Intersectionality: A Feminist Theory for Transitional Justice?

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ABSTRACT

Transitional justice is understood as a mechanism for enabling politically conflicted societies to institutionalise universal principles of equality and human rights as embedded in liberal democratic processes of state building and regime reform. Feminist intersectionality theory enables critical analysis of the application of these principles in concrete practice. It poses useful theoretical and empirical questions for explaining gendered dimensions of transitions particularly in cultures that are described as ‘deeply divided’. The adaptation of social theories, from one context for application to another, calls for critical caution. From the perspective of post 1989 German reunification, Knapp (2011) argues that social theories should be viewed as intrinsic cultural practices which are shaped and charged by the historical contexts of their articulation. In her analysis and context, for instance, ‘race’ is a particularly problematic theoretical concept. Based on the German historical experience, Knapp’s argument is instructive for understanding what is involved in ‘local’ adaptations of ‘international’ feminist theories or legal principles. This paper explores these questions in relation to the absence of women from peace negotiations and the silence in negotiations on matters to do with women’s day-to-day lives. Northern Ireland’s 1998 Agreement is the political and textual site for adapting intersectional analysis. In this polity ‘sect’ becomes an insightful as well as problematic theoretical category. The central argument is that a conceptualization of gender that intersects with other structural dimensions of inequality and discrimination aids understanding the legal and social challenges posed by transitional justice.

Introduction: Fast Travelling Theories and Frameworks

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Intersectionality theory has been used for detailed analysis of two substantive socio-legal arenas in transitional justice, namely, women’s gendered experiences of post-conflict equality legislation\(^1\) and the underenforcement of change processes with transformational social and economic effects for women.\(^2\) This theory has proven to be of critical value for investigating socio-economic and cultural dimensions of inequality in transitions.\(^3\) The adaptation of intersectionality from its late 20c. origins in US feminist, civil rights jurisprudence, for use as an analytical tool in transitional justice is one more episode in the remarkable global ‘travels’ of intersectionality theory (as outlined in sections 1). Within the same time-frame the proliferation of transitional justice, as an established framework used in the resolution of conflicts, means that it too can be viewed as a global ‘fast traveller’.\(^4\) Since the end of the cold war, transitional justice has developed a substantial literature and a significant presence in international law (as outlined in section 2).\(^5\) Feminist scholarship has deliberated on the potential of transitions to empower and improve the lives of women whilst shedding light on past injustices.\(^6\) A rich seam of critical human rights reports and indigenous feminist studies of transitions in-situ have energized and informed the debate.\(^7\) In this paper, I argue that deploying the analytics of intersectionality in transitional justice helps us to understand what concretely happens to women in post-conflict circumstances. Intersectionality calls for the analysis to take account of formative structural and cultural dimensions of the society in transition. This analysis introduces critical questions about gendered forms of exclusion that are otherwise absent from academic analysis.\(^8\) It aids understanding why the most

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\(^5\) Christine Bell & Elizabeth Craig, ‘A Decade of Peace Agreements’, Christine Bell, Peace Agreements and Human Rights (Oxford: Oxford University Press, 2000): 323–74. These authors define ‘transitional justice’ as a range of judicial and non-judicial approaches undertaken by societies experiencing a profound reordering of their political, legal, social and economic affairs. This reordering results from an end to violent conflict and/or a changeover from an authoritarian regime to one based on principles of democracy and pluralism. They identify 65 peace agreements in the last decade of the twentieth century. Their calculations have been updated by the TJI database. The TJI Peace Agreement Database provides details of over 640 peace agreements signed since 1990, addressing conflicts that affect over 85 jurisdictions (Online) Available online at: http://www.peaceagreements.ulster.ac.uk/.


\(^8\) For an analysis of women’s equality in post-conflict Northern Ireland see Rooney supra n 1.
vulnerable people fail to benefit from the tradeoffs involved in peace negotiations (as outlined in sections 3 and 4). As such, this analysis helps to develop a clearer theoretical grasp of the interlocking, gendered, socio-legal features of transitions and their concrete impacts on women’s lives. Taken together, these fast travelling frameworks that cross territorial and disciplinary boundaries offer analytical challenges for transitional justice (as outlined in section 5). This article affirms critical correlations between structural, economic and political inequity, violent conflict and the limitations of law as a framework for conflict resolution.

Part One: Intersectionality Travels

Intersectionality has proven to be ‘a highly successful’ feminist theory within the Anglo-European context of feminist scholarship for over twenty years. Its extraordinary proliferation led Knapp to view it as a paradigm of ‘fast travelling’ theory. In its ‘travels’ through various branches of equality scholarship intersectionality has proven to be a promising approach when analysing complex constellations of identity based discrimination. In so doing, it poses productive methodological and theoretical challenges for analysing relationships between specific forms of discrimination, women’s socio-economic inequalities and identity discourses within a state or regime in transition. This analytics has proved useful for societies as diverse as Afghanistan and Northern

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Available online at: http://www.csis.ox.ac.uk/otp.php?show=conference

10 For the argument that all too often transitional justice is offered as a ‘one size fits all’ solution in diverse conflicts see, Nagy supra n 4. Mani supra n 9, similarly suggests that the transitional justice template has been exported across the globe as a ‘pre-packaged set of measures’ very often with little thought given either to local conditions or local perspectives.


13 Knapp supra n 12, at 3.

14 This was the premise of the conferences: International Congress, Relations of Difference – Dynamics of Conflict in Global Perspective (Paulet: Difference & Intersectionality, Leibniz University of Hannover, Arts and Humanities Faculty, 1-3 July 2009), on file with the author. See also papers presented at: Celebrating Intersectionality? Debates on a multi-faceted concept in Gender Studies, International Conference (Goethe-University Frankfurt, January 22 and 23, 2009) (Online) Available online at: http://www.gge.uni-frankfurt.de/intersectionality/index.shtml
Ireland. A critical question that recurs within the intersectional scholarship that is addressed in this paper is the extent to which this approach is adaptable and beneficial for understanding women’s lives in intensely complex contexts. The theoretical implications of this question remain unresolved in the literature – which is why the question continues to be asked and remains relevant. Indeed, intersectionality continues to generate creative debate about conceptual and methodological coherence in a variety of theoretical and applied fields whilst it maintains its extraordinary status at the ‘cutting edge of contemporary feminist theorizing’. Kathy Davis accounts for this success by drawing parallels between intersectionality and other ‘highly successful’ theories claiming that they commonly thrive on ‘ambiguity and incompleteness’. The questions and the debate generated by intersectionality, she asserts, are a function of its phenomenal success. Using a sociology-of-science perspective, she reasons that highly successful theories, chameleon-like, capture the imagination of a broad academic audience faced with some perplexing and fundamental concern at a particular juncture in diverse disciplinary fields. A fundamental concern facing theorists who use intersectionality as an analytical resource is the phenomenon of human vulnerability resulting from deepening socioeconomic inequalities both within highly institutionalised, wealthy liberal democracies and between these states and ‘developing’ countries. Intersectionality poses significant theoretical and empirical questions for explaining gendered forms of inequality in such contexts many of which now include societies in transition.

From a European standpoint, Knapp is insightful when reflecting on concepts and theories as ‘fast travellers’. She explains that when the intersectional triad of race/class/gender ‘travels’ from its ‘New World’ origins in the US, to be taken up in feminist discourses in the ‘Old World’ of European states, then the concepts undergo a ‘significant shifting of meanings’. In order to grasp the scale of this alteration, she cites Germany’s relatively recent history of transition via state division and re-formation within the European Union. She

15 Ni Aoláin and Rooney supra n 2.
17 Davis supra n 12, at 69.
18 Davis supra n 12, at 69. A similar observation applies to the tradeoffs and irreconcilable goals involved in the transitional justice deal; see Leebaw supra n 9.
21 Knapp supra n 12, at 13. The argument is more nuanced than this brief reference allows but ultimately the point being made is that gender/race/class categories and usage is integral to geo-political histories of state formation. The specific technologies and trajectories of European colonization and immigration also come into play.
reminds us that despite post-cold war unity, ‘Germany still comes in two parts’. In (formerly) West German social science discourse, for instance, ‘class’ and ‘gender’ are conspicuously viewed as ‘zombie’ categories – effectively dead but not yet buried. When feminists from this location undertake ‘class’ and ‘gender’ as central categories of intersectional analysis they risk positioning themselves in a bygone rhetoric long since overtaken by the playfully post modern. For feminists from the (formerly) East German setting, on the other hand, usage of the concept ‘class’ is complicated by its centrality in a cold-war narrative as a property of Western capitalism. As for the category ‘race’, Knapp observes, this poses another set of historically situated, deep-rooted problems for German feminists hailing from either ‘part’ of Germany. The concept of racial categories enters German academic discourse, she remarks, as an ‘almost entirely negative category’ that is effectively unusable. These observations suggest that intersectionality is both a problematical and critically productive resource for understanding the process of German reunification, its influence on academic discourse, and the implications for its most ‘vulnerable subjects’.

Knapp concludes that the programmatic triad of intersectionality, on its transatlantic journey from the New World, not only fuels internal feminist debate on liberal notions of ‘European diversity’ but also acts as ‘a radical historical reminder of the dark sides of modernity’ and its techno-scientific modalities of inferiority. Faced with such challenges, the feminist way forward, she proposes, is to continue to wrestle with the creative conundrums at the heart of the feminist endeavour to empower women and improve their lives. This calls for comparative analyses that explore how the race/class/gender triad is received in other European states and particularly, she urges, within states that are alert to their colonial histories. Intersectional analysis then reveals the material, cultural and symbolic diversity of women’s lives in such contexts. At the same time, and indispensable to the analysis, is the necessity to keep sight of the homogenizing material dimensions of inequalities ingrained in the conditions of women’s lives within and across cultures and classes. Such comparative analyses, she contends, can contribute answers to compelling questions of how: ‘gender relations and sexuality, class relations and configurations of ethnicity and race [are] interwoven in the structural make-up of a given society ... And [furthermore] what happens to these relationalities under conditions of

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22 Knapp supra n 12, at 13.
23 Knapp supra n 12, at 14; citing Ulrick Beck to argue that ‘class’ has been replaced by allusions to more cultural understandings of social differentiation and to notions of horizontal disparities, lifestyle choices and so on.
24 This reading of Knapp’s position is influenced by a critique of second-wave feminism found in, Nancy Fraser, ‘Feminism, Capitalism and the Cunning of History’, New Left Review, 56 (2009): 97-117.
25 To be overcome eventually in a communist future where ‘class’ would be rendered meaningless; see Knapp supra n 12, at 13.
26 Knapp supra n 12 at 15.
27 Knapp supra n 12, at 19.
social, political and economic transformation’. In the dynamic circumstances of post-conflict transformation in diverse states and regimes, intersectionality provides critical conceptual tools for investigating how women distinctly experience discursive invisibility and actual exclusion and why women’s lives are inadequately considered when the opportunity for radical societal change occurs.

Part Two: Fast Travelling Modalities

The globalization of transitional justice as a framework for the resolution (or dampening) of long standing conflicts is a remarkable phenomenon of international governance since the end of the Cold War. In tandem with official peace treaties, the transitional justice framework is applied in the resolution of conflicts in diverse national contexts. Like the Westphalian state form from which it is derived and that it augers, transitional justice formally embeds universal principles of citizenship, equality before the law and protection of human rights. The explicit aim is for the integration of hitherto ‘unstable’ polities and postcolonial states into a ‘new world order’ of liberal democratic norms. The formal norms and liberal principles involved in transitional justice discourses undergo significant shifts in meaning and modalities ‘on arrival’ in the post-conflict environment. This includes the liberal principle of equality between men and women that is recognised in international law and is contained in many international human rights treaties. This principle is also recognised in liberal democracies in varying forms, constitutionally and legislatively. The implementation of these principles, however, even within wealthy liberal democracies, as Fineman and others argue, is an altogether different matter. The challenges of implementation are critical and complex when the liberal principles and norms embedded in transitional justice ‘travel’ to post-conflict contexts. Afghanistan is a case in

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28 Knapp supra n 12, at 18.
29 Ruti Teitel, Transitional Justice (Oxford: Oxford University Press, 2000). Teitel maintains that transitional justice is also remarkable precisely because it embeds other values (e.g. amnesty) which seem counter-intuitive to positive liberal virtues.
30 For a brief historical account and the view that transitional justice is the international ‘flavour of the decade’ see Mani supra n 9. As an ‘international’ conflict resolution process, transitional justice arguably also helps unstable polities to integrate and secure systems of global capitalism. In this regard, for example, Ireland’s historical relationship with Britain is considered by Joe Cleary as part of a global process: ‘through which different parts [of the globe] were differently integrated into an emergent world capitalist system . . . it follows that the determination of a specific national configuration must be conceived as a product of the global [however] the national arena still remains a crucial site for social struggle, but a true understanding of those struggles can only be grasped contextually within a wider global frame’. Joe Cleary, ‘“Misplaced Ideas”? Colonialism, Location, and Dislocation in Irish Studies’, in Clare Carroll & Patricia King (eds.) Ireland and Postcolonial Theory (Cork: Cork University Press, 2003); 16–45, at 43–4. See also Nagy supra n 4. Incidentally, for views on the US as an exporter of ‘commercial democracy’ see, David Bromwich, ‘Obama: His Words & His Deeds’, The New York Review of Books (June, 2011) (Online) Available online at: http://www.nybooks.com/articles/archives/2011/jul/14/obama-his-words-his-deeds/.
33 Fineman supra n 19; Conaghan supra n 11.
The Afghan Constitution of 2004 includes specific provisions that guarantee the equality of men and women before the law. Female parliamentarians in Afghanistan, however, say that the country’s powerful lawmaking institutions are dominated by men who have systematically opposed gender equality. As has been well documented by non-governmental organizations and others, women’s formal equality in law in such circumstances is systematically underenforced. In relation to Afghanistan, however, the observation made by Bell et al is additionally noteworthy. These authors argue that in the context of a ‘war on terror’ the language of ‘democratization’ and ‘transition’ has increasingly been appropriated, ‘in furtherance of an apparently global project [that has] few effective international legal constraints’. The assumption that the introduction of liberal legal principles and equality norms improves women’s lives in such circumstances has to be treated with some caution. This is all the more reason, then, to employ intersectional analysis for monitoring what happens to the most vulnerable women’s lives in these situations.

The absence of women amongst negotiating elites, moreover, and the silence in negotiations on socio-economic matters to do with women’s day-to-day lives leads Bell et al to observe that any examination of the gendered dimensions of transitional justice raises ‘awkward questions about the neutrality’ of the transitional project itself. The absence of women in the negotiations that precede peace agreements is the first of the ‘awkward questions’ that leads Bell et al to question the concept of ‘neutrality’ in transitional justice. These authors argue that this absence of women leads to a ‘male bias’ in negotiations and a subsequent failure to mainstream a gender perspective into transitional policies and socio-economic programmes, as is called for, for instance, in the Beijing Platform. The absence of women from peace negotiations and the silence in these negotiations on women’s socio-economic inequalities in the transitioning society is the original impetus for the introduction of intersectional analysis into transitional justice scholarship.

The challenge within transitional justice is to recognise what is at stake in the conceptualization of ‘women’s absence’ from peace negotiations. When people are excluded from negotiations or absent from

34 The Afghan Constitution of 2004, art. 22: ‘The citizens of Afghanistan – whether man or woman – have equal rights and duties before the law’.
36 Ní Aoláin & Rooney supra n 2.
39 Bell, Campbell & Ni Aolain supra n 37, at 320.
electoral assembles on the basis of race, religion, or ethnicity the inequality or discrimination may be more readily recognized as unjust and unfair. However, when an absence of women also involves group based exclusions then such exclusions are rarely recognized and examined.\textsuperscript{41} Intersectionality theory enables us to analyse how group based structural inequalities and gender interlock in ways that may otherwise escape notice in transitional justice scholarship.\textsuperscript{42}

If the transitional framework is to aid a society to deal with the trauma of its past and to create a stable future then intersecting structural socio-economic harms have to be examined in order to be tackled. For there to be any possibility of women participating as equals, and benefiting from a reorganization of state or regime power, then the commitment made to women’s equality in the rhetoric of peace agreements needs to be applied, where possible, with legal force. Mechanisms have to be put in place whereby implementation or the impact of underenforcement is monitored.\textsuperscript{43} One measure of over-time success in this regard would be to keep track of the participation of women in public life. An enduring structural measure of social inclusion would result if increasing levels of women’s poverty were targeted and reversed. In Northern Ireland, for instance, the most vulnerable women and their dependents would benefit. Thereby social stability as a whole would be enhanced. As it is, however, and as (former) President Mary Robinson observed from the vantage point of the privileged ‘insider’, the full participation of women in society is perceived as an issue that is only for women. And it is a short step from this to the position that such issues are merely for women.\textsuperscript{44} Because transitional justice norms are, like the law itself, ‘relatively concrete, widely applied and imbued with strong normative weight they are highly influential in shaping people’s views and perceptions’.\textsuperscript{45} Those most adversely affected by violent political conflicts may not be in a position to influence what happens. The theoretical insights and interventions developed in transitional justice scholarship can enable us to understand how transitions work in local contexts, what they achieve, where they fail and their potential to deliver social benefit from the resolution to long standing conflicts.

\textbf{Part Three: Conceptual Exclusions}


\textsuperscript{42} Nadera Shalhoub-Kevorkian suggests ‘interlock’ as a more accurate term for generational structural injustices (personal communication); see her \textit{Militarization and Violence against Women in Conflict Zones in the Middle East: A Palestinian Case-Study} (Cambridge: Cambridge University Press, 2009).

\textsuperscript{43} The UN Convention on the Elimination Of All forms of Discrimination Against Women (1979) is one such monitoring mechanism (Online) Available online at \url{http://www.un.org/womenwatch/daw/cedaw/}

\textsuperscript{44} Rooney supra n 41. Mary Robinson, \textit{Striking a Balance} (The Allen Lane Foundation Lecture, 1992).

\textsuperscript{45} Conaghan supra n 11, at 5.
In a comprehensive investigation of peace negotiations, Bell et al found that they typically focus upon a, ‘male conception of conflict’ that revolves around allocations of political power, territorial claims and ‘stopping (only) certain forms of violence’. In the process of negotiations issues central to women’s day-to-day lives are neglected whilst structural socio-economic inequalities, at the heart of conflict, may also be ignored. These authors go further to claim that the absence of women in negotiations reinforces a ‘conceptual exclusion’ which is also found in ‘liberal-democratic constitutionalism’. This theoretical point is later developed by Ní Aoláin in her study of political violence and gender where she concludes that ‘women’s rights are generally the most ignored and underenforced category of norms in a transitional context’. In their study of gender in truth recovery processes, Ní Aoláin and Turner further contend that socio-economic deprivations, with particular adverse impacts on women in conflicted societies, are regularly ignored in negotiating agendas. They call for the introduction in these contexts of second generation human rights provisions which include socio-economic rights. The theoretical links made between a male conception of conflict and ‘conceptual exclusions’ in negotiations, which are then reinforced by an absence of women, represents a milestone in the theorization of gender in transitional justice.

The invisibility of women in peace negotiations and as beneficiaries of the deal are viewed by Bell et al as doubly unfair given research and anecdotal evidence showing that women will often have been at the forefront of peace initiatives throughout the conflict. The ‘important role of women in the prevention and resolution of conflicts and in peace building’ is also emphasised in UN Resolution 1325 which calls for the ‘equal participation of women in the maintenance of peace and security’. The academic argument and the resolution suggest that the presence of women will improve the chances of peace. Whilst this is obviously a strong strategic reason for women’s participation in peace negotiations it should be advanced with some caution. It implies that an additional expectation and responsibility may attach to women who are present in negotiations. It further suggests a conditional admission of women to negotiations that is not applied to men in these contexts.

46 Bell, Campbell & Ní Aoláin supra n.37, at 321.
47 Bell, Campbell & Ní Aoláin supra n.37, at 321.
48 Bell, Campbell & Ní Aoláin supra n 37, at 321 also Fineman supra n 19.
49 Ní Aoláin supra n 11, at 849.
51 Bell, Campbell & Ní Aoláin supra n 37, at 320.
52 Bell & O’Rourke supra n 32.
To raise the ‘awkward question’ of women’s absence in the transitional context, in order to challenge the dominance of men and the prominence of masculine priorities, is to risk falling into a categorical trap of essentialising the ‘woman’ who is absent and overstating her capacities for changing the agenda and building peace. This leads to the assumption that a ‘presence’ of women, of any women, will positively change the process. However, when this ‘solution’ is countenanced, other ‘awkward’ intersectional questions arise with equally perplexing implications for the ‘neutrality’ of transitions. For instance, which women should be present? Would any woman be able to ‘represent’ women’s interests? Can only women represent these interests? Are ‘women’s interests’ different from men’s interests? How so? In the context of violent political conflicts, in what ways may women’s and men’s ‘interests’ and experiences diverge or be in dispute or coalesce? Can legal formulation accord recognition to women’s presence in this context? The strategic answer provided to these complex and pragmatic questions by some international agencies, in their brokerage of conflicts, has been to implement UN Resolution 1325 that requires the presence of women in delegations. However, Brittain reports that women artificially installed in negotiations in this way have viewed their presence as ‘window dressing’. They become disillusioned. The strategy may provide short-term highly visible gains in a widely reported and welcome ‘presence’ of women in negotiations that usefully highlights women’s previously unnoticed absence. However, claims that the UN resolution has thereby been effectively implemented is potentially damaging for women in these contexts, and especially for those who see their ‘presence’ as providing only the illusion of transformation. An externally imposed presence of women, moreover, is no guarantee that issues pertaining to women’s day-to-day lives will be addressed.

The absence of women in negotiations in the transitional context may initially seem simply a matter of common sense – men dominate in militaries as well as in the political parties and government elites that negotiate a peace treaty and its legal framework. So, those present at the negotiations simply reflect the ‘reality’ of sex segregation in the public sphere. However, this uncritiqued ‘common sense’ reality is one of the disappearing acts of legitimizing discourses, whereby women’s absence in negotiations generally goes unnoticed and unremarked. Along with it, also unnoticed, is the hegemonic androcentrism of conflicts. These

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54 Afghanistan Online supra n 35.
conceptual exclusions have concrete consequences and are profoundly problematic. The masculinity of the set up is also invisible in an arena that is apparently gender-free. Thus, the ‘patriarchal dividend’ enjoyed by some elites as a result of negotiations is under-examined.\(^{57}\) These benefits are not shared equally by all parties to them. Neither are the lethal costs of military participation in conflicts borne equally by all.\(^{58}\) ‘Awkward questions’ are not raised in these contexts about structural patterns of harm; about which men are killed or about the gender composition of those imprisoned.\(^{59}\) Other critical questions arise around human rights abuses and what constitutes ‘harm’, that requires restitution and legal remedy in negotiations, and what actually counts as ‘participation’ in a conflict. Negotiation agendas often have a legitimate focus upon high profile past human rights violations. The composition of those present is drawn from participants to the conflict. The conceptualisation of what constitutes ‘participation’, however, is acutely gendered. ‘Participation’ in these circumstances correlates with prominence in the public domain of governance, politics and military status. How ‘harm’ and ‘participation’ in conflict are conceptualised is also of central importance to understanding how inequalities experienced by women in their everyday lives are left out of consideration in negotiations, why women are not present and moreover, why their absence is unnoticed and unremarked. Women are deeply involved in multiple ways in conflicted societies and wars.\(^{60}\) The forms of women’s ‘participation’, however, are generally not recognized and do not count or qualify for admission to post-conflict negotiations. Women and children figure disproportionately as conflict refugees whilst forms of violence experienced by many women may be excluded from legal accountability, and therefore invisible, in the post-conflict environment.\(^{61}\) Furthermore, in transitional negotiations men are viewed as recognisably ‘representative’ of the group interests that are the subjects of negotiation. Analysis of the gender dynamics of


\(^{58}\) In the context of Northern Ireland over 95% of conflict-related deaths were of men and working-class areas paid the highest human costs.


\(^{59}\) For an analysis of women’s gendered experiences of violence see Ní Aoláin supra n 11.


\(^{61}\) Ní Aoláin supra n 11, at 830.
conflicts reveal, ‘that there is a tangible link between the experience of women during conflict and the exclusions identified in the transitional context’. Intersectional analysis raises critical questions about gendered exclusions that are otherwise hidden from view and under-investigated.

When ‘gender’ is used in transitional justice discourse as an allusion to ‘all women’ it sheds urgent light on an ignored absence. Paying analytical attention to how the concept ‘gender’ works in these contexts reveals that specific forms of women’s exclusion and subordination may be routinely accepted and unquestioned or acknowledged but unexamined. This may obscure or sidestep structural inequalities between women and within social groups. Tackling such inequalities is critical to the long term prospects of transitions to have positive outcomes in women’s lives. Also, routinely unexamined in these circumstances are the structural socio-economic and political inequalities between men that significantly shape transition processes and affect the possibility of women’s participation in them. The intersectional operations of masculinity in conflicts and the disparity in costs and benefits experienced by various men in the political regime in transition is also routinely ignored and rendered invisible to analysis and remedy.

These matters of conceptualization involve inequalities of recognition and redistribution, accrued over time, which are integral to individual experience and indeed to the construction of social groups. Feminist analyses have thus far highlighted the implications for women of arenas where men are generally construed as unproblematically ‘representative’ of the parties to a conflict whilst women are categorized as essentially apart. Transitional justice processes tend to positively flatten these structural complexities by holding out the liberal promise of ‘equality’. In the Northern Irish context, for instance, gender roles are instantiated through a conflict narrative whereby women are not included in any way that reflects their presence in social categories and groups or that comprehends gendered forms of participation within conflicts. When women in this transitional conflict come into public view they often do so as people uniquely able to overcome discredited

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62 Ní Aoláin supra n 11, at 837.
63 Rooney supra n 1.
64 Thomson uses the phrase ‘routinely accepted’ to summarize how gendered discourse provides a normative framework of shared understanding: Thomson supra n 56.
65 Thomson supra n 56 also Connell supra n 57; neither author discusses masculinity in conflicts. Their work is nevertheless valuable for understanding the gender dynamics involved. For feminist analyses of androcentric discourse see Fraser supra n 24.
68 Rooney supra n 1; also references at supra n 60.
sectarian politics.\textsuperscript{69} This representation accords with the expectation and responsibility for making peace that may attach to women’s inclusion in negotiations. It is as though ‘women’ are admitted to conflict discourses, and to negotiations, as symbolically desirable presences free of the brutality and messiness of war and outside of the deep rooted intersectional inequalities at their core. Again, these categorical representations have concrete consequences.

The invisibility of women in conflict narratives combined with an intersectional analysis of gender and the dominance of masculinities in the transitional context is core to understanding how women’s day-to-day lives get left out of consideration in negotiations. The precarious, symbolic role of women in conflict discourses paradoxically sustains the invisibility of gender regimes operating within these scenarios. This precarious role is essential to the narrative fiction that conflicts are gender-free. Indeed, the massive literature and mainstream analysis of the Northern Irish conflict forms an ostensibly gender-free account.\textsuperscript{70} Any examination of women’s in/visibility in this narrative reveals how intersectional gender regimes conceptually frame what is in view for analysis.\textsuperscript{71} Yet, gender as a key organising principle of conflicts, one that structures the discursive framework for understanding, is unexamined in this regard.\textsuperscript{72} The academic spotlight falls on violence and on its mostly male perpetrators and victims.\textsuperscript{73} Women rarely feature anywhere other than in a feminist scholarship which is largely ignored in the mainstream academic literature. In this way, the scholarly terrain of gender analysis mirrors the status of what it investigates and becomes a field that is ‘merely’ about women.\textsuperscript{74} It is arguable that mainstream conflict analyses, that focus solely on male actors, see only half – albeit the most visible half – of what is going on.

The question of what goes on and who is present in negotiations that lead to a peace treaty is of fundamental importance to the restructuring of relationships within a new dispensation that is the subject of negotiation. Peace treaties are in effect legal documents that go on to govern the distribution of state or regime power and benefit within a future framework of law.\textsuperscript{75} The presence of women and, moreover, what

\textsuperscript{69} Rooney supra n 1 and supra n 11.
\textsuperscript{70} Rooney supra n 1.
\textsuperscript{71} For an intersectional study of women’s accounts of the conflict see, Eilish Rooney, ‘Leaving Home and Staying Put: Intersectional Narratives from Northern Ireland’s Transition’, \emph{She’s Leaving Home}, (2011): 187-201.
\textsuperscript{73} In Fraser’s analysis of second wave feminism she notes a tendency for feminist critique also to focus on physical violence whilst neglecting analyses of socio-economic and structural violations; Fraser supra n 24.
\textsuperscript{74} Rooney supra n 41; Robinson supra n 44.
\textsuperscript{75} In this case, law is seen as a complex set of practices with significant material and political effects; Joanne Conaghan, ‘Book Review’, \emph{Feminist Legal Studies}, 10 (2002): 177–83.
they gain or do not gain from negotiations may be core to the potential for advancing gender equality in the transition. At heart, this is a critical matter of social justice and future social stability.76 The question of women’s presence in peace negotiations reveals how these processes embed conceptual frameworks that have forceful, concrete gendered outcomes. They disadvantage all women and have particular impacts for the most vulnerable women in places such as Northern Ireland. Pragmatic questions of presence and absence have practical and theoretical dimensions. Peace treaty processes are typically driven by an enforced pragmatism rather than theoretical coherence and social justice. Ending violence and establishing social stability is variously a priority of states, regimes, international agencies and those involved in negotiations. On occasion, the issue of political violence may be used as a bargaining tool by parties in negotiation or by groups without formal representation in the process. The circumstance whereby this violence is maintained or ended and which violations are recognised as requiring legal remedy are all deep concerns with diverse ramifications for those present and for the women who are largely absent. This is all the more reason for negotiations to be fully representative of a populace facing the challenge of state or regime reform.

Part Four: Negotiating Presence

The predominant perspective in intersectionality theory has been about looking at how different social categories – such as gender, race and class – interact in shaping subjective experiences, often experiences of discrimination, and how they are taken up in constructions of group identity in different contexts.77 This provides a framework for the analysis of how gender relations, socio-economic status and configurations of ethnicity and race are interwoven in the structural make-up of a given society. As such, intersectionality has significant benefits for the analysis of social categories and women’s lives in transitional society. For instance, in Northern Ireland intersectionality exposes the ‘illusory sameness’ suggested by the very terms used to reference structural dimensions of inequality (such as ‘Catholic’ and ‘Protestant’). Joan Scott’s acute insight that, ‘identities don’t pre-exist their strategic political invocations’ (my emphasis) is valuable for understanding ‘identity’ discourses in these situations.78 Strategic, political invocations of the terms ‘Catholic’ and ‘Protestant’

76 Rooney supra n 1.
77 Knapp supra n 12, at 18.
(and ‘woman’ for that matter) in the Northern Irish situation illustrate and affirm her point. Furthermore, intersectionality functions as a conceptual framework or heuristic device for posing critical questions otherwise not asked, for seeing women otherwise hidden from view within identity discourses. This is critical for describing the kinds of things to consider especially when social identities, and the political affiliations they denote, are institutionalized into a post-agreement architecture of governance, as is the case for instance, in Northern Ireland.\textsuperscript{79}

The ‘problem’ of women’s absence in negotiations is further complicated by political affiliation and the position adopted by a political party towards women’s inclusion in party structures. An empirical study of the disparities between women’s and men’s participation and prominence in political parties in Northern Ireland investigated party positions on strategies for women’s inclusion.\textsuperscript{80} All of Northern Ireland’s political parties agreed that more women would be welcome. This study found, however, that a party’s position on the constitutional issue of state formation and the social class from which it derives its main support base are decisive in whether or not the party operates quotas for women in party structures. Unionist parties supportive of the constitutional status of Northern Ireland within the United Kingdom rejected quotas and preferred the ‘merit’ principle.\textsuperscript{81} Nationalist republican parties with a united Ireland aspiration operate various quotas for women at all levels in party structures.\textsuperscript{82} It is not necessarily the case that unionist politicians are more conservative than their nationalist republican counterparts, though that may sometimes be so. The point is that the relationship between a political party and the defence of the state or regime it supports is seen to be a factor. The relatively high level of women’s participation in state challenging grass-roots political movements is recognized in women’s indigenous accounts and in the feminist literature.\textsuperscript{83} Again, assumptions cannot easily be drawn from this that nationalist republican or grass-roots political movements are necessarily progressive for women, though that may sometimes be so and clearly these Northern Irish political parties operate progressive strategies for women’s inclusion. The point is that mobilised opposition to the status quo of an existing state or regime appears to be a factor in women’s activism. In the post-conflict transitional

\begin{flushleft}
\textsuperscript{79} The Northern Ireland Assembly functions through ‘weighted majorities’ based upon unionist and nationalist political representation. The Alliance Party designates as ‘other’.
\textsuperscript{80} Proactive strategies include opportunities for women to gain selection in winnable seats. Eilish Rooney & Margaret Woods, \textit{Women in Community and Politics: A Belfast Study} (Belfast: Centre for Research on Women, University of Ulster, 1995), at 118.
\textsuperscript{81} Rooney & Woods supra n 80, at 23-9.
\textsuperscript{82} Rooney & Woods supra n 80, at 23.
\textsuperscript{83} Carol Coulter, \textit{The Hidden Tradition: Feminism, Women and Nationalism in Ireland} (Cork: Cork University Press, 1993); also Aretxaga and Hassim supra n 60.
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process, however, women overall may be seen to lose out. The intersecting influence of social class on women's presence in political parties is a significant factor in all of this whether or not women are unionist or nationalist republican in their politics. The higher representation of women in parties that emerge from 'grass roots' militarized movements in this situation may account for some linkage between the prominence of working class representatives in negotiations, the participation of women and the inclusion of socio-economic issues on the negotiation agenda. In the Northern Irish context, feminist and women’s sector activism led to the inclusion of the Northern Ireland Women’s Coalition (NIWC) in the negotiations. The remarkable presence of the NIWC women highlighted the issue of women’s presence in negotiations.

The reference to gender as a category that simply conflates in everyday usage with 'being a women' is registered in the responses of women and men in the Rooney and Woods study to questions about their experience of being a politician in Northern Ireland. The commonality in women’s experiences in different parties and across class and cultural belongings lends weight to Knapp’s caution that we should remain attentive to the homogenizing dimensions of gender inequality within and between cultures. For instance, this study found that women from different parties and diverse class backgrounds commented that they were seen as ‘women first’ and politicians second. Furthermore, they recognized this as an experience of being treated as ‘different’. The experiences of women as being treated as ‘different’ were not perceived as problematic by male politicians in the study. It is not that the men could not comprehend this experience. It is simply that they appeared to be unaware that being treated as ‘different’ within party structures is a gendered disadvantage. In the pragmatic realm of party politics, this study indicates that ‘being a woman’ is a ‘difference’, understood by women and men, as one needing to be accommodated within an arena in which

85 Those unionist women who support the merit principle as the basis of political representation may not share this perspective. It is not that women are uninvolved in unionist politics. The Ulster Unionist Party claims the longest established women’s political organization and, like the other parties, it claims 50% female membership; Rooney & Woods supra n 80, at 27.
86 Rooney supra n 41.
87 Bell, Campbell & Ní Aolán supra n 37. The situation for working class women in stable democracies may differ in that time constraint linked to poverty is seen as a key determinant of low levels of women’s public participation and their social exclusion. For an elaboration of this time-poverty analysis see. Ruth Lister, Citizenship: Feminist Perspectives (New York: New York University Press, 1997).
88 Kate Fearon & Monica McWilliams, Women’s Work: The Story of the Northern Ireland Women’s Coalition (Belfast: Blackstaff Press, 1999); also Avila Kilmurry & Monica McWilliams, ‘Struggling for Peace: How Women in Northern Ireland Challenged the Status Quo’, Solutions 2/2 (Feb 28, 2011) (Online) Available online: [http://www.thesolutionsjournal.com/node/893](http://www.thesolutionsjournal.com/node/893).
89 Knapp supra n 12. at 18.
90 Rooney & Woods supra n 80, at 21.
91 Rooney & Woods supra n 80, at 21.
masculinity is an invisible taken-for-granted norm. The ‘accommodation’ of women is often seen as a problem, especially by those male politicians who have little understanding or sympathy for women and the obstacles they encounter through having to be ‘accommodated’ because of their ‘difference’. Indeed, the condescending viewpoint of some male politicians suggested obstructive attitudes towards women’s political participation in Northern Ireland that is an additional burden.92 These women’s gendered experiences, however, do not translate into agreement that proactive measures for women’s inclusion are required. As noted already in this case, the party position on the status of the state and on the principle of affirmative action is decisive. The unionist women in this study, moreover, broadly supported their party’s opposition to proactive strategies for women’s inclusion. Party politics, it should be remembered, is a highly competitive arena for men and women who, by virtue of their political ambitions, are keen to gain party and public prominence. The Northern Irish context is insightful for thinking about the application of UN Resolution 1325 that calls for an equal presence of women in peace negotiations. The hypothetical imposition of the resolution in Northern Ireland, beneficial as it might have been for women in general, would also have been problematic.

At the talks leading up to the 1998 Agreement93 women were in fact present, albeit in small numbers. They represented the two governments, the parties challenging state legitimacy, and, distinctively, the women of the NIWC.94 Women were also present in prominent roles, notably Mo Mowlam, Member of Parliament and British Secretary of State for Northern Ireland; also Liz O’Donnell, Teach Dail and representative of the Irish government.95 However, what a ‘presence’ of women means in this context, and how that translates into space in the negotiations being devoted to women’s gendered experiences of conflict or to the recognition of gendered socio-economic harms, are all matters subject to party political dispute over the redistribution of state resources and the reconstitution of state institutions. As it is, the main priority of these negotiations, like those studied by Bell et al, centred on, ‘stopping (only) certain forms of violence’.96 Issues of political violence, decommissioning of paramilitary weapons and reform of the criminal justice system continued to be raised in ways that extended negotiations and blocked political progress well into the post-agreement period. Such grave preoccupations evidently appear to offer little time for serious debate on women’s inequalities. Little

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92 Rooney & Woods supra n 80, at 19-22.
94 Eight women were elected to the 90 seats designated for constituency representatives; Sydney Elliott & W. D. Flax, Northern Ireland: A Political Directory: 1968–1999 (Belfast: The Blackstaff Press, 1999). The two women who became ministers in the first Northern Ireland Assembly executive belonged to nationalist republican parties. They were, Bairbre de Brún, Sinn Fein (SF) and Brid Rogers, Social Democratic & Labour Party (SDLP).
95 The Democratic Unionist Party (DUP), which is now the largest unionist party, did not participate.
96 Bell, Campbell & Ñ Aoláin supra n37, at 321.
media or public attention has been paid to the status of women in the subsequent implementation of the 1998 Agreement.⁹⁷

The extraordinary emergence of the NIWC, prior to the talks which led to the 1998 Agreement, was the achievement of a dedicated group of feminists and women’s rights activists.⁹⁸ They effectively mobilized Northern Ireland’s women’s sector in support of a ‘woman’s voice at the talks’.⁹⁹ Two NIWC women were elected to the talks Forum as a result.¹⁰⁰ The NIWC’s success attracted international media attention and captured feminist aspirations for the inclusion of women in elected assemblies across the world.¹⁰¹ Moreover, in both international and local media coverage the NIWC figured as embodying a politics beyond sectarian division.¹⁰² Whilst promoting this vision, the party ensured a leadership that was representative of Catholic and Protestant traditions. In order to secure this mandate the NIWC, notwithstanding its title, adopted a non-position on the constitutional status of Northern Ireland. Again, for the purpose of thinking about how an intersectional analysis works in this context, it is necessary to consider the wider implications of the figure that occasionally comes to prominence in conflict discourse as representative of ‘women’. The high visibility of this figure appears to be conditional upon the intersecting silences she invokes. In the Northern Irish narrative, this representative ‘woman’ is symbolically free of the socio-economic, political and religious inequalities that shape and determine the most marginalized and vulnerable women’s lives. The silences invoked by this every-woman figure are partly an effect of how women are strategically hailed into conflict discourse as essentially blameless, sometimes praiseworthy and often selectively as victims. In the Northern Irish case, this figure implies that the issue of constitutional state formation, rather than being a critical matter of democratic

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⁹⁸ The D’Hondt top-up system was used for elections to the Northern Ireland Forum, 1996. The system allocated two top-up seats to the ten parties gaining the most votes. Some feminists realized that this offered a strategic opportunity for local women’s groups and non-governmental organizations to elect representatives. The Progressive Unionist Party (political branch of the paramilitary Ulster Volunteer Force), Ulster Democratic Party (political branch of the paramilitary Ulster Defence Association), NIWC, and Labour Coalition each gained two representatives in the 110 seat forum; (Online) Available online at: [http://en.wikipedia.org/wiki/Members_of_the_Northern_Ireland_Forum](http://en.wikipedia.org/wiki/Members_of_the_Northern_Ireland_Forum).


¹⁰⁰ They were Monica McWilliams (academic from a Catholic and farming background) and Pearl Sagar (community worker from a Protestant and urban working-class background).

¹⁰¹ Fearon & McWilliams; Kilmurry & McWilliams supra n 88.

¹⁰² Simultaneously, the party took a principled stand and supported the inclusion in talks of all political parties with paramilitary links. It also adopted a human rights position on Roisin McAliskey’s detention; Robin Whitaker, ‘Gender and the Politics of Justice in the Northern Ireland Peace Process: Considering Roisin McAliskey’, Identities, 15/1 (2008): 1 – 30. These contentious positions attracted less public attention.
governance and state power, is a matter of individual preference that has neither material nor political consequences for women.

The woman constituted by (and occasionally laying claim to) this discourse is a construction with material and rhetorical effects. This construction of gender ‘difference’ goes some way to bringing some women into view. However, as Crenshaw notes in a discussion about intersections of race, class and gender in the US, attention to gender difference is only part of the theoretical work needed to understand what is going on within and between social categories. Her comment is particularly apposite for conflicted societies: ‘The struggle over which differences matter and which do not is neither an abstract nor an insignificant debate among women. Indeed, these conflicts are about more than difference as such; they raise critical issues of power’.103 Of particular interest for transitional justice scholarship is how intersecting gender/class/identity regimes of local power operate in a society characterised as violently ‘politically divided’. Introducing ‘women’ into an otherwise gender-free conflict narrative reveals how gender is decisive to the analysis. The challenge is to apply intersectionality to the problem of how to empower and improve women’s lives in these circumstances.

Part Five: Intersectionality in Transitional Justice

An intersectional approach to gender in transitions suggests extending Said’s ‘fast travelling theory’ metaphor to the analytical activity involved.104 This calls for academic ‘travelling’ across disciplinary and territorial boundaries in search of women’s accounts, empirical information and theoretical insights into gendered experiences of conflict and transition. Knapp’s useful discussion of gender, within the frame of feminist sociology, sees it as a central axis of dominance and inequality that hierarchically structures women’s lives.105 The intersectional approach helps to delineate the material and symbolic dimensions of this ‘axis’ as experienced by the most vulnerable people in post conflict societies. It further enables us to foreground specific gendered experiences of inequality both within and across social identity groups. It is vital, particularly in the transitional context of negotiations between different groups, to also counter the conceptualisation of

104 Said surpa n 20.
105 Knapp n 12.
‘gender’ as a short hand reference to ‘all women’ or as a category that is exclusive of men.  

Women and men have many interests in common in peace negotiations. The opposed negotiating position adopted by different parties is central to understanding how the shared interests and socio-economic standing of parties involved in peace negotiations influence the presence of women in them and, moreover, whether or not matters to do with women’s day to day lives are considered. The theoretical paradigm of intersectionality is beneficial for understanding what is at stake in the analysis of gender in transitional justice. The introduction of gender into thinking about who is present in negotiations, for instance, deconstructs binary oppositions between different men who appear as ‘representative’ of parties to a conflict. The analysis brings women’s gendered experiences into view whilst the introduction of structural socio-economic relations of inequality opens social identities to empirical investigation. Intersectional analysis enables scrutiny of the material and symbolic circumstances of women’s lives in transitional contexts and aids understanding the capacity of institutional reform to benefit the most marginalized people.

To some extent the ‘arrival’ of intersectionality theory in transitional justice mirrors its origins in US feminist jurisprudence. Crenshaw found that the neutral legal norms of antidiscrimination law largely succeeded in eliminating symbolic manifestations of racism but left its materialization unaffected and intact.

In relation to the position of women within the Black community, she also emphasises the necessity to attend to the gendered dimensions of intra-group relations and the multiple forms of subordination experienced by these women. Such theoretical interventions have practical implications particularly for women in post conflict processes. Three intersectional aspects of recognition and redistribution in feminist critical race perspectives are useful for thinking about women’s absence from negotiations and the view that this leads to a failure to address issues pertinent to women’s day to day lives. Of first importance are the forms of concealment that constitute and govern public discourse and their implications for argument from feminist jurisprudence. Being invisible in a discourse or being assumed to be included, though not mentioned, is one form of concealment. Mentioning ‘women’ whilst failing to bring the concept of gender into play is another (as may be a focus on gender which bypasses men and masculinility). In a politically ‘divided’ post conflict society

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106 Connell supra n 57 also Thomson supra n 56.
107 For a survey of women’s war experiences and gender analyses see Lorentzen and Turpin supra n 60.
there is often the additional political gesture of avoiding allusions to women in relation to matters that are
central to negotiations around governance, past human rights abuses, weaponry and criminal justice. In all of
this the realm of ‘women’ may symbolise a desirable, alternative landscape, one free from violent political
conflict. However, this idealised evocation also renders invisible the empirical circumstances of women’s lives,
their gendered experiences of violence and their forms of participation in conflict. As already noted, the
construction of women-as-innocent is occasionally breached when some women are hailed into the conflict
narrative. In this context, an otherwise concealed female presence carries powerful rhetorical authority.

There is much to be learned for transitional justice from an intersectional understanding of the
institutionalised modalities of recognition and redistribution that follow from peace negotiations. Northern
Ireland’s 1998 Agreement is a significant site for understanding how the language of recognition provides a
discursive resolution to deep-rooted problems of state and group formation. In this jurisdiction, the definition
of the nation state, its territorial integrity and citizen-state equality have been redefined in the 1998
Agreement by dual British-Irish citizenship. This includes the democratic right of citizens to exercise their
mandate in order to reconstitute the state so as to remain within the United Kingdom or leave it to become a
unitary Irish state. This political recognition and the redistributive rights it potentially confers matter to women
and men. Its importance is not diminished by the fact that few women were present in the negotiations that
led to this resolution. Peace negotiations represent what Thomson, in another context, calls a ‘critical
moment’ in the reassertion of hegemonic gender power.\textsuperscript{111} Within this ‘critical moment’ in South Africa, for
instance, the gendered and race based legacy of apartheid’s socio-economic harms were not addressed. This
meant that those who benefited most throughout the apartheid regime were institutionally positioned to
reassert power and influence within the new regime.\textsuperscript{112} In Northern Ireland the foundational and persistent
structural dimensions of inequality and discrimination differentially experienced by the most vulnerable
women within the state are now left to the vicissitudes of political struggles over the implementation of what
was gained in the passage of the 1998 Agreement.\textsuperscript{113} In this transition the important recognition of dual-
citizenship may be granted and valued by women as well as men. However, the redistributive measures

\textsuperscript{111} Thomson supra n 56.
\textsuperscript{112} See, e.g., Brandon Hamber, ‘Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland’, \textit{Fordham
\textsuperscript{113} Rooney supra n 11.
required for the exercise of equal participation in citizenship is not being enacted with legal force or in the spirit envisaged in the aspirational language of the 1998 Agreement. 114

Women’s rights and equality are referenced at several points in the text of the 1998 Agreement. Two commitments address the notably low levels of women in public life. The political parties made commitment in the section on ‘Rights, Safeguards and Equality of Opportunity’, to ‘the right of women to full and equal political participation’. 115 The British government also made a commitment to ‘pursue broad policies for . . . the advancement of women in public life’. 116 Neither commitment carries an implementation mechanism. If carried out, these commitments should result in an increase in the percentage of women politicians and women in public life generally. This would be one measure of women participating as equals and beneficiaries of the post-conflict redistribution of state power. In practice, however, the politicians do not concur as to how this should come about. 117 With regard to a more enduring measurement of women’s social inclusion, that of tackling women’s poverty, all parties to the negotiations acknowledged in the text of the 1998 Agreement that women’s unequal access to social and economic opportunities requires legislation. Key commitments to women’s equality of opportunity are made within a rights framework where the parties affirmed ‘the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity’. 118 This commitment is matched by government’s intention, ‘to create a statutory obligation on public authorities to carry out all their functions with due regard to the need to promote the equality of opportunity’. 119 The language of the parties and that of the government is notably different in important respects. For instance, the parties refer to ‘class’ as a category to be recognised in the equality provisions whilst government does not. Commitments to class equality would impact positively upon the most vulnerable

114 There is nothing ‘inevitable’ about structural inequalities linked to identities in state formation. Their resilience, however, may have the appearance of inevitability. Such inequalities are the outcomes of decisions taken in relation to economic developments, social policy, and political expediency, and sometimes inertia and they can be reversed. For a visual representation of economic under-development linked to Catholic and Protestant population densities see maps reproduced in, I. Shuttleworth & A. Green, ‘Labour Market Change in Northern Ireland’, in B. Osborne & I. Shuttleworth (eds.), Fair Employment in Northern Ireland (Belfast: Blackstaff Press, 2004): 100–21; for similar regional incidences of sickness see maps reproduced in, Committee for the Administration of Justice (CAJ), Equality in Northern Ireland: The Rhetoric and the Reality (Belfast: Shanways, 2006).

115 Agreement supra n 93, at 16.

116 Agreement supra n 93, at 19.

117 Rooney & Woods supra n 80. The number of women MLAs in the 108 member NI Assembly has risen from 15 (2010) to 20 (2011). Women are present in the political parties: Alliance 2 of 8; DUP 5 of 38; SDLP 3 of 14; SF 8 of 29; UUP 2 of 16. Three women are ministers (Arlene Foster, DUP Minister for Enterprise, Trade and Investment; Carál Ni Chuilin, SF Minister of Culture, Arts and Leisure; Michelle O’Neill, SF Minister of Agriculture and Rural Development); one woman is a Junior Minister (Martina Anderson, SF). The ongoing low level presence of women MLAs contrasts with the Welsh Assembly, where women comprise 47% of representatives. Women’s Representation in Politics: Key Facts (Online) Available online at: http://www.equalities.gov.uk/docs/Womenrepresentationin%20politics%20Oct%202008.doc

118 Agreement supra n 93, at 16.

119 Agreement supra n 93, at 16. Section 75 of the Northern Ireland Act 1998 requires public authorities in carrying out their duties in Northern Ireland to pay due regard to the need to promote equality of opportunity between: persons of different religious belief, political opinion, racial group; age; marital status; or sexual orientation; between men and women generally; between persons with a disability and those without; and between persons with dependants and persons without.
people’s circumstances. Women would benefit more significantly as a result. Whilst the parties make no mention of the category ‘political opinion’ it is given second place in the government’s list of equality grounds. The legislation repeats the language of government. There is no reference to social class. The first two dimensions of inequality named in government legislation, those of ‘religious belief’ and ‘political opinion’, give recognition to jurisdiction-specific, intersectional, patterns of structural inequality in Northern Ireland. These dimensions map onto regional patterns of political and religious inequalities.\textsuperscript{120}

The social exclusion and vulnerability that women experience through poverty is exacerbated in the Northern Irish context by segregation of (mainly) Catholic and Protestant working class areas. This is most clearly evident in the segregation of public housing into ‘Catholic’ and ‘Protestant’ districts and in the associated segregation of children into Catholic and Protestant (or state) sectors in education.\textsuperscript{121} The poorest Protestant areas commonly occur at what have come to be called ‘interfaces’ between the most deprived Protestant and Catholic districts. Since the passage of the 1998 Agreement levels of deprivation amongst workless households in the poorest Protestant areas have worsened and are moving closer towards the same level of deprivation as their Catholic counterparts.\textsuperscript{122} There is a levelling downwards. Furthermore, in these districts deepening levels of social need generates communal and political tensions that may easily be diverted by a crisis into sectarian hostility. In public discourse this is almost always treated as solely a problem of dysfunctional male behaviour. Women are largely invisible although they are likely to experience greater levels of poverty than men.\textsuperscript{123} Interface districts have also endured the worst impacts of the conflict.\textsuperscript{124} The significant social policy commitments made by government in the 1998 Agreement to target objective need were expected to benefit the most vulnerable including the most socially excluded women living in these districts.\textsuperscript{125} Effective implementation of this policy could ensure that the people who experienced the worst impacts of the conflict would positively benefit socially and economically from its resolution.

\textsuperscript{120} Shuttleworth & Green supra n 114.
\textsuperscript{121} Over 70\% of public housing is more than 90\% Protestant or Catholic: around 95\% of children attend either Catholic or state (Protestant) schools. The nature of the problem that this segregation exemplifies is another matter. For instance, the ‘segregation’ of housing and schooling in Northern Ireland into middle- and working-class spaces manifests deeper differences in terms of environment and attainment levels but is not viewed as in need of public policy solutions.
\textsuperscript{122} CAJ supra n 114, at 66.
\textsuperscript{123} Almost two-thirds of income support claimants in Northern Ireland are women. Moore et al., \textit{Gender Equality in Northern Ireland: Northern Ireland Assembly Research Paper 28/02} (Belfast: Northern Ireland Office Research and Library Services, April, 2002).
\textsuperscript{124} Hillyard et al supra n 58.
\textsuperscript{125} The pledge made in the Agreement is to target social need, in order to progressively eliminate ‘the differential in unemployment rates between the two communities by targeting objective need’; Agreement supra n 93, at 19.
The limited fiscal power to redistribute social benefit is embedded by the 1998 Agreement legislation in the Northern Ireland Assembly. The Assembly functions through ‘weighted majorities’ based upon unionist (mainly Protestant) and nationalist republican (mainly Catholic) political representation. In this way, the political affiliation and historical experience that sect broadly denotes is institutionalized in the mechanisms for power sharing governance. Even as sect is institutionalised and embedded in the arrangements for power-sharing in local governance, however, the implementation of equality and human rights legislation could undermine sectarian inequalities. That way, the material weight and cultural meaning of institutionalized sectarianism would also be weakened. However, from an intersectionality perspective, what Hill-Collins has to say on the limitations of identity based approaches to equality in the United States is cautionary:

. . . intersections of race, class, and gender, among others, create more fluid and malleable boundaries around the category ‘African-American women’ . . . and fluidity of boundaries operates as a new lens that potentially deepens understanding of how the actual mechanisms of institutionalised power can change dramatically even while they reproduce long standing group inequalities of race, class, and gender.126

The 1998 Agreement has mandated a dramatic change in the exercise of political power in Northern Ireland. However, democratic participation is based upon and reproduces ‘long standing group inequalities’. The drama of the negotiations and the promise of the 1998 Agreement have so far not been matched by the full implementation of what was agreed. The dramatic change of institutionalised power augured by the 1998 Agreement may yet be seen to further institutionalise and perhaps even deepen group inequalities in the jurisdiction. The warning from transitional justice scholars, that women would do well to be sceptical of the potential of the transitional process to deliver benefit, is one that is well made in Northern Ireland. Perhaps the stereotypical construction of women as ‘apart from conflict’, as occupying a ‘woman only’ innocent space are influential in how ‘gender’ is sometimes deployed and in how the equality legislation is handled. Additionally, in feminist literature and strategic activism, there may be a desire to unify women as a protection from a socially divisive ‘competition for scarce resources’.127 As already noted, in the context of conflicts (and transitions), the occasional presence of the hitherto absent figure of ‘woman’ often carries powerful rhetorical authority. This is so in the prosecution of war, in the implementation of peace agreements and in feminist

127 Hill-Collins supra n 126, at 69.
strategies to improve women’s lives.\footnote{128} The powerful rhetorical authority symbolised by the otherwise absent woman, and claims for redistribution on her behalf, are disciplined by ignoring her as ‘innocent’ of the conflict and by portraying her as uninvolved in politically disputed religious and political inequalities. She literally does not appear to count. Structural, religious and political inequalities and other inequalities and discriminations experienced by women are rendered invisible in the same move. It appears that contentious inequalities and discourses are male-only territory.\footnote{129} This renders the inequalities experienced by those who are most vulnerable invisible to remedy.

\section*{Conclusion}

The Northern Irish experience of transition raises critical questions concerning the reforming capacity of the liberal democratic state and how a post-conflict state or regime meets the challenge of deep rooted structural inequalities. The failure of the one of Europe’s leading democracies to dismantle structural sectarianism during over 30 years of direct rule led Desmond Bell to claim that Northern Ireland marks the ‘graveyard of British social democratic illusions about the reforming capacities of the state in capitalist society’.\footnote{130} However, he was writing before any assessment could be made of the full impact and significant success of the then recently introduced fair employment legislation (1989) in Northern Ireland. It is not that this legislation would satisfy Bell’s social democratic aspirations for radical reform but the legislation effectively and importantly aided in dismantling sectarian employment practices. The Northern Irish workplace is now viewed as one of the most integrated spheres in the society.\footnote{131} These benefits are experienced less by women, who have lower levels of participation in the workplace. They are not experienced at all by people living in workless households. Nevertheless, the capacity for strong law to deliver beneficial structural impacts is important if also often qualified by underenforcement.\footnote{132} The equality legislation mandated by the 1998 Agreement and government policy to target objective social need may yet be implemented with full rigour and for the benefit of those most in need of them.

\footnote{128} Rooney supra n 11. 
\footnote{129} This is not to say that the most vulnerable and marginalized men stand to benefit substantially from the equality legislation. There have been economic improvements for those in employment but workless households have experienced deepening levels of inequality that are set to worsen.
\footnote{131} CAJ supra n 114. 
\footnote{132} Ní Aoláin & Rooney supra n 2.
There is room for hope as well as space for scepticism. It must be recognised that outcomes of peace agreements are not entirely determined by the people who negotiate them, although who they represent and the presence of women in this representation are significant matters of social justice. Neither is the implementation of an agreement determined by the people who provide the democratic mandate. How different political parties and public bodies implement or deter the implementation of legislation is important but may not be the decisive issue. The observation that the outcomes of agreements ‘are not determined by words [alone] but by the power relations that impose their interpretations’ is well remembered in this situation.\(^\text{133}\) State power is decisive. On occasion the law is an effective arbiter of this power. The ‘watching brief’ of transitional justice scholars in these contexts is to monitor, analyse and report observations from particular contexts for critical understanding and the benefit of other transitional societies. This work is carried on with an eye to the future and to the question that may be posed by those looking back from that vantage point seeking to understand what went wrong. Transitional justice research may provide some of the answers. In situations where transitions are successful this discourse will have made a contribution to such a future. Then the academic question will be: ‘how did they succeed?’ This paper is offered as a tentative contribution to either of these future questions posed by those living in transitional jurisdictions and by those studying them.

The transitional justice research agenda can benefit from extending the analytical range to embrace ‘fast travelling’ intersectionality theory as a critical feminist resource. This involves investigations of discursive regimes of representation (recognition) along with their objective structural and socio-economic correspondences (redistribution). This poses methodological challenges for the scholar bent on crossing disciplinary boundaries between law and the social sciences in search of conceptual insights and their objective correspondences. In the field of post-structural analysis, core concepts and the historical conditions of their construction within ‘meta narratives’ are deconstructed and sifted for shifting meanings and uncertainties as well as for their hegemonic silences. In this critique, concepts are treated with post-structural caution. In the field of social policy and applied social disciplines, on the other hand, analyses of equality legislation and socio economic data fix boundaries and create realist categories for empirical purposes. At stake in all of this is how the conceptualisation of gender in interpretative and in applied disciplinary fields has

pivotal, concrete material effects for women’s day-to-day lives and for the analyses that make them visible.

The search for the ‘absent woman’ who raises ‘awkward questions’ in diverse transitions leads to critical questions about the unexamined presence of men and the androcentric gaze of the narrative. In turn, the political economy of gender in conflict and transition comes into fresh view and new boundaries appear. Intersectionality originated in urgent political conditions in the US. Perhaps its most important contribution on ‘arrival’ in transitional justice is to assert the importance of continuing to pose questions that are not easily answered.

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