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Transitional Justice and Conflict Studies: Bridging the Divide¹

Denisa Kostovicova

ABSTRACT: This article identifies three aspects of conflict studies that are largely ignored in the transitional justice literature: debates over the causes of armed conflict, the transnational nature of contemporary violence, and the persistence of wartime actors and structures. It analyzes scholarly attempts that begin to bridge the divide between transitional justice and conflict studies. Those efforts demonstrate how engagement with conflict studies can open new research horizons in the study of transitional justice and lead to better understandings of how justice-focused interventions can bring about positive peace. However, innovation in primary data generation and methods is needed for this subfield to develop into a fully-fledged research program.

Transitional justice is the study of how states and societies engage with the legacy of war crimes and serious human rights violations (Teitel 2000). Whether focused on transgressions by repressive regimes or the legacy of armed conflict, transitional justice has developed as a normative field which is premised on the assumption that facing the violent past is emancipatory for individuals, societies, and states.

But recently the study of transitional justice and, specifically, of post-conflict justice has reached an impasse. On one hand, there is an agreement among scholars and policy makers that states and societies must ‘explicitly address their legacies of violence (Murphy, 2017),’ as was recently illustrated by the inclusion of transitional justice provisions in the Colombian peace accords. Such integration of the politics of peace and the politics of justice has largely dispelled earlier doubts that peace and justice are competing processes (Vinjamuri 2003-04, 142; Mendeloff 2004). On the other hand, scholars have become preoccupied with the unintended consequences of transitional justice. They have shown that transitional justice mechanisms—whether international or domestic war crimes trials, truth and reconciliation commissions, or traditional forms of justice, such as Rwanda’s *gacaca* process—can be subverted to promote narrow political interests and to marginalize victims. They can undermine the very goals that they are supposed to promote, such as reconciliation and

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democratization. In fact, what is intended to be transitional justice often ends up being ‘transitional *injustice*’ (Loyle and Davenport 2016; Sharp 2013, 158-160).

In the face of this impasse, there have been efforts to situate the study of transitional justice within the study and practice of peacebuilding. Those efforts are proving constructive. Bringing together these two fields of study underscores the original normative aspiration of transitional justice as theory and practice. It forces scholars and practitioners to focus on the challenges that come with addressing armed conflict as a particular type of criminal legacy, which, in turn, requires particular kinds of justice-related interventions. In that way, the recent exchange between scholars of transitional justice and peacebuilding has the ‘potential to reinvigorate the field [of transitional justice] [...] and open the doors to more creative thinking, policies and practices’ (Sharp 2015, 152). As a consequence, reconceptualization of transitional justice as peacebuilding has started to bring an end to the ‘splendid isolation’ of the study of justice from the study of peace (Sharp 2015, 168).

However, another kind of isolation—between transitional justice and conflict studies—persists. With an eye toward promoting peace, the field of transitional justice remains primarily interested in *how* war-time harms can be addressed adequately. Consequently, it has generally left aside the question of *why* violence took place. Addressing this question requires rigorous engagement with conflict studies, and such engagement can reveal blind spots in the theory and practice of transitional justice. It can also reveal limitations in the relatively young literature of transitional justice, such as a need for greater attention to causal forces, scope conditions and operationalization of key concepts (DeMeritt 2016). This article therefore identifies and analyzes three disconnects between transitional justice and conflict studies, drawing on debates that have preoccupied scholars of conflict. These disconnects, which are illustrated with references to examples from the Balkans,² concern: debates about the causes of conflict, the transnational character of contemporary violence, and the consequences of conflict. The article points to scholarly attempts that have begun to bridge the divide between transitional justice and conflict studies, and their implications for the study of transitional justice.

Causes of Conflict: Ethnic or Economic, or Neither?

² Evidence is derived from primary research in Serbia, Kosovo, Bosnia and Herzegovina and Montenegro in 2015 and 2016.

Understanding the causes of conflict is imperative for achieving post-conflict transitional justice. Both the scholarship on and the practice of transitional justice are driven by the idea that transitional justice will prevent conflict recurrence (Sriram 2007). But, unintended impacts of transitional justice are often attributed to the fact that transitional justice measures have not addressed the underlying causes of conflict. Scholars of transitional justice therefore can learn a great deal from scholars of conflict studies, who have rigorously debated and theorized the causes of conflict.

For scholars of conflict, key causal questions are often framed in terms of debates over whether insurgents are motivated by a desire for material aggrandizement, economic marginalization, or by a range of political grievances, which may include minority and human rights issues (Newman 2014, 21-9). The role of ethnicity and identity as drivers of conflict is also disputed (Wucherpfenning et al. 2012). Other explanations, such as those considering the role of emotions, have also been considered. New methods of analysis have been developed in response to these debates,³ but controversy over the underlying causes of conflict remains unresolved. The question of whether there even is such a thing as ‘ethnic conflict’ remains particularly contested. By presenting evidence that interethnic cooperation rather than conflict is the norm, Fearon and Laitin (1996) focused the inquiry on the question of when and under what conditions inter-ethnic relations might deteriorate into violent conflict. It then becomes incumbent upon researchers to shed light on causal path(s). Knowledge of those paths will (or at least should) have direct bearing on the study and practice of transitional justice.

Despite the need for a conflict-justice nexus, akin to a peace-justice nexus (Obradovic-Wochnik and Baker 2016), studies of transitional justice have generally done little to engage with or respond to the arguments about the causes of armed conflict. One partial exception to that rule, however, relates to literature that explores economic violence and, hence, the need for economic (as well as social) justice. Laplante (2008, 355) has advocated considering the way in which ‘transitional justice mechanisms may begin to better accommodate socioeconomic issues,’ so that transitional justice can respond to the wide range of harms that may be inflicted during a conflict (Mani 2008; Sharp 2013, 159-61). This recognition of a need for economic justice has sparked a lively debate in which arguments in favor of a holistic recognition of past wrongs are countered with warnings that ‘[w]ell-

³ For example, see Cederman, Weidmann & Gleditsch (2011) for operationalization and analysis of horizontal inequalities.

meaning efforts to have transitional justice tackle socio-economic wrongs will simply freight it with yet more unrealizable expectations' (Waldorf 2012, 179). Meanwhile, those who agree on the necessity of moving away from a narrow focus on 'bodily harm' so that harms caused by structural violence can be included in a transitional justice framework, disagree on what may constitute an adequate acknowledgment of socio-economic wrongs (Evans 2016). There is also concern, as Friedman (2017) shows in her analysis of the Peruvian truth commission that incorporation of consideration of structural and economic drivers of violence in the context of transformative justice may result in a sidelining of other important factors such as ideology.

While discussions of the links between the causes and dynamics of conflict and transitional justice are needed, scholars exploring those links also need to be careful not to confuse the causes and consequences of conflict. When exploring the link between the economic aspects of conflict and subsequent transitional justice instruments, for example, scholars need to differentiate between economic violence, understood as a type of discrimination, and economic motivations for violence, which are seen as individual-level incentives for participation in inter-ethnic violence. Imprecision when discussing economic aspects of conflicts may lead to designing justice instruments that do not address war-time harm adequately.

Also, economic motivations for violence can have unexpected consequences in the search for truth and justice in the aftermath of mass violence. In Bosnia and Herzegovina, for example, perpetrators revealed the locations of mass graves that victims' families had been trying to find for years, as an act of revenge against their comrades-in-arms for not giving them their share of war booty. The promise of those spoils motivated these actors to join the fight,⁴ and betrayal over the spoils brought the truth out, to be sure. However, the way in which the truth was revealed offered little benefit for healing and reconciliation as it is conceived in the transitional justice scholarship. Going forward, we would do well to bear in mind Woodward's (2007, 154) caution that, '[i]f effective peacebuilding depends on addressing "root causes" and the knowledge on which those policies are based is wrong, then our interventions may do more harm than we would by ignoring causes altogether.'

Nature of Conflict: Implications of Cross-Border Dynamics of Contemporary Violence

⁴ Interview with a civil society activist. Sarajevo, 10 December 2015.

Sriram and Ross (2007) have highlighted the cross-border nature of conflicts and, in so doing, they have identified an ‘impunity gap’ in transitional justice. The gap concerns the inability of state-centered transitional justice instruments—whether retributive transitional justice processes such as war crimes trials or restorative justice processes such truth commissions—to address injustice where victims and perpetrators come from different sides of a border. This ‘transnational gap’ can only be addressed if transitional justice scholars engage with the field of conflict studies, where scholars have explored various cross-border dimensions of conflict.

Longitudinal studies of the nature of conflict dynamics indicate that most conflicts have been intra-state, as opposed to inter-state wars, since World War II (Melander et al. 2016). In addition, since the end of the Cold War, there has been an increase in civil wars that have cross-border dynamics (Checkel 2013). In 2016, 38% of intrastate conflicts ‘were internationalized, in the sense that external states contributed troops to one or both sides in the conflict’ (Allansson et al. 2017, 576). Recognizing the ‘many and multifaceted linkages’ between conflicts in neighboring countries (Wallensteen and Sollenberg 1998, 624), scholars have used the term ‘regional conflict’. These linkages include a multiplicity of transnational actors who ‘compete for political control and the monopoly of violence in a region’ (Ansorg 2011, 173). Cross-border dynamics can stretch well beyond a region affected by conflict and bring new actors, such as diaspora communities, into the conflict and into the study of conflict.

These cross-border dynamics of conflict have cross-border consequences. A case in point is mass population displacement, both within states and across borders into neighboring states, as well as into the ‘third’ states and the creation of conflict-generated diasporas globally. The regional and global pattern of population displacement from the Syrian conflict aptly demonstrates this trend. Displacement beyond the locus of violence may also affect victims’ bodily remains (not just live refugees). The case of Serbian authorities using freezer trucks to move the corpses of ethnic Albanians from Kosovo into the territory of Serbia to cover up their crimes committed in the 1999 conflict is particularly infamous. Cross-border dynamics of conflict also directly affect peace making (Wallensteen and Sollenberg 1998, 625), of which transitional post-conflict justice is a part. Mass expulsion and displacement of civilian populations result in a physical, spatial, and legal separation of victims and evidence from the places where crimes and human rights violations were committed. Perpetrators, meanwhile, have often evaded responsibility simply by retreating across borders.

Scholars and practitioners of transitional justice have recently begun to address the transnational focus in conflict studies by investigating what a regional approach to transitional justice might entail. They have paid attention to: the role of norms, identities and discourses in transitional justice in a regional context; how transnational actors may be involved in transitional justice processes; and how transnational dynamics affect different transitional justice instruments. Among practitioners, meanwhile, challenges in addressing responsibility for the cross-border character of war crimes have been noted before the International Criminal Tribunal for the former Yugoslavia (ICTY).⁵

It is worth recognizing the attempts to implement, in practice, a regional approach to restorative transitional justice, which takes the form of non-judicial mechanisms such as truth commissions. A multi-ethnic civil society initiative has been advocating the establishment of a regional fact-finding commission in the Balkans, known by its acronym RECOM. Recent research, applying quantitative text analysis, has evaluated the impact of regional as opposed to national-level justice-seeking through RECOM. This research has found that deliberative debates with stakeholders, which were held at a regional level, had a higher content of restorative justice discourse focused on reconciliation, truth and victims than those at a national or sub-national level (Kostovicova 2017). This indicates that a regional approach to justice-seeking can overcome divisive discourses that often plague the pursuit of transitional justice at a national level.

Beyond regional dynamics, other recent research has focused on the role of diasporas in transitional justice processes, thereby addressing another transnational dimension of conflict (Haider 2014). Scholars have highlighted the role of diasporas in the creation of a comprehensive and accurate record of past crimes, in the establishment of socio-economic links with communities at home, in shifting justice claims from the national to the global level, and in building bridges across confronted communities (Young and Park 2009; Halilovic 2015; Koinova and Karabegovic 2016).

In sum, the recent focus on regional and transnational actors has suggested some possible paths forward in addressing the ‘impunity gap’ in the practice of transitional justice (Sriram and Ross 2007). More importantly, it has revealed new horizons for future transitional justice research at a regional level. This subfield of transitional justice has benefited from key findings about conflict trends and has contributed to the theorization of peace beyond the state (Diel 2016, 8).

⁵ This stands in contrast to the Special Court for Sierra Leone’s conviction of former Liberian President Charles Taylor.

Consequences of Conflict: Visible versus Invisible

Scholarship on transitional justice will also benefit from engagement with debates within conflict studies concerning how conflicts end and, indeed, whether they end at all. Scholars who have looked beyond the visible trappings of peace, such as peace agreements and post-conflict institutions, have challenged the clear distinction between wartime and peacetime. These scholars argue that the concept of a ‘war-to-peace’ continuum better captures the continuities between conflict and peace (Keen 2000, 2). This continuum encompasses the existence and persistence of conflict structures into the peace period, including the incidence of post-conflict violence (Kissane 2016, 193-194). These structures are not visible and usually operate in a gray area involving informal political, economic, and security structures. A product of conflict, these networked structures can bring together political, economic, security, and criminal actors who then shape politics after the cessation of violence (Poulin 2006, 42-95)—including the practice and effects of transitional justice.

While scholars of conflict are often aware of the ‘invisible’ legacies of war on social and political structures, scholars of transitional justice have tended to address only visible consequences of conflict. On one hand, they have investigated the effects of different types of war termination on the adoption of transitional justice measures, or a range of impacts (e.g. on human rights or democratization) of incorporation of transitional justice measures in peace agreements. These studies have been particularly amenable to quantitative inquiry, using conflict data sets in conjunction with new transitional justice data sets that offer increasingly fine-grained information on the diversity of justice measures and their effects. On the other hand, qualitative researchers have been animated by challenges to peace manifested in the lived, everyday experiences of the consequences of conflict. They have studied the effects of ethnic homogenization of previously multi-ethnic spaces at different levels such as schools, towns, and the national state, as is the case in Bosnia and Herzegovina (Clark 2010). Physical segregation combined with socialization into single-ethnic communities perpetuates ethnocentric perspectives on conflict and culpability, which in turn impede post-conflict justice and reconciliation efforts.

Scholarly focus on the visible effects of conflict has come at the expense of a rigorous examination of motivations for resistance to post-conflict justice. Might political elites’ nationalist discourse against post-conflict justice be a strategy to deflect attention from their

economic and other crimes during and after the armed conflict (Kostovicova and Bojicic-Dzelilovic 2014)? To address this question, the study of transitional justice would have to incorporate scholarship on war economies and their transformation in post-conflict periods. The survival of wartime actors invariably threatens the pursuit of justice in post-conflict contexts. For example, the establishment of hybrid courts in Rwanda has been a direct response to the murder of hundreds of victims who testified in genocide trials as well as threats of reprisals, which would likely have incapacitated the judicial system (Tondini 2010, 25).

Research on informal and criminal structures is challenging because such structures, including their affiliates, norms, and activities, are difficult to classify in the fluid aftermath of conflict. However, their impact on post-conflict justice is no less real. Their operation in the ‘post-conflict’ period provides insight into not just the nature of resistance to transitional justice but also the quality of peace. Transitional justice interventions such as vetting can open space for justice and reconciliation and thus contribute to a ‘normative agenda’ (Guarrieri et al. 2017, 2; Regan 2014) of building ‘positive peace’—a concept that goes beyond viewing peace solely as the absence of violence. Ultimately, as Wallensteen (2015, 156) argues, ‘quality peace’ is determined by the extent to which the postwar condition provides for justice, reflected ‘notably in the recognition of pain and creation of transparent structures.’⁶

Conclusion

This article has investigated disconnects between the fields of conflict studies and transitional justice. It has analyzed emerging attempts to bridge the two literatures by scholars of transitional justice who are attuned to debates in conflict studies. Attention to the causes of conflict has resulted in reappraisal of the type of harm that needs to be addressed. Awareness of cross-border dimensions of conflict has led to identification of actors (such as diasporas) and spaces (such as regions) where justice can be championed and practiced. Lastly, recognition of persistence of informal and criminal structures has improved understandings of domestic factors that subvert the intended promotion of peace through transitional justice. These examples show how closer engagement with conflict studies can open new research

⁶ Wallensteen refers to inter-state conflicts, but the argument equally applies to intra-state conflicts.

horizons in the study of transitional justice while refining understanding of the requirements for positive peace.

In sum, as Keen (2000, 2) puts it, '[i]n order to think sensibly about peace, we need to think clearly about what war actually *is*.' Without considering conflict studies and the knowledge that the field has produced so far, even a rigorous reconceptualization of transitional justice as peacebuilding may not deliver its theoretical and practical expectations. Recent scholarship has shown that engagement with theoretical perspectives of conflict studies is theoretically rewarding, but it is only the beginning. Going forward, such engagement ought to be accompanied by innovation in primary data generation and methods to develop the 'conflict-justice nexus' into a fully-fledged research program for the study of peace.

Works Cited

- Allansson, M. et al. (2017) Organized Violence, 1989–2016. *Journal of Peace Research*, 54(4), 574–587.
- Ansorg, N. (2011) How does Militant Violence Diffuse in Regions? Regional Conflict Systems in International Relations and Peace and Conflict Studies. *International Journal of Conflict and Violence*, 5, 173-187.
- Baker, C. & Obradovic-Wochnik, J. (2016) Mapping the Nexus of Transitional Justice and Peacebuilding. *Journal of Intervention and Statebuilding*, 10(3), 281-301.
- Cederman, L., Weidmann, N.B. & Gleditsch, K.S. (2011) Horizontal Inequalities and Ethnonationalist Civil War: A Global Comparison. *American Political Science Review*, 105(3), 478-495.
- Checkel, J.T. (2013) Transnational Dynamics of Civil War. In Checkel, J.T. (Ed.) *Transnational Dynamics of Civil War*. Cambridge: Cambridge University Press.
- Clark, J.N. (2010) Education in Bosnia-Herzegovina: The Case for Root-and-Branch Reform. *Journal of Human Rights*, 9(3), 244-362.
- deMeritt, J.H.R (2016) Transitional Justice: Prospects for Postwar Peace and Human Rights. In Mason T.D. and McLaughlin Mitchell, S. (Eds), *What Do We Know about Civil Wars?* Lanham: Rowman & Littlefield.
- Diel, P.F. (2016) Exploring Peace: Looking Beyond War and Negative Peace. *International Studies Quarterly*, 60(1), 1-10.
- Evans, M. (2016) Structural Violence, Socioeconomic Rights, and Transformative Justice. *Journal of Human Rights*, 15, 1-20.
- Fearon, J.D. & David D. Laitin, D.D. (1996) Explaining Interethnic Cooperation. *American Political Science Review*, 90(4), 715-735.

- Friedman, R. (2017) Implementing Transformative Justice: Survivors and Ex-combatants at the Comisión de la Verdad y Reconciliación in Peru. *Ethnic and Racial Studies*, 41(4), 701-720.
- Guarrieri, T.R. et al. (2017) Introduction: Exploring Peace. *International Studies Review*, 19(1), 1-5.
- Halilovic, H. (2015) Long-distance Mourning and Synchronised Memories in a Global Context: Commemorating Srebrenica in Diaspora. *Journal of Muslim Minority Affairs*, 35, 410-422.
- Haider, H. (2014) Transnational Transitional Justice and Reconciliation: The Participation of Conflict-generated Diasporas in Addressing the Legacies of Mass Violence. *Journal of Refugee Studies*, 27(2), 207-233.
- Keen, D. (2000) War and Peace: What's the Difference? *International Peacekeeping*, 7(4), 1-22.
- Kissane, B. (2016) *Nations Torn Asunder: The Challenge of Civil War* (Oxford: Oxford University Press).
- Koinova, M. & Karabegovic, D. (2016) Diasporas and Transitional Justice: Transnational Activism from Local to Global Levels of Engagement. *Global Networks*, 17(2), 212-233.
- Kostovicova, D. (2017) Seeking Justice in a Divided Region: Text Analysis of Regional Civil Society Deliberations in the Balkans. *International Journal of Transitional Justice*, 11, 154–175.
- Kostovicova, D. & Bojicic-Dzelilovic, V. (2014) Ethnicity Pays: The Political Economy of Post-Conflict Nationalism in Bosnia-Herzegovina. In B. Kissane (Ed.), *After Civil War: Division, Reconstruction, and Reconciliation in Contemporary Europe*. Pittsburgh: Pennsylvania University Press.
- Laplante, L.J. (2008) Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework, *International Journal of Transitional Justice*, 2, 331–355.
- Loyle, C.E. & Davenport, C. (2016) Transitional Injustice: Subverting Justice in Transition and Postconflict Societies. *Journal of Human Rights*, 15(1), 126-149.
- Mendeloff, M. (2004) Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm? *International Studies Review*, 6(3), 355-380.
- Melander, E. et al. (2016) Organized Violence, 1989-2015. *Journal of Peace Research*, 53(5), 727-742.
- Murphy, C. (2017) *The Conceptual Foundations of Transitional Justice*. Cambridge: Cambridge University Press.
- Pouliny, B. (2006) *Peace Operations Seen from Below: U.N. Missions and Local People*. Bloomfield, CT: Kumarian Press.

- Regan, P.M. (2014) Bringing Peace Back In: Presidential Address to the Peace Science Society, 2013. *Conflict Management and Peace Science*, 31(4), 345-356.
- Sharp, D.N. (2015) Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition. *International Journal of Transitional Justice*, 9, 150-169.
- Sriram, C.L. (2017) Beyond Transitional Justice: Peace, Governance, and Rule of Law. *International Studies Review* 19(1), 53-69.
- Sriram, C.L. & Ross, A. (2007) Geographies of Crime and Justice: Contemporary Transitional Justice and the Creation of “Zones of Impunity”. *International Journal of Transitional Justice* 1, 45-65.
- Sriram, C.L. (2007) Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice. *Global Society*, 21(4), 579-591.
- Teitel, R. (2000) *Transitional Justice*. New York and Oxford: Oxford University Press.
- Tondini, M. (2010) *Statebuilding and Justice Reform: Post-Conflict Reconstruction in Afghanistan*. Abingdon: Routledge.
- Vinjamuri, L. (2003-04) Order and Justice in Iraq. *Survival*, 45(4), 135-152.
- Wallensteen, P. (2015) *Quality Peace: Peacebuilding, Victory and World Order*. Oxford: Oxford University Press.
- Wallensteen, P. & Sollenberg, M. (1998) Armed Conflict and Regional Conflict Complexes, 1989-97. *Journal of Peace Research* 35(5), 621-634.
- Woodward, S.L. (2007) Do the Root Causes of Civil War Matter? On Using Knowledge to Improve Peacebuilding Interventions. *Journal of Intervention and Statebuilding*, 1(2), 143-170.
- Wucherpfennig, J., Metternich, N.W., Cederman, L. & Gleditsch, K.S. (2012). Ethnicity, the State, and the Duration of Civil War. *World Politics*, 64(1), 79-115.
- Young, L.A. & Park, R. (2009) Engaging Diasporas in Truth Commissions: Lessons from the Liberia Truth and Reconciliation Commission Diaspora Project. *International Journal of Transitional Justice*, 3, 341–361.

