Transitional Justice and Conflict Transformation in Post-War Societies:
Practical and Ethical Implications

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Abstract

Academic and policy literature has increasingly argued that transitional justice should contribute to conflict transformation and address the root causes of conflict. While transitional justice developed as a set of practices in the context of regime transitions during the Cold War, in the last two decades, transitional justice mechanisms have increasingly been established in complex post-war contexts often with global support. While conflict transformation is particularly important in post-war contexts, transitional justice theory and practice has insufficiently acknowledged the challenges arising from the global promotion of transitional justice to complex post-conflict societies. I argue that transitional justice theory and practice tends to take a symptomatic approach, focusing on legacies, rather than root causes. The inadequate attention to root causes is not only dangerous in post-war contexts, given the likelihood of future violence, but also masks global accountability and complicity. I argue that if transitional justice is to contribute to conflict transformation, it must prioritize structural and reparatory justice. In addition, more integration is needed between the fields of conflict causes, peace-building, and transitional justice.

Key Words: Transitional justice, conflict transformation, root causes, post-war, legacies.

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Introduction

Conflict transformation has recently become a key priority in transitional justice academic and policy literature.¹ As set out by the United Nations and the International Center for Transitional Justice, transitional justice should address the root causes of violence, engage and empower citizenry, strengthen democratic structures, and facilitate civic participation.² A growing normative literature has argued that transitional justice should contribute to peace-building – that it should transform the unjust and exploitative social, economic, and political structures that enabled and contributed to conflict and strengthen societal bonds and relationships.

In this article, I argue that the objective of conflict transformation is especially critical in recent post-war contexts. While transitional justice developed as a set of global epistemic ideas and practices during the Cold War in the context of regime transitions from authoritarian rule to

¹ Although mainly historical and reflective, the article draws on field research carried out between 2009-2012 on transitional justice in rural and urban areas in Sierra Leone and Peru. In both countries, I carried out a total of 125 semi-structured interviews and an additional 8 focus groups with officials and civil society involved in each countries' transitional justice process, as well as direct stakeholders, including victims, ex-combatants, and inhabitants, teachers, academics and community leaders in war-affected areas, notably Ayacucho in Peru and Kailahun in Sierra Leone. The purpose of the research was to gain understanding of the objectives and methods of transitional justice in both contexts from officials directly involved in transitional justice, and in depth understanding of how stakeholders saw and evaluated transitional justice and peace-building. In both contexts, I focused on criminal courts, truth and reconciliation commissions, and communal restorative justice and reconciliation processes.

democracy, in the last two decades, the settings of transitional justice have expanded. In settings as diverse as Rwanda, the former Yugoslavia, Liberia, East Timor, Sierra Leone, Uganda, El Salvador, Guatemala, Sudan, Cambodia, Chad, the Central African Republic, the Democratic Republic of Congo, and Peru, transitional justice practices have been set up to address complex and protracted societal conflicts and civil wars.³

Unlike earlier transitional justice during regime transitions, post-war settings present a complex and in many ways distinctive set of challenges for the practice of transitional justice. Protracted social conflicts, as defined by Edward Azar, are deeply rooted in social, political, and economic structures, and often have a class and sectarian element.⁴ They have both a political and a social dimension, characterized by political violence at the hands of state agents and insurgency groups, as well as micro-level communal violence by individuals who know each other. The legacies of violence in protracted conflicts are pervasive and reinforce each other - while political violence at the hands of state agents perpetuates mistrust and fear of authority, communal violence shatters social norms and communal life. The challenges of post-conflict recovery following protracted social conflicts are immense and require a multipronged approach that addresses social, economic, and political root causes of conflict, and the legacies of violence at the micro and macro levels.

³ Many of these settings, of course, classify as both regime and conflict transitions.
Contexts also matter for the evaluation of impact. While transitional justice theory and practice has tended to take an instrumental view of transitional justice - focusing on the contribution of transitional justice mechanisms to various individual or societal ends – I stress that transitional justice processes are endogenous to their contexts. Domestic political and social realities enable and constrain transitional justice processes and shape how they are received. The factors that transitional justice mechanisms are set up to address can also often undermine their impact over time. Where transitional justice mechanisms seek to generate civic trust or national reconciliation, for instance, weak social and political capital, caused by years of violence, can generate mistrust of authority and transitional justice institutions. Similarly, in cases of weak or failed states, or where perpetrators and victims live in the same communities, transitional justice mechanisms need to take into account the risk of further violence and incitement potentially generated by public participation in transitional justice processes.

Existing theory and practice has only partially addressed the challenges of the global transference of transitional justice to fragile and complex post-war contexts. While scholars and practitioners have recently placed more emphasis on the contribution of transitional justice to peace-building, I argue that transitional justice theory and practice still tends to focus on the legacies of conflict rather than root causes. To the extent that transitional justice mechanisms are conceived to be transformative, they embody a psychosocial understanding of transformation, where transitional justice mechanisms are deemed to be successful to the extent that they shape and influence
individual and societal perceptions and views. Where transitional justice institutions, particularly recent truth commissions, have taken steps to address the root causes of conflict through their historical findings and recommendations, insufficient follow up by domestic and international agents severely weakens their impact in this sphere, resulting often in a loss of momentum domestically and generating further resentment.

In this special issue, I critically reflect on the contribution of global transitional justice to conflict transformation in recent post-war contexts. Where a large number of violent conflicts rescind after the cessation of violence, the insufficient engagement of transitional justice with the root causes of conflict is not only dangerous, but also politically and morally questionable, masking broader responsibility for conflict, particularly international accountability. For transitional justice to contribute to conflict transformation, it would have to prioritize social and reparatory justice, which in turn would require a greater and more long-term commitment on the part of international actors. I also call for more inter-disciplinary research and integration between research on the causes of conflict, peace-building, and transitional justice.

This article is organized into several sections. I begin by putting transitional justice into historical context and offering observations on the challenges and dynamics of implementing transitional justice in post-war settings. I then look at the current empirical and normative literature on impact and evaluation, discussing what I identify as gaps in current research, before turning to a discussion of peace-building and transitional justice. I conclude by reflecting
on challenges facing transitional justice and peace-building and discuss possible implications in the identification of objectives and benchmarks of evaluation.

*Transitional Justice in Post-Conflict Contexts: the Challenges of Post-War Recovery*

The domestic and international contexts of transitional justice have expanded markedly in the last two decades. Transitional justice consolidated as a set of global epistemic practices and ideas during the end of the Cold War. Early cases of transitional justice, as in Uruguay (1985) and Argentina (1983–1984), were set up as part of regime transitions from authoritarian rule to democracy. Transitional justice mechanisms in the Southern Cone were used as instruments against state repression in the context of struggles for justice and human rights. Sustained civil society activism, as in Argentina, where the National Commission of the Disappeared followed campaigns by the Madres of the Plaza de Mayo, and strong leadership bolstered the legitimacy of these early processes, linking them to popular struggles against oppressive regimes and democratization.

Since the end of the Cold War, transitional justice has been practiced in a wider range of circumstances. While the regime transition model continued to hold to some extent in post-Soviet transitions, the number of transitional justice processes in post-civil war contexts quickly grew as transitional justice in regime transitions from authoritarian states declined. Since the Second
World War, important trends in conflict studies have emerged. In the last fifty years, intra-state wars have killed over 16.2 million people, five times the number causes by inter-state warfare.\(^5\) 93 percent of violence has been waged in developing countries. Mass political violence, as argued by Benjamin A. Valentino, requires a low level of social support and tends to be waged by small groups of people.\(^6\) Intrastate wars are often characterised by multiple cycles of violence with forty percent of countries experiencing a new civil war within a decade.\(^7\)

In addition, international involvement in transitional justice has grown. Transitional justice, as noted by Ruti Teitel, is currently in a globalized phase.\(^8\) In the 1990s and 2000s transitional justice mechanisms were set up with a high level of international support. This greater international role in domestic transitional justice processes has manifest in both explicit and more indirect ways. External agents played an active role in setting up, funding, and staffing of transitional justice mechanisms. The globalization of transitional justice is also manifest in the development of global norms and best practices, promoted by an increasingly self-conscious and integrated global transitional justice epistemic community.\(^9\)

\(^9\) Since the 1990s, transitional justice has become a large and self-aware body of research and practices, institutionalized into research centers and formalized as a field of study, notably, the International Center for Transitional Justice, founded in
Current transitional justice theory and practice has underappreciated the serious and concerning implications resulting from the global transference of transitional justice to fragile and complex post-conflict settings. Although post-conflict transitional justice settings include a diverse range of conflicts and contexts, they often share certain characteristics. Intra-state wars tend to feature systematic and brutal patterns of atrocities against civilians, including sexual violence and slavery; large-scale population dislocation and social disruption; and the forced recruitment of combatants, including children. In addition to the sheer volume and brutality of abuses and deaths in civil wars, post-conflict contexts are often marked by complex and overlapping categories of victims and perpetrators. Unlike regime transitions focusing on state-sponsored abuses, in intra-state wars, multiple parties often commit violence, including state agents, insurgents, vigilante groups, and civilians. Violence in protracted societal conflicts is often both political and social, characterized by structural violence, waged by the state, as well as more intimate communal violence, committed by people who know each other.

Prolonged and complex societal conflict also tends to leave a less visible but highly damaging and pervasive type of trauma and damage on the social fabric. In contexts of protracted political violence, the violation of basic rights

causes not only physical and psychological suffering, but also fosters a long-term sense of marginalization and atomization.\textsuperscript{10} Prolonged violence erodes the foundations of collective life, encouraging a mistrust and suspicion of authority, and fatalism about collective action.\textsuperscript{11} As noted by Joanna Quinn, these multi-layered legacies of violence are inter-linked and reinforce each other.\textsuperscript{12} Perceptions of helplessness, marginalization, powerlessness, and lack of self-worth are paralyzing for collective life, while eroded trust inhibits civic engagement and the development of strong political structures. While political violence erodes civic trust and the foundation of political life, leaving individuals atomized and disempowered, years of communal violence and population displacement tear apart the social fabric, affecting everyday social interactions.

Unlike Cold War regime transitions, focusing on strong authoritarian states and military governments, often with middle class and civil society support, post-war contexts are often characterised by weak and failed states. Post-war settings are often highly vulnerable to future violence; in some cases,

\textsuperscript{10} Daniel Philpott distinguishes between primary and continuous secondary wounds: ‘Primary wounds are unprompted by prior injustices and the memories that they leave. Secondary wounds, by contrast, are caused by primary wounds through a chain of events involving memories, emotions, and judgments, culminating in further acts of injustice. Just and Unjust Wars: An Ethic of Political Reconciliation (Oxford: Oxford University Press, 2012), 35.


violence never ceases.\textsuperscript{13} The fragile nature of post-war contexts has a range of implications for transitional justice. Where protagonists remain armed, transitional justice mechanisms must contend with the possibility of spoilers. The establishment of participatory transitional justice processes where violence is still present or a continued threat may also generate fear and mistrust among local populations. Transitional justice mechanisms may have to compromise on certain objectives, given broader security considerations, as in Burundi, where the Commission of Inquiry (1995-1996) alleged that it could not name perpetrators and stated that security must first be established before legal and other reforms could be meaningfully carried out.

Intra-state wars also often contain an important ethnic element, which can influence local perceptions of transitional justice. The Comisión de la Verdad para El Salvador (1992-1993) and Comisión para el Esclarecimiento Histórico in Guatemala (1997-1999) determined that genocide had been conducted against indigenous populations. In Peru, where the majority of victims of the conflict represented an indigenous and largely rural population, the ethnic undertones of the conflict magnified a sense of collective victimization in war-affected areas, fostering a perception that political violence had targeted the region as a whole. In this context, the ethnic undertones of the conflict increased sensitivities to the management of transitional justice, putting the identity and social background of truth

\textsuperscript{13} Kimberly Susan Theidon describes a general condition of simmering low-intensity intrastate conflicts, characterized by political violence at the hands of state agents and insurgent groups and intimate violence between neighbors. \textit{Entre Prójimos: Violencia y La Política de la Reconciliación en el Perú} (Lima, Perú: Instituto de Estudios Peruanos, 2004).
commission officials into the public eye and raising contention about representation. In conflicts with multiple and sometimes overlapping layers of violence, transitional justice mechanisms face contentious questions of how far back historically to start investigations.

These realities present grave implications for transitional justice theory and practice. Despite a recent emphasis on global-local partnership and multiple parallel tracks of transitional justice in global policy discourses,\textsuperscript{14} in practice, international criminal justice continues to hold sway.\textsuperscript{15} The global emphasis on criminal justice and individual accountability translates less straightforwardly to contexts marked by the forced recruitment of combatants, the widespread use of child soldiers, and the use of civilians as collaborators. In cases of long-term communal violence, survivors may face different needs than those emphasized by the human rights and liberal institution-building approach, favored by the international community, including how to find a common ground and live together after violence and how to address the chronic effects of structural injustices, which perpetuate suffering and victimization. Despite the grave psychosocial impact of prolonged violence on


the civilian population and the frequent structural injustices underlying violence, global transitional justice continues to put less emphasis on the psychosocial dimension of transitional justice, and on reparatory justice. Where critical peace-building studies frequently highlight the lack of social justice and continued economic structural inequality as primary barriers to the consolidation of positive peace, it is precisely in this sphere that transitional justice consistently lets victims down.16

The establishment of transitional justice in post-conflict settings has also generated new challenges and dynamics regarding agency, representation, and ownership that were less prevalent in earlier regime transitions. In post-war contexts, global formal mechanisms are more likely to come into tension with local conflict resolution and justice processes.17 Not infrequently, the global transference of transitional justice to weak and failed states has generated further tensions and politics, including counter-movements to formal transitional justice processes. In Guatemala, for example, the Historical Clarification Commission generated criticism for its lack of popular


17 As Rosalind Shaw and Lars Waldorf argue, societies with long histories of subordination and violence tend to have particularly developed informal conflict resolution and coping mechanisms, as in Sierra Leone, where centuries of raiding and internal violence, brought about by the Transatlantic slave trade and colonialism, resulted in complex and innovative communal coping mechanisms. ‘Introduction,’ in Localizing Transitional Justice: Interventions and Priorities after Mass Violence, eds. Rosalind Shaw, Lars Waldorf, and Pierre Hazan (Stanford, CA: Stanford University Press, 2010), 11. See also Rosalind Shaw, Memories of the Slave Trade: Ritual and the Historical Imagination in Sierra Leone (Chicago: University of Chicago Press, 2002).
engagement and impact.\textsuperscript{18} Popular dissatisfaction over the official truth-seeking process mobilized civil society and religious leaders to organize an alternative truth-seeking process. Under the leadership of Bishop Juan Gerardi, the Catholic Church played a strong role in producing a separate truth commission, the Recovery of Historical Memory Project, which sent seven hundred ‘agents of recovery’ to villages to hear the testimony of victims and provide psychological and spiritual support.\textsuperscript{19} Shortly after the Recovery of Historical Memory Project presented its final report, challenging powerful military actors for abuses committed during Guatemala’s three decades of atrocities, Gerardi was killed in his home by individuals operating under military orders. The assassination was a tragic testament to what proved to be a highly divisive and contentious past, despite an extensive truth-seeking effort in post-war Guatemala. It also, however, revealed a more complex memory politics where civil society fills a void left by official truth-seeking efforts even under intense opposition and personal risk.

Questions of bias and representation are also particularly thorny in post-conflict contexts. In post-war contexts, transitional justice institutions have often put emphasis on prosecuting multiple sides of the conflict, as at the Special Court for Sierra Leone, where the tribunal prosecuted former military, Revolutionary United Front, and civil defense militants. The controversial trial of civil defence leader, Chief Samuel Hinga Norman, generated intense criticism among many Sierra Leoneans, who disagreed that Norman was

\textsuperscript{18} Mani, \textit{Beyond Retribution}, 104-105.
\textsuperscript{19} Philpott, \textit{Just and Unjust Wars}, 100.
accountable on the same level as government and insurgency leaders. Tensions escalated as Norman requested to speak in front of the Truth and Reconciliation Commission, but the Special Court for Sierra Leone refused. In a widely appealed and controversial decision, the Special Court for Sierra Leone made arrangements for Norman to give a confidential statement for the Truth and Reconciliation Commission but both Norman and the Truth and Reconciliation Commission refused, taking a stance that Norman should give public testimony.

Finally, legitimacy and ownership become significant in post-war settings. On the one hand, and contrary to the stance of a lot of the interpretive literature, a strong argument can be made in favor of the external management of transitional justice processes to bring neutrality and impartiality to highly sensitive proceedings. International commissioners ran the El Salvadorian and Guatemalan truth commissions and proceedings were conducted mainly behind closed doors. Jeremy Sarkin maintains that external management of transitional justice processes can help avoid politicization and address the difficult question of representation. In practice, this fear was born out in Peru, where vocal coalitions on all sides of the conflict accused

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21 Special Court for Sierra Leone, President, Geoffrey Robertson, later offered a compromise that Norman could give a written sworn affidavit testimony to the Truth and Reconciliation Commission and answer questions from the commission through writing. See The Special Court for Sierra Leone, Decision on the Request by the TRC of Sierra Leone to Conduct a Public Hearing with the Accused (29 October 2009), available at www.sc.sl.org.

the Comisión de la Verdad y Reconciliación of bias and major protagonists in the conflict – the military and the Shining Path - declined to take part in its proceedings. On the other end of the spectrum, and in line with a lot of the ethnographic literature, are those who argue that the international management of transitional justice stifles ownership and authenticity, a criticism that was frequently levelled against the UN-established hybrid court in Sierra Leone and the Truth and Reconciliation Commission.

**Transitional Justice and Peace-building**

Transitional justice policy and research has only partly taken the practical, moral, and ethical dilemmas generated by the global promotion of transitional justice into post-conflict settings into account. In recent years, important policy actors, as well as a growing normative literature, have called for a transformative approach to transitional justice. Influential actors in the transitional justice community, notably the International Center for Transitional Justice, have espoused thicker understandings of transitional justice, linking transitional justice to wider global policy realms, including development, migration and Disarmament, Demobilization, and Reintegration (DDR). Likewise, prominent peace-building institutions, notably, the Integrated Disarmament, Demobilization, and Reintegration Standards module have taken up a commitment to transitional justice. A growing normative literature has also called for transitional justice to contribute to peace-building. Wendy Lambourne advocates a multipronged and multidisciplinary holistic approach, which focuses on transformation rather than transition. Transformation
requires ‘long-term sustainable processes embedded in society’ and the ‘adoption of psychosocial, political and economic, as well as legal perspectives on justice.’

Where sustainable peace-building must address both the short-term objectives of negative peace and long-term objectives of building meaningful and just security, political, economic and justice structures, the contribution of justice to peace-building is ‘more than transitional: it must set up structures, institutions and relationships to promote sustainability.’

Similarly, Rama Mani argues that transitional justice theory and practice has focused predominantly on rectificatory justice over distributive and reparatory justice, insufficiently taking into account the needs of developing countries.

Tying into a larger literature on transitional justice and development, transitional justice, it is commonly argued, has insufficiently addressed the exploitative structures that contribute to violence and continue to cause suffering for survivors of violence.

Despite an emphasis on long-term conflict transformation, in practice, how transitional justice should address the root causes of conflict is far from clear. More interdisciplinary engagement and communication is needed between the causes of conflict, peace-building and transitional justice scholarship.

Literature on the causes of conflict reveals a multifaceted picture of causes of

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conflict, including underlying root causes as well as a complex array of social and psychological factors that incentivize individuals to participate in violence. In Sierra Leone, for instance, long serving as an important case study for the greed versus grievance debate on civil war, scholars have offered a wide range of understandings of the causes of war. While many external academics, journalists, and Sierra Leonean government officials have focused on the economic drivers of the war, on the other side of the debate, reflecting the narrative of a lot of Sierra Leonean civil society, are those who focus on the psycho-social motivations driving ex-combatants in a highly hierarchical and unjust society. These narratives have significant implications for conflict resolution and transitional justice. While for many government officials, a deeper understanding of the Revolutionary United Front would not be productive, given the assessment of the insurgency as an opportunistic and ideologically bereft movement, arguments that focus on grievances take seriously gathering subjective understandings of ex-fighters. This latter group would prioritize the reintegration of ex-combatants, and advocate a more serious commitment to combat structural violence. It would also suggest - also on the part of the international community - a serious

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commitment to addressing structural violence and implementing reparatory justice. While the Sierra Leonean Truth and Reconciliation Commission, similarly to the community reconciliation project, Fambul Tok, sought to generate social understanding for the causes of the war and provide former combatants with a voice, those who emphasise economic causes of the war have criticized the Truth and Reconciliation Commission for underemphasizing economic drivers of conflict, and bypassing the question of individual responsibility.  

While providing methodological rigor and transparency, the recent push to standardize transitional justice objectives and mechanisms of evaluation in some ways has further obscured the potential contribution of transitional justice to conflict transformation. In the last two decades, an active comparative impact assessment literature has emerged. This more positivist oriented scholarship has tended to focus on the impact of transitional justice mechanisms on quantifiable criteria, such as human rights and the rule of law. Proponents of large N data sets, such as Tricia Olsen, Leigh Payne and Andrew Reiter, argue that transitional justice’s normative foundations are a consequence of its commitment to preferences, and seek to provide empirically grounded and testable claims.  

29 Lansana Gberie, *A Dirty War in West Africa.*  
literature has also embraced the move towards standardisation. Seeking to identify global best practices, an influential literature, prominent among scholar-practitioners, has called for normative theory based on recent practices, reflecting emerging consensus in the field. Colombian political scientist and current United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, identifies the generation of civic trust, recognition, reconciliation and democracy as key objectives to which all mechanisms of transitional justice should aspire.

What is absent or overshadowed in this research is a rigorous contextual understanding of root causes of conflict. The comparative literature seeks to eschew the discipline’s focus on preferences by identifying ends with which to evaluate all mechanisms of transitional justice regardless of the type of mechanism or context. Although a rich interpretive case oriented literature has pushed back against the universalization of objectives, questioning the transitional justice ‘tool kit’ and a ‘one-size-fits-all approach,’ the focus of this literature on local preferences and needs has also led it to take a cautious

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32 De Greiff, ‘Theorizing Transitional Justice.’

approach to the generalization of findings. Overlapping with recent engagement with transitional justice in the critical peace-building literature, a common finding of the interpretive literature is that global transitional justice does not line up with local preferences and objectives. The literature has also placed weight on the historical and normative origins of globalized transitional justice, raising the question of cultural resonance and compatibility, and surfacing previously neglected factors, including agency and resistance.

While both empirical and normative scholarship tends to treat transitional justice mechanisms as instruments in a causal sequence, meant to bring about certain ends, transitional justice mechanisms are also expressions of their contexts and matter for the assessment of impact. The domestic environments in which they are established shape how they conduct their


work and their impact over time.\textsuperscript{36} While the Peruvian Comisión de la Verdad y Reconciliación sought to foster civic trust and generate political and social capital in politically marginalized areas, the Peruvian state’s long-term marginalization of rural and largely indigenous parts of the country and a prolonged dirty war at the hands of military agents and insurgency groups had already eroded political trust and faith in authority. Intense communal violence and (often forced) collaboration of civilians with military and insurgent groups left resentment and suspicion at the micro level, while the concentration of violence in remote parts of the country resulted in very different experiences and memories of the conflict across the country.\textsuperscript{37} The ethnic undertones of the conflict had a particularly harmful impact, reinforcing a sense of broader victimization among war-affected largely indigenous populations, while distancing the conflict from the emotional identifications of the middle classes in the capital and coastal cities. While the commission sought to generate civic trust and solidarity among coastal populations, these domestic realities also constrained its impact. Insufficient follow up after the commission completed its mandate, particularly in reparations, further augmented suspicion, reinforcing apathy in politics and institutions and a sense of social isolation and marginalization.\textsuperscript{38}


\textsuperscript{38} Laplante and Theidon find that giving testimony had cathartic effects for their interviewees in Ayacucho, although these were later undermined by the lack of concrete follow up. ‘Truth with Consequences.’
Symptoms versus Causes

The insufficient attention to root causes, particularly unjust economic structures, is not solely a product of the atomization of transitional justice as a field. It also reflects a particular epistemological and ontological orientation. While transitional justice scholarship is still debating what distinguishes it from ‘ordinary justice’, transitional justice has since its foundations oriented itself as a highly symbolic and political set of practices and discourses, designed to shape social and political consciousness in post-war societies. Already in 1943, during the Tripartite Dinner Meeting at the Tehran Conference, the question arose of how to deal with war criminals. Where Joseph Stalin proposed summarily executing 50,000–100,000 German staff officers, Winston Churchill denounced the idea of ‘the cold blooded execution of soldiers who fought for their country’ and opposed executions ‘for political purposes.’ However, he also stated that war criminals must pay for their crimes and importantly that they should be tried at the places where the crimes were committed. Churchill stressed that the trials would play an educational role – that they would have an impact on future generations.

Social learning has been a central theme in transitional justice. Much of transitional justice theory and practice has focused on the normative and

39 Christine Bell challenges the status of transitional justice as a field, distinguishing ‘field’ as ‘a sphere of knowledge, interest and activity, held together by distinctive claims for legitimacy,’ from ‘discipline,’ which implies a body of knowledge with its ‘own background of education training, procedures, methods and content areas.’ ‘Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’’, *International Journal of Transitional Justice* 3 (2009), 7.
discursive impact of transitional justice. Early literature on transitional justice concentrated on the extent to which truth commissions versus criminal trials were better able to contribute to the understanding of conflict. Writing at the intersection of psychology, education and transitional justice, Laurel Fletcher and Harvey Weinstein argue that war crimes and political violence are committed during periods of diminished agency. Criminal trials rest on the possibility of free will, yet trials are less suited to accounting for individual moral choice during war or the complex social contexts and psychological pressures, which characterize mass violence. For Martha Minow, the biggest setback for truth-seeking is that trials focus on a few individuals and do not account for indirect guilt and the ‘complex connections among people that make massacres and genocides possible.’ Unlike criminal tribunals, proponents of truth commissions commonly argued that truth commissions offer a potentially greater pedagogical contribution and further social understanding by shedding light on long-term structural causes and systematic patterns and highlighting diminished agency during mass violence. At the same time, legal theorists, notably Mark Osiel argued that trials have long had an underappreciated yet important substantive effect on post-conflict


41 Martha Minow, Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence (Boston, MA: Beacon Press, 2000), 47.
transitions. Even where divisive, high-profile trials play a signalling role, reaffirming respect for rule of law and due process. The idea that mechanisms of transitional justice can play a role as norm affirmers is based on a certain understanding of political harm, which these processes address. In Osiel’s view, the ability for political actors to carry out mass atrocities depends on embedded common social practices and networks, e.g. command-and-obey structures. The contribution of transitional justice is to counter the social frameworks that enable conflict by offering alternative normative parameters. Reliance on common legal procedures ensures moral disagreement among antagonists remains mutually respectful, within the courtroom and beyond. Criminal trials restore a sense of equality in front of the law and provide a frame of reference as reliance on common procedures fosters shared norms and trust. These common procedures create a safe environment, representing a return to order.

In recent years, transitional justice has further advanced its focus on popular perceptions by taking up a more participatory orientation and targeting direct stakeholders. There has been a marked effort on the part of transitional justice institutions to encourage popular engagement and outreach. As part of a greater holistic turn, there has been an increased emphasis on engaging victims and popular outreach. Criminal tribunals have increasingly

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43 Ibid.
44 As noted by Daniel Philpott, normative understandings of conflict transformation are already an implicit objective in transitional justice procedures and mandates. *Just and Unjust Wars*, 23-24.
emphasised popular involvement, outreach, and legacy, manifest in the establishment of on-site hybrid courts in Sierra Leone and East Timor, drawing on a mixture of international and domestic personnel,\textsuperscript{45} to ‘sensitization’ efforts, and an increased focus on legacy assessment at the International Criminal Court.\textsuperscript{46} Both research and practice on trials and truth commissions has focused on legacies, arguing that transitional justice should reach those who suffered most and were on the front lines of the conflict - victims and often ex-combatants.

While there are clear and significant moral and strategic imperatives to address the immediate legacies of violence and prioritize direct stakeholders, in the long run, the focus on legacies rather than root causes has reinforced a problematic symptomatic approach. Although the literature has recently sought to more self consciously orient itself to post-conflict contexts by considering the potential contribution of transitional justice to peace-building, much like the early scholarship, this recent academic and practitioner literature has also tended to focus more on process goals and legacies of violence than on root causes. In this scholarship, as well, transitional justice is conceptualised to be transformative for peace-building but in a direct psychosocial sense where transitional justice mechanisms have a direct impact on stakeholders in conflict. The Integrated Disarmament,  

\textsuperscript{45} These hybrid tribunals were established on sites where violence took place, as opposed to the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia, established in Tanzania and The Hague, respectively.

\textsuperscript{46} See the recent legacy study of the Special Court for Sierra Leone, ‘Assessing the impact and legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia (No Peace Without Justice, September 2012). Available at: http://www.npwj.org/node/5599.
Demobilization, and Reintegration Standards module, for example, argues that transitional justice can benefit peace-building by building trust in war-affected communities. Participation in transitional justice processes are hypothesized to facilitate the reintegration of ex-combatants in a number of ways – notably by providing ex-combatants with a voice, allowing them to explain or apologize, and by giving them an opportunity to participate in traditional rituals and cleansing processes. In this way, transitional justice, it is argued, can give DDR legitimacy and can help build trust by assuring victims and affected communities that perpetrators are being publicly shamed or forced to make reparation. 47

Another claim is that transitional justice mechanisms can facilitate reintegration and reconciliation by individualizing responsibility – an argument James L. Gibson makes in reference to national reconciliation and the South African Truth and Reconciliation Commission. 48

The common denominator is that transitional justice seeks to build trust and contribute to peace-building by addressing legacies of violence and providing a new narrative and understanding of what agency during conflict and individual motivations.


48 James L. Gibson finds that the Truth and Reconciliation Commission contributed to reconciliation by countering collective narratives of blame and victimization. He argues that the commission’s detailed historical account – particularly its assignation of individual of guilt – helped expose more nuanced understandings of the past. In his view, some of the commission’s most controversial findings were also the most important, for example, that black-on-black violence was vicious and widespread during apartheid, and that whites were also victims of apartheid. The airing of such findings shifted attitudes and created tolerance: ‘As facts are assembled, juxtaposed, and sifted, perceptions lose their black-and-white character, taking on more subtle and nuanced shades.’ Overcoming Apartheid: Can Truth Heal a Divided Nation (New York, NY: Russell Sage Foundation, 2004), 76.
Recent truth commissions have gone further in incorporating conflict transformation into their mandates and have more self-consciously linked themselves to post-conflict peace-building and development. The Sierra Leonean Truth and Reconciliation Commission (2003), the Peruvian Comisión de la Verdad y Reconciliación (2003), and the Commission for Reception, Truth and Reconciliation in East Timor (2005) were mandated to address root causes and legacies of conflicts, and consciously tied their work to peace-building and post-conflict reconstruction. In Sierra Leone and East Timor, ex-combatant testimony was linked to reintegration into their former communities. The Sierra Leonean Truth and Reconciliation Commission placed particular emphasis on countering the marginalization of youth as a cause of the conflict, setting up separate hearings under the auspices of UNICEF for youth and producing child friendly versions of its report. It recommended a variety of skills training and education programs for ex-combatants, particularly child soldiers, and recommended community service for ex-combatants (as well as for current military forces), e.g. rebuilding schools and hospitals, to prove themselves gain trust. The Peruvian Comisión de la Verdad y Reconciliación, in turn, identified the marginalization of rural areas and the indigenous, particularly in the Peruvian Sierra, to be a root cause of the conflict – and raising awareness and furthering cultural pluralism and social justice as key transitional justice objectives. The commission also prioritized acknowledging and empowering victims and marginalized sectors through its proceedings and

49 The Sierra Leonean TRC Report, ‘July 28 Recommendations on Governance.’
recommendations, serving as the first Latin American commission to use hearings – a procedure adopted from the South African Truth and Reconciliation Commission and employed in the Peruvian context to empower and dignify victims and counter public apathy. Reflecting widespread practices of sexual violence in both conflicts, both the Peruvian and Sierra Leonean commissions put emphasis on rape and gender specific violence, and outlined gender-specific recommendations in their reform programs. Both commissions emphasized popular participation and engagement in the democratic reform process as a type of civic nation-building and check against future political marginalization. Both commissions also identified middle class populations in the capital as their primary audience seeking to encounter public apathy and indifference among those who were less affected by the war. In other ways, as well, Sierra Leone has established a precedent by announcing that revenue from diamonds during the war should pay for part of the reparations for the war.

Here, as well, transitional justice mechanisms disappointed where they failed to go far enough in contributing to conflict transformation. Both the Sierra Leonean and Peruvian truth commissions provided detailed reports to use for pedagogical purposes yet very few schools have implemented the reports in school curricula. Where academics and local civil society have faulted the Peruvian Comisión de la Verdad y Reconciliación for its lack of engagement

50 See the CVR Report, Volume 1, Chapters 1-3; Carlos Iván Degregori, Qué Difícil es Ser Dios: El Partido Comunista del Perú - Sendero Luminoso y el Conflicto Armado Interno en el Perú: 1980-1999 (Lima: Institute of Peruvian Studies, 2010), and Dr. Salomón Lerner Febres, interview by author, Lima, Peru, 10 February 2011.

51 Mani, ‘Dilemmas of Expanding Transitional Justice,’ 258.
with the Shining Path, posing a barrier to long-term reconciliation and understanding of the root causes of the conflict, the Sierra Leonean Truth and Reconciliation Commission was criticized for its disproportionate presence in the capital rather than war affected areas, where most victims and ex-combatants came from, the legalistic character of its hearings, and its insufficient and/or superficial involvement of perpetrators. In both Sierra Leone and Peru, dissatisfaction with the contribution of formal transitional justice to peace-building motivated local actors, notably the Sierra Leonean community reconciliation project, Fambul Tok, to offer alternative transitional justice processes, which would give more ownership to local communities and contribute to long-term peace-building and reconciliation. Installing youth ambassadors and working through a decentralized network of local authorities, one of Fambul Tok’s key objectives is to facilitate generational repair, reflecting its view of social inequality and youth marginalization as a root cause of the conflict.

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52 Theidon, ‘Justice in Transition.’
53 Shaw, ‘Rethinking Truth and Reconciliation Commissions.’
54 Tim Kelsall criticizes the legalistic formal nature of proceedings, stressing the importance of culture in transitional justice. In his view, the most meaningful part of the Truth and Reconciliation Commission hearings came at the end of the hearings when the commission incorporated a traditional ritual-based reconciliation ceremony. Kelsall, ‘Truth, Lies, Ritual,’ 372. See also Tim Kelsall, *Culture under Cross Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press: 2009).
If one factor stands out in recent qualitative research, a consistent concern of survivors across cases – and criticism of global transitional justice in general – is its insufficient commitment to addressing structural inequality and furthering reparatory and social justice.  

War-affected communities commonly refer to their failure to meet their subsistence needs as a major impediment to peace and reconciliation. A common finding in research on survivors is that failure to implement reparatory justice is perceived as a continued form of victimization. These perceptions often increase over time.

According to the South African Barometer Report, while in 2003, respondents commonly separated economic opportunity from reconciliation, looking at reconciliation as a process of 'forgiveness' and positive inter-racial relations, by 2010, respondents identified socio-economic inequality as the biggest fault line, preventing inter-racial reconciliation in South Africa.

In practice, a meaningful commitment to social and reparatory justice raises difficult questions about accountability including international responsibility. In Sierra Leone, for example, often considered a success story for the ‘two-track


58 Lambourne, ‘Transitional Justice and Peacebuilding,’ 42. In my research on Sierra Leone, victims frequently complained of the reintegration assistance and DDR programs for ex-combatants, comparing these policies to their abandonment and isolation. Many victims, particularly widows and amputees, have been resettled to disability camps in Kenema and Grafton.

approach,\textsuperscript{60} a criticism of the Truth and Reconciliation Commission is that it edited out and underplayed economic causes of the war and the responsibility of international financial institutions. Additionally, there are often discrepancies between theory and practice, as well as practice and long-term implementation. Although most truth commissions have been tied to some kind of reparations program, the track record of truth commissions in the implementation of reparations has been anything but good.\textsuperscript{61}

\textbf{Conclusions}

Transitional justice, peace-building, and conflict transformation are closely intertwined. While I have raised challenges in the application of transitional justice to post-conflict contexts, transitional justice is particularly important in post-conflict settings. As some of the worst outbreaks of violence in the last two decades indicate, unaddressed past legacies can provide fuel for violent actors who mobilize and spread fear through the politicization of past grievances. Recent attempts by transitional justice mechanisms to contribute to peace-building offer potentially valuable insights for the theory and practice of transitional justice. On the one hand, recent cases of transitional justice highlight the potential contribution of transitional justice to peace-


building. While a lot of the ethnographic research has focused on the impact of transitional justice on the micro level – on personal healing and interpersonal and community reconciliation - more research is needed on the substantive contribution of transitional justice mechanisms on political and social behavior and identifications on the macro level. Peace-building entails both a micro social dimension, relating to interpersonal and communal repair, and macro political dimension, in the building or strengthening of political institutions and channels for participation.\(^{62}\) In both Sierra Leone and Peru, truth commissions, while controversial, opened new channels for participation, providing a platform for activists and victims' groups to pursue their demands.\(^ {63}\) In Peru, in particular, the Comisión de la Verdad y Reconciliación had an especially strong impact, generating vigorous debate and counter-narratives both among victims and the military.\(^ {64}\) While the Sierra Leonean Truth and Reconciliation Commission generated less domestic attention, victims and alternative transitional justice processes mobilized in criticism of the commission, leading in part to the later formation of the Sierra Leonean restorative justice project, Fambul Tok.


\(^ {63}\) For an interesting discussion on truth-telling and political agency, see Lisa J. Laplante, 'The Peruvian Truth Commission’s Historical Memory Project: When Truth-Tellers Confront Truth Deniers,' *Journal of Human Rights* 6, no. 4 (2007), 438-443.

\(^ {64}\) This finding links to a broader literature on memory politics and political activism, particularly in South America, truth-seeking in Peru became a form of politics, serving as a resource through which groups pursued their claims See Leigh A. Payne, *Unsettling Accounts: Neither Truth Nor Reconciliation in Confessions of State Violence* (Durham and London: Duke University Press, 2008); Katherine Hite and Cath Collins, 'Memorial Fragments, Monument Silences and Re-awakenings in 21\(^{st}\)-Century Chile,' *Millennium: Journal of International Studies, Violence and Memory Forum* 38, no. 2 (2009); and Elizabeth Jelin, *State Repression and the Labors of Memory* (Minneapolis, MN: University of Minnesota Press, 2003).
On the other hand, recent cases of transitional justice also reveal challenges in the contribution of formal transitional justice to peace-building. Truth commissions are short-term mechanisms, usually in operation between six months to two years, with strict budgetary constraints. Where social justice is often a foremost concern in post-war contexts, this is an area where transitional justice mechanisms often have the least clout. There are also often tensions between transitional justice’s peace-building objectives and its commitment to accountability. As the mandates of transitional justice mechanisms have become more complex, transitional justice processes run the risk of jeopardising certain objectives over others, as was the case with the Peruvian Comisión de la Verdad y Reconciliación, which sought to provide an inclusive platform to all sides in the conflict and contribute to the reintegration of ex-combatants while contributing to criminal justice. The commission’s eventual role in helping bring to trial hundreds of military personnel while contributing to criminal justice cost it the ability to engage the major protagonists in the conflict, leading to what one observer referred to as ‘reconciliation without belligerents.’

If transitional justice is to have an impact on conflict transformation, however, it needs to focus on root cases, particularly economic institutions and structural injustice and violence. Tackling structural injustices likely requires a longer and more rigorous engagement on the part of the international community. Without this long-term commitment, international agents should...
think carefully before they intervene. What we see frequently across cases is a severe loss of momentum and disappointment particularly among victims who feel abandoned by transitional justice processes. Although research and practice on transitional justice, peace-building, and the causes of conflict are far from homogenous, there is much that these fields can learn from each other. The rigorous study of the impact and success of transitional justice can yield important insights about the causes of war, while a richer understanding of the causes of war and dynamics of peace-building is important to foster more sensitive and informed transitional justice policies. While conflict transformation is already implicit in transitional justice mandates and practices, what transitional justice mechanisms identify to be the root causes of conflict needs to be more closely interrogated and systematically assessed. This will require honest dialogue with a wide variety of stakeholders and domestic and international experts to capture the plurality of factors underlying conflict, which tends to vary across localities and can change over time.