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

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Chapter V: Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition[1]

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.

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[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

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[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

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[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 policyscape 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,*

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[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

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[20] See Paul van Zyl, "Promoting Transitional Justice in Post-Conflict Societies," in eds. Alan Bryden and Heiner Hänggis*, 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

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[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 authoritarianism[39]—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

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[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 certainty 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.

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[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 or 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

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[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 that 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

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[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,

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[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

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[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] S*ee, 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 polices, 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

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[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

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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—

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[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

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[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 inappropriateness[97] 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

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[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 re-consider 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 Background[99]
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

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[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

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[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.

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[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.

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[109] Compare, for example, Goetschel & Hagmann, "Civilian Peacebuilding: Peace by Bureaucratic Means?" and Rubli, "Transitional Justice: Justice by Bureaucratic Means?"