a brutal scrum for the nation's diamond resources, in fact, it might more plausibly be argued that diamonds played into both greed and grievance dynamics. Thus, for example, in the

⁵⁸ John Bellows and Miguel Edward, "War and Institutions: New Evidence from Sierra Leone," *The American Economic Review* 96 (2006): 394.

⁵⁹ Statute of the Special Court for Sierra Leone, art. 1.

⁶⁰ *Witness to Truth, Report of the Sierra Leone Truth and Reconciliation Commission* (2004), Vol. I, 37-38.

⁶¹ *Witness to Truth*, Vol. II, 27.

⁶² *Ibid.*, 35.

⁶³ *Ibid.*, 99-105.

decades before the eruption of conflict, the commission examines the role of elites in siphoning off the country's diamond wealth to the detriment of development and poverty alleviation, creating some of the conditions, including widespread frustration with corruption, that made the conflict possible. Once the conflict erupted, control of diamond production became a key strategy for several factions, influencing the targeting of certain areas with attendant human rights consequences. The commission found it important to emphasize, however, that this did not feature highly in the early years of the conflict, ultimately concluding that while diamonds helped to fuel and sustain the conflict, plunder was not the driving factor that precipitated the RUF's initial brutal campaign.⁶⁴

The report's recommendations, which are in principle binding upon the government of Sierra Leone,⁶⁵ are ambitious and wide ranging. While the bulk of the recommendations appear to target stronger rule of law and greater respect for civil and political rights, there are also recommendations tailored to dimensions of economic violence as expressed before and during the conflict, including a repeal of laws preventing women from owning land, the need for a stronger anti-corruption commission, better basic service delivery, and better and more transparent use of diamond revenues. Taken together, the recommendations of the Sierra Leonean TRC were perhaps the most comprehensive, and most holistic set of recommendations issued by any truth commission up to that time.

In issuing its recommendations, the commission attempted to calibrate what was realistically achievable in the short, medium, and long term. In this respect, it is worth noting that recommendations targeting improvement of economic and social rights are more likely to be qualified by the commission as something the government must "work towards" rather than something that is "imperative." While this is in part understandable given Sierra Leone's resource limitations, it may also serve to reinforce the notion that these are "backburner" issues compared to more pressing issues relating to civil and political rights. In this regard, it is unfortunate that the commission did not more explicitly couch the economic violence that it documented in explicitly human rights terms. As things stand, though there have been notable exceptions, including the passage of Sierra Leone's three gender bills,⁶⁶ many of the commission's recommendations have not been implemented. Understanding that misuse of diamond revenues and other instances of corruption can lead to violations of the rights to health and education, for example, might have given activists and citizens groups a tool to campaign and press for the implementation of certain recommendations.⁶⁷

iv. Liberia: Truth and Reconciliation Commission (2006-2009)

⁶⁴ *Witness to Truth*, Vol. I, 12.

⁶⁵ Republic of Sierra Leone, The Truth and Reconciliation Act (2000), Section 17.

⁶⁶ Specifically, the Domestic Violence Act, the Registration of Customary Marriage and Divorce Act, and the Devolution of Estates Act.

⁶⁷ Lisa Laplante, "Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework," *International Journal of Transitional Justice* 2 (2008): 337-350.

On Christmas eve 1989, former government minister Charles Taylor and a small group of Libyan-trained rebels launched an insurgency from neighboring Côte d'Ivoire in an attempt to topple the abusive regime of Samuel Doe, who ruled Liberia from 1980 to his death in 1990. The civil war that would consume Liberia for the next 14 years, punctuated only by a brief relative peace from 1996-1999, would result in the loss of as many as 250,000 lives and the displacement of one million individuals. While staggering in themselves for a country whose pre-war population numbered just over two million, such numbers only begin to capture the brutality of a conflict now famous for its use of child soldiers, widespread sexual violence, and rapacious looting as Charles Taylor and other rebel faction leaders encouraged their troops to "pay themselves."⁶⁸ Charles Taylor sustained his war effort in large part through plunder of Liberia's natural resources, including timber and diamonds, many of which were trafficked from neighboring Sierra Leone. The war only came to a definitive end in 2003 with the combined interventions of neighboring (Guinea), regional (Nigeria), and international powers (the United Nations and the United States). In early 2006, a transitional government was replaced by Ellen Johnson Sirleaf, Africa's first and only elected female head of state, and her new administration.

The comprehensive peace accords of 2003 provided for the creation of a truth and reconciliation commission that was to "deal with the root causes of the crises in Liberia, including human rights violations."⁶⁹ The commission, which was not actually launched until early 2006, was tasked with investigating "gross human rights violations and violations of international humanitarian law," including massacres, rape, murder, and extra-judicial killings. It was also mandated to investigate "economic crimes, such as the exploitation of natural or public resources to perpetuate the armed conflict."⁷⁰ In terms of temporal scope, the commission's mandate actually stretched back to 1979, some ten years before the formal beginning of the civil war, the final year of Americo-Liberian rule. It was further permitted to look at "any other period preceding 1979." This was a significant concession to many of Liberia's so-called "natives," who continue to view the tiny but still influential elite who ruled the country since its founding as a colony in 1822 with some suspicion, and who associate the structural violence and disenfranchisement woven throughout Liberia's history as fundamental to understanding the eruption of war in 1989.

From the outset, the Liberian commission's trajectory was a shaky one. The commission was cash-strapped, and its commissioners generally perceived as lacking the requisite stature and expertise. Disputes within the commission even led to a fistfight between two female commissioners. Of the former warlords who testified, some chose to grandstand and even express open contempt for the commission. At times, the conduct of commissioners appeared deeply unprofessional, including episodes of "giggling" when victims narrated unusual forms of atrocities, including particularly creative forms of

⁶⁸ *Truth and Reconciliation Commission, Consolidated Final Report (2009) (Liberia TRC Report)*, Vol. I, 44.

⁶⁹ *Republic of Liberia, An Act to Establish the Truth and Reconciliation Commission for Liberia (Liberian TRC Act)*, May 12, 2005, preamble.

⁷⁰ *Ibid.*, Article IV, Section 4(a).

rape.”⁷¹ The commission’s final report has been criticized for lacking rigor, even described by one critic as “unsightly and horribly flawed.”⁷² Perhaps unsurprisingly, two of the nine commissioners refused to sign the final report.

Despite these serious shortcomings, the commission’s final report was a bombshell. It recommended 98 people for prosecution and that 50 people be barred from public office for 30 years due to support they gave to Liberia’s warring factions. The list of those subject to censure included President Ellen Johnson Sirleaf herself, an icon of the international women’s movement and widely respected as an exemplar of good governance. While some welcomed the recommendations for prosecution and censure, they have arguably made enemies of even some of the report’s natural allies.⁷³

Given the drama surrounding the commission and the controversy arising out of its recommendations for prosecution and censure, it is perhaps unsurprising that some of the more progressive aspects of its work have been underappreciated. The commission was, for example, the first to take statements from citizens living abroad, particularly the large diaspora community living in the United States. It was also innovative in terms of its attempts to detail violations against women and children.⁷⁴ Finally, the commission broke ground in its relatively extensive exploration economic violence. Indeed, the report squarely identifies as among the “root causes of the conflict,” factors such as poverty, an “entrenched political and social system founded on privilege, patronage . . . and endemic corruption which created limited access to education, and justice, economic and social opportunities,” and “historical disputes over land acquisition, distribution and accessibility.”⁷⁵

In reading the commission’s account of the civil war, this more holistic approach makes clear that physical and economic violence are almost impossible to separate in attempting to understand the unfolding of Liberia’s civil war. For example, the commission details instances of Charles Taylor’s soldiers helping to guard the very logging companies who were paying Taylor for the privilege of operating in his territory, which in turn allowed Taylor to buy arms and take more territory, extorting even more companies and further diverting the proceeds of plunder and pillage into his war machine. Other aspects of the war economy, including widespread looting, are also documented. Though the report does not do so explicitly, one can trace in its narrative of the war economy an exaggerated form of the plunder and patronage system that in many ways started with Liberia’s colonization by repatriated slaves some 150 years earlier.

Beyond the war economy, other dimensions of economic violence, such as issues of land-tenure, are treated rather breezily and without the necessary rigor that complex issues require. Similarly, while many of the recommendations relating to

⁷¹ Lansana Gberie, “Truth and Justice on Trial in Liberia,” *African Affairs* 107 (2008): 428.

⁷² Steinberg, “Liberia’s Experiment,” 136.

⁷³ *Ibid.*

⁷⁴ Paul James-Allen, Aaron Weah, and Lizzie Goodfriend, “Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia,” International Center for Transitional Justice (May 2010), 3.

⁷⁵ *Liberia TRC Report*, Vol. II, 16-17.

economic violence seem sensible enough, including further investigations into those individuals accused of economic crimes, repatriation of unlawfully acquired monies, and the building of a new culture of integrity in politics, in general the report's recommendations section is unmoored from the rigorous documentation and empirical data one would expect to find in the body of a report. Thus, although the likelihood that many of its recommendations will be adopted has already been deeply undermined by the controversy surrounding its recommendations for censure, the overall shoddy workmanship of the report, including the general lack of congruence and consistency between the various sections of the report, and between the report and its recommendations, does not help matters.

If its groundbreaking though incomplete treatment of economic violence is to be welcomed, one can lament the lost opportunity to make tighter connections between the economic crimes discussed in the report, and violations of economic and social rights under international law. Indeed, economic and social rights receive scant mention in the report as an explicit matter, though there are a few vague mentions of "economic rights." In the end, the war economy detailed in the report comes to be seen as a product of unchecked greed and criminality by certain individuals, but there is little attention to the actual suffering it imposed on the people, an effect compounded by the near complete absence of victim voices throughout the report. In addition, the failure to cast economic violence as a rights issue robs would be activists and reformers of an important lobbying tool using a universal vocabulary that would serve to link war time violations of economic and social rights with violations before and after the conflict took place. The Liberian commission's approach to economic violence is therefore both ambitious and progressive, but also serves as a cautionary tale. Documenting economic violence is a complicated exercise that requires time, finances, and expertise. A commission without these resources should think carefully about how best to pursue a broad mandate.

v. *Kenya: Truth, Justice, and Reconciliation Commission (2009-ongoing)*

Compared to some of its more troubled neighbors, Kenya has, to outsiders at least, appeared to be a relatively stable and peaceful nation. Yet Kenya's post independence history has a darker side, and has been "marked by authoritarianism, political repression, gross violations of human rights, and widespread corruption."⁷⁶ Ethnic cleansing, detention without trial and of political prisoners, torture, and extrajudicial killings have all featured in the nearly forty years of rule under presidents Kenyatta and Moi and the Kenya African National Union party (KANU).⁷⁷ Shortly after historic elections brought an end to KANU rule, a new coalition government under President Kibaki created a task force to study the question of holding a public inquiry into past injustices. Based on broad-based consultations, the 2003 task force recommended the creation of a "Truth,

⁷⁶ Godfrey Musila, "Options for Transitional Justice in Kenya: Autonomy and the Challenge of External Prescriptions," *International Journal of Transitional Justice* 3(2009): 447.

⁷⁷ See generally, Makau Mutua, chairperson, "Republic of Kenya, Report of the Task Force on the Establishment of a Truth, Justice and Reconciliation Commission," *Buffalo Human Rights Law Review* 10 (2004).

Justice, and Reconciliation Commission" (TJRC), but its recommendations were ignored. It would take the postelection chaos of 2007, where politically orchestrated violence left more than 1100 people dead, to provide the impetus for further action. In the wake of that violence, a national dialogue and reconciliation process mediated by former UN Secretary General Kofi Annan helped to create consensus that "historical injustices," issues at the core of the post-electoral violence, finally needed to be addressed. In 2008, the Kenyan parliament adopted an act providing for the establishment of the TJRC.⁷⁸

As established, the mandate of the Kenyan TJRC is spectacularly broad, not only in terms of temporal scope, going back to 1963, but in terms of the range of "historical injustices" it was authorized to investigate during its two-year operational period.⁷⁹ Those issues range from egregious acts of physical violence, such as "abductions, disappearances, detentions, torture, sexual violations, murder, extrajudicial killings" to rather ill-defined "economic rights" and "economic crimes," including irregular and illegal acquisition of public land, grand corruption, exploitation of natural or public resources, and "perceived economic marginalization of communities."⁸⁰ While the commission's mandate is exceptional when viewed against the "dominant script" followed by most truth commissions throughout the world, the transitional justice narrative in Kenya has long seen forms of economic violence as central to the historical injustices that need to be addressed.⁸¹ Indeed, in tracing the history of transitional justice initiatives in Kenya, Godfrey Musila has argued that economic issues actually have a longer pedigree and are more central to most accounts of victimization in Kenya than civil and political rights, which "were late entrants to the Kenyan debate."⁸²

The sheer breadth of the commission's mandate, however, led to worry that its ambitious goals may not be manageable in terms of time and cost. Before the TJRC even began its work, Human Rights Watch, for example, argued that the commission should either be given a longer life, or the scope of its mandate reduced.⁸³ In examining the possibility of overreach, the task force established to study the possibility of a truth commission in 2003 noted that, particularly in Kenya, "economic crimes are so intertwined with human rights violations that it is impossible to establish watertight compartments between the two types of violations."⁸⁴ Nevertheless, as a means of ensuring that an examination into historical injustices remains focused and manageable, it argued that that "a truth commission should investigate a selected set of economic crimes that directly lead to the violations of economic, social, and cultural rights."⁸⁵ In

⁷⁸ *Republic of Kenya, The Truth, Justice and Reconciliation Act, 2008* (Kenyan TRC Act).

⁷⁹ The commission began its work in August 2009, yet as a result of repeated delays and extensions, its final report had yet to be issued as of this writing in January 2013.

⁸⁰ The Truth, Justice and Reconciliation Act, 2008.

⁸¹ Godfrey Musila, "Options for Transitional Justice in Kenya: Autonomy and the Challenge of External Prescriptions," *International Journal of Transitional Justice* 3 (2009): 446.

⁸² Musila, "Options for Transitional Justice in Kenya," 460.

⁸³ Human Rights Watch, "Kenya: Proposed Truth Commission Bill Seriously Flawed," Press Release (March 13, 2008).

⁸⁴ Mutua, "Report of the Task Force," 41.

⁸⁵ *Ibid.*, 42.

other words, by focusing specifically on an economic crimes-human rights violations nexus, a truth commission might frame and focus its inquiry into historical injustices in ways that are holistic, yet limited enough to be manageable. As adopted, however, the TJRC Act mentions “economic crimes” and “economic rights,” but the terms go largely undefined and their overlap with violations of internationally recognized economic and social rights is unclear. The apparent distinction made in the Act between “human rights,” on the one hand, with “economic rights,” on the other does little to clarify the muddled waters.

As of this writing, release of the TJRC’s final report has been greatly delayed, and it remains to be seen whether it will produce a report without rigor, similar to the Liberian report discussed above, “mired in the enormous details of history that . . . obfuscate[s] and preclude[s] possibilities for legal accountability.”⁸⁶ Thus, only time will tell whether the commission’s final product will be as rigorous and groundbreaking as its mandate is holistic and broad.

vi. *Economic Violence in the Work of Truth Commissions Outside of Sub-Saharan Africa*

Though this chapter has primarily focused on the role of economic violence in the work of African commissions, truth commissions outside of Africa have also begun to move beyond the dominant and relatively narrow script that has traditionally circumscribed the work of truth seeking bodies around the world. In East Timor, the report of the Commission for Reception, Truth, and Reconciliation (2002-2005), often known by its Portuguese Acronym, CAVR, took an extended look at economic violence under the Indonesian occupation.⁸⁷ The commission’s final report, *Chega!* (or “enough”), has a chapter explicitly dedicated to exploring violations of economic and social rights, including the rights to an adequate standard of living, health, and education. In general, the commission’s analysis is comparatively sophisticated, linking up a range of Indonesian policies with violations of economic and social rights in creative and unexpected ways, including the use of education as a propaganda tool as a violation of the right to education, forced resettlement of villagers into areas with poor soils and malarial conditions as a violation of the right to health, and the manipulation of coffee prices to fund military operations as a violation of the right to an adequate livelihood.⁸⁸ The tight linkage between the commission’s work on economic violence and specific violations of economic and social rights under international law continues into the recommendations section, with specific recommendations grouped under headings such as “right to education and self-determination” and “right to health and a sustainable environment.”⁸⁹ Overall, the commission’s elaborate treatment of economic and social rights violations under Indonesian occupation stands in contrast with many of the African

⁸⁶ Musila, “Options for Transitional Justice in Kenya,” 453.

⁸⁷ Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste, CAVR.

⁸⁸ *Chega!, The Report of the Commission for Reception, Truth and Reconciliation in Timor Leste (CAVR), Final Report (2005)*, part 7.9, 3.

⁸⁹ *Ibid.*, part 11, 10-12.

case studies discussed above, which have examined various forms of economic violence, but rarely done so in explicit terms of economic and social rights. Nevertheless, despite offering perhaps the most extensive and explicit treatment of economic and social rights of any truth commission to date, for purposes of reparations, the East Timorese commission's definition was limited to victims of violations of civil and political rights.⁹⁰ While the necessity of such distinctions as a matter of resource constraints might be argued, such practices have the effect of promoting hierarchies of rights and granting de facto impunity to the architects of economic violence.

Beyond East Timor, in 2009 the Solomon Islands Truth and Reconciliation Commission was created in order to examine the ethnic violence arising out of disputes over land ownership and economic displacement that wracked the region between 1997 and 2003 in a period known as "the Tensions."⁹¹ The scope of the commission's work includes investigating and reporting on a relatively broad range of physical violence and civil and political rights, including killings, abductions, enforced disappearances, torture, rape, sexual abuse, forced displacements, deprivation of liberty and serious ill-treatment.⁹² In contrast, the range of economic rights to be so investigated is comparatively limited, including only "the right to own property and the right to settle and make a living," but the commission is also tasked with assessing the impact of the conflict on key sectors such health and education. The act establishing the commission makes clear that any such assessment is to be done "without diluting emphasis on individual victims."⁹³ It therefore appears that parliament was intent on precluding a loose and overly broad inquiry unmoored from concrete violations of human rights.⁹⁴ When the five-volume final report is made public, it will be clear whether economic violence has indeed been of significant if circumscribed importance to the commission's work.⁹⁵

C. Broadening the Script, Yet Retaining Focus

With few exceptions, the transitional justice institutions of the 1980s and 90s worked to build a justice narrative that was relatively narrow, focusing largely on egregious acts of physical abuse, while issues of economic violence were pushed to the sidelines. Seen against the backdrop of this "dominant script," the work of the truth commissions outlined in this chapter is pioneering, even while the work of some individual commissions has

⁹⁰ *Ibid.*, part 11, 40-41.

⁹¹ For background on "the Tensions," see generally James Cockayne, "Operation Helpem Fren: Solomon Islands, Transitional Justice and the Silence of Contemporary Legal Pathologies on Questions of Distributive Justice," NYU School of Law Center for Human Rights and Global Justice, Working Paper Series, No. 3 (2004).

⁹² *The Solomon Islands, Truth and Reconciliation Act, 2008 (Solomon Islands TRC Act)*, section 5.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ While the commission's final report was given to the Prime Minister in early 2012, as of this writing, it is unclear when it will be made widely publicly available.

been deeply flawed. Taken together, the work of these commissions suggests that the dominant script is slowly giving way to a much more holistic conception of justice in transition in which economic violence is increasingly placed in the foreground.

One might well ask *why* a number of African commissions appear to have broken from the dominant script to varying degrees. While the answer presented here is somewhat speculative, there are at least three plausible explanations. First, in the case of Chad, it appears to have worked in such splendid isolation that it was not heavily influenced by the dominant script to begin with.⁹⁶ At the same time, Chad's cash-strapped government appeared to be desperate to reclaim some of the funds embezzled by Habré on the eve of his fall from power, making a focus on corruption important if only out of self-interest. Second, speaking more broadly, unlike the early Latin American commissions, most of the commissions outlined in this chapter were operating at a time when work on economic and social rights had become much more prevalent in the UN and NGO world more generally, with activists vigorously pressing the need to give both civil political and economic and social rights equal pride of place. If early Latin American commissions of the 1980s and 90s in some ways expressed the human rights zeitgeist of the era, they also represented the least common denominator of what could be agreed to at the time. Yet by the end of the millennium, the parameters of the possible in the world of human rights and transitional justice had expanded, as reflected in the work of the commissions discussed in this chapter. Finally, for at least some of the conflicts presented in this chapter, economic violence was so deeply written into the logic of the conflict that to focus exclusively on violations of physical integrity would have seemed wholly inadequate. It is simply not possible to understand conflicts in Sierra Leone and Liberia, for example, without reference to facets of economic violence.

Whatever the precise reasons for this evolving work, the empirical evidence of a change in the dominant script that these commissions represent has been accompanied by signs of a normative shift in international policymaking. For example, a recent report of from the UN Secretary General observes "a growing recognition that truth commissions should also address the economic, social, and cultural rights dimensions of conflict to enhance long-term peace and security."⁹⁷ Given these emerging normative and empirical trends, now is the time to take stock of the work that has been done with an eye to improving future practice.

One of the challenges illustrated in this chapter is that while the work of some truth commissions is starting to broaden, it is not clear that the budgets and time allocated to do this work has increased commensurately. Addressing legacies of economic violence in the context of a truth commission is challenging work, at times requiring new methods of research and documentation that call on particular sets of expertise. In many instances, such work does not lend itself to the relatively straightforward victim hearings that have been the mainstay of many truth commissions in the past. To some extent, the case studies discussed in this chapter reflect the dangers of broadening mandates

⁹⁶ Cavallaro and Albuja, "The Lost Agenda," 138.

⁹⁷ United Nations Secretary General, "The Rule of Law and Transitional Justice in Post-Conflict Societies," UN Doc. S/2011/634 (October 12, 2011), para. 7.

without at the same time broadening the resources needed to accomplish the work. In Chad, for example, the attempt to unravel Hissein Habré's alleged financial schemes did not appear to benefit from the time, financial wherewithal, or expertise in forensic accounting that would have been required to thoroughly and convincingly expose the economic misdeeds of the former regime. In attempting to document aspects of economic violence in Liberia and East Timor, the truth commissions in question appeared to be especially reliant on secondary sources, a fact that may detract from credibility when so many other aspects of a commission's work are based on primary fact-finding and first-hand testimony.⁹⁸ Finally, analytically, the work and mandates of several of the truth commissions discussed in this chapter bear a confused and inexact relationship with economic and social rights recognized under international law, which at times gives the final reports a rather loose and freewheeling feel.

Given the unlikelihood in the near term that the resources allocated to truth commissions will increase dramatically over historical levels, commissions addressing aspects of economic violence will need to find better ways to manage broadening mandates. To some extent, increased work on economic violence might give transitional justice more relevance to new constellations of actors and institutions, including development and financial organizations. Some issues of resources and expertise might therefore be addressed through new partnerships. In the end, however, the work of the Liberian truth commission illustrates that partnerships alone cannot ensure quality work, and many truth commissions will still need to find some kind of filtering device to tighten the focus on economic violence to manageable levels.

One potential filter that might increase the rigor of work on economic violence would be to focus specifically on an "economic violence-human rights nexus," looking primarily at those aspects of economic violence that most directly and egregiously impact economic and social rights recognized under international law. While this approach might at times exclude certain kinds of conduct from a commission's purview—not every act of corruption might be seen to undermine the right to health or education, for example⁹⁹—it could also provide some benefits in terms of requiring truth commissions to focus on the rights bearers themselves, the victims of economic violence, without getting lost in numbers and open-ended historical analysis. A sharper focus on the intersection of economic violence and internationally recognized economic and social rights would also likely give civil society and citizen groups a powerful mobilization tool once a truth commission issues its report. Given the extent to which the recommendations of many truth commissions are simply ignored by governments, this should not be overlooked. Of course, in focusing on a rights nexus, truth commissions should be wary not to become overly lawyerly and atomistic, losing the broader thread and historical context in which rights violations are produced. As with so many other questions of transitional justice, striking the right balance will be key.

⁹⁸ In its final report, the East Timorese commission acknowledged its heavy reliance on secondary sources as one of the limitations of its analysis. *Chega!*, part 7.9, 5.

⁹⁹ See Chris Albin-Lackey, "Corruption, Human Rights, and Activism: Useful Connections and their Limits," in this volume.

Beyond looking to an economic violence-human rights nexus, there may be other ways of circumscribing mandates to manageable levels. Each truth commission will have to find a context-appropriate solution to addressing economic violence. But despite the risks of taking a more holistic approach to questions of justice in transition, there is simply no a priori reason to exclude economic violence from the mandate and work of a truth commission as a general matter. This is particularly true when economic violence has been written into the logic of the conflict itself, as illustrated in various ways by the work of the truth commissions described in this chapter. The script is slowly changing, and those changes bring new challenges. Just as the human rights movement has found that greater embrace of economic and social rights has required hard thinking about new advocacy strategies and research methods, so too the field of transitional justice needs to focus greater energies on devising more holistic yet rigorous and disciplined approaches to questions of economic violence and justice in transition.¹⁰⁰ Examining the pioneering work of African truth commissions on economic violence helps to give some important clues as to where this work must begin.

¹⁰⁰ See generally Roth, *“Defending Economic, Social and Cultural Rights.”* (Explaining the particular methodological challenges associated with trying to apply a “naming and shaming” documentation strategy to violations of economic and social rights); Goering, *“Amnesty International and Economic, Social, and Cultural Rights.”* (Tracing the history of Amnesty International’s ambivalence towards economic and social rights).

**Part III: Towards an Alternative Transitional
Justice Paradigm: *Transitional Justice as
Peacebuilding?***

Chapter IV: Beyond the Post-Conflict Checklist; Linking Peacebuilding and Transitional Justice Through the Lens of Critique¹

Since the end of the Cold War, programs and interventions associated with both international peacebuilding and transitional justice have increasingly followed in war's wake.² Today, there is a growing demand for post-conflict peacebuilding initiatives, partly for humanitarian reasons, and partly for strategic reasons arising out of the conceptualization of failed and conflict states as a global security issue.³ At the same time, the growth of transitional justice practices may be creating a "justice cascade," a new global norm of accountability that helps give rise to new trials and truth commissions year after year.⁴ More and more, the question is not whether there will be some kind of transitional justice post-conflict, but what the timing, modalities, and sequencing might be.⁵

In the post-conflict context, transitional justice and peacebuilding initiatives often share the same temporal and geographic space, and several United Nations (UN) peace operations have been given a mandate to address transitional justice as well as more general peacebuilding activities.⁶ Despite this, peacebuilding and transitional justice have not always been seen as part of the same enterprise,⁷ and linkages between them

¹ This dissertation chapter was originally published in the *Chicago Journal of International Law*: *Chicago Journal of International Law* 14 (2013): 165-196.

² I discuss evolving definitions of "international peacebuilding" in Section A. In general, however, this article focuses on international peacebuilding initiatives and definitions central to the United Nations (UN) system as opposed to the various types of interpersonal, community-level, and "track-two" peacebuilding that are done by individuals, religious groups, and nongovernmental organizations (NGOs).

³ See Edward Newman et al, "Introduction," in *New Perspectives on Liberal Peacebuilding*, eds. Edward Newman, Roland Paris, and Oliver Richmond (United Nations University, 2009), 3-9.

⁴ See generally Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W. W. Norton and Co., 2011) (arguing that a global crescendo of human rights prosecutions demonstrates the emergence of a new international norm of accountability); Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2011) (discussing the phenomenon of truth commissions and their spread throughout the world).

⁵ The various mechanisms associated with transitional justice are frequently applied in both post-conflict and post-authoritarian scenarios. Because this article focuses on the overlaps between transitional justice and post-conflict peacebuilding, however, I refer here only to post-conflict transitional justice.

⁶ Examples include the UN Mission in Kosovo (UNMIK) and the UN Transitional Authority in East Timor (UNTAET).

⁷ Scholars and policymakers have long examined the possibility for tensions between peace and justice initiatives, manifested in the so-called "peace versus justice" debate. See, e.g., Chandra Lekha Sriram, *Confronting Past Human Rights Violations: Justice vs Peace in Times of Transition* (Milton Park: Frank Cass, 2004), 1-2. In recent years, however, transitional justice advocates have tended to see the various and sometimes contradictory goals of transitional justice as complementary. See Bronwyn Anne Leebaw, "The Irreconcilable Goals of Transitional Justice," *Human Rights Quarterly* 30, no. 1 (2008): 98.

have not generally received a great deal of attention by scholars.⁸ Indeed, despite proximities of time and space, there has historically been little coordination between traditional pillars of post-conflict peacebuilding, such as the demobilization, disarmament, and reintegration (DDR) of ex-combatants, security-sector reform (SSR), and transitional justice initiatives.⁹

There are signs that this historic, separate-tracks approach to peacebuilding and transitional justice programs is changing. Although peace and justice have at times been thought to be in tension with one another, rhetorically at least, they are now seen as mutually supportive.¹⁰ There is a growing interest in both academic and policy communities in exploring potential theoretical and programmatic linkages between peacebuilding and transitional justice.¹¹ Some in those communities have called for better coordination in order to facilitate complementarity.¹² At a policy level, there are early indications that this is in fact taking place. For example, in 2006 the UN Department of Peacekeeping Operations set forth guidance encouraging greater linkages between DDR programming and transitional justice.¹³ Together with this new

⁸ See Paul van Zyl, "Promoting Transitional Justice in Post-Conflict Societies," in *Security Governance in Post-Conflict Peacebuilding*, eds., Alan Bryden and Heiner Hänggis (Geneva: DCAF, 2005), 209-10.

⁹ See Lars Waldorf, "Introduction: Linking DDR and Transitional Justice," in *Disarming the Past: Transitional Justice and Ex-Combatants*, eds. Ana Cutter Patel, Pablo de Greiff, and Lars Waldorf (New York: ICTJ, 2009), 16 (discussing lack of coordination between transitional justice and DDR); Alexander Mayer-Rieckh and Roger Duthie, "Enhancing Justice and Development Through Justice-Sensitive Security Sector Reform," in *Transitional Justice and Development: Making Connections*, eds. Pablo de Greiff and Roger Duthie (New York: ICTJ, 2009), 222 (noting that the practices of SSR and transitional justice "rarely interact, either in practice or in theory").

¹⁰ The mutual complementarity of peace, justice, and democracy has arguably been a UN doctrine at least since the 2004 publication of a landmark report on transitional justice. See United Nations Secretary General, "The Rule of Law and Transitional Justice in Post-conflict Societies," UN Doc. S/2004/616 (August 23, 2004), 1 (asserting that "[j]ustice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives").

¹¹ See generally, e.g., Chandra Sriram, Olga Martin-Ortega, Johanna Herman, "Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice," JAD-PbP Working Paper Series No 1. (May 2009), 13 (discussing increasing linkages between transitional justice and a broader set of peacebuilding activities); Alan Bryden, Timothy Donais, and Heiner Hängi, *Shaping a Security-Governance Agenda in Post-Conflict Peacebuilding* (Geneva: DCAF, 2005) (examining policy linkages between SSR, DDR, rule of law initiatives, and transitional justice); see also van Zyl, "Promoting Transitional Justice," 210 (arguing that "[t]ransitional justice strategies should be understood as an important component of peacebuilding").

¹² See, e.g., Johanna Herman, Olga Martin-Ortega, and Chandra Lekha Sriram, "Beyond Justice Versus Peace: Transitional Justice and Peacebuilding Strategies," in *Rethinking Peacebuilding: The Quest for Just Peace in the Middle East and the Western Balkans*, eds. Karin Aggestam and Annika Björkdahl (Milton Park: Routledge, 2013), 50 (observing the importance "to find commonalities between the transitional justice and peacebuilding processes, particularly since activities in the field often overlap").

¹³ United Nations Department of Peacekeeping Operations (DPKO), *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, § 2.10 (DPKO 2006).

enthusiasm, some have urged caution, pointing to the need to manage potentially significant tensions between peacebuilding and transitional justice projects and programs.¹⁴

Building peace with justice is a complex and long-term endeavor that calls for holistic solutions that address crosscutting challenges. While peacebuilding is ultimately a broader notion, both peacebuilding and transitional justice are open-ended concepts with substantial overlap that “are contrived to achieve a common purpose”: long-term positive peace.¹⁵ Both seek to rebuild social trust and social capital and attempt to address problems of governance, accountability, and the need for institutional reform. To these same ends, promoting synergies between peacebuilding and transitional justice programs and initiatives is a worthwhile goal for policymakers, academics, and practitioners alike. Indeed, the UN has recently overhauled its “peacebuilding architecture” with the creation of a Peacebuilding Commission (PBC) precisely to avoid fragmented and duplicative efforts in the peacebuilding arena, broadly conceived.¹⁶

And yet, as this article will argue, developing more integrated approaches to peace and justice issues in the post-conflict context may create its own problems and challenges. In particular, there is a danger that as transitional justice is mainstreamed into emerging best practices for post-conflict reconstruction by the PBC and other UN policy organs, together with DDR, SSR, rule of law assistance, and elections, it will increasingly come to be seen as yet one more box to tick on the “post-conflict checklist,” a routine part of the template deployed in the context of post-conflict peace operations.¹⁷

¹⁴ See generally Herman, “*Beyond Justice Versus Peace*” (discussing the potential tensions between transitional justice, rule of law assistance, DDR, and SSR).

¹⁵ Gerhard Thallinger, “The UN Peacebuilding Commission and Transitional Justice,” *German Law Journal* 8 (2007): 696. The term “negative peace” refers to the absence of direct violence. It stands in contrast with the broader concept of “positive peace,” which includes the absence of both direct and indirect violence, including various forms of “structural violence” such as poverty, hunger, and other forms of social injustice. See generally Johan Galtung, “Violence, Peace, and Peace Research,” *Peace Research* 6, no. 3 (1969): 167.

¹⁶ See Dustin Sharp, “Bridging the Gap: the United Nations Peacebuilding Commission and the Challenges of Integrating DDR and Transitional Justice,” in *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants*, eds. Chandra Lekha Sriram, et al (London: Routledge, 2012), 24-25.

¹⁷ The problem of template-based or one-size-fits-all peacebuilding initiatives is a frequent trope in both academic and policy literature. See, e.g., Roger Mac Ginty, “Indigenous Peace-Making Versus the Liberal Peace,” *Cooperation and Conflict: Journal of the Nordic Studies Association* (2008): 144 (observing the existence of “set templates” and a “formulaic path” in internationally sponsored peacebuilding); Edward Newman, “‘Liberal’ Peacebuilding Debates,” in *New Perspectives on Liberal Peacebuilding*, 42 (noting that “[a] core problem of contemporary peacebuilding is its tendency to be formulaic”); International Crisis Group, *Liberia and Sierra Leone: Rebuilding Failed States*, Africa Report no. 87 (Dakar/Brussels: International Crisis Group, December 2004), 9 (criticizing a mechanistic “operational checklist” approach to post-conflict peacebuilding in which the international community assumes it can safely withdraw after rote implementation of a series of initiatives: deployment of peacekeeping troops, disarmament, demobilization and reintegration of ex-combatants, the repatriation and return of refugees and

In this regard, it is worth noting that traditional international peacebuilding programs—including DDR, SSR, and rule of law assistance—as well as a number of transitional justice initiatives have been subject to powerful, parallel critiques: that they are too often externally driven, being planned and implemented in a top-down and state-centric manner that gives insufficient voice and agency to those most affected by the conflict;¹⁸ that they are biased toward Western approaches, giving too little attention to local or indigenous peace and justice traditions;¹⁹ that they are presented as technocratic, neutral, and apolitical solutions to highly contested or contestable political issues and choices;²⁰ and that they ultimately reflect not local needs and realities, but a dominant “liberal international peacebuilding” paradigm that seeks to foster Western, market-oriented democracies in the wake of conflict without considering the tensions this may unleash in the immediate aftermath of conflict.²¹ Considered together, there is reason to worry that better integration and coordination between peacebuilding and transitional justice might exacerbate some of the tendencies that have given rise to these parallel critiques rather than alleviate them.

As academics and policymakers begin to sound out linkages and synergies, viewing transitional justice and peacebuilding overlaps through the prism of these critiques might help us to strengthen policies that seek to promote complementarity. At the same time, addressing some of these critiques may cast doubt upon the prospects of more coordinated approaches to post-conflict peacebuilding altogether. The types of locally owned, context-specific, and bottom-up solutions frequently advocated in the literature may take us beyond the “post-conflict checklist,” but they also call into question the role of international organizations and international standards that are typically part and

internally displaced persons, security sector and judicial reform, transitional justice initiatives, and, finally, a first election).

¹⁸ See, e.g., Oliver Richmond, “The Romanticisation of the Local: Welfare, Culture, and Peacebuilding,” *International Spectator: Italian Journal of International Affairs* 44, no. 1 (2009), 161-63 (discussing the tendency toward top-down institution building in a variety of “liberal” interventions); Kora Andrieu, “Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm,” *Security Dialogue* 41, no. 5 (2010): 54 (noting that “transitional justice seems to be strongly under the influence of [a] top-down state-building approach.”)

¹⁹ See, e.g., Mac Ginty, “Indigenous Peace-Making,” 144-45 (noting that Western approaches to peacebuilding “risk[] minimizing the space for organic local, traditional or indigenous contributions to peace-making”); Wendy Lambourne, “Transitional Justice and Peacebuilding After Mass Violence,” *International Journal of Transitional Justice* 3, no. 1 (2009): 32-34 (calling for a revalorization of local and cultural approaches to justice and reconciliation).

²⁰ See, e.g., Newman, “‘Liberal’ Peacebuilding Debates,” 42 (critiquing attempts to “‘de-politicize’ peacebuilding and present it as a technical task”); Patricia Lundy and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35, no. 2 (2008): 276-77 (arguing that “wider geo-political and economic interests too often shape what tend to be represented as politically and economically neutral post-conflict and transitional justice initiatives”).

²¹ See generally Roland Paris, *At War's End: Building Peace After Nationalist Conflict* (Cambridge: Cambridge University Press, 2004); Chandra Lekha Sriram, “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,” *Global Society* 21, no. 4 (2007): 579.

parcel of international post-conflict assistance. Yet from a pragmatic and realist standpoint, a balance between local and international agency in post-conflict programming seems both inevitable and desirable, and both “locals” and “internationals” have a stake in finding creative solutions to peacebuilding and transitional justice challenges, and learning from and applying the lessons of best practices elsewhere.²²

Ultimately, striking a better balance might involve more hybridized forms of peacebuilding and transitional justice that involve a mixture of conventional and local practices and models.²³ While this Article will not attempt to set forth a comprehensive and integrated approach along these lines, it will argue that attentiveness to some of the parallel critiques leveled against both peacebuilding and transitional justice interventions could lead to shifts that would strengthen policy in both areas in the process of promoting linkages. The possibility of integrating local reconciliation practices into both transitional justice mechanisms and reintegration schemes for former combatants is one such possibility that will be briefly examined in this Article.

This Article will proceed in five sections. In Section II, I discuss the origins and evolution of both peacebuilding and transitional justice since the end of the Cold War. In Section III, I evaluate some of the broad and parallel critiques that have been leveled against peacebuilding and transitional justice. In Section IV, I examine the possibility for greater coordination between peacebuilding and transitional justice, looking to potential tensions and complementarity at a programmatic level, particularly through the lens of the longstanding critiques discussed in Section III. I argue that greater attention to these critiques might help to inspire modes of coordination and complementarity that will avoid some of the dangers of a standardized, checklist approach to post-conflict peacebuilding. Section V concludes the Article.

A. Origins and Growth of Peacebuilding and Transitional Justice

The growth and expansion of international peacebuilding efforts associated with the end of the Cold War has been paralleled by an explosion of interest in the various mechanisms associated with transitional justice. In post-conflict countries today, there is an increased likelihood that at least some of the various programs and initiatives associated with both international peacebuilding and transitional justice will be marshaled as part of a response to violent conflict. The following section briefly outlines the origins of both fields with a view to understanding the critiques that will be discussed in Section III of this Article.

i. The Growth and Expansion of Peace Operations

²² See Laura Arriaza and Naomi Roht-Arriaza, “Social Reconstruction as Local Process,” *International Journal of Transitional Justice* 2, no. 2 (2008): 153 (arguing for strategies that “incorporate a perspective that encompasses bottom-up local efforts as well as top-down state-driven or internationally driven ones”).

²³ See Newman, Paris, and Richmond, “Introduction,” 16.

With the end of the Cold War, the world experienced a rapid expansion in international peacekeeping and peacebuilding, and UN peace operations quickly grew in both sophistication and complexity. The thick, multi-dimensional mandates associated with UN missions today stand in contrast to the relatively thin approaches previously taken. During the Cold War, peacekeeping actions placed a premium on neutrality, consent, and minimum force—notions all central to traditional conceptions of sovereignty.²⁴ So-called “first generation”²⁵ or consensual peacekeeping often involved interposition of forces for the monitoring of ceasefires geared toward containing conflicts and maintaining stability.²⁶ Such practices were largely based on the felt importance of maintaining international security between states as opposed to the intra-state conflict and civil wars that we often associate with conflict today.²⁷ Rather than attempting to address “root causes” or to resolve conflict, the driving idea was to contain international instability in an era when a larger confrontation between great powers was to be avoided at all costs.

If these early peacekeeping efforts were relatively minimalist and involved the avoidance of domestic politics, the end of the Cold War brought about a huge shift in the approach to conflict management, and the UN increasingly found itself called upon in these next generation initiatives to address underlying economic, social, cultural, and humanitarian problems premised on the idea that managing the often internal conflicts of the post-Cold War world required a multi-faceted approach. Thus, from managing conflict *between* states, there was a shift to the perceived need to build peace *within* states, from traditional acts of *peacekeeping* authorized under Chapter VI of the UN Charter,²⁸ to more complex, and, from a traditional Westphalian perspective, more intrusive acts of *peacebuilding* that were frequently authorized under Chapter VII.²⁹ This shift was bolstered by the belief that threats to security come not just from interstate

²⁴ See Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building* (Oxford: Oxford University Press, 2004), 238.

²⁵ Some refer to three different generations of peacekeeping, which evolved in quick succession in the early 1990s. See, e.g., *ibid.* Others, such as Roland Paris, simply distinguish between “traditional” peacekeeping and “peacebuilding operations.” See Roland Paris, “Peacekeeping and the Constraints of Global Culture,” *European Journal of International Relations* 9, no. 3 (2003), 448-50.

²⁶ Examples of this approach to peacekeeping include the UN Military Observer Group in India and Pakistan (established in 1949) designed to monitor a ceasefire, the UN Peacekeeping Force in Cyprus (established in 1964) established to prevent fighting between Turk and Cypriot communities, and the UN Disengagement Observer Force (established in 1974) after the disengagement of Israel and Syria from the Golan Heights.

²⁷ See Newman, Paris, and Richmond, “Introduction,” 6.

²⁸ UN Charter Art. 11, ¶1.

²⁹ Examples of more complex, multi-dimensional peace operations include Cambodia, Angola, Burundi, Central African Republic, Liberia, Mozambique, Rwanda, Sierra Leone, Chad, Sudan, Côte d'Ivoire, Democratic Republic of the Congo, Somalia, Kosovo, El Salvador, Guatemala, Haiti, Timor-Leste, Bosnia and Herzegovina, Eastern Slavonia, and Croatia.

wars, but also from weak, failing, and conflict-prone states, and, particularly in the post-9/11 world, non-state actors.³⁰

The concept of “post-conflict peacebuilding” that has come to be associated with multi-dimensional UN peace operations is often attributed to UN secretary general Boutros Boutros-Ghali and his 1992 *Agenda for Peace* report, which defined it as “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict.”³¹ Since that time, the concept has been institutionalized across a number of organizations outside of the UN system that use it to frame and organize a variety of post-conflict activities.³² The term has come to comprise efforts to disarm previously warring parties, reintegrate former soldiers into society, demine and destroy weapons, rebuild the security and judicial sectors, repatriate or resettle refugees, and engage in various forms of democracy and governance assistance, including monitoring elections.³³

Twenty years after the UN offered its initial definition, the term peacebuilding has, if anything, come to be construed in even more expansive terms. According to a recent UN working definition, peacebuilding “involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundation for sustainable peace and development.”³⁴ This definition is spectacularly broad and, together with the shift from first to successive generations of peacekeeping, could be seen as demonstrating a growing commitment on the part of the UN system to the idea of building “positive peace,” rather than simply maintaining “negative peace.”³⁵

The increasingly broad mandates and obligations of UN peacekeeping missions across the world to include various aspects of peacebuilding and statebuilding³⁶ were not initially met with a significant evolution of the UN’s institutional doctrine or structure, leading to redundant and ad hoc efforts and a general lack of coordination.³⁷ However, the seemingly inevitable involvement in increasingly complex post-conflict initiatives

³⁰ See Newman, Paris, and Richmond, “Introduction,” 9.

³¹ United Nations, *Agenda for Peace, Preventative Diplomacy, Peacemaking and Peace Keeping*, UN Doc A/47/277-S/24111 (1992), ¶ 21.

³² See Michael Barnett, et al, “Peacebuilding: What Is in a Name?,” *Global Governance* 13, no. 1 (2007): 45–48.

³³ See United Nations, *United Nations Peacekeeping Operations: Principles and Guidelines* (United Nations 2008), 26, online at http://pbpu.unlb.org/pbps/library/Capstone_Doctrine_ENG.pdf (visited Apr 8, 2013).

³⁴ *Ibid.*, 18.

³⁵ See generally Sharp, “Bridging the Gap.”

³⁶ For a discussion of the evolution of peacebuilding and statebuilding discourse, see generally, John Heathershaw, “Unpacking the Liberal Peace: The Dividing and Merging of Peacebuilding Discourses,” *Millennium: Journal of International Studies* 36, no. 3 (2008): 597. In general, while peacebuilding is the more inclusive term, statebuilding tends to focus more narrowly on rebuilding the core institutions and apparatuses of a modern, liberal state in the aftermath of conflict.

³⁷ Liliana Lyra Jubilit, “Towards a New *Jus Post Bellum*: The United Nations Peacebuilding Commission and the Improvement of Post-Conflict Efforts and Accountability,” *Minnesota Journal of International Law* 9 (2011): 31.

eventually culminated in the 2005 creation of the UN Peacebuilding Commission (PBC), which has been tasked with facilitating integrated approaches to post-conflict reconstruction throughout the UN system and beyond.³⁸ Today, the coordination, direction, and implementation of the vast majority of on-the-ground peacekeeping missions across the world is done by the UN Department of Peacekeeping Operations (DPKO), and many such missions today have significant peacebuilding components.³⁹

ii. *Transitional Justice: From the Exception to the Mainstream*

While definitions of transitional justice vary and have evolved over time, most of them attempt to capture a legal, political, and moral dilemma about how to deal with historic human rights violations and political violence in societies undergoing some form of political transition.⁴⁰ The institutional mechanisms most closely associated with the field are trials and truth commissions, though reparations, lustration, and broader institutional reform are also central.⁴¹ Taken together, transitional justice is often said to be both backward looking, insofar as it is closely associated with justice and accountability for previous human rights violations, and forward looking, insofar as its advocates often claim that justice is essential to prevent recurrence and to lay the groundwork for longer term peace and stability.⁴²

³⁸ See General Assembly Res No 60/180, UN Doc A/RES/60/180 (2005), ¶¶ 1–2; Security Council Res No 1645, UN Doc S/RES/1645 (2005), ¶¶ 1–2. The UN's new peacebuilding architecture also includes a Peacebuilding Support Office (PBSO), which acts as a secretariat to the PBC, and serves the UN secretary general in coordinating UN agencies in their peacebuilding efforts, as well as a Peacebuilding Fund (PBF), administered by the PBSO, intended to address immediate peacebuilding needs in countries emerging from conflict, and thereby fill a critical gap in post-conflict project financing.

³⁹ Of course, beyond DPKO, full implementation of peace operations around the world is also the work of many UN agencies, ranging from the Department of Political Affairs (DPA) and the United Nations Development Programme (UNDP) to the Office of the High Commissioner for Human Rights (OHCHR), and the Office of the United Nations High Commissioner for Refugees (UNHCR).

⁴⁰ For a review of how definitions of transitional justice have evolved over time, see Rosemary Nagy, "Transitional Justice as a Global Project: Critical Reflections," *Third World Quarterly* 29, no. 2 (2008): 277–78.

⁴¹ According to a landmark 2004 UN report, transitional justice comprises "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof." United Nations, *The Rule of Law and Transitional Justice in Post-conflict Societies*, ¶8.

⁴² See, e.g., Andrieu, "Civilizing Peacebuilding," 538 (noting that transitional justice has both forward- and backward-looking aspects); Mayer-Rieckh and Duthie, "Enhancing Justice and Development," 224 (arguing that it would be a mistake to see transitional justice as solely backward looking); Andrew Valls, "Racial Justice as Transitional Justice," *Polity* 36, no. 1 (2003):

As with peacebuilding, the birth and rapid growth of transitional justice is closely associated with political currents near the end of the Cold War. Specifically, as a field of policy, practice, and study, transitional justice has its origins in the so-called “third wave” of democratic transitions that swept Eastern Europe and Latin America in the late 1980s and 1990s⁴³ Indeed, the origins of transitional justice in the deliberations of how new democracies ought to respond to massive human rights violations is key to understanding the parameters and practices of the field.⁴⁴ Early thinking about justice in transition often focused on the need to deliver enough justice to contribute to building a new democratic order, without at the same time endangering the democratic transition itself.⁴⁵ Like its parent field of human rights, transitional justice was preoccupied with accountability for abuses. It also sought to achieve justice in ways that would facilitate a transition not just to democracy but to something resembling Western liberal democracy.⁴⁶

58 (arguing for a balanced approach to transitional justice that takes into account both forward- and backward-looking dimensions).

⁴³ See *Generally* Samuel P. Huntington, “The Third Wave: Democratization in the Late Twentieth Century,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume I. General Considerations*, ed. Neil Kritz (Washington: United States Institute of Peace, 1995), 65. While the term “transitional justice” was coined some twenty years ago, it has been argued that transitional justice did not coalesce as a distinct “field” until sometime after 2000. See Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31 (2009): 329-32 (tracing the history of the use of the term “transitional justice”); Christine Bell, “Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field,’” *International Journal of Transitional Justice* 3 (2009): 7 (arguing that transitional justice did not emerge as a distinct field until after 2000). Of course, the practices associated with transitional justice go back for centuries if not millennia. See *generally* Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004). (reviewing historic practices now associated with the modern field of transitional justice).

⁴⁴ See Thomas Hansen, “The Horizontal and Vertical Expansions of Transitional Justice: Explanations and Implications for a Contested Field,” in *Transitional Justice Theories*, eds. Susanne Buckley-Zistel, et al (Milton Park: Routledge, 2014).

⁴⁵ Political scientists of the period focusing on the dilemmas of transitional justice analyzed the role of bargains between elite groups in striking a balance between the demands of justice and the needs of the democratic transition. See *generally* Huntington, “The Third Wave”; Guillermo O’Donnell and Philippe Schmitter, “Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies,” in Kritz, *Transitional Justice*, 57.

⁴⁶ See Arthur, “How Transitions Reshaped Human Rights,” 325-26 (arguing that transition to democracy was the “dominant normative lens” through which political change was viewed in the early years of transitional justice practice and scholarship); see also Lundy and McGovern, “Whose Justice?,” 273 (arguing that “[t]ransition,’ as normally conceived within transitional justice theory, tends to involve a particular and limited conception of democratization and democracy based on liberal and essentially Western formulations of democracy”). For an argument that mainstream human rights practice of the period also sought to replicate essentially Western liberal models of governance, see *generally* Makau wa Mutua, “The Ideology of Human Rights,” *Virginia Journal of International Law* 36, no. 3 (1996): 589.

In the quarter century that has followed the emergence of transitional justice discourse and practice, it has evolved from a discourse of exception and deviation—something thought to be different from ordinary forms of justice to be deployed on an ad hoc basis during a period of rupture—to something that has in many ways been institutionalized, regularized, and mainstreamed.⁴⁷ Increasingly, the question is not whether some kind of justice will be delivered during periods of transition but what the sequencing and modalities might be.⁴⁸

The upward trajectory and expansion of the field are in part reflected in its embrace by a landmark 2004 report by the UN secretary general.⁴⁹ Indeed, over the last twenty years, the UN system as a whole has become heavily involved in a number of transitional justice processes around the world. The international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) were both created by the Security Council. In Sierra Leone, East Timor, Cambodia, Bosnia, and Lebanon, the UN created hybrid international tribunals. Today, the Office of the High Commissioner for Human Rights has the lead responsibility for transitional justice issues, having supported transitional justice programs in some twenty countries around the world.⁵⁰ The Bureau of Crisis Prevention and Recovery (BCPR) at the UN Development Programme also works to support transitional justice efforts. Although it does not have an explicit mandate to work on transitional justice issues and its record of practice is only beginning to be established, the newly created PBC has already identified support for transitional justice initiatives as key to peacebuilding.⁵¹

⁴⁷ See, e.g., Ruti G. Teitel, "Transitional Justice in a New Era," *Fordham International Law Journal* 26, no. 4 (2002): 894 (noting the emergence of a "steady state" phase of transitional justice in which "the post-conflict dimension of transitional justice is moving from the exception to the norm"); see also Nagy, "Transitional Justice as a Global Project," 276 (noting the standardization of transitional justice); Kieran McEvoy, "Beyond Legalism: Towards a Thicker Understanding of Transitional Justice," *Journal of Law and Society* 34, no. 4 (2007): 412 (observing that "[t]ransitional justice has emerged from its historically exceptionalist origins to become something which is normal, institutionalized and mainstreamed"). For an argument that transitional justice is not exceptional, and that the so-called dilemmas of transitional justice are in fact little more than the dilemmas of "ordinary" justice, see generally Eric A. Posner and Adrian Vermeule, "Transitional Justice as Ordinary Justice," *Harvard Law Review* 117, no. 3 (2003): 761.

⁴⁸ See Nagy, "Transitional Justice as a Global Project," 276.

⁴⁹ See generally United Nations, *The Rule of Law and Transitional Justice in Post-Conflict Societies*.

⁵⁰ See United Nations, *Message by Ms. Navanethem Pillay at the Special Summit of the African Union* (Oct 22, 2009) online at <http://www.unhcr.ch/hurricane/hurricane.nsf/0/110E705F1034E048C1257657005814CE?opendocument> (visited Apr 9, 2013).

⁵¹ For example, in Burundi, one of the first two countries added to the PBC's agenda, the Commission identified lack of accountability for human rights abuses as a cause of the conflict and continued impunity as a factor contributing to potential relapse into conflict. With this in mind, support for transitional justice initiatives forms one of the pillars in Burundi's strategic framework for peacebuilding. See United Nations, *Strategic Framework for Peacebuilding in Burundi*, UN Doc PBC/1/BDI/4 (2008) ¶¶ 9–10, 30–31 (2007).

As transitional justice practices have become increasingly normalized and embraced by key global institutions like the UN, the field has begun to move beyond its roots and association with the political transitions of the late 1980s and 1990s to Western liberal democracy, and it has become associated with post-conflict peacebuilding situations more generally, even including those that do not involve a liberal transition.⁵² With this expansion have come calls to broaden the parameters of transitional justice work. Thus, arguments have been made that there should be greater linkages between transitional justice and development work,⁵³ anti-corruption efforts,⁵⁴ security sector reform,⁵⁵ the DDR of former combatants,⁵⁶ and other peacebuilding activities.⁵⁷ At the level of institutional mechanisms and practice, transitional justice has expanded well beyond trials and truth commissions, and there is an increasing interest in the embrace of more traditional and indigenous forms of justice and reconciliation work.⁵⁸ Yet despite this expansion across multiple dimensions, in many ways transitional

⁵² One prominent example is Rwanda, which, despite its association with several forms of transitional justice (ranging from the International Criminal Tribunal for Rwanda, to domestic prosecutions, to a nationwide accountability process known as gacaca loosely based on Rwandan tradition), could hardly be considered democratic. See generally Phil Clark and Zachary D. Kaufman, eds, *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (New York: Columbia University Press, 2009).

⁵³ See generally de Greiff and Duthie, eds., *Transitional Justice and Development*; Roger Duthie, "Toward a Development-Sensitive Approach to Transitional Justice," *International Journal of Transitional Justice* 2, no. 3 (2008): 292 (2008); Rama Mani, "Dilemmas of Expanding Transitional Justice, or Forging the Nexus Between Transitional Justice and Development: Editorial," *International Journal of Transitional Justice* 2, no. 3 (2008): 253.

⁵⁴ See generally Ruben Carranza, "Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?," *International Journal of Transitional Justice* 2, no. 3 (2008): 310.

⁵⁵ See generally Mayer-Rieckh and Duthie, "Enhancing Justice and Development"; Corey Barr, "Making Connections: Bridging Transitional Justice and Security Sector Reform to Confront Conflict-Related Sexual and Gender-Based Violence," *Praxis: Fletcher Journal of Human Security* 26 (2011): 5; Eirin Mobekk, *Transitional Justice and Security Sector Reform: Enabling Sustainable Peace* (Geneva Centre for the Democratic Control of Armed Forces Occasional Paper No 13, Nov 2006).

⁵⁶ See generally Sharp, "Bridging the Gap"; Patel, de Greiff, and Waldorf, eds, *Disarming the Past* (cited in note 9).

⁵⁷ See Sriram, Martin-Ortega, and Herman, "Evaluating and Comparing Strategies," 13 (discussing general linkages between transitional justice and a broad set of peacebuilding activities).

⁵⁸ Sierra Leone, East Timor, and Rwanda are but three examples of the incorporation of local tradition into larger transitional justice processes. See generally Patrick Burgess, "A New Approach to Restorative Justice: East Timor's Community Reconciliation Process," in *Transitional Justice in the Twenty-First Century*, eds., Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006); Christopher J. Le Mon, "Rwanda's Troubled Gacaca Courts," *Human Rights Brief* 14 (2007): 16; Augustine S.J. Park, "Community-Based Restorative Transitional Justice in Sierra Leone," *Contemporary Justice Review* 13, no. 1 (2010): 95.

justice institutions and mechanisms retain some of the hallmarks and limitations of the field's origins in the democratic transitions of the late 1980s and 1990s, as discussed in Part III.

B. Parallel Critiques of Peacebuilding and Transitional Justice

As post-conflict peacebuilding and transitional justice have expanded and to some degree become both normalized and institutionalized in the post-Cold War era, they have also been subject to trenchant critiques from academics, activists, and policymakers. While the programs associated with international peacebuilding assistance, such as DDR and SSR, have historically had little connection to transitional justice initiatives, either in terms of theory or policy and practice, many of the critiques leveled against international efforts in both domains strongly echo each other. Particularly given calls for greater linkages between peacebuilding and transitional justice, these parallel critiques bear close examination.

I have grouped the critiques into three loose general categories below: (a) the critique of liberal international peacebuilding; (b) the critique of politics as neutral technology; and (c) the debate about local versus international. These groupings are not meant to be definitive, and the critiques explored below are in no way exhaustive. For some scholars, such as Roland Paris, these critiques should all be disentangled from each other and do not necessarily go hand in hand.⁵⁹ For others, many of the concerns raised below cannot be disassociated from what has become known as the critique of liberal international peacebuilding.⁶⁰ What can be fairly said is that the critiques discussed below often share substantial overlap but that the groupings nevertheless serve a useful role for purposes of discussion and analysis.

i. The Critique of Liberal International Peacebuilding

For the last two decades, international post-conflict peacebuilding efforts have most often taken place in developing rather than developed countries.⁶¹ For explanation, one could point to evidence suggesting that poor countries are more prone to civil wars, but a fuller understanding would also need to account for the entrenched global power dynamics and Security Council vetoes that make interventions predicated on building

⁵⁹ See Roland Paris, "Saving Liberal Peacebuilding," *Review of International Studies* 36, no. 2 (2010): 363.

⁶⁰ See generally Neil Cooper, Mandy Turner, and Michael Pugh, "The End of History and the Last Liberal Peacebuilder: A Reply to Roland Paris," *Review of International Studies* 37, no. 4 (2011): 1995.

⁶¹ Examples are not in short supply, and include multi-dimensional UN peace operations in Cambodia, Angola, Burundi, Central African Republic, Liberia, Mozambique, Rwanda, Sierra Leone, Chad, Sudan, Côte d'Ivoire, Democratic Republic of the Congo, Somalia, Kosovo, El Salvador, Guatemala, Haiti, and Timor-Leste.

peace and justice more likely in the smaller, poorer countries of the world.⁶² Given these trends, it appears that both peacebuilding and transitional justice interventions will have a greater footprint in the developing world than the developed world for the foreseeable future.⁶³

With these broad trends as a backdrop, the critique of liberal international peacebuilding posits that in practice, peacebuilding interventions have largely been premised on a model of liberal internationalism that conceives of market-oriented economies and Western-style liberal democracy as the unique pathway to peace.⁶⁴ The interventions contrived to bring about just such a liberal peace are seen to constitute a sort of modern-day *mission civilisatrice*.⁶⁵ Yet because many of the post-conflict and developing countries in which peacebuilding interventions take place have a historical and cultural grounding that varies from that of the Occident, some argue that the emphasis on elections, democracy, and free markets associated with the typical package of post-conflict peacebuilding interventions can be both dangerous and destabilizing.⁶⁶ The critique suggests they are potentially dangerous and destabilizing because rapid economic and political liberalization can give rise to grievances and political competition with which the often fragile or shattered institutions in post-conflict countries are as yet too weak to cope.⁶⁷

The combined effects of peace operations and development assistance facilitated by liberalizing international financial institutions such as the World Bank and the International Monetary Fund may therefore be to create instability and even a return to conflict.⁶⁸ For this reason, some critics of liberal international peacebuilding have

⁶² See Paul Collier, et al, *Breaking the Conflict Trap: Civil War and Development Policy* (Washington: World Bank, 2003), 22 (arguing that civil wars are more likely in low-income countries).

⁶³ For an argument that at least some of the patterns that have led to international interventions in the past are changing, see generally Scott Straus, "Wars Do End!: Changing Patterns of Political Violence in Sub-Saharan Africa," *African Affairs* 111, no. 443 (2012): 179. Straus argues that wars, major forms of large-scale organized political violence, and episodes of large-scale mass killing of civilians are declining in frequency and intensity in Sub-Saharan Africa. It is worth noting, however, that, according to Straus, other forms of political violence, such as electoral violence and violence over access to livelihood resources, are increasing or persistent. Even the low-level insurgencies that Straus lists as exemplary of future trends, such as Darfur and the Lord's Resistance Army in Uganda, have resulted in various forms of international intervention.

⁶⁴ See Roland Paris, "Peacebuilding and the Limits of Liberal Internationalism," *International Security* 22, no. 2 (1997): 56.

⁶⁵ See generally Roland Paris, "International Peacebuilding and the "Mission Civilisatrice"" *Review of International Studies* 28, no. 4 (2002): 637.

⁶⁶ See generally, Paris, *At War's End*.

⁶⁷ Ibid.

⁶⁸ Without attempting to discern the cause, it is worth recalling in this regard that a significant portion of civil wars reignite within a period of five years of their supposed settlement. See Paul Collier and Anke Hoeffler, "On the Incidence of Civil War in Africa," *Journal of Conflict Resolution* 46, no. 1 (2002): 17; Astri Suhrke and Ingrid Samset, "What's in a Figure?: Estimating Recurrence of Civil War," *International Peacekeeping* 14, no. 2 (2007): 197–98.

advocated “institutionalization before liberalization,” a focus on strengthening the institutions of economic and political governance prior to full liberalization.⁶⁹ Of course, the disastrous rush to elections as a departure strategy that has been associated with some early UN peace operations has in fact been moderated in recent years with an increased emphasis on institution building, including broad categories of programming such as rule of law assistance, DDR, and SSR.⁷⁰ Nevertheless, some critics argue that even in its current form, international peacebuilding may involve the imposition of Western institutional preferences that, at their core, are still largely premised on “neoliberal policies of open markets . . . and governance policies focused on enhancing instruments of state coercion.”⁷¹ Equally worrisome, the strongest critics argue, is that there is little space to dissent from the prevailing and hegemonic international peacebuilding paradigm.⁷²

Applying the critique of liberal international peacebuilding to transitional justice, Chandra Sriram argues that mainstream justice strategies “share key assumptions about preferable arrangements, and a faith that other key goods—democracy, free markets, ‘justice’—can essentially stand in for, and necessarily create peace.”⁷³ To the contrary, Sriram argues that transitional justice processes and mechanisms may, like liberal peacebuilding, destabilize post-conflict and post-atrocity countries because “calls for justice are likely to generate tensions and exacerbate conflicts that have the potential to undermine peacebuilding.”⁷⁴ And as with the other components of liberal peacebuilding, transitional justice strategies are often rooted in Western modalities of justice imposed from the outside.⁷⁵

While transitional justice processes have historically been linked to an emphasis on building Western-style democracies, these processes have not traditionally been associated with the push for free markets.⁷⁶ Sriram therefore notes that transitional justice might not be as subject to this aspect of the critique of liberal international peacebuilding.⁷⁷ However, it is worth noting that while trials and truth commissions around the world have tended to focus on accountability for violations of physical integrity (murder, rape, torture, disappearances) and civil and political rights more generally, issues of economic and distributive justice and economic and social rights,

⁶⁹ See Paris, “Peacebuilding and the Limits,” 57–58.

⁷⁰ For a critique of the rush to rapid elections, see Chesterman, *You, The People*, 204–235.

⁷¹ See Cooper, Turner, and Pugh, “The End of History,” 1995; Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman, “Promoting the Rule of Law: From Liberal to Institutional Peacebuilding,” in *Peacebuilding and the Rule of Law in Africa: Just Peace?*, eds. Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman (Milton Park: Routledge, 2011), 1–2 (arguing that promoting institutionalization as a response to the critique of liberal international peacebuilding may also entail an imposition).

⁷² See Cooper, Turner, and Pugh, “The End of History,” 1995.

⁷³ Sriram, “Justice as Peace?,” 579.

⁷⁴ *Ibid.*, 583.

⁷⁵ See *ibid.*, 591.

⁷⁶ See *ibid.*, 580.

⁷⁷ *Ibid.*

have often been placed in the background of transitional justice practice and concern.⁷⁸ The effect has at times generated outrage over acts of physical violence conceived of as exceptional evils, while leaving the larger economic and social status quo intact, perhaps thereby obfuscating and legitimating patterns of economic violence that may be equally devastating.⁷⁹ In this sense, transitional justice has paralleled the neoliberal market orientation that is featured in the critique of liberal international peacebuilding. Thus, it would seem that the paradigmatic “third wave” transitions at the origins of transitional justice, transitions from authoritarianism and communism to market-oriented, Western-style democracy, were crucial not only to structuring the initial conceptual boundaries of the field but also remain relevant to understanding the field’s existing practices today.⁸⁰

ii. *Politics As Neutral Technology*

A second criticism of both international peacebuilding and transitional justice that is related to but distinguishable from the critique of liberal international peacebuilding is the argument that that they are both presented as technocratic, neutral, and apolitical solutions to highly contested or contestable political issues and choices. In other words, the choice as to the modalities of better forms of governance and questions that arise out of a desire for justice (for example, justice for whom, for what, and to what ends?) are highly political choices that have important consequences for the distribution of political, economic, social, and cultural power in the post-conflict context.⁸¹ Yet, a perennial feature of the various components of post-conflict peacebuilding, such as rule of law and democracy assistance, is that they are often imagined as fundamentally apolitical and neutral technologies—a misperception that obfuscates the difficult tradeoffs that need to be made to further important post-conflict objectives such as development, security, and human rights protection.⁸² Thus, critics of both peacebuilding and transitional justice have argued that the fundamentally political nature of both enterprises needs to be brought to the surface.⁸³

⁷⁸ See Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *International Journal of Transitional Justice* 2, no. 3 (2008): 275-76.

⁷⁹ Dustin N. Sharp, “Addressing Economic Violence in Times of Transition: Toward a Positive-Peace Paradigm for Transitional Justice,” *Fordham International Law Journal* 35 (2012): 781-82.

⁸⁰ Arthur, “How ‘Transitions’ Reshaped Human Rights,” 326.

⁸¹ See Nagy, “Transitional Justice as a Global Project,” 280–86 (employing the categories of when, whom, and what in order to interrogate the limits of mainstreamed transitional justice).

⁸² See Balakrishnan Rajagopal, “Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination,” *William and Mary Law Review* 49 (2008): 1349 (arguing that renewed enthusiasm for building the rule of law in the post-conflict context represents a “desire to escape from politics by imagining the rule of law as technical, legal, and apolitical”); Ole Sending, *Why Peacebuilders Fail to Secure Ownership and Be Sensitive to Context* (Security in Practice, NUPI Working Paper 755 (2009)) (observing that the ends of liberal international peacebuilding are often imagined to be “a-historical and pre-political”).

⁸³ See, for example, Edward Newman, “‘Liberal’ Peacebuilding Debates,” 42–43 (critiquing attempts to “‘de-politicize’ peacebuilding and present it as a technical task”); Lundy and McGovern, “Whose Justice?,” 277 (arguing that the “rise in interventionism, based on Western

The need to more openly assess the tensions, tradeoffs, and debates that undergird peacebuilding and transitional justice interventions is all the more plain if we take seriously the notion that they serve to replicate essentially Western liberal economic and governance models. In this regard, it is important to examine the discourse of the local that has emerged in recent years in the critique of both peacebuilding and transitional justice.

iii. The “Local” versus the “International”

A third set of concerns leveled against both international peacebuilding and transitional justice broadly addresses the extent to which an appropriate balance has been struck between the “local” and the “international” in terms of agency, input, and authority over post-conflict planning and programming. Concerns about striking the right balance take a number of rhetorical forms, and include the worry that post-conflict agendas are “externally driven,” that they are planned and implemented in a “top-down” matter, or otherwise fail to give sufficient agency to local actors with respect to core issues and choices.⁸⁴ A related concern is the extent to which mainstream peacebuilding and transitional justice initiatives are biased toward Western approaches, giving too little attention to local practices of promoting peace, justice, and reconciliation.⁸⁵ In recent years, exploration of the complexity of the discourse of the local has experienced renewed interest in academic circles.⁸⁶ At rhetorical level at least, the importance of local or national ownership has now become a virtual UN mantra in official policy

conceptions of justice, has also been paralleled by reluctance on the part of many rule of law experts to acknowledge the political dimensions of such activities” and that “[e]xpressing transitional justice questions as a series of technical issues offsets this potentially troubling recognition”); Leebaw, “The Irreconcilable Goals,” 98-106 (arguing that the seeming consensus as to the goals of transitional justice masks a deeper politicization and debate, but that it has become difficult to assess the tensions, trade-offs, and dilemmas associated with transitional justice to the extent that they have been re-conceptualized in apolitical terms).

⁸⁴ See, e.g., Richmond, “The Romanticisation of the Local,” 161-63 (discussing the tendency toward top-down institution building in a variety of “liberal” interventions); Andrieu, “Civilizing Peacebuilding,” 541 (noting that “transitional justice seems to be strongly under the influence of [a] top-down state-building approach”); Sriram, “Justice as Peace?,” 591 (noting that “[t]ransitional justice, and in particular trials, are frequently imported from the outside and occasionally externally imposed”).

⁸⁵ See, e.g., Mac Ginty, “Indigenous Peacemaking,” 144-45 (noting that Western approaches to peacebuilding “risk[] minimizing the space for organic local, traditional or indigenous contributions to peace-making”); Lambourne, “Transitional Justice and Peacebuilding,” 30 (calling for a revalorization of local and cultural approaches to justice and reconciliation).

⁸⁶ See generally, for example, Timothy Donais, “Empowerment or Imposition? Dilemmas of Local Ownership in Post-Conflict Peacebuilding Processes,” *Peace and Change* 34, no. 1 (2009): 3; Richmond, “The Romanticisation of the Local,” 44; Simon Chesterman, “Ownership in Theory and in Practice: Transfer of Authority in UN Statebuilding Operations,” *Journal of Intervention and Statebuilding* 1, no. 1 (2007): 3.

documents.⁸⁷ Yet despite all of the attention, the precise meaning of the discourse of local ownership in peacebuilding remains imprecise and poorly understood.⁸⁸

Broadly speaking, the mobilization of the concept of the local in the context of peacebuilding debates might be viewed as an argument over strategy in which context-specific solutions are pitted against a perceived standardization or a checklist approach to post-conflict programming.⁸⁹ Yet the discourse of the local could also be thought of as one of resistance to the perceived hegemony of liberal international peacebuilding itself insofar as it is conceived of or forms part of a larger effort to reconstitute post-conflict societies in the image of Western liberal democracies. At a deeper level, the local versus international debate might also be thought to capture one of the essential dilemmas and contradictory goals of post-conflict interventions in general. That is, while such interventions must be responsive to local context, traditions, and political dynamics in order to be perceived as legitimate, they often seek to challenge and transform many of the dynamics that may have led to the conflict in the first place, which can include traditional practices and power structures.⁹⁰ Even were this not the case, in the immediate post-conflict aftermath, the very local political and cultural structures that might have ordinarily served as an interface point between the local and the international have often broken down, making it that much more difficult to find the ideal balance between local and international agency. Indeed, the very notion of intervention is predicated on some idea of local failure, which may imply the need for something outside of the local to set things right again.

Along with the rise of the discourse of the local in academic and policy circles, many are quick to warn that it is important not to essentialize or romanticize the local.⁹¹ In the field of transitional justice, for example, local justice and reconciliation practices have in some instances accompanied more standard (or Western) transitional justice interventions in intriguing ways that hint at great potential for furthering reconciliation and accountability.⁹² At the same time, local practices can occasionally be difficult to

⁸⁷ See, e.g., United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 17 (arguing that the UN must “learn better how to respect and support local ownership, local leadership and a local constituency for reform”); United Nations, *Report of the Secretary General on Peacebuilding in the Immediate Aftermath of Conflict*, UN Doc A/63/881–S/2009/304 (2009), ¶ 7 (observing that “[t]he imperative of national ownership is a central theme of the present report”).

⁸⁸ See Chesterman, “Ownership in Theory and Practice,” 7-10 (reviewing the evolution of the concept of local ownership).

⁸⁹ See Lundy and McGovern, “Whose Justice?,” 271 (criticizing the “one-size-fits-all” and “top-down” approaches to transitional justice).

⁹⁰ See Leebaw, “The Irreconcilable Goals of Transitional Justice,” 117.

⁹¹ See Donais, “Empowerment or Imposition?,” 11-13; Richmond, “The Romanticisation of the Local,” 153 (discussing the various unhelpful ways in which internationals tend to romanticize the local).

⁹² In East Timor, for example, the Community Reconciliation Process brought together aspects of local justice, arbitration, and mediation in order to bring perpetrators and former combatants into dialogue with their estranged communities. See generally Burgess, “New Approach to Restorative Justice.” In Sierra Leone, the non-governmental organization Fambul Tok (“Family Talk” in the

reconcile with international principles.⁹³ Supposedly local practices may also be subject to capture by elites who would use them for their own political purposes. In Rwanda, for example, the local dispute-settlement practice of *gacaca* was modified and adopted at a national level to address justice and reconciliation issues that followed in the wake of the 1994 genocide. While this development was initially heralded by some, it has also been observed that *gacaca* has been implemented in ways that, while they serve the interests of the Kagame government, may not fully serve the needs of community justice and reconciliation.⁹⁴ Thus, as the Rwanda case illustrates, the turn to the local in matters of peacebuilding and transitional justice offers no easy solutions, and ultimately the concepts of both local and international might be marshaled to further important emancipatory goals in the post-conflict context.⁹⁵

C. Building Linkages between Peacebuilding and Transitional Justice

Although international peacebuilding and transitional justice efforts parallel each other in many ways, ranging from shared historical origins in post-Cold War dynamics and political currents to similarities in the sharp critiques that these efforts have generated, peace and justice initiatives have not always been seen to walk hand in hand. Indeed, over the last twenty-five years, the “peace versus justice” debate, in which the imperatives of justice are thought to threaten possibilities for peace and stability, has proved to be an enduring one, seeming to erupt nearly every time an international tribunal indicts a high-level official or former warlord.⁹⁶

local Krio language) has worked to address some of the shortcomings of the national truth and reconciliation commission by implementing a program of local ritual and truth telling at the village level. See *generally* Park, “Community-Based Restorative Transitional Justice.”

⁹³ Roger Duthie, “Local Justice and Reintegration Processes as Complements to Transitional Justice and DDR,” in *Disarming the Past*, 243–45.

⁹⁴ For example, crimes committed by the Rwandan Patriotic Front, the Tutsi-led military force that stopped the genocide, are excluded from the *gacaca* process. See Le Mon, “Rwanda’s Troubled *Gacaca*,” 18. For a rosier assessment at the outset of the implementation of *gacaca*, see *generally* Timothy Longman, “Justice at the Grassroots? *Gacaca Trials in Rwanda*,” in *Transitional Justice in the Twenty-First Century*, 206.

⁹⁵ Sharp, 35 Fordham Intl L J at 800 (cited in note 79).

⁹⁶ See, e.g., Louise Arbour, “Justice v Politics,” *The New York Times*, Sept 16, 2008 (justifying her controversial decision to indict Slobodan Milošević even though it was criticized at the time for threatening the peace process); IRIN Humanitarian News and Analysis, “Liberia: ECOWAS Chairman Urges UN to Lift Taylor Indictment,” *IRIN*, June 30, 2003 (discussing the argument of the then chairman of the Economic Community of West African States, President John Kufuor of Ghana, that the UN should set aside the indictment of Charles Taylor by the Special Court for Sierra Leone on the grounds that it was necessary to facilitate a negotiated settlement to Liberia’s civil war); Jeffrey Gettleman and Alexis Okeowo, “Warlord’s Absence Derails Another Peace Effort in Uganda,” *The New York Times*, April 12, 2008 (discussing the refusal of the leader of the Lord’s Resistance Army to attend peace negotiations due in part to indictments from the International Criminal Court).

Perhaps in part as a result of these perceived tensions, scholars and practitioners of transitional justice have not historically tended to ground their research or praxis in vocabularies of peace or peacebuilding.⁹⁷ To a large extent, the connections between peacebuilding and transitional justice have been “under-researched.”⁹⁸ Yet despite these historic tensions, current UN doctrine holds that peace and justice are mutually supportive, even if the timing, modalities, and sequencing of peace and justice initiatives need to be carefully considered.⁹⁹ More recent transitional justice scholarship has tended to play down the potential for conflict between peace and justice.¹⁰⁰ At the same time, the shared space and common goals of peacebuilding and transitional justice in the post-conflict context have led to an increasing interest by both academics and policymakers in exploring the possibilities for linkages and complementarity.¹⁰¹

i. Acknowledging Both Tensions and Complementarity

Given many of the shared goals of peacebuilding and transitional justice—rebuilding social trust and social capital, addressing problems of governance and accountability, and fostering institutional reform, to name only a few—the desire to promote linkages and complementarity seems eminently sensible. And yet, a closer examination reveals that many of the traditional programmatic components of international post-conflict peacebuilding have the potential to both complement and conflict with transitional justice initiatives.¹⁰² As but two examples, I briefly outline here the potential for tension and complementarity between transitional justice and programs relating to the disarmament, demobilization, and reintegration of former combatants and security sector reform more generally.

⁹⁷ See Andrieu, “Civilizing Peacebuilding,” 539 (noting that “few transitional justice scholars have yet situated their research in the context of peacebuilding, seeing it instead through the dominant lens of legalism and human rights”); Lambourne, “Transitional Justice and Peacebuilding,” 29 (noting that “few researchers have analyzed the relationship between justice, reconciliation and peacebuilding”). A notable exception to this trend is Rama Mani whose pioneering work took a much more holistic approach to issues of justice and peace in the post-conflict context.

⁹⁸ See van Zyl, “Promoting Transitional Justice,” 210.

⁹⁹ See UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 21.

¹⁰⁰ See Leebaw, “The Irreconcilable Goals of Transitional Justice,” 98.

¹⁰¹ See, e.g., Sriram, Martin-Ortega, and Herman, *Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice*, 13 (discussing increasing linkages between transitional justice and a broader set of peacebuilding activities); Bryden, *Shaping a Security-Governance Agenda in Post-Conflict Peacebuilding*, 20–22 (examining policy linkages between SSR, DDR, rule of law initiatives, and transitional justice); van Zyl, “Promoting Transitional Justice,” 210 (arguing that “[t]ransitional justice strategies should be understood as an important component of peacebuilding”).

¹⁰² See generally Herman, Martin-Ortega, and Sriram, *Beyond Justice Versus Peace* (discussing the potential tensions between transitional justice, rule of law assistance, DDR, and SSR).

In the last twenty years, DDR programs have become a regular feature of post-conflict peacebuilding.¹⁰³ Of recent peacekeeping missions, at least seven of those established by the UN Security Council included DDR in their mandate.¹⁰⁴ While programs vary in terms of their modalities, the basic goal of all such programs is to assure security and stability in the post-conflict context by removing weapons from the hands of former combatants and helping them to integrate socially and economically into society.¹⁰⁵ If done well, DDR programs have the potential to contribute to the very stability that might be thought essential to getting larger development and justice initiatives off the ground. While few would therefore dispute the need for such programs, they have often been criticized for a short-term “guns for cash” approach that may shortchange some of the longer-term and more challenging goals of DDR, particularly the reintegration of former combatants back into the community.¹⁰⁶

Despite increasingly global experience and expertise with DDR, it has been hard to overlook the disappointing results of many DDR programs, ultimately leading the UN and others to stress the need for a more “integrated” approach.¹⁰⁷ But while more integrated approaches sound laudable in the abstract, such efforts have the potential to create enormous challenges when dealing with fields such as DDR and transitional justice that, historically, have enjoyed few connections at the level of policy and practice.¹⁰⁸ The historical separation between DDR and transitional justice may in part reflect a perception that they are meant to serve different constituencies for different purposes. Thus, while transitional justice mechanisms are often viewed as victim

¹⁰³ Between 1994 and 2005, thirty-four different DDR programs were created around the world. Waldorf, “Linking DDR and Transitional Justice,” 18. For a more detailed exploration of tensions and complementarities between DDR and transitional justice in broad comparative terms, see *generally* Chandra Lekha Sriram and Johanna Herman, “DDR and Transitional Justice: Bridging the Divide?,” *Conflict, Security, and Development* 9, no. 4 (2009): 455.

¹⁰⁴ These are the United Nations Mission in the United Nations Assistance Mission in Sierra Leone (UNAMSIL, 1999), the Democratic Republic of Congo (MONUC, 1999), the United Nations Mission in Liberia (UNMIL, 2003), the United Nations Mission in Côte d’Ivoire (UNOCI, 2004), the United Nations Stabilization Mission in Haiti (MINUSTAH, 2004), the United Nations Operation in Burundi (UNOB, 2004), and the United Nations Mission in the Sudan (UNMIS, 2005).

¹⁰⁵ See *IDDRS*, § 1.2.

¹⁰⁶ United Nations Development Programme, *Practice Note: Disarmament, Demobilization and Reintegration of Ex-Combatants* (New York: UNDP, 2005), 18.

¹⁰⁷ See United Nations, *Report of the Secretary-General: Disarmament, Demobilization and Reintegration*, UN Doc A/60/705 (2006), ¶ 9(b); Mark Knight and Alpaslan Özerdem, “Guns, Camps and Cash: Disarmament, Demobilization and Reinsertion of Former Combatants in Transitions from War to Peace,” *Journal of Peace Research* 41, no. 4 (2004): 513. The felt need for better integration helped in part to spur the publication of the Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS), a policy guide that sets forth best practices for DDR programming and the various ways in which it can and should be linked with other post-conflict programmatic areas, including transitional justice. See *generally*, *IDDRS*.

¹⁰⁸ See Waldorf, “Linking DDR and Transitional Justice,” 16.

oriented, DDR is seen to serve the needs of former perpetrators.¹⁰⁹ While transitional justice focuses on justice and accountability for past violations, traditional approaches to DDR focus on military and security objectives.¹¹⁰

With this backdrop in mind, it is not hard to imagine that the existence of robust accountability mechanisms might make some former combatants reluctant to come forward and lay down their arms. Moreover, to the extent that those who need to be disarmed are either embedded in state security forces or stand to be integrated into reconstituted state security forces as part of a larger SSR program, this too makes the prospects for restoration of the rule of law difficult since the very forces responsible for enforcing the law have the most to lose from the accountability measures that are part and parcel of transitional justice.¹¹¹ Beyond this, the provision of reinsertion and reintegration benefits to former combatants, a typical feature of many DDR programs, can be contrasted with the relative paucity and lack of generosity of reparations programs for victims.¹¹² The perception that former perpetrators are being rewarded for bad behavior while former victims are left to fend for themselves could ultimately make reintegration and reconciliation initiatives difficult.¹¹³

Taken together, there is ample potential for tension between DDR programs and transitional justice initiatives. However, despite the potential to work at cross-purposes, DDR programs and transitional justice mechanisms also share common goals, including trust-building, prevention of renewed violence, and reconciliation.¹¹⁴ In terms of furthering these common goals, there are a number of areas of potential complementarity, particularly as regards the reintegration component of DDR programs. For example, while there is some evidence to suggest that parallel DDR and transitional justice initiatives might decrease former combatants willingness to come forward and engage in truth telling and reconciliation activities, it can also be argued that sending a strong public signal that only the “big fish” will be put on trial might allow victims to feel justice is being done, while at the same time making it clear that most combatants were

¹⁰⁹ The victim/perpetrator distinction can be problematic in several respects, particularly in the context of DDR where many former combatants are both perpetrators and victims at the same time. See Luisa Maria Dietrich Ortega, “Transitional Justice and Female Ex-Combatants: Lessons Learned from International Experience,” in *Disarming the Past*, 169.

¹¹⁰ Kimberly Theidon, “Transitional Subjects: The Disarmament, Demobilization and Reintegration of Former Combatants in Columbia,” *International Journal of Transitional Justice* 1, no. 1 (2007): 69.

¹¹¹ Herman, *Beyond Justice Versus Peace*.

¹¹² See Eric Witte, “Beyond “Peace versus Justice”: Understanding the Relationship Between DDR Programs and the Prosecution of International Crimes,” in *Disarming the Past*, 96.

¹¹³ See generally Jeremy Ginifer, “Reintegration of Ex-Combatants,” in *Sierra Leone: Building the Road to Recovery*, eds. Mark Malan, et al (Institution for Security Studies, 2003), 39.

¹¹⁴ According to one UN definition, the aims of transitional justice include ensuring accountability, serving justice, achieving reconciliation, and preventing human rights violations in the future. See United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 4. The IDDRS similarly underscores the centrality of DDR programs to preventing renewed violence, encouraging trust and confidence, and reconciliation. See IDDRS, § 1.2.

not among the worst offenders and can be reconciled to their community.¹¹⁵ Beyond community-level reconciliation, which will be discussed in more detail in the next section, building stronger linkages between DDR and transitional justice would likely involve a greater focus on human rights vetting to ensure that abusive former combatants are not channeled into reconstituted security services.¹¹⁶ This mechanism, along with other accountability mechanisms, could ultimately enhance the credibility and legitimacy of the new forces, while at the same time lowering the chances of recurrence of abuses by the reformed security forces, even if the potential for some short-term frictions cannot be eliminated.¹¹⁷

SSR is a process that could be thought to include DDR but which is at the same time much broader and more comprehensive. While definitions of SSR vary in scope, the UN generally understands it to comprise efforts to promote “effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law.”¹¹⁸ Similar to DDR programs, there exists a significant potential for tension between SSR programs and transitional justice initiatives.¹¹⁹ The potential for conflict between members of the security sector, who risk possibly being downsized or excluded through vetting procedures, and transitional justice, which seeks to promote accountability and truth-telling for abusive members of those same security forces, is fairly straightforward and obvious. At the same time, without security and stability, accountability mechanisms associated with transitional justice will have difficulty functioning. Thus, the basic tension between the felt needs of stability and security on the one hand, and the exigencies of accountability and human rights on the other, renders the already complicated task of reforming or reconstituting the security sector all the more challenging. Perhaps in part due to this potential for tension, SSR and transitional justice “rarely interact, either in practice or in theory.”¹²⁰

Despite these tensions, it would be difficult to foster effective and accountable security “with full respect for human rights and the rule of law”¹²¹ without some attention to issues of past abuses and impunity. In particular, attention to these issues through both transitional justice and SSR mechanisms has the potential to provide a much-

¹¹⁵ In Sierra Leone, for example, the Special Court for Sierra Leone’s outreach efforts included activities targeting ex-combatants to explain the meaning of the phrase those “who bear the greatest responsibility” for crimes within its mandate. The purpose of these efforts was to dispel rumors that the court intended to indict every fighter, from top to bottom. See Mohamed Gibril Sesay and Mohamed Suma, *Transitional Justice and DDR: The Case of Sierra Leone* (New York: ICTJ, 2009), 18-19.

¹¹⁶ See Mobekk, *Transitional Justice and Security Sector Reform*, 68–71 (discussing the role of vetting in conducting reform of military forces, police services, the judiciary, intelligence services, and the governance sector).

¹¹⁷ See *ibid*, 18 (discussing the role of SSR and transitional justice in engendering trust in critical state institutions).

¹¹⁸ See United Nations, *Securing Peace and Development*, ¶ 17.

¹¹⁹ See Herman, Martin-Ortega, and Sriram, *Beyond Justice v. Peace*, 15.

¹²⁰ Mayer-Rieckh and Duthie, “Enhancing Justice and Development,” 222.

¹²¹ United Nations, *Securing Peace and Development*, ¶ 17.

needed sense of legitimacy for formerly abusive security forces.¹²² This, together with other potential avenues of complementarity, has given rise to a small but growing literature exploring the possibility of a “justice-sensitive” approach to SSR that would include, among other things, more robust human rights training and vetting.¹²³ Thus, as with DDR, building better linkages between SSR and transitional justice could ultimately promote trust building, prevention of renewed violence, and reconciliation.

As defined by some global institutions, the “security sector” extends well beyond traditional security actors like the police and the military to management and oversight bodies, broader justice and rule of law institutions, and non-statutory security forces.¹²⁴ It is particularly in this broader conception of security sector reform, with its inclusion of the judicial sector and access to justice, that the potentially positive linkages between SSR and transitional justice might be more apparent. Therefore, while not always thought of as being part of SSR, programs that ensure access to justice, particularly access to justice for those abused by security forces, could be one way of fostering accountability long-term, and maintaining sustained “bottom-up” pressure for reform on the security sector as a whole.¹²⁵

ii. Building Linkages through the Lens of Critique

The potential for both conflict and complementarity between transitional justice and peacebuilding initiatives highlights the need for coordination sufficient to mitigate tensions and promote positive overlaps. Indeed, recognition of the need to promote coherence and integration while avoiding the fragmented and duplicative approaches of the past helped in part to inspire the creation of the PBC in 2005.¹²⁶ The many challenges associated with building peace and justice in the post-conflict context call for holistic solutions that address crosscutting challenges. For these reasons, this Article takes it as a starting point that promoting synergies between peacebuilding and transitional justice programs and initiatives is a worthwhile goal. At the same time, despite the seemingly unobjectionable nature of appeals for greater coordination, more

¹²² Herman, Martin-Ortega, and Sriram, *Beyond Justice Versus Peace*, 15–16.

¹²³ See, e.g., Mayer-Rieckh and Duthie, “Enhancing Justice and Development,” 215; Barr, “Making Connections: Bridging Transitional Justice and Security Sector Reform,” 5; Mobekk, *Transitional Justice and Security Sector Reform*, 1–7; Laura Davis, *Justice-Sensitive Security System Reform in the Democratic Republic of the Congo* (The Initiative for Peacebuilding, 2009), 24–26.

¹²⁴ Organization for Economic Cooperation and Development, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice* (OECD, 2007), 5.

¹²⁵ For a review of the potential for “bottom-up” access to justice initiatives to effect larger rule of law reforms, see generally Stephen Golub, “The Rule of Law and the UN Peacebuilding Commission: A Social Development Approach,” *Cambridge Review of International Affairs* 20, no. 1 (2007): 47.

¹²⁶ See General Assembly Res No 60/180, 1; Security Council Res No. 1645, 1 (emphasizing the need for a “coordinated, coherent, and integrated approach to post-conflict peacebuilding and reconciliation”); Jubilut, “Towards a New Jus Post Bellum,” 31 (discussing the problem of redundant and ad hoc efforts and a lack of coordination in peacekeeping missions of the past).

integrated approaches to peace and justice issues in the post-conflict context may also create problems and challenges of their own.

To begin, the UN's historic track record on coordination leaves ample room for improvement, and initial assessments of the PBC's ability to promote more integrated approaches to complex and multi-dimensional peacebuilding challenges have not been optimistic.¹²⁷ Further complicating the task of coordination is the fact that post-conflict peacebuilding is a large and multifaceted task, with key roles being played by a variety of actors. Though this Article has focused largely on the UN, the larger post-conflict peacebuilding picture also includes actors over which the PBC has no direct authority, ranging from the World Bank and key bilateral donors such as the US, the EU, and Japan to national governments, civil society actors, and various local constituencies. Getting actors both in and outside of the UN system to work towards more integrated approaches to post-conflict peacebuilding is an enormous task, especially given the stove-piping, overlapping mandates, and bureaucratic territorialism that have plagued such efforts in the past.¹²⁸ It is important to note that coordination difficulties stem not only from the magnitude of the task or difficulties of communication amongst all of the various players, but also because of underlying disagreements and uncertainties as to how to best accomplish peacebuilding objectives in the first place.¹²⁹

Second, beyond the inherent challenges of large-scale coordination itself, there is a danger of over-standardization and bureaucratization as best practices for the coordination of transitional justice and peacebuilding initiatives are taken up by the global institutions associated with post-conflict peacebuilding and development assistance that have the tendency to operate through standardized templates.¹³⁰ It has been argued that as transitional justice practices have spread around the world, they have done so not necessarily by adapting themselves *de novo* to each new context, but through a process of "acculturation" whereby a dominant script or practice is replicated again and again as a result of repeated information exchanges and consultations.¹³¹ Once a dominant paradigm or script develops, modifying that script to suit new conditions or circumstances can be extremely challenging.¹³² In the context of internationally driven peacebuilding initiatives more generally, the existence of "set

¹²⁷ See United Nations, *Review of the United Nations Peacebuilding Architecture*, UN Doc A/64/868-S/2010/393 (2010), ¶ 57–59.

¹²⁸ See Herman, Martin-Ortega, and Sriram, *Beyond Justice Versus Peace*, 17 (observing that improving connections between peacebuilding and transitional justice requires a level of coordination that large bureaucracies are not very good at).

¹²⁹ See Roland Paris, "Understanding the 'Coordination Problem' in Postwar Statebuilding," in *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, eds. Roland Paris and Timothy D. Sisk (Milton Park: Routledge 2009), 72.

¹³⁰ As Roland Paris has argued, this is particularly true insofar as efforts at coordination give impetus to centripetal forces in policymaking. See *ibid.*, 62.

¹³¹ James Cavallaro and Sebastián Albuja, "The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond," in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, eds. Kieran McEvoy and Lorna McGregor (Portland: Hart, 2008), 125.

¹³² See *ibid.*

templates” and a “formulaic path” has similarly been observed.¹³³ Given these tendencies, there is reason to worry that—notwithstanding paeans to national ownership and context-appropriate solutions—as transitional justice is mainstreamed into emerging best practices for post-conflict reconstruction, transitional justice initiatives will come to be seen as yet another item on the “post-conflict checklist,” a mechanistic part of the template deployed in the context of post-conflict peace operations.¹³⁴ That post-conflict peacebuilding and transitional justice initiatives have frequently been criticized for being planned and implemented in a top-down, externally-driven, and Western-biased manner, only serves to highlight the concern of standardization.¹³⁵

Third, as explored in Section III of this Article, international peacebuilding programs, as well as a number of transitional justice initiatives, have frequently been subject to powerful, parallel critiques, including the critique of liberal international peacebuilding, the critique of politics as neutral technology, and concerns about striking the right balance between the local and the international in post-conflict programming. Considered together with the danger of over-standardization, there is reason to worry that better integration and coordination between peacebuilding and transitional justice, especially insofar as it is carried out by the large bureaucracies traditionally associated with post-conflict assistance, might actually exacerbate some of the tendencies that have given rise to these parallel critiques rather than alleviate them. At a minimum, given historic patterns, there is no reason to think that simply linking peacebuilding and transitional justice, without more, will do anything to counter these tendencies.

Given the potential problems and challenges inherent in attempting to build stronger linkages between peacebuilding and transitional justice initiatives, it would not be unreasonable to question the compatibility of more integrated approaches involving a strong international role with the types of locally owned, context-specific, and bottom-up solutions suggested by the critiques that have arisen in the academic and policy literature.¹³⁶ On the other hand, from a pragmatic and realist standpoint, a balance between local and international agency in post-conflict programming seems both inevitable and desirable, due in part to the resources and expertise that internationals can at times bring to bear.¹³⁷ With this perspective in mind, as scholars, practitioners, and policymakers begin to take a greater interest in sounding out potential linkages,

¹³³ See Sending, “Why Peacebuilders Fail to Secure Ownership and Be Sensitive to Context,” 7 (observing that “international organizations, such as the UN and the World Bank, are bureaucratic organizations that operate through standardized templates”).

¹³⁴ See Elizabeth Stanley, “Transitional Justice: From the Local to the International,” in *The Ashgate Research Companion to Ethics and International Relations*, ed. Patrick Hayden (Farnham, UK: Ashgate, 2009), 276 (observing that, together with other international interventions, “transitional justice practices have commonly become part of a longer list of ‘tickboxes’ to attain peace and security”).

¹³⁵ See Section B, *infra*.

¹³⁶ See Section B, *infra*.

¹³⁷ See Arriaza and Roht-Arriaza, “Social Reconstruction as Local Process,” 153 (arguing for strategies that “incorporate a perspective that encompasses bottom-up local efforts as well as top-down state-driven or internationally driven ones”).

viewing transitional justice and peacebuilding overlaps through the prism of the critiques and concerns outlined in this article should prove instructive. Attentiveness to some of the parallel critiques and concerns that have been raised could lead to shifts that would strengthen policy in both areas in the process of promoting linkages.

Ultimately, promoting linkages that reflect a cognizance of critique might involve more hybridized forms of peacebuilding and transitional justice that involve a mixture of conventional and local practices and models.¹³⁸ For example, as previously discussed, DDR programs and transitional justice initiatives have the potential to both conflict with and complement each other, and careful coordination is called for if synergies are to be exploited. One of the areas where DDR programs have had the least amount of success is in the community reintegration element, sometimes known as the forgotten “R” of DDR, or the “the weakest link in the DDR chain.”¹³⁹ This is an area where the reconciliation components of transitional justice initiatives might serve as a potential bridge, strengthening both DDR and transitional justice goals in the process.¹⁴⁰ The potential use of local ritual and tradition in facilitating reconciliation generally and the reintegration of former combatants specifically might be one way of building linkages between transitional justice and DDR programs that gives deference to the critiques and concerns that have in the past plagued both fields (including that they are Western-biased and externally driven).¹⁴¹ Such approaches to reintegration have seen limited but intriguing use in Sierra Leone and Mozambique.¹⁴² Similarly, in East Timor, a post-conflict community reconciliation process combined aspects of arbitration and mediation grounded in local ritual in bringing former perpetrators and combatants into dialogue with their estranged communities and victims.¹⁴³ In the future, it might be possible for coordinating bodies like the PBC to encourage the use of local ritual and tradition to bridge the gap between DDR and transitional justice. This could, of course, be a difficult needle to thread since too much international involvement in such affairs might be seen to co-opt or corrupt the authenticity of local practices. Nevertheless, the PBC could play a helpful role even if only to brief local constituencies as to the range of local ritual that has been successfully used in other contexts.

¹³⁸ See Newman, Paris, and Richmond, “Introduction,” 16.

¹³⁹ Sami Faltas, *DDR without Camps: The Need for Decentralized Approaches: Topical Chapter of the Conversion Survey* (Bonn International Center for Conversion, 2005), 1; see also Macartan Humphreys and Jeremy M. Weinstein, “Demobilization and Reintegration,” *Journal of Conflict Resolution* 51, no. 4 (2007): 549 (concluding that combatants who did not participate in DDR were reintegrated as successfully as those who did).

¹⁴⁰ For a longer elaboration of this argument, see Sharp, “Bridging the Gap,” 34–36. For an exploration of the application of local ritual in the context of the reintegration of former child combatants, see Roger Duthie and Irma Specht, “DDR, Transitional Justice, and the Reintegration of Former Child Combatants,” in *Disarming the Past*, 207–10.

¹⁴¹ Ministry of Foreign Affairs Sweden, *Stockholm Initiative on DDR, Final Report* 30 (Stockholm: March 2006); see also Theidon, “Transitional Subjects,” 90.

¹⁴² See generally Duthie, “Local Justice and Reintegration Processes.”

¹⁴³ See generally Burgess, “A New Approach to Restorative Justice.”

While this is but one example, we should be attentive to similar possibilities as we contemplate promoting greater linkages between peacebuilding and transitional justice. This Article does not attempt to set forth a comprehensive approach along these lines, but there are possibilities ripe for exploration. One such example might be the use of “bottom-up” approaches to rule of law assistance that attempt to effect reforms through grassroots legal empowerment.¹⁴⁴ Another such example could be more comprehensive approaches to transitional justice and SSR programs that give greater emphasis to accountability for economic crimes and economic violence perpetrated in the course of the conflict.¹⁴⁵ Additional possibilities that would cut against the grain of longstanding critiques of transitional justice and peacebuilding need to be developed by academics, practitioners, and policymakers going forward.

D. Conclusion

Though historically seen as being in competition with the demands of peace, transitional justice is increasingly accepted as an important element of post-conflict peacebuilding. Along with the demobilization and disarmament of ex-combatants, security sector reform, rule of law programs, and elections, it has now joined a virtual checklist of post-conflict interventions spearheaded by the international community in post-conflict countries. This increasingly shared space between transitional justice and post-conflict peacebuilding initiatives has sparked new interest among both scholars and policymakers in sounding out potential connections between both fields. Although the pursuit of synergies between peacebuilding and transitional justice programs is a worthwhile goal, in developing these connections, we must also be keenly attentive to mutual shortcomings. Transitional justice and post-conflict peacebuilding have historically proceeded on separate tracks, yet there has been a remarkable similarity in the critiques and concerns that have been leveled against both fields in the last two decades. There are strong reasons to suspect that more integrated approaches to peacebuilding and transitional justice will have the tendency to exacerbate some of the tendencies that have given rise to these parallel critiques rather than alleviate them. Seeking synergies and overlaps through the optics of these historic concerns and critiques could be one technique of resistance to these tendencies. To be sure, exploiting overlaps while addressing critiques and pushing back against long dominant paradigms would bring its own challenges. At the same time, such efforts could take us one step forward in moving beyond the post-conflict checklist and towards the development of more holistic and innovative approaches to the challenge of building peace with justice in conflict’s wake.

¹⁴⁴ See *generally* Golub, “The Rule of Law and the UN Peacebuilding Commission.”

¹⁴⁵ See *generally* Sharp, “Addressing Economic Violence in Times of Transition,” (discussing the peripheral status of economic violence and economic justice in mainstream transitional justice initiatives); see *also* Carranza, “Plunder and Pain,” 310 (arguing that transitional justice must do more to grapple with corruption and other economic crimes that may have helped to precipitate the conflict).

Chapter V: Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition¹

When it first took the global stage in the 1980s and 1990s, transitional justice was largely thought of as a vehicle for helping to deliver important liberal goods in post-conflict and post-authoritarian societies, including political/procedural democracy, constitutionalism, the rule of law, and respect for human rights. Some three decades after the so-called “third wave” of democratic transitions associated with the field’s naissance, the idea of transitional justice as handmaiden to liberal political transitions—the “paradigmatic transition” of transitional justice—remains a deeply embedded narrative that has helped to shape dominant practices and conceptual boundaries.²

In recent years, this traditional transitional justice narrative has become increasingly intertwined with a view of transitional justice as a component of post-conflict peacebuilding more generally, including in societies not undergoing a paradigmatic liberal transition.³ To the extent that “peace” invokes more holistic sets of objectives than the narrower goals associated with facilitating liberal political transitions, the turn to peacebuilding might be seen to represent a broadening and a loosening of earlier paradigms and moorings, making this a significant moment in the normative evolution of the field. Yet with few exceptions, there has thus far been little scrutiny as to what “transitional justice as peacebuilding” might actually mean or how it might be different than “transitional justice as liberal democracy building.”⁴ In many instances, analysis of the linkages between transitional justice and peacebuilding goes little further than the loose sloganeering of “no peace without justice” or simplistic assertions that peace and justice go hand in hand.⁵

Considered more critically, it is entirely possible that “transitional justice as peacebuilding” will prove to be a distinction without a difference from what came before.

¹ This dissertation chapter was originally published in the *International Journal of Transitional Justice* (2015).

² See generally Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice,” *Human Rights Quarterly* 31, no. 2 (2009): 321.

³ Examples of transitional justice outside of paradigmatic liberal transitions include Rwanda, Kenya, Uganda, Chad, and elsewhere.

⁴ For the most part, transitional justice scholars have not framed their work in terms of peace or peacebuilding. Kora Andrieu, “Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm,” *Security Dialogue* 41, no. 5 (2010): 539. There are, of course, notable exceptions to this trend, including Rami Mani, Chandra Lekha Sriram and Wendy Lambourne. See, for example, Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Malden: Blackwell Publishers, 2002); Chandra Lekha Sriram, “Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,” *Global Society* 21, no. 4 (2007): 580-81; Wendy Lambourne, “Transitional Justice and Peacebuilding After Mass Violence,” *International Journal of Transitional Justice* 3, no. 1 (2009): 28-48.

⁵ See U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, ¶ 8, U.N. Doc. S/2004/616 (Aug. 23, 2004) (arguing that “[j]ustice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives”).

Historically, the “peace” associated with international post-conflict peacebuilding efforts spearheaded by the United Nations and major international donors has typically been conceived of as a narrow liberal peace predicated on free markets and Western-style democracy.⁶ Thus, insofar as the goals of liberal international peacebuilding and the historic goals of transitional justice are essentially one and the same, “transitional justice as peacebuilding” may be little more than a dressed up tautology. More darkly, an amorphous transitional-justice-as-peacebuilding narrative may prove useful to autocratic regimes that would seek to use the tools and rhetoric of transitional justice to consolidate abusive regimes in the name of “peace,” just as victors have often done in the name of “justice.”⁷

In this light, it is worth recalling that concepts of both peace and justice have emancipatory dimensions, yet both have also been associated with colonial logics and dominant ideologies and power structures throughout history. While both concepts are often presented as neutral and apolitical, devoid of inherent ideological content, they have at times been used to legitimate a world order characterized by economic and structural violence enforced by military interventionism.⁸ In short, there are reductionist notions of peace, just as there are reductionist notions of justice. Bearing in mind Robert Cover’s observation that institutions and prescriptions do not exist apart from the narratives that locate and give them meaning,⁹ I argue that the particular “peace” and the particular “justice” that serve to undergird any emerging transitional-justice-as-peacebuilding narrative matter a great deal.

In this article, I explore what it might mean to emancipate the emerging transitional-justice-as-peacebuilding narrative from the bonds of the one-size-fits-all reductionist logic of the paradigmatic transition that has historically served to undergird transitional justice and liberal international peacebuilding more generally. I argue that (re)conceptualizing transitional justice as a form of peacebuilding has the *potential* to reinvigorate the field, challenge longstanding blindspots and assumptions, and open the doors to more creative thinking, policies, and practices that take us beyond the confines of the increasingly rote transitional justice “toolbox,” but this cannot be taken for granted.

As a step in this direction, it will be important to deconstruct several key assumptions that might implicitly undergird transitional-justice-as peacebuilding

⁶ See generally Roland Paris, *At War’s End: Building Peace After Civil Conflict* (Cambridge: Cambridge University Press, 2004).

⁷ On “victor’s peace,” see Oliver Richmond, “Emancipatory Forms of Human Security and Liberal Peacebuilding,” *International Journal* 62 (2007): 462.

⁸ I employ the term “economic violence” throughout this article in ways that overlap with Galtung’s concept of “structural violence,” but with at least one very important distinction. While Galtung’s “structural violence” is conceived of as being less “personal,” “direct,” and “intentional” than physical and psychological violence, many acts of economic violence—including corruption, plunder of natural resources, and violations of economic and social rights more generally—cannot be so characterized. In that sense, they often share much in common with direct physical violence. See Johan Galtung, “Violence, Peace, and Peace Research,” *Peace Research* 6, no. 3 (1969): 170-73.

⁹ Robert Cover, “*Nomos and Narrative*,” *Harvard Law Review* 97 (1983): 4.

narratives, including: (1) the idea of “transition” as necessarily suggestive of a narrow liberal teleology; (2) ideas of “justice” as synonymous with legal and atrocity justice; and (3) the idea of “peacebuilding” as synonymous with what has come to be known as “liberal international peacebuilding.” I offer several concepts from critical peacebuilding theory—including “positive peace,” “popular peace,” “the everyday” and “hybridity”—that might serve as useful correctives to these narrow assumptions. Taken together, I argue, critical reflection along these lines can help to lay the groundwork for a transitional-justice-as-peacebuilding paradigm that reflects a commitment to human rights ideals and the consolidation of a more open-textured, contextually relevant, and genuine positive peace.

A. Transitional Justice and Post-Conflict Peacebuilding

The historical and ideological origins of transitional justice, rooted largely in the liberal democratic transitions that swept Latin American and other parts of the world in the final decades of the twentieth century, have been well documented.¹⁰ Scholarly work associated with these early political transitions tended to situate the origins of liberal democracy in choices by elite groups and legal-institutional reforms, rather than being the product of social conditions or some more “bottom up” process.¹¹ To these assumptions were added both a preoccupation with accountability for human rights atrocities, and a deeply held belief that grappling with the legacies of the past would help to strengthen key liberal goods, from political democracy, to human rights and the rule of law. As Paige Arthur has observed, those origins remain relevant, having helped to create a paradigm and sets of assumptions that have served to shape transitional justice theory, policy, and practice up through the present day.¹²

In the decades that followed the birth of the field, the “dominant script” of the Latin American model has, in essence, been exported throughout the world, having significantly shaped the parameters of the so-called transitional justice “toolbox.”¹³ One can now point to over three dozen truth commissions and scores of human rights prosecutions as evidence of a global “justice cascade.”¹⁴ This sense of cascade or

¹⁰ See generally Paige Arthur, “How ‘Transitions’ Reshaped Human Rights.”

¹¹ See Samuel P. Huntington, “The Third Wave: Democratization in the Late Twentieth Century,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume I. General Considerations*, ed. Neil Kritz (Washington: United States Institute of Peace, 1995), 65-81; Guillermo O'Donnell and Philippe Schmitter, “Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies,” in Kritz, *Transitional Justice*, 57-64.

¹² See Paige Arthur, “How ‘Transitions’ Reshaped Human Rights.”

¹³ James Cavallaro and Sebastián Albuja, “The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond,” in *Transitional Justice from Below, Grassroots Activism and the Struggle for Change*, eds. Kieran McEvoy and Lorna McGregor (Oxford and Portland, Oregon: Hart Publishing, 2008), 125.

¹⁴ See Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W. Norton, 2011), 21.

crescendo has in turn helped to cloak some of the more overt ideological origins and assumptions of the field in an aura of naturalness and inevitability. *After all, it might be said, how else should one respond to mass atrocities if not through the mechanisms of transitional justice?* Thus, for many, the question is no longer whether transitional justice is needed in the wake of dictatorship or mass atrocity, but how it should be implemented.¹⁵ Implementation in turn implicates a transitional justice that has been institutionalized and mainstreamed, embraced by the United Nations, and buttressed by an emerging industry of international NGOs, expert consultants, dedicated staff positions at the United Nations, and academic journals.¹⁶

A similar trajectory can be seen in the history of post-conflict peacebuilding, itself born out of the same ideological and political currents associated with the end of the Cold War and the seeming triumph of Western liberal democracy. In particular, both transitional justice and post-conflict peacebuilding share a faith that the world can be fashioned by liberal ideas and institutions, and that weak, failing, and conflict-prone states—now conceptualized as threats to global security—can be relocated from a sphere of conflict to a sphere of peace through a process of political, social, and economic liberalization. The term “peacebuilding” came into the modern international lexicon and polycscape thanks in part to Boutros Boutros Ghali’s 1992 *Agenda for Peace* report, which defined the term as: “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict.”¹⁷ While this and other definitions are incredibly expansive, as implemented by the United Nations and major international donors, the term has come to stand for a fairly narrow and established checklist of programs and initiatives, including efforts to disarm previously warring parties, re-integrate former soldiers into society, demine and destroy weapons, reform the formal “security sector,” repatriate or resettle refugees, and various forms of democracy, governance, and rule of law assistance, including monitoring elections.¹⁸ As with transitional justice, post-conflict peacebuilding efforts have become normalized and institutionalized—evidence of which can be seen in the expanding number of peace operations that include robust peacebuilding components and the creation of the United Nations Peacebuilding Commission in 2005—a seemingly natural and inevitable response to conflict and mass atrocities.¹⁹ *After all, it might be thought,*

¹⁵ Kieran McEvoy, “Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,” *Journal of Law and Society* 34, no. 4 (2007): 412.

¹⁶ Laura Arriaza & Naomi Roht-Arriaza, “Social Reconstruction as Local Process,” *International Journal of Transitional Justice* 2, no. 2 (2008): 152.

¹⁷ United Nations, *Agenda for Peace, Preventative Diplomacy, Peacemaking and Peace Keeping*, UN Doc A/47/277–S/24111 at 6, ¶ 21 (1992).

¹⁸ See United Nations, *United Nations Peacekeeping Operations: Principles and Guidelines* 26 (United Nations 2008), online at http://pbpu.unlb.org/pbps/library/Capstone_Doctrine_ENG.pdf.

¹⁹ Examples of more complex, multi-dimensional peace operations are not in short supply: Cambodia, Angola, Burundi, Central African Republic, Liberia, Mozambique, Rwanda, Sierra Leone, Chad, Sudan, Côte d’Ivoire, Democratic Republic of the Congo, Somalia, Kosovo, El Salvador, Guatemala, Haiti, Timor-Leste, Bosnia and Herzegovina, Eastern Slavonia, and Croatia, among others.

how should the “international community” respond to violent intrastate conflict and civil war if not through these initiatives?

Despite the significant overlap in terms of origins and assumptions, there has been relatively little formal connection between transitional justice initiatives and the staples of post-conflict peacebuilding programming, either in theory or practice.²⁰ In recent years, however, this has started to change and there is a small but growing literature looking at potential linkages between peacebuilding and transitional justice generally,²¹ and in particular with respect to specific initiatives like Security Sector Reform (SSR) and Disarmament, Demobilization, and Reintegration (DDR).²² Embraced in a landmark 2004 report by the Secretary General,²³ the United Nations has developed a wealth of transitional justice experience over the last twenty years and has itself begun to elaborate policies to facilitate linkages with post-conflict peacebuilding.²⁴ It has developed guidelines noting that approaches to transitional justice should take into account “the root causes of conflict or repressive rule,”²⁵ an important addition to the individual accountability model that characterized many earlier transitional justice initiatives. At the same time, peacebuilding efforts have increasingly incorporated rule of law reform programming more generally,²⁶ and a growing number of humanitarian and peacebuilding organizations are framing their efforts in ways that draw upon transitional justice discourse.²⁷ If transitional justice has its own “toolbox,” said to include, among other things, prosecutions, truth telling, vetting and dismissals, and reparations, perhaps it can simply be subsumed into the larger post-conflict peacebuilding template.

The seeming gradual convergence of peacebuilding and transitional justice has led

²⁰ See Paul van Zyl, “Promoting Transitional Justice in Post-Conflict Societies,” in eds. Alan Bryden and Heiner Hänggi, *Security Governance in Post-Conflict Peacebuilding* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2005), 209-10.

²¹ See, for example, Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman, *Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice* 13 (JAD-PbP Working Paper Series No 1, May 2009) (discussing increasing linkages between transitional justice and a broader set of peacebuilding activities)

²² See, for example, Alan Bryden, Timothy Donais, and Heiner Hängi, *Shaping a Security-Governance Agenda in Post-Conflict Peacebuilding* (Geneva Centre for the Democratic Control of Armed Forces Policy Paper No 11, Nov 2005) (examining policy linkages between SSR, DDR, rule of law initiatives, and transitional justice).

²³ United Nations, *Report of the Secretary-General: The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc S/2004/616 (2004).

²⁴ United Nations Department of Peacekeeping Operations (DPKO), *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, § 2.10 (DPKO 2006).

²⁵ United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, March 2010, 7.

²⁶ Michael Schoiswohl, “What’s Law Got to Do with It? The Role of Law in Post-conflict Democratization and Its (Flawed) Assumptions,” in ed. Shahrbanou Tadjbakhsh *Rethinking Liberal Peace; External Models and Local Alternatives* (New York: Routledge, 2011), 113.

²⁷ Sandra Rubli, *Transitional Justice: Justice by Bureaucratic Means?* (Swiss Peace Working Paper 4 – 2012), 3-6.

to calls for better coordination to promote mutually shared goals.²⁸ Yet there are also grounds for caution. It has been noted, for example, that transitional justice and peacebuilding initiatives such as DDR and SSR may at times work at cross-purposes.²⁹ But even where that is not the case, transitional justice may, much like liberal peacebuilding, occasionally serve to destabilize post-conflict societies that may be ill prepared for the forces that rapid political, social, and economic liberalization may unleash.³⁰ Moreover, if both peacebuilding and transitional justice share much in common in terms of history, aspirations, and assumptions, they have also been dogged by parallel critiques, including, among other things, that they have been externally driven, being planned and implemented in a top-down state-centric manner that tends to marginalize local values and practices; and that they are presented as neutral and apolitical solutions to highly contestable questions.³¹ Greater convergence might well exacerbate some of the tendencies that have given rise to these critiques, not make them better.³²

Thus, neither transitional justice nor peacebuilding should simply be accepted as unquestionably “good,” and it should not be assumed that conjugating transitional justice with peacebuilding will necessarily lead to greater “peace” or “justice” in the broader or even narrower senses of those terms. In considering the value of any emerging transitional-justice-as-peacebuilding narrative, we must therefore scrutinize potential assumptions with regards to what we mean by “transition,” by “justice” and by “peacebuilding.”

B. “Transitional Justice as Peacebuilding”; Three Potential Assumptions

i. “Transition” as Narrow Liberal Teleology

The felt need to grapple with the moral, legal, and political dilemmas that arise in the aftermath of periods of intense repression and large scale human rights abuses, has, for the past several decades, been conceptualized through the lens of “transitions.” In the abstract at least, the “transition” of transitional justice connotes unspecified change. Yet for Ruti Teitel, who arguably coined the term “transitional justice” in 1991,³³ the transition

²⁸ See, for example, Johanna Herman et al., “Beyond Justice Versus Peace: Transitional Justice and Peacebuilding Strategies,” in *Rethinking Peacebuilding: The Quest for Just Peace in the Middle East and the Western Balkans*, eds. Karin Aggestam and Annika Björkdahl (New York: Routledge, 2012), 48-50.

²⁹ Ibid.

³⁰ Chandra Lekha Sriram, “Justice as Peace?,” 580–81.

³¹ Dustin Sharp, “Beyond the Post-Conflict Checklist: Linking Peacebuilding and Transitional Justice Through the Lens of Critique,” *Chicago Journal of International Law* 14, no. 1 (2013): 169-70.

³² Ibid.

³³ Ruti G. Teitel, “Transitional Justice Globalized,” *International Journal of Transitional Justice* 2, no. 1 (2008): 1.

at issue is essentially a political one involving “the move from less to more democratic regimes.”³⁴ This conceptualization of transition is hardly unique to Teitel, and indeed it can be said that liberal democratic transitions constitute the “paradigmatic transition” of transitional justice.³⁵ Implicit in this understanding of transition is a sort of teleological or “stage theory” view of history.³⁶ If barbarism, communism, and authoritarianism lie at one end of the narrative, then Western liberal democracy sits at the other “end of history.”³⁷ With law as the master discipline and lawyers as the high priests, the mechanisms of transitional justice become a sort of secular right of passage symbolizing political evolution.³⁸

If we put to the side for one moment the problematic assumption that history tends towards definite ends—something that seems especially questionable given the rise of religious extremism and the resurgence of geopolitics, spheres of influence, and muscular authoritarianism³⁹—one fundamental problem with this historic and narrow conception of transitions in transitional justice is that it is simply empirically inaccurate. The label “transitional justice” has for some time been applied to contexts that do not involve a liberal political transition (Rwanda, Chad, Uganda, Ethiopia) if they involve a political transition at all (Kenya, Colombia), or which involve transitions from one nominally liberal ethno regime to another (Cote d’Ivoire). Beyond illiberal transitions, the term has also been invoked to describe the use of truth commissions and other commissions of inquiry in consolidated liberal Western democracies (Australia, Canada). Taken together, these cases make clear that the mechanisms of transitional justice are not a one-way ratchet of liberal betterment, but can in fact be used to reinforce illiberal ideologies and to consolidate the power of illiberal regimes, just as they can be invoked in regimes that are decidedly liberal but which may be undergoing normative transitions with respect to historic injustices.⁴⁰ In both liberal and illiberal contexts, the law and legalism associated with transitional justice may serve to obfuscate the very real power dynamics and contestable political choices at the heart of any set of transitional justice mechanisms. According to Hansen, scholarship has largely ignored the complexity and diversity of such patterns because of a deep-rooted assumption that transitional justice

³⁴ Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000), 5.

³⁵ Padraig McAuliffe, “Transitional Justice’s Expanding Empire: Reasserting the Value of the Paradigmatic Transition,” *Journal of Conflictology* 2, no. 2 (2011): 34-35.

³⁶ See Alexander Hinton, “Introduction,” in *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, ed. Alexander Hinton (New Brunswick: Rutgers Press, 2010), 6-7.

³⁷ See generally Francis Fukuyama, *The End of History and the Last Man* (New York: Avon Books, 1992).

³⁸ See Michael Rothberg, “Progress, Progression, Procession: William Kentridge and the Narratology of Transitional Justice,” *Narrative* 20, no. 1 (2012): 5.

³⁹ Walter Russell Mead, “The Return of Geopolitics; the Revenge of Revisionist Powers,” *Foreign Affairs* (May/June 2014).

⁴⁰ On the concept of transition without actual regime transition, see, for example, Andrew Vails, “Racial Justice as Transitional Justice,” *Polity* 36, no. 1 (2003): 53-71.

is inherently “good.”⁴¹

Observing these trends, McAuliffe argues for the retention of a traditional and somewhat narrow understanding of “transitional justice” on the grounds that transitional justice mechanisms can best and most fairly be evaluated under the conditions of the classic paradigmatic liberal democratic transition.⁴² This argument is certainly buttressed by empirical data suggesting that transitional justice initiatives may have the largest positive impact in countries already well on the path to democracy.⁴³ McAuliffe also worries that the range of contexts to which the term “transition” is being applied might be stretching the coherence of the term. Thus, taken together, McAuliffe suggests, we might want to make a distinction between paradigmatic transitional justice, understood in the context of liberal democratic transitions, and the mere use of transitional justice mechanisms “in societies which radically depart from the traditional type of transitions where it is most useful.”⁴⁴ While not denying some of the cogency of these arguments, it can also be said that, rather than reserving the term “transitional justice” for a narrow subset of paradigmatic transitions where it might work optimally, what is needed is a better understanding of the ways in which transitional justice mechanisms function in a range of contexts, from the paradigmatic political transition to the normative and ideological transitions seen in consolidated democracies. Moreover, to the extent that the intelligibility of the term “transition” is being stretched by application to contexts other than that of the paradigmatic political transition, any incoherence depends in large measure on the extent to which the field remains intellectually wedded to an exclusively liberal and political understanding of that term. Thus, as developed below, there certainly are other and broader ways to conceptualize “transition” than a liberal political one.

Finally, one might also note that, for better or worse, the horse of a more expansive notion of transitional justice may be out of the proverbial barn. The current transitional justice moment is characterized precisely by a willingness to question and push back on the historical peripheries and paradigms of the field.⁴⁵ Whether this expansion is due to resistance to the limitations of the narrow founding paradigm of transitional justice, or simply the result of an emerging industry that seems eager to make itself increasingly relevant to new contexts, the result is much the same: returning to a more narrow conception of applicable context and aspirations seems improbable. More pragmatically, what is needed is a (re)conceptualization of our understanding of transitions that captures the complex realities of an expanding field, while addressing some of the blindspots and limitations of the founding paradigm.

⁴¹ Thomas Obel Hansen, “Transitional Justice: Toward a Differentiated Theory,” *Oregon Review of International Law* 13, no. 1 (2011): 17; see also Siphiwe Ignatius Dube, “Transitional Justice Beyond the Normative: Towards a Literary Theory of Political Transitions,” *International Journal of Transitional Justice* 5, no. 2 (2011): 181.

⁴² Padraig McAuliffe, “Transitional Justice’s Expanding Empire,” 34-35.

⁴³ Oskar N.T. Thoms, James Ron, and Roland Paris, “State-Level Effects of Transitional Justice: What do We Know?,” *International Journal of Transitional Justice* 4, no. 3 (2010): 35.

⁴⁴ *Ibid.* 33.

⁴⁵ See generally Dustin Sharp, “Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice,” *Harvard Human Rights Journal* 26 (2013): 150.

One possible reason for the expansion and growth of transitional justice in situations far removed from the “third-wave” democratic transitions that helped to establish the original mold is an increasing tendency to see transitional justice as a tool for promoting not just democracy, but peace and human security in a more diverse range of contexts.⁴⁶ This raises the question as to whether the transition of transitional justice might be better seen as a transition to peace, broadly understood, and perhaps specifically as a transition to “positive peace,”⁴⁷ rather than something like liberal democracy, more narrowly understood. In considering such a (re)conceptualization, one must of course acknowledge that many have questioned the utility of the “transitions” lens altogether, irrespective of the imagined destination.⁴⁸ Over the years, alternatives to the transitions paradigm have included “overcoming the past”⁴⁹ and Rama Mani’s concept of “reparative justice,” a concept that is at once holistic, placing a greater emphasis on distributive justice and “root causes,” while also suggesting something permanent and incremental, rather than transitional, temporal, and incomplete.⁵⁰ In a similar vein, Wendy Lambourne and, more recently, Paul Gready and Simon Robins have argued for the adoption of a “transformative justice” approach with a view to placing greater emphasis on, inter alia, structural violence and local agency as part of the transitional justice process.⁵¹ Each of these proposals has, in its own way, attempted to address some of the assumptions and limitations of the field’s foundational paradigm and has been anchored in the broader and more holistic conceptions of peace and peacebuilding associated with “positive peace.” In that sense, (re)conceptualizing the transition of transitional justice as a transition to positive peace is meant to build upon and draw together these various proposals rather than oppose or replace them, while expressing a particular and explicit consonance with a conception of transitional justice as a form of peacebuilding.

While a (re)conceptualization of the field to involve a transition to positive peace would of course retain the transitions lens and while peace is itself a teleological concept, it might nevertheless distinguish itself from the paradigmatic transition model insofar as all countries have gone through war and peace throughout history. In this sense, transitional justice as a transition to positive peace might come to suggest not a specific

⁴⁶ Ruti G. Teitel, “Transitional Justice Globalized,” 2-3.

⁴⁷ The term “negative peace” refers primarily to the absence of direct, personal violence. It stands in contrast with the broader concept of “positive peace,” which includes the absence of both direct, personal violence and more indirect “structural violence” (understood to comprise poverty and power and resource inequalities more generally). See Johan Galtung, “Violence, Peace, and Peace Research,” 175, 183.

⁴⁸ Thomas Carothers, “The End of the Transition Paradigm,” *Journal of Democracy* 13 (2002): 4.

⁴⁹ Timothy Garton Ash, “The Truth About Dictatorship,” *New York Review of Books*, Feb. 19, 1998, 35-40.

⁵⁰ Rama Mani, “Rebuilding an Inclusive Political Community after War,” *Security Dialogue* 36, no. 4 (2005): 521.

⁵¹ See Wendy Lambourne, “Transitional Justice and Peacebuilding After Mass Violence,” 46; Paul Gready and Simon Robins, “From Transitional to Transformative Justice: A New Agenda for Practice,” *International Journal of Transitional Justice*, 2014 (Advance Access).

destination, and not a project for the backward rest rather than the liberal West—a moment that occurs at “the end of history”—but something that all societies will need to revisit at multiple junctures. As (re)conceptualized, transitional justice would be as relevant to addressing historical injustices in consolidated democracies like Australia as it is to the immediate post-conflict context of Liberia or Sierra Leone.

Positive peace is inherently holistic, and a destination never fully arrived at. In this sense, it carries with it the potential to address issues relating to the narrowness of the paradigmatic transitions lens. As I discuss in the following sections, however, peace, and even “positive peace,” may be subject to narrow and limiting constructions. After all, liberal peacebuilding, with its shallow emphasis on free markets and democracy as the pathway to “peace,” reflects much more than a simple attempt to guarantee “negative peace,” understood as the absence of overt hostility. Liberal peacebuilders might rightly claim that they are working toward a sort of “positive peace.” Yet Galtung’s concept of positive peace would not stop there, and is intimately bound up with considerations of social and distributive justice that have been largely absent from mainstream practice in the fields of both peacebuilding and transitional justice.⁵² I explore these distinctions in greater detail in the following sections, including the necessity of conjugating positive peace with other concepts from critical peacebuilding theory.

ii. “Justice” as Synonymous with Legal and Atrocity Justice

If “transition” as narrow liberal teleology is a potentially problematic assumption in any emerging transitional-justice-as-peacebuilding paradigm, we must also consider the conceptualization of “justice” in any such narrative. As Nagy has noted, to speak of “justice” in times of transition begs the question: *justice for what, justice for whom, and justice to what ends?*⁵³ Considered most expansively, “justice” could be understood as a broad social project and a condition in society. To “do justice” with such a conception in mind would likely involve a wide spectrum of efforts involving components of retributive, restorative, and distributive justice.⁵⁴ Yet this holistic view of justice stands in contrast to a narrower human rights legalism often associated with transitional justice that has tended to see justice as a relationship to the state,⁵⁵ has tended see “accountability” for mass atrocities as synonymous with individual accountability rather than a broader collective or institutional model, and which has imagined justice to be something that can, to some extent, be engineered and delivered through legal mechanisms and reforms. Seen through these more lawyerly optics, justice is primarily about rights, and not social welfare and well being per se. If this is the conception of justice animating the field, we

⁵² Galtung, “Violence, Peace, and Peace Research,” 183.

⁵³ Rosemary Nagy, “Transitional Justice as Global Project: Critical Reflections,” *Third World Quarterly* 29, no. 2 (2008): 276 (2008).

⁵⁴ See Rama Mani, *Beyond Retribution*, 5.

⁵⁵ David Kennedy, “The International Human Rights Regime: Still Part of the Problem?,” in *Examining Critical Perspectives on Human Rights*, eds. Rob Dickinson et al. (Cambridge: Cambridge University Press, 2012), 25.

can then ask whether “transitional justice” is not just a simple byword for “law” or “legal justice.”⁵⁶

While most would agree that transitional justice is no longer confined to a lawyer’s thinking and discourse,⁵⁷ the field remains heavily anchored in a conception of justice that is close to synonymous with legalistic human rights and atrocity justice. This is not to say that highly legalized, rights-oriented approaches to transitional justice focusing on individual criminal responsibility are not valuable or that the advocates of such approaches are found only in the liberal West (on the contrary). Yet to conflate such approaches with what it means to “do justice” in times of transition without probing their potential blindspots and limitations would be highly problematic. Such dissection reveals that, consistent with the liberal ideology that has historically served to undergird the field, “doing justice” has tended to suggest addressing violations of physical integrity rights—murder, rape, torture, and disappearances—and civil and political rights more generally. If these issues have occupied the foreground of traditional transitional justice concern, questions of economic violence (economic crimes, plunder of natural resources, economic and social rights violations)—to say nothing of broader conceptions of economic, social, and distributive justice—have been pushed to the periphery. They have tended to be relevant to the extent they provide useful context for helping us to understand why civil and political rights have been violated.⁵⁸

If some lament the narrowness of the justice historically promoted by the field, others argue that to take a broader view of what it means to do justice in times of transition may be to overburden the field with an expansive concept of justice and sets of expectations upon which it cannot possibly deliver.⁵⁹ Without doubt, justice in its fullest and most expansive sense must necessarily remain a broader concept than transitional justice.⁶⁰ However, to the extent that questions of economic violence and distributive justice help to drive conflict, instability, and human rights abuses, their positioning at the periphery of transitional justice concern may ultimately be self-defeating. Thus, whatever the dividing line between abuses that will be addressed or go unaddressed by transitional justice mechanisms, it makes little sense to draw a simplistic one that reifies historic dichotomies of civil and political versus economic and social rights.⁶¹ (Re)conceptualizing the transition of transitional justice as a transition to “positive peace,” which includes at its core a preoccupation with questions of resources and inequality,

⁵⁶ Christine Bell, Colm Campbell, and Fionnuala Ni Aolain, “Transitional Justice; (re)Conceptualising the Field,” *International Journal of Law in Context* 3, no. 2 (2007): 86.

⁵⁷ Ibid.

⁵⁸ Zinaida Miller, “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice,” *International Journal of Transitional Justice* 2, no. 3 (2008): 275-76.

⁵⁹ Lars Waldorf, “Anticipating the Past: Transitional Justice and Socio-Economic Wrongs,” *Social & Legal Studies* 21, no. 2 (2012): 171-86.

⁶⁰ See Roger Duthie, “Transitional Justice, Development, and Economic Violence,” in *Justice and Economic Violence in Transition*, ed. Dustin Sharp (New York: Springer Publications, 2014), 195-97.

⁶¹ Dustin Sharp, “Addressing Economic Violence in Times of Transition,” in *Justice and Economic Violence in Transition*, ed. Dustin Sharp (New York: Springer Publications, 2014), 19.

could be one way of helping to ensure that a greater balance is struck between a wider range of justice concerns.⁶² Such a paradigm shift would not of itself render transitional justice indistinguishable from broader projects of development or necessarily dictate radical resource redistribution. More cautious approaches might, for example, focus on those patterns of economic violence with the greatest negative impact on economic and social rights, just as transitional justice prosecutions for violations of civil and political rights have tended to be relatively limited and selective.⁶³ Much will depend on context, but whether issues of economic violence are addressed is a question largely bound up with practical and methodological challenges, not fundamental or structural impossibilities.⁶⁴

There are increasing signs of a willingness to address the constructed invisibility of the economic in transitional justice. A small but growing literature has emerged questioning the marginalization of economic violence in the transitional justice context.⁶⁵ At the level of policy, the UN Secretary General has noted that transitional justice must seek to address violations of all rights, including economic and social rights.⁶⁶ At the level of practice, an increasing number of truth commissions, including Chad, Ghana, Sierra Leone, Liberia, Kenya, and East Timor have examined questions of economic violence more squarely, even if their recommendations with regards to questions of economic violence have seldom been implemented.⁶⁷ The trend is therefore a modest one, but it may at least help to shift the terrain of the debate from whether questions of economic violence should be addressed at all, to whether it makes sense to do so in view of the particular roots and drivers of the conflict in question, and how it might be done within the transitional justice context in ways cognizant of prevailing financial and temporal resource limitations.

While these are welcome developments, the longer-term viability of this trend may hinge, at least in part, on whether any emerging transitional-justice-as-peacebuilding narrative comes to be thought of broadly, grounded in what Galtung refers to as more “extended” understandings of both peace and violence.⁶⁸ Such a narrative would provide a frame for both policy and action conducive to the strengthening of this trend. In contrast, a narrower transitional-justice-as-peacebuilding narrative that dovetails with the

⁶² Ibid, 23-24.

⁶³ Dustin Sharp, “Conclusion: From Periphery to Foreground,” in *Justice and Economic Violence in Transition*, ed. Dustin Sharp (New York: Springer Publications, 2014), 292-94.

⁶⁴ Duthie, “Transitional Justice, Development, and Economic Violence,” 191.

⁶⁵ See, e.g., Louise Arbour, “Economic and Social Justice for Societies in Transition,” *New York University Journal of International Law and Politics* 40, no. 1 (2007); The entire volume of *International Journal of Transitional Justice* 2 (2008); Pablo de Greiff and Roger Duthie, eds., *Transitional Justice and Development: Making Connections* (New York: Social Science Resource Council, 2009).

⁶⁶ United Nations, *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, March 2010, 7.

⁶⁷ Dustin Sharp, “Economic Violence in the Practice of African Truth Commissions and Beyond,” in *Justice and Economic Violence in Transition*, ed. Dustin Sharp (New York: Springer Publications, 2014), 79.

⁶⁸ Galtung, “Violence, Peace, and Peace Research,” 183.

liberal international peacebuilding project, a project that has historically been associated with neoliberal socioeconomic policies, would likely prove less so.

iii. *“Peacebuilding” as Synonymous with Liberal International Peacebuilding*

Any emerging transitional-justice-as-peacebuilding narrative begs the question of what we mean by “peace” and “peacebuilding” in the first place. During the Cold War at least, the concept of peace in the West was often seen as vaguely and suspiciously subversive, leftist, and political.⁶⁹ With the fall of the Berlin Wall and collapse of the Soviet Union, however, those associations began to ease and the concept has now forcefully entered the discourse and practices of policymakers accompanied by the tacit assumption that peace is an uncontested and non-ideological concept.⁷⁰ In the last 25 years, the United Nations Security Council has demonstrated an increasing willingness to intervene in conflict and post-conflict environments under the aegis of peace, at times giving liberalism and the concept of peace an aggressive face.

The minimalist *peacekeeping* activities of the Cold War have long given way to comparatively intrusive acts of *peacebuilding*. Thus, if the concept of “peace” was marshaled during the Cold War to support interposition of forces and the monitoring of ceasefires—efforts predicated in large part on neutrality, consent, and minimum force—the peace operations of the last 25 years (as seen in East Timor, Kosovo, and Liberia, for example) have involved intensive involvement in social, political, and economic questions that would have once been considered exclusive “sovereign” or “internal” affairs. Such efforts have included drafting new laws and constitutions, monitoring and certifying elections, and helping to run or reform various institutions of governance in ways that can only be likened to neo-trusteeship.⁷¹

From a legal standpoint, the shift has been reflected in the increasing use of Chapter VII of the UN Charter, where the use of force is permitted in the name of peace (as seen in Cote d'Ivoire and the Democratic Republic of the Congo) and does not require the consent of the host state.⁷² Parallels of this willingness to go so far as to wage war in the name of peace can also be seen in concepts of “humanitarian intervention,” which has been given a new lease on life in the post-Cold War context, and its sibling, the so-called “responsibility to protect.”⁷³ Through these shifts in both

⁶⁹ Laurent Goetschel & Tobias Hagmann, “Civilian Peacebuilding: Peace by Bureaucratic Means?,” *Conflict, Security and Development* 9, no. 1 (2009): 56.

⁷⁰ Ibid.

⁷¹ See Constanze Schellhaas and Annette Seegers, “Peacebuilding: Imperialism’s New Disguise?,” *African Security Review* 18, no. 2, (2009): 2; Philip Cunliffe, “Still the Spectre at the Feast: Comparisons between Peacekeeping and Imperialism in Peacekeeping Studies Today,” *International Peacekeeping* 19, no. 4 (2012): 426.

⁷² This stands in contrast to efforts under Chapter VI, involving so-called “consensual” peacebuilding.

⁷³ U.N. Secretary-General, Report of the High-level Panel on Threats, Challenges and Change, UN Doc. A/59/565, ¶ 201 (December 2, 2004) (noting that there “is a growing acceptance that

norm development and practice, sovereignty is rendered increasingly permeable and conditional, and the distinction between waging war and making peace elided.⁷⁴ Taken together, concepts of peace and peacebuilding in the post Cold War world have become critical tools of global governance,⁷⁵ helping to construct, reproduce, and maintain a particular vision of order predicated on political, social, and economic liberalization. Together with transitional justice initiatives, international peacebuilding has become one of the ways in which liberal values—including political and economic relations—are projected globally, from the core to the periphery, and a new world order enforced.⁷⁶

As a global project, liberal international peacebuilding has been subjected to serious and sustained critique. As with all critiques, there is a danger of painting with too broad a brush, homogenizing diversity and difference.⁷⁷ Yet even with that caveat, the contours of these critiques are worth bearing in mind when we ask what the particular “peacebuilding” in any emerging transitional-justice-as-peacebuilding narrative should mean. At its core, liberal international peacebuilding has tended to see peace through a narrow, reductionist lens, with economic and political liberalization—free markets and Western style democracy—as the unique pathway to peace.⁷⁸ The assumption is therefore that key liberal goods necessarily bring peace and not the other way around, or some other way. The problem is that this simplistic formula has a rather rocky track record, having worked well except for when it has not. Thus, for example, the rush to democracy did not bring peace in Angola, Bosnia, or Afghanistan. Rapid market liberalization has proven similarly destabilizing, having created huge dislocations in the former Soviet block, not to mention the economic violence that flowed from structural adjustment programs of the 1980s and 90s.

The realization that rapid liberalization may be destabilizing led to a chastened liberal peacebuilding paradigm that places greater emphasis on institution building—reform of the security and judicial sectors, for example—as a prelude to greater liberalization.⁷⁹ Programming modeled on this “institutionalization before liberalization” critique tends to focus almost exclusively on building formal, national-level liberal institutions required for the Western, Weberian state and its centralized monopoly on the use of force. Thus, while key national-level institutions of the state are showered with the attention and dollars of international reformers, the everyday security and needs that

while sovereign Governments have the primary responsibility to protect their own citizens . . . when they are unable or unwilling to do so that responsibility should be taken up by the wider international community....”).

⁷⁴ Florian Kuhn, “The Peace Prefix: Ambiguities of the Word ‘Peace’,” *International Peacekeeping* 19, no. 4 (2012): 397.

⁷⁵ Ibid, 397.

⁷⁶ See Cunliffe, “Still the Spectre at the Feast,” 428.

⁷⁷ Jenny Peterson, “A Conceptual Unpacking of Hybridity: Accounting for Notions of Power, Politics and Progress in Analyses of Aid-Drive Interfaces,” *Journal of Peacebuilding and Development* 7, no. 2 (2012): 9.

⁷⁸ See Roland Paris, “Peacebuilding and the Limits of Liberal Internationalism,” *International Security* 22, no. 2 (1997): 56.

⁷⁹ See Paris, “Peacebuilding and the Limits,” 57-58.

ordinary people need to survive—housing, water, jobs, electricity—are often shortchanged. This focus on central state institutions seems to assume that peacebuilding and statebuilding are essentially one and the same,⁸⁰ and that institutions induce liberalism rather than the other way around, or some other way.

For many if not most critics of the liberal international peacebuilding model, the problem is not that human rights, the rule of law, good governance, democracy or other key liberal goods are themselves undesirable. One need not therefore jettison liberalism itself; many aspects of the ideology are invaluable. Indeed, many of the critiques of liberal peacebuilding are themselves reflective of decidedly liberal principles.⁸¹ Thus, there are certainly readings of the liberal tradition that would give greater weight to local autonomy, participation, and decision making, to everyday needs and distributive justice, and which would reflect greater contextual openness and adaptability—principles which would go a long way to addressing the various critiques leveled against liberal international peacebuilding. Much of the frustration therefore stems from the reductionism, chauvinism, and arrogance of a narrow liberal international peacebuilding model that tends to privilege certain forms of expertise and knowledge, has too often been associated with exogenous imposition, and which tends not to question its own blindspots, assumptions, and checkered history. The goal, therefore, is to question the assumption that liberal democracy and capitalism—as *they have been narrowly and simplistically understood*—are somehow a unique pathway to grappling with legacies of violent conflict, and to strip the liberal international peacebuilding project of its sense of naturalness and inevitability, of the illusion that it somehow represents an escape from politics and ideology.

C. Critical Peacebuilding Theory

If liberal peacebuilding is therefore a dubious foundation for any emerging transitional-justice-as-peacebuilding narrative, a key challenge has been that scholars have tended to be long on critique and short on concrete alternatives. At the end of the day, the liberal international peacebuilding model remains mainstream and dominant, and there is no rival competing paradigm. That said, even if they do not provide a comprehensive solution, there are concepts from critical peacebuilding theory that can serve as possible correctives to help address some of the more problematic aspects of the narrow liberal international peacebuilding model that has been the subject of such sustained critique. As will be evident, these concepts are overlapping and mutually supportive, perhaps lacking sharp edges and crispness, but this does not diminish their importance or utility.

Several concepts from critical peacebuilding theory call for a shift in perspective—

⁸⁰ See Oliver Richmond & Audra Mitchell, “Towards a Post-Liberal Peace: Exploring Hybridity via Everyday Forms of Resistance,” in *Hybrid Forms of Peace: From Everyday to Post-Liberalism*, eds. Oliver Richmond and Audra Mitchell (New York: Palgrave Macmillan, 2012), 4-5.

⁸¹ See Roland Paris, “Saving Liberal Peacebuilding,” *Review of International Studies* 36, no. 2 (2010): 354-57.

a reprioritization of emphasis and resources from the state and its core security institutions to the needs of communities and individuals—and an increased emphasis on understanding and generating local legitimacy. Together, they serve to envision a peacebuilding process that goes well beyond the state-centric liberal international peacebuilding paradigm with its comparative emphasis on elections, restored courts, and re-trained and re-equipped security forces, etc. David Roberts, for example, invokes the concept of “popular peace” to emphasize the need for greater focus on everyday problems faced by ordinary individuals and communities as part of the peacebuilding process: social services delivery; economic and social rights; basic needs such as shelter, clean water, sanitation, electricity, jobs; and human security.⁸² If liberal international peacebuilding tends to reflect a paradigm of peacebuilding as top-down, institutional engineering, or “trickle-down” peace,⁸³ Roberts argues that attention to local needs is key to generating a desperately needed sense of legitimacy for both local government and international peacebuilding initiatives in the post-conflict context, which can in turn serve as a key to macro-level stability and peace.⁸⁴ This shift in emphasis offered by the concept of “popular peace” therefore involves a broader imagining of security and peace, one which “trickles up” from micro to macro rather than the other way around.⁸⁵

The concept of “popular peace” is helpfully understood in tandem with the concept of “the everyday” found in critical peacebuilding scholarship.⁸⁶ In contrast to the dominant liberal peace paradigm, an “everyday peace” is one “in which a population’s preferences are recognized . . . beyond narrow liberal confines.”⁸⁷ As many scholars and observers have noted, the sense that peacebuilding processes are remote or irrelevant to the everyday lives, preferences, and social reality of the very individuals those processes are ostensibly intended to benefit may spark resistance,⁸⁸ leading those affected by these programs to attempt to reconfigure them “so that they begin to reflect their own everyday lives rather than structural attempts at assimilation.”⁸⁹ Thus, peacebuilding processes that ignore the lived realities and needs of “the everyday” in the

⁸² David Roberts, “Post-Conflict Peacebuilding, Liberal Irrelevance and the Locus of Legitimacy,” *International Peacekeeping* 18, no. 4 (2011): 415.

⁸³ Shahrbanou Tadjbakhsh, “Liberal Peace in Dispute,” in *Rethinking Liberal Peace: External Models and Local Alternatives*, ed. Shahrbanou Tadjbakhsh (New York: Routledge, 2011), 3.

⁸⁴ Roberts, “Post-Conflict Peacebuilding,” 411.

⁸⁵ The concept of peacebuilding “from below” or transitional justice “from below” is a concept that has been developed and arrived at by many scholars. As but two examples, see, for example, Kieran McEvoy and Lorna McGregor, eds., *Transitional Justice From Below* (Hart Publishing: Portland, 2008); Timothy Donais and Amy Knorr, “Peacebuilding from Below vs. the Liberal Peace: the Case of Haiti,” *Canadian Journal of Development Studies* 34, no. 1 (2013): 54-69.

⁸⁶ For a longer exposition of the concept, see David Roberts, *Liberal Peacebuilding and Global Governance: Beyond the Metropolis* (New York: Routledge, 2011), 89-91.

⁸⁷ Ibid. 90.

⁸⁸ See Andrea Talentino, “Perceptions of Peacebuilding: The Dynamic of Imposer and Imposed Upon,” *International Studies Review* 8, no. 2 (2007): 253.

⁸⁹ Oliver Richmond, “Resistance and the Post-Liberal Peace,” *Millennium – Journal of International Studies* 38 (2010): 677.

post-conflict context risk generating needless and counterproductive friction and struggle.

If concepts such as “the everyday” and “popular peace” call for a shift in focus and perspective, the concept of “hybridity” provides an additional layer of complexity and critique, asking us to think about the intricate interaction between top-down and bottom-up forces and processes in liberal international peacebuilding. Hybridity calls upon us to consider the ways in which peacebuilding initiatives are made and remade through a complex cocktail of local resistance, cooptation, and appropriation.⁹⁰ Thus, it suggests that peacebuilding does not involve a dynamic of external actors introducing new ideas and practices to static local societies,⁹¹ but is in practice a “glocal” phenomenon.⁹² Hybridity presents itself more as a description of the messy, awkward, and complex nature of internationally driven peacebuilding, of the heterogeneity and diversity in societies, than a conscious policy aim.⁹³ In this way, the concept of hybridity allows us to assess the prominence of liberalism in both peacebuilding and transitional justice without collapsing into a stereotype of an all encompassing ideological behemoth;⁹⁴ to stand in a place where we neither romanticize the local, nor demonize the hegemonic, liberal West.⁹⁵ Taken together, hybridity helps to shift the focus in peacebuilding from efficiency to the need to generate a sense of local legitimacy that has often been sorely lacking.⁹⁶ Thus, like the concept of “the everyday,” and “popular peace,” understanding the reality of hybridity calls upon us to move away from solely elite-level analysis—from the state and its institutions—and to take the roles and needs of non-elites seriously.

D. Critical Peacebuilding Theory and Transitional Justice

Given the parallel origins, ideological assumptions, and critiques of both liberal international peacebuilding and transitional justice, it would be dangerous to assume that “transitional justice as peacebuilding” will come to reflect more holistic rather than more reductive concepts of peacebuilding. Thus, longstanding critiques relating to the inaccessibility, neo-colonial undertones, and inappropriateness⁹⁷ of transitional justice to local wants and needs are unlikely to be addressed unless greater thought is given to the particular kind of peace and peacebuilding with which transitional justice should be

⁹⁰ See generally, Roger Mac Ginty, *International Peacebuilding and Local Resistance. Rethinking Peace and Conflict* (Basingstoke: Palgrave, 2011).

⁹¹ Roger Mac Ginty and Gurchathen Sanghera, “Hybridity in Peacebuilding and Development: an Introduction,” *Journal of Peacebuilding and Development* 7, no. 2 (2012): 4.

⁹² Bruce Mazlish, “The Global and the Local,” *Current Sociology* 53, no. 1 (2005): 99.

⁹³ Necla Tschirgi, “Bridging the Chasm Between Domestic and International Approaches to Peacebuilding,” paper for presentation at the joint CISS/KEYNOTE conference “Between the Global and the Local: Actors, Institutions and Processes,” Prague, June 24-26, 2012.

⁹⁴ Jenny Peterson, “A Conceptual Unpacking of Hybridity,” 12.

⁹⁵ Kristoper Liden, Roger Mac Ginty, and Oliver Richmond, “Beyond Northern Epistemologies of Peace: Peacebuilding Reconstructed?,” *International Peacekeeping* 16, no. 5 (2009): 594.

⁹⁶ *Ibid.*

⁹⁷ Chandra Sriram, “Post-Conflict Justice and Hybridity in Peacebuilding: Resistance or Cooptation,” in *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism*, eds. Oliver Richmond and Audra Mitchell (New York: Palgrave Macmillan, 2012), 60.

associated: whether a kind of emancipatory peace resonant with critical peacebuilding theory ideals of “positive peace,” “the everyday” and “popular peace,” or a more classically narrow and reductionist (neo)liberal one. To the extent that there are emerging efforts to seek greater complementarity between the staples of liberal international peacebuilding programming and initiatives associated with transitional justice, building linkages and programming with a cognizance of the parallel critiques that have historically dogged both fields would also be an important step.⁹⁸

Viewed in their ensemble, the concepts discussed throughout this article—including “positive peace,” “the everyday,” “popular peace,” and “hybridity”—ask us to reconsider the priorities and praxis of both peacebuilding and transitional justice and provide a useful prism for helping to imagine what more emancipatory transitional-justice-as-peacebuilding might entail. Their key value may be as a set of constructs or guiding principles that can help to facilitate an important perceptual and attitudinal shift. Thus, while not presented here as a panacea to the realities of narrow liberal international peacebuilding or the parallel problems that have bedeviled transitional justice, they at least call for greater attention to historic blindspots and assumptions and might be a first step in moving liberal international peacebuilding and transitional justice in the direction of greater pluralism, contextualism, and global-local balance, bringing some of the historic peripheries of the field into the foreground:

Historic Foreground	Historic Background⁹⁹
the global, the Western	the local, the non-Western “other”
the modern, the secular	the traditional, the religious
the legal	the political
civil and political rights	economic and social rights
physical violence	economic violence
the state, the individual	the community, the group
formal, institutional, “top-down” change	informal, cultural, social, “bottom-up” change

If the historic foreground remains important to the work of transitional justice, neither is it obvious that peace and justice are best advanced by heavily privileging those items while pushing others to the margins. Thus, while concepts from critical peacebuilding theory do not themselves provide a “roadmap” for negotiating the many complex questions, choices, and tradeoffs involved in striking a better balance between historic foreground and background, the shift in perspective they afford, together with the emphasis on the need for multiple levels of legitimacy, suggest that they offer a starting point for thinking, policy, and action that stands in refreshing contrast to the preoccupation in the earlier years of the field of transitional justice with elite bargains and decision making.¹⁰⁰ Taken together, they allow us to imagine a world where those

⁹⁸ Dustin Sharp, “Beyond the Post-Conflict Checklist,” 169-70.

⁹⁹ Chart adapted from, Dustin Sharp, “Addressing Economic Violence in Times of Transition,” 15.

¹⁰⁰ See, for example, Samuel P. Huntington, “The Third Wave,” 65-81; Guillermo O'Donnell and Philippe Schmitter, “Transitions from Authoritarian Rule,” 57-64.

developing transitional justice programming and policy ask themselves, at the outset, how those items traditionally pushed to the margins might be given genuine importance, value, and where needed, priority. It is thought provoking to imagine, for example, what a transitional justice process might look like that did *not* privilege international “expertise” at the expense of local agency; nation or capital-based justice at the expense of community and rural based justice; largely Western legal modes of justice at the expense of “traditional” or “local” modalities of justice; the prosecution of the so-called “big-fish” at the expense of a focus on reparations and community needs; and physical violence and civil and political rights at the expense of economic violence and economic and social rights.¹⁰¹ We have as yet few empirical examples of such “alternative” transitional justice approaches, though the Fambul Tok project in Sierra Leone, with its emphasis on community-based reconciliation grounded in traditional ritual and practice, provides an intriguing, if occasionally flawed, example.¹⁰²

Perhaps less ambitiously, concepts of “positive peace,” “popular peace,” “the everyday,” and “hybridity” might at least work together to serve as a sort of bulwark against the slide towards expediency that would continue to privilege the historical foreground of transitional justice work, answering sustained critique with only superficial appropriation. After all, even important themes evolving out of the critical studies literature like “participation” and “local ownership” intended to address some of the longstanding critiques of transitional justice and peacebuilding practice are easily co-opted by international institutions and donors who would turn them into a sort of ritualized mantra devoid of substance.¹⁰³ The concepts from critical peacebuilding theory discussed in this article are then a reminder that we must resist these gravitational forces by continually asking whose peace (or whose justice) we are building, based on whose priorities, to what ends, and who gets to decide.¹⁰⁴

E. Conclusion

If transitional justice is gradually moving beyond the peace versus justice debates of the

¹⁰¹ Each of these pairings, of course, involves an extended debate and literature well beyond the scope of this article.

¹⁰² See generally Augustine Park, “Community-Based Restorative Transitional Justice in Sierra Leone,” *Contemporary Justice Rev.* 13, no. 1 (2010): 95-119. I explore this and other attempts at greater engagement with “the local” in great detail elsewhere. See Dustin Sharp, “Addressing Dilemmas of the Global and the Local in Transitional Justice,” *Emory International Law Review* 28 (forthcoming, 2015).

¹⁰³ See, for example, Bill Cooke and Uma Kothari, eds., *Participation: The New Tyranny?* (London: Zed Books, 2001).

¹⁰⁴ The question of “whose peace” is, of course, one asked by many peacebuilding scholars. See, for example, Michael Pugh, Neil Cooper, Mandy Turner, eds., *Whose Peace? Critical Perspectives on the Political Economy of Peacebuilding* (New York: Palgrave Macmillan, 2008). This same refrain has also been asked in the context of transitional justice. See, for example, Patricia Lundy and Mark McGovern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35, no. 2 (2008), 265.

past to be seen as a critical component of peacebuilding itself, the import of any future transitional-justice-as-peacebuilding narrative will hinge to a large extent on our understanding of concepts of “transition,” “justice,” and “peacebuilding.” The potential assumptions I have outlined above with regard to these three concepts are not meant to be exhaustive. And while those assumptions have been painted with a fairly broad brush both due to reasons of space and to illustrate a point more vividly, it seems probable that they will in some form help to color our understanding of transitional justice as a form of peacebuilding going forward. This is especially true in a world where transitional justice and liberal peacebuilding have been mainstreamed and institutionalized, where the centripetal pull of dominant and mainstream practice is strong.¹⁰⁵

Even so, there are emancipatory concepts of peace and peacebuilding that carry with them the potential to challenge longstanding blindspots and assumptions and to increase the possibility of a transitional-justice-as-peacebuilding project that is true to human rights ideals while becoming more open-textured and attuned to local needs and context. To these ends, I have argued that thinking of the transition of transitional justice as a transition to “positive peace” where the perspectives of “popular peace,” “the everyday” and “hybridity” are paramount could be an important step in helping to emancipate the field from the bonds of the paradigmatic transition and serve to resist a simple elision of transitional justice and liberal international peacebuilding.

Some have worried that thinking of transitional justice more expansively (perhaps even along the lines suggested by this article) will somehow overburden the field—jeopardizing even the narrow aims of combatting impunity for violations of physical integrity, for example.¹⁰⁶ The goal, however, is not to conflate transitional justice with social justice writ large or with the greater peacebuilding enterprise itself. Rather, by carefully considering and deconstructing assumptions implicit in the narratives of the field, both historic and emerging, it may be possible to liberate policymaking from narrow pathways and paradigms that may stymie creativity and thinking, and possibly underserve the goal of the consolidation of a long-term, robust, and positive peace.

There is therefore a strong need for greater critical theoretical and empirical attention to the links between transitional justice, peace, and peacebuilding that take us beyond the “no peace without justice” debates and sloganeering of the past, and which build upon the work of pioneering scholars.¹⁰⁷ To be clear, the claim is not that these ideas and questions cannot and have not been arrived at by constructs outside of critical peacebuilding theory. Indeed, critiques developed by transitional justice scholars and peacebuilding scholars, working in at-times “splendid isolation,” are often remarkably similar.¹⁰⁸ At the same time, the concepts from critical peacebuilding theory discussed in this article carry with them special salience in a world where transitional justice is increasingly seen as part and parcel of the international peacebuilding enterprise.

¹⁰⁵ See Roland Paris, “Understanding the ‘Coordination Problem’ in Postwar Statebuilding,” in Roland Paris and Timothy D. Sisk, eds, *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations* 62 (New York: Routledge, 2009).

¹⁰⁶ Lars Waldorf, “Anticipating the Past,” 171-86.

¹⁰⁷ See works cited note 3, *supra*.

¹⁰⁸ Dustin Sharp, “Beyond the Post-Conflict Checklist,” 178-85.

Greater collaboration by scholars in both areas would be welcome, and thinking in each area could serve as a source of insight and inspiration for the other.¹⁰⁹ This article has only sketched a few brief ideas in this regard as an attempt to stimulate further thinking and debate. The hope is that careful introspection and collaboration along these lines could lead to a conceptualization of “transitional justice as peacebuilding” that might serve to loosen moorings in the most rigid and narrow templates of Western liberalism, making transitional justice more of a true global project.

¹⁰⁹ Compare, for example, Goetschel & Hagmann, “Civilian Peacebuilding: Peace by Bureaucratic Means?” and Rubli, “Transitional Justice: Justice by Bureaucratic Means?”

Conclusion

Some thirty years after it burst upon the world stage, transitional justice has become the “globally dominant lens”¹ through which we grapple with legacies of violence and mass atrocity. That lens has not been an apolitical, acultural, or non-ideological one, being most accurately viewed as a fairly narrow liberal prism. Indeed, the idea of transitional justice as handmaiden to liberal political transitions—the “paradigmatic transition” of transitional justice—remains a deeply embedded narrative in thinking, policy, and practice today. However, that the contours of transitional justice have been shaped by the light cast from that liberal prism is not itself, without more, an indictment of transitional justice. Key to our understanding of transitional justice and its possible future is a critical examination of the implications of the narratives and assumptions undergirding transitional justice, both historic and those possibly emerging.

Parts I and II of this dissertation sought to explore the ways in which the liberal optics of transitional justice practice, policy, and study have served to shape our sense of what it means to “do justice” in times of transition. I have argued that these optics contributed, at least in part, to some of the blindspots and frictions associated with transitional justice initiatives today, helping to push certain questions and modalities of justice into the foreground, while relegating others to the background of transitional justice concern:

Set in the Foreground	Set in the Background ²
the global, the Western	the local, the non-Western “other”
the modern, the secular	the religious, the traditional
the legal	the political
civil and political rights	economic and social rights
physical violence	economic and structural violence
the state, the individual	the community, the group
formal, institutional, “top-down” change	informal, cultural, social, “bottom-up” change

In exploring just a few of the historic peripheries of the field in *Parts I and II*, I have argued that there is nothing particularly natural or inevitable about the privilege, dominance, and marginalization reflected in the chart above; nor is it obvious that objectives of peace and justice can best be achieved in all contexts by emphasizing the foreground at the expense of the background. I have also argued that while a narrow and perhaps *neoliberal* understanding of liberal traditions has contributed to this backgrounding and foregrounding, it may be possible to recover from liberalism itself some of the keys to striking a better balance. Thus, for example, in *Part I*, I have argued that the field’s engagement with questions of “the local” and the “non-Western” has been both complex and clumsy, fraught with frictions and contradictions. Transitional justice has tended to privilege largely Western approaches to and understandings of what it means to “do justice.” Yet the choice going forward is not a simple one between vigorous

¹ Paul Gready and Simon Robins, “From Transition to Transformative Justice: A New Agenda for Practice,” *International Journal of Transitional Justice* (2014) (Advance Access).

² Chart adapted from, Dustin Sharp, “Addressing Economic Violence in Times of Transition,” 15.

localism and strongly assertive liberal internationalism. Rather, the dilemmas of “the local” reveal competing liberal principles and commitments that need to be balanced. In and of itself, there is nothing particularly illiberal, for example, in giving greater weight to local autonomy, participation, and decision making. If taken seriously, principles of pluralism and concepts like the “margin of appreciation” worked out in historically liberal societies would also go a long way towards generating transitional justice practice reflective of greater contextual openness and adaptability. As I argue in *Chapter I*, giving life to such principles means moving beyond invocations of near empty signifiers such as “local ownership,” and requires us to deconstruct and disaggregate what we mean by those terms. I have proposed that understanding concepts like “local ownership” across multiple dimensions of “control,” “process,” and “substance” would be a useful construct for striking a better global-local balance in the transitional justice context and beyond. In sum, the clash between the global and the local, or between the Western and the non-Western in transitional justice may therefore flow in large part from a narrow and arrogant version of the liberal tradition associated with the 1990s and the triumphal spirit of the “end of history” that has come to undergird so many aspects of liberal post-conflict governance in recent decades.

In *Part II* of this dissertation, I sought to reinforce arguments made in *Part I*, exploring the ways in which narrow liberal understandings of what it means to do justice in times of transitional have served to marginalize questions of economic violence and economic justice in the post conflict context. Yet, much like the dilemmas of the local, recovery of more accommodating strands of the liberal tradition could go a long way towards rectifying this blindspot. Thus, there are certainly threads of the liberal tradition that would pay greater attention to everyday needs, economic and social rights, and questions of distributive justice even if they have not characterized liberal post-conflict governance since the end of the Cold War.

I have made two particular arguments that contribute to the transitional justice literature in this area. First, I have suggested that the paradigmatic transition of transitional justice, with its implicit narrow assumptions that liberal democracy and free markets are the unique pathway to peace, might not be the best foundation for a more contextually sensitive and relevant transitional justice project. As an alternative, I have offered the concept from critical peacebuilding theory of “positive peace,” rooted as it is in the need to address questions of economic and structural violence, as a potentially useful construct in moving the transitional justice debate forward. Second, I have argued against the misconception in some of the literature that addressing questions of economic violence will of itself over-stretch the resources and intellectual coherency of the field. There are potentially narrow and broad approaches to questions of economic violence, just as there are narrow and broad approaches to redressing violations of physical integrity. I have offered the construct of the “economic violence—human rights violations” nexus as one way of disciplining and rendering manageable the inquiry.

If rather narrow understandings of liberalism undergirding the “paradigmatic transition” associated with the birth of the field have proven problematic—resulting in some of the blindspots, frictions, and contradictions discussed in Parts I and II—the questions then turns to alternative narratives and groundings for transitional justice going

forward. In recent years, the view of transitional justice as handmaiden to liberal political transitions has begun to give way to a somewhat looser view of transitional justice as a component of post-conflict peacebuilding more generally. The confluence of the frictions and critiques developed in Parts I and II, together with the emerging narrative of “transitional justice as peacebuilding” therefore led me to the central research question of this dissertation: *might a (re)conceptualization of the field of transitional justice around frames of peace and peacebuilding help to address longstanding critiques and limitations of the field and, at the same time, serve as useful tool for re-orienting theory and practice in ways more reflective of a genuinely pluralistic and global project?* Drawing on the work done in *Parts I and II*, I attempted to answer this question in *Part III*. In short, I answered with a very qualified “yes,” but the results cannot be taken for granted.

Indeed, as I argued in *Part III*, there are many reasons to be wary of an increasing association between transitional justice and peacebuilding. These fears are legitimated when we consider the striking parallel critiques that have been leveled against both peacebuilding and transitional justice since the end of the Cold War: that they are too often externally driven, being planned and implemented in a top-down and state-centric manner; that they are biased toward Western approaches, giving too little attention to local or indigenous peace and justice traditions; that they are presented as technocratic, neutral, and apolitical solutions to highly contested or contestable political issues and choices, etc. Thus, as I argue in *Chapter IV*, promotion of synergies between transitional justice and peacebuilding must first begin with a firm understanding of these critiques. Without this, it seems probable that greater coordination between the two will only exacerbate the tendencies that gave rise to the critiques rather than mitigate them. And yet, it might also be possible to coordinate “through the lens” of critique, giving rise to new and innovative transitional justice and peacebuilding programs. To illustrate this point, I explored ways in which DDR and transitional justice programs might be coordinated through the lens of critique.

Second, in considering the ever-closer alignment of peacebuilding and transitional justice, we must be aware that historically, the “peace” associated with international post-conflict peacebuilding efforts spearheaded by the United Nations and major (Western) international donors has typically been conceived of as a narrow liberal peace predicated on free markets and Western-style democracy. Thus, one might well ask whether the “peacebuilding” promoted by the “international community” and the historic goals of transitional justice might not be one and the same. Even with that very significant caveat, I have argued that there are also emancipatory concepts of peace and peacebuilding that carry with them the potential to challenge longstanding blindspots and assumptions and to increase the possibility of a transitional-justice-as-peacebuilding narrative that is true to human rights ideals while becoming more open-textured and attuned to local needs and context. Preventing simple elision of transitional justice and liberal international peacebuilding—and working toward a more emancipatory conception of transitional justice-as-peacebuilding in the process—can be facilitated in part through the use of several constructs from critical peacebuilding theory: positive peace, the everyday, popular peace, and hybridity. While they do not themselves create

a program for action, these constructs, together with an effort to remember that liberalism is indeed a big tent capable of accommodating a great diversity of ideas and approaches, offer a very useful starting point for reimagining transitional justice going forward.

Proposals for Future Consideration

This dissertation has sought to explore but a few of the historic peripheries and dichotomies of the field of transitional justice, and has done so at a fairly high level of generality. That inquiry has at times been broad brush and superficial. More specific and detailed work is needed in the future, and it is hoped that this dissertation provides a number of points of departure in this regard.

First, just as this dissertation has sought to unpack and explore historic peripheries of “the local” and “the economic,” there is a need to interrogate further peripheries and blindspots of both transitional justice and peacebuilding. Referencing the chart above reveals that I have done little to explore, for example, the marginalization of concepts of “the religious” and “the community” in liberal post-conflict governance. These are projects that I or other scholars might find worthwhile in the future.

Second, I have analyzed how we might begin to work through some of the frictions arising out of such historic dichotomies at a time when the field is in a state of normative ferment, when some of its foundational assumptions appear to be in question, and when the historic narratives undergirding the field may be evolving. I have sketched several ideas to help shape an alternative transitional justice narrative, but much more could be done to put flesh on the bones of those ideas. This dissertation has been written largely in a “critical studies” tradition, seeking to explore and understand some of the implications of the implicit and explicit ideologies and politics associated with liberal-post conflict governance, without at the same time providing a blueprint for change. Thus, much can and should be done to help develop these ideas in the direction of concrete policy and action.

Finally, at a time when transitional justice is increasingly seen as a component of peacebuilding in a diverse range of contexts, there is a need for greater critical theoretical and empirical attention to the links between transitional justice, peace, and peacebuilding that take us beyond the “no peace without justice” debates and sloganeering of the past. Greater collaboration by scholars in both areas would be welcome, and thinking in each area could serve as a source of insight and inspiration for the other. To date, peacebuilding and transitional justice scholars have too often worked in “splendid isolation.” It is hoped that this work, together with work other scholars mining similar veins, will be an important step in breaking down those siloes.

Executive Summary

What does it mean to “do justice” in times of transition? Justice for what, justice for whom, and to what ends? Attempts to answer these and other related questions have often aroused debate: from antiquity, to the so-called “third wave” of democratic transitions in the 1980s and 90s up through the present day. While “justice” may be an elusive and essentially contested concept deeply rooted in context-specific history and culture, increasingly, “doing justice” in the wake of large-scale human rights violations has become inseparable from the field of “transitional justice.” Such is the dominance of the mainstream transitional justice paradigm today that, in practice, the question is increasingly not *whether* there will be some kind of transitional justice in the aftermath of conflict, but *how* various components of the transitional justice “toolbox” will be implemented.

If the growth and trajectory of transitional justice discourse and practice has been seen in some quarters an unalloyed “good thing,” it has also been accompanied by fierce resistance and persistent frictions, leading some to question the future of the field and call for its re-examination. Such examination makes clear that the core narratives and preoccupations of the field contain something of a contradiction. Transitional justice is at times imagined as a post-political and post-ideological enterprise, part of “the end of history,” and yet is also heavily associated with liberal and neoliberal democratic political transitions and has been dominated by largely Western conceptions and modalities of justice. Though increasingly implicit, the idea of transitional justice as handmaiden to liberal political transitions—the “paradigmatic transition” of transitional justice—remains a deeply embedded narrative that continues to shape thinking, policy, and practice today. Together with post-conflict peacebuilding, transitional justice has, since the end of the Cold War, become an important feature of liberal post-conflict governance, a means by which Western liberal values are pushed from core to periphery.

While the narratives undergirding and shaping the field have had many positive dimensions, they have also served to limit and constrain the transitional justice enterprise in various ways. For example, they have heavily shaped the modalities of transitional justice (approaches that are generally state-centered, top-down, privileging the global over the local). In addition, they have served to limit our sense of what the “justice” of transitional justice should reasonably include (generally addressing civil and political rights rather than economic and social rights, physical violence rather than questions of economic or structural violence). In short, transitional justice theory and practice have typically failed to reflect the complex depth and pluralism of the many varied notions of justice across the globe, and this may ultimately hinder the emergence of a truly global project, where “global” is not simply a byword for “western” or “liberal.” In this light, there is a strong need to revisit and deconstruct the field’s core normative metanarratives, blindspots and assumptions as a prelude to seeking a more emancipatory ground for transitional justice policy and practice that is true to human rights ideals while becoming more open-textured and attuned to local needs and context.

In recent years, the view of transitional justice as handmaiden to liberal political transitions has begun to give way to a somewhat looser view of transitional justice as a component of post-conflict peacebuilding more generally. One can therefore ask whether the emerging transitional-justice-as-peacebuilding narrative is likely to address the aforementioned historic blindspots and tensions. To the extent that “peace” invokes more holistic sets of objectives than the narrower goals associated with facilitating liberal political transitions, the turn to peacebuilding might be seen to represent a broadening and a loosening of earlier paradigms and moorings, making this a significant moment in the normative evolution of the field. At the same time, given the parallel critiques that have been leveled against both peacebuilding and transitional justice since the end of the Cold War, there are reasons to be wary of this increasing association. Historically, the “peace” associated with international post-conflict peacebuilding efforts spearheaded by the United Nations and major international donors has typically been conceived of as a narrow liberal peace predicated on free markets and Western-style democracy. Thus, insofar as the goals of liberal international peacebuilding and the historic goals of transitional justice are essentially one and the same, without more, “transitional justice as peacebuilding” may be little more than a dressed up tautology.

Yet there are also emancipatory concepts of peace and peacebuilding that carry with them the potential to challenge longstanding blindspots and assumptions and to increase the possibility of a less rigid transitional-justice-as-peacebuilding narrative. Preventing simple elision of transitional justice and liberal international peacebuilding—and working toward a more emancipatory conception of transitional justice-as-peacebuilding in the process—can be facilitated in part through the use of several constructs from critical peacebuilding theory: positive peace, the everyday, popular peace, and hybridity. While they do not themselves create a program for action, these constructs offer a very useful starting point for reimagining transitional justice going forward.

Finally, principles of pluralism and concepts like the “margin of appreciation” worked out in historically liberal societies can be useful constructs in generating new transitional justice practice reflective of greater contextual openness and adaptability. Thus, if an arrogant, aggressive and narrow liberalism has historically been part of the problem in transitional justice, some of the solutions to modern-day transitional justice dilemmas might also be recovered from the broader liberal tradition.

Nederlandse Samenvatting (Summary in Dutch)

Transitional Justice en Liberaal Post-Conflict Bestuur Synergieën en symmetrieën, wrijvingen en tegenstrijdigheden

Door Dustin Nachise Sharp

Wat betekent het om “gerechtigheid te brengen” in een overgangperiode? Gerechtigheid voor wat, gerechtigheid voor wie, en met welk doel? Pogingen om deze en andere, gerelateerde, vragen te beantwoorden hebben vaak geleid tot discussie: sinds de oudheid, tijdens de zogeheten “derde golf” van democratische overgangen in de jaren '80 en '90 en heden ten dage nog steeds. Hoewel “gerechtigheid” een vaag en wezenlijk betwist concept is dat sterk gebonden is aan de specifieke geschiedenis en cultuur in een bepaalde context, wordt “gerechtigheid brengen” in de nasleep van grootschalige mensenrechtenschendingen steeds meer gezien als een onafscheidelijk deel van “transitional justice”. Het mainstream paradigma van transitional justice is tegenwoordig zo dominant dat de vraag niet langer is *of* er een vorm van transitional justice zal plaatsvinden in de nasleep van een conflict, maar *hoe* verschillende componenten van de transitional justice “toolbox” geïmplementeerd zullen worden.

In bepaalde kringen wordt de groei en het traject van het transitional justice discours en de implementatie ervan in de praktijk gezien als een onbetwist “goede zaak”. Het gaat echter ook gepaard met felle weerstand en aanhoudende wrijvingen, wat sommigen ertoe leidt de toekomst van dit veld in vraag te stellen en op te roepen tot een herziening ervan. Nader onderzoek onthult dat de centrale uitgangspunten en bekommernissen van het domein in zekere mate tegenstrijdig zijn. Transitional justice wordt soms voorgesteld als een post-politieke en post-ideologische onderneming, onderdeel van “het einde van de geschiedenis”, en toch wordt het sterk geassocieerd met liberale en neoliberale democratische politieke overgangen en wordt het sterk gedomineerd door voornamelijk westerse opvattingen en modaliteiten van gerechtigheid. Hoewel in toenemende mate impliciet, het idee van transitional justice als de knecht van liberale politieke overgangen – de “paradigmatische overgang” van transitional justice – blijft een diep verankerde visie die nog steeds het denken, beleid en de praktijk vormgeeft. Samen met post-conflict vredesopbouw is transitional justice sinds het einde van de Koude Oorlog een belangrijk aspect van liberaal post-conflict bestuur geworden, een middel waarmee westerse liberale waarden vanuit de kernstaten verspreid worden over de periferie.

Hoewel de uitgangspunten die het domein schragen en vormgeven veel positieve dimensies gehad hebben, hebben ze ook gediend om de transitional justice onderneming op verschillende manieren te beperken en te belemmeren. Zo hebben zij bijvoorbeeld de modaliteiten van transitional justice sterk vormgegeven (benaderingen die in het algemeen gericht zijn op de staat, van bovenaf opgelegd worden en globaal bevoorrechten boven lokaal). Daarenboven hebben ze gediend tot het begrenzen van ons aanvoelen van wat de “gerechtigheid” of “justice” van transitional justice

redelijkerwijs zou moeten omvatten (in het algemeen is het gericht op burgerlijke en politieke rechten eerder dan op economische en sociale rechten, op fysiek geweld eerder dan op economisch en structureel geweld). Kortom, de theorie en praktijk van transitional justice falen doorgaans de complexe diepte en het pluralisme van de vele, verschillende invullingen van het begrip gerechtigheid in de wereld te weerspiegelen en dit kan uiteindelijk het ontstaan van een werkelijk globaal project verhinderen, waar “globaal” niet synoniem is met “westers” of “liberaal”. In dit licht is er een grote behoefte aan een herziening van het domein en moeten we de centrale normatieve meta-verhalen, de blinde vlekken en de uitgangspunten van het domein deconstrueren als een aanloop tot de emancipatie van transitional justice met een beleid en praktijk die trouw zijn aan mensenrechtenidealen en tegelijkertijd een meer toegankelijke structuur krijgen en meer afgestemd worden op de lokale noden en context.

In recente jaren is de visie op transitional justice als de knecht van liberale politieke overgangen beginnen wijken voor een enigszins lossere visie op transitional justice als een meer algemene component van post-conflict vredesopbouw. Men kan zich daarom afvragen of het aannemelijk is dat het opkomende transitional-justice-als-vredesopbouw discours de bovenvermelde historische blinde vlekken en spanningen zal aanpakken. In de mate dat “vrede” een meer alomvattend geheel van doelen oproept dan de meer beperkte doelstellingen die geassocieerd worden met het bevorderen van liberale politieke overgangen, kan de wending naar vredesopbouw gezien worden als een verruiming en een versoepeling van de eerdere paradigma’s en pijlers, wat dit een belangrijk moment maakt in de normatieve evolutie van het domein. Tegelijkertijd zijn er redenen om terughoudend te zijn tegenover deze toenemende associatie, gezien de parallelle kritiek die geuit wordt op zowel vredesopbouw als transitional justice sinds het einde van de Koude Oorlog. De “vrede” die geassocieerd wordt met internationale inspanningen voor post-conflict vredesopbouw en aangevoerd wordt door de Verenigde Naties en grote internationale donoren werd in het verleden doorgaans opgevat als een nauwe liberale vrede gebaseerd op vrije markt en democratie in westerse stijl. In de mate dat de doelen van liberale internationale vredesopbouw en de historische doelen van transitional justice wezenlijk een en dezelfde zijn, is “transitional justice als vredesopbouw”, zonder meer, dus waarschijnlijk weinig meer dan een opgesmukte tautologie.

Er zijn echter ook emancipatoire concepten van vrede en vredesopbouw die potentieel hebben om de aloude blinde vlekken en uitgangspunten uit te dagen en die meer mogelijkheid bieden voor een minder stug transitional-justice-als-vredesopbouw discours. Het voorkomen van het simpelweg samensmelten van transitional justice en liberale internationale vredesopbouw – en het werken naar een meer geëmancipeerd concept van transitional-justice-als-vredesopbouw in dat proces – kan vergemakkelijkt worden door het gebruiken van verschillende constructies van de kritische vredesopbouwtheorie: positieve vrede, het alledaagse, vrede voor het volk, en hybriditeit. Hoewel deze constructies zelf geen programma voor actie creëren bieden ze een bruikbaar beginpunt om transitional justice te herzien.

Ten slotte kunnen beginselen van pluralisme en concepten zoals de “beoordelingsmarge”, ontwikkeld in historisch liberale maatschappijen, bruikbare

constructies zijn om een nieuwe transitional justice praktijk te genereren die getuigt van een grotere openheid voor de context en van aanpassingsvermogen. Kortom, als een arrogant, agressief en eng liberalisme doorheen de geschiedenis deel is geweest van het probleem in transitional justice, dan kunnen een aantal van de oplossingen voor de huidige transitional justice dilemma's misschien ook gehaald worden uit de bredere liberale traditie.

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Curriculum Vitae

Dustin N. Sharp was born in 1973 in Tuscon, United States of America. After graduating, *summa cum laude*, from the University of Utah with a Bachelor of Arts (BA) in English Literature in 1996, Sharp served for two years as an English teacher and teacher trainer in the United States Peace Corps in N'zerekore, Guinea. He then attended Harvard Law School where in 2002 he obtained his Juris Doctor (JD) degree in Law, *cum laude*. After clerking for Judge F. Carlos Lucero on the United States 10th Circuit Court of Appeals, Sharp began his legal career in 2003 as an Attorney-Adviser at the United States Department of State where he represented the United States in multilateral treaty negotiations and advised the Bureau of International Organization Affairs. Starting in 2006, he worked for Human Rights Watch where he was responsible for designing and implementing research and advocacy strategies in Francophone West Africa, with an emphasis on countries in crisis such as Côte d'Ivoire and Guinea. He researched and authored reports on police torture and prison conditions, excessive use of force by security forces, and violent pro-government militias. Since 2010, he has served as an Assistant Professor at the Joan B. Kroc School of Peace Studies at the University of San Diego (USD), where he teaches classes in international human rights and transitional justice to mixed audiences of Law and Peace Studies students. Sharp's research focuses on the role of law in post-conflict environments, ranging from the work of human rights NGOs, to rule of law development assistance initiatives, to war crimes tribunals and truth commissions. Sharp has continued his work in West Africa since coming to USD, overseeing the West African Human Rights Training Initiative, a three-year capacity-building program focusing on local human rights organizations in Côte d'Ivoire, Guinea, Liberia and Sierra Leone. He began his PhD research at Leiden in the fall of 2013.