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

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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¹ Unlike the other chapters in this articles-based dissertation, this introductory chapter is unpublished.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 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.