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## How Power Dynamics Influence the "North-South" Gap in Transitional Justice

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# How Power Dynamics Influence the “North-South” Gap in Transitional Justice

Introductory Essay by Laurel E. Fletcher and Harvey M. Weinstein\*

INTRODUCTION .....	191
I. WORKSHOP FORMAT .....	194
II. WHAT DID WE LEARN? .....	194
A. <i>Dynamics of Colonialism in Transitional Justice Interventions</i> .....	195
1. <i>Collective Memory and Legacies of Colonialism</i> .....	197
2. <i>Collective Amnesia and International Transitional Justice Interventions</i> .....	198
B. <i>Dynamics of the Legalization of Transitional Justice</i> .....	199
1. <i>The Legal Framework of Transitional Justice and the Politics It Promotes</i> .....	200
2. <i>The Politics of Social Justice as Transitional Justice</i> ...	203
C. <i>Dynamics of Research Extraction</i> .....	205
1. <i>North-Based Researchers, South-Based Sites</i> .....	206
2. <i>Extractive Pressures on North-Based Research</i> .....	208
3. <i>South-Based Researcher-Practitioner Dynamics</i> .....	210
D. <i>Funding Dynamics</i> .....	211
1. <i>Funding Top-Down Priorities</i> .....	211

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2. <i>Funding Interventions vs. Funding Structural Changes</i>	212
3. <i>The Dilemma of South-Based Grantees</i> .....	213
4. <i>Funding Reparations</i> .....	214
III. WHAT'S NEXT?.....	215
CONCLUSION .....	217

## INTRODUCTION

Transitional justice is an area of inquiry, a set of practices, a form of politics, a career, and/or a source of hope and disappointment, to name a few of its facets. Centered on the idea that in the aftermath of mass violence or periods of repression, societies need to undergo processes to address past harm to ensure a peaceful future, transitional justice unabashedly offers itself as a moral project, a ritual cleanse. A community of interested actors—advocates, funders, policy makers, practitioners, scholars, and victims—is invested in its success. Although how success is defined varies with how the actor interprets the events that trigger a transitional justice response. While stakeholders are essentially in agreement around fundamental questions of goals and tactics, the “community” is not static. Critiques of transitional justice abound within the community, generally focused on shortcomings in theory and practice.

An important part of the critique has been that transitional justice as now conceived is top-down, formulaic, overly focused on international criminal prosecutions, limited to civil and political rights, and, in the worst case, nothing but a shill for global capitalist expansion. In response, there have been calls for a transitional justice that is bottom-up; transformative; economic, social, and cultural rights-focused; and responsive to corporate complicity and to structural inequities. In turn, critics who think transitional justice continues to overpromise and overreach question this expansive agenda. Concerns are raised about a move away from an accountability-focused agenda toward interventions that are development-focused or even nation-building.

The extent to which advocates and victims have succeeded in making victims a central focus of transitional justice does not appear to have brought satisfaction to victims nor to their advocates. Disquiet remains. The gap between the ideal and the reality is brought into sharp relief when attitudes towards these processes are examined through a prism of the relationships between the so-called “Global North” and “Global South.” However, even then, there is a more fundamental set of issues at play; we suggest that there needs to be a forthright conversation about the internal power and social dynamics within the transitional justice community that shape the field. These include but go beyond the North-South gap. In particular, there is no internal dialogue about the ways in which geo-political and other power dynamics play out in this space. In response to this concern, we gathered together a diverse group to begin this discussion at a workshop in March 2017 at Berkeley Law titled, “North-South Dialogue: Bridging the Gap in Transitional Justice” (the “Workshop”).

Generally, only outside of the published literature and professional conferences do transitional justice stakeholders talk candidly and express misgivings about the ways in which they and other constituencies within the community conduct their activities. We are not referring to professional grouching or petty politics inherent in any field. The misgivings to which we refer have a wider dimension to them. Those who are working in or with communities in which transitional justice interventions are contemplated or implemented—the Global South—are frustrated at how they are treated by international researchers, funders, and policy makers from wealthy countries—the Global North. Our objective was to initiate a conversation about this North-South gap. We understand the terms “Global North” and “Global South” to be a convenient, if reductive, shorthand for the fact that the major funders, policy makers, and researchers working on transitional justice mostly are based in Australia, North America, and Western Europe, while the sites of transitional justice practice generally are found in Africa, Asia, and Latin America.<sup>1</sup>

We aimed to narrow this divide by increasing communication among advocates, practitioners, scholars, and funders working in various regions. We wondered what ideas and exchanges might be generated by bringing “North” and “South” transitional justice practitioners and researchers together. Our conversation sought to peel back the cover on this dynamic and to have a candid conversation about what David Kennedy has called “the dark side” of human rights, which is equally applicable to transitional justice.<sup>2</sup> We hoped that the Workshop would serve not only to identify some “lessons learned” in transitional justice praxis to date, but might also help to enrich the way in which participants – both scholars and practitioners – theorize transitional justice as a concept and framework for action. Would such a dialogue lead to more innovative ways of thinking about what transitional justice can accomplish and/or lead to other forms of intervention?

We also hoped that the meeting might serve as a forum to explore how to create sustainable platforms for on-going dialogue among geographically diverse transitional justice scholars, advocates, and practitioners. The field has its own specialty journal, listserv, and formal and informal regional networks. However,

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<sup>1</sup> Eastern European countries have initiated processes to respond to the widespread human rights violations committed by authorities during the Soviet era. National researchers have studied these efforts but because little of this work appears in English, unfortunately, it is often overlooked in mainstream, international discussions. Exceptions to this pattern include Roman David, *Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)*, 28 L. & SOC. INQUIRY 387 (2003); ENCYCLOPEDIA OF TRANSITIONAL JUSTICE (Lavinia Stan & Nadya Nedelsky eds., 2013); and Nanci Adler, *Reconciliation with – or Rehabilitation of – the Soviet Past?*, 5 MEMORY STUD. 327 (2012). Furthermore, we acknowledge that the concepts of Global “South” and “North” are an accurate geopolitical representation, but can also serve as a shorthand to refer to concentrations of inequitable distribution of power and material resources. Thus, there are pockets of the “South” (e.g., marginalized communities) found within the “North,” and similarly enclaves of the “North” (e.g., elites) within the “South” (e.g., rural communities).

<sup>2</sup> David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101 (2002).

there is no umbrella organization to facilitate the face-to-face dialogue and open exchange of ideas required to overcome the gap in knowledge between South and North. As the work of scholars writing in the Global South has been relatively less visible in international discussions of transitional justice, there has been little dialogue across language barriers either through meetings or scholarly exchange. Those with resources to travel and who publish regularly (especially in English) dominate the field.<sup>3</sup> We had entertained the idea of the creation of an international association of transitional justice scholars and practitioners, and bringing together a smaller cross section of the community could be a way to test the concept.

Informed by these ideas as a foundation, the meeting was the culmination of months of planning by a core group of scholars and practitioners based in the Global North and South. We sought to bring together in a small international meeting, scholars who have studied transitional justice from a variety of disciplines, employed a variety of methodologies, and who might offer a rich academic contribution, as well as practitioners whose experiences in different countries, with different mechanisms, and whose engagement with different sectors could provide a comprehensive experiential basis from which to interrogate scholarly contributions. Our focus was on cultivation of a two-way dialogue.

The irony of two North-based academics initiating a conversation about the ways in which “our” engagement is problematic to colleagues in the South is not lost on us. It would have been better if the meeting could have taken place in the Global South; it would have been better if co-conveners were South-based. Access to resources—time, funding, networks—needed to pull off an international meeting is not equally distributed. As North-based academics, we have the privilege of salaried positions that allow us to devote the time to organizing the meeting. Practitioner-colleagues based in the South rely on grant funding and it was not fair or feasible to expect them to carry the administrative and financial responsibility for an initial meeting. We formed a committee with a balance of North- and South-based colleagues to provide input into the meeting structure and to guard against replicating the power dynamics in the field that we sought to disrupt. This was a modest beginning. Developing an organizational and financial structure that enables South-based leadership in future efforts remains unfinished business.

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<sup>3</sup> Laurel E. Fletcher & Harvey M. Weinstein, *Writing Transitional Justice: An Empirical Evaluation of Transitional Justice Scholarship in Academic Journals*, 7 J. HUM. RTS. PRAC. 177, 183 (2015) (finding that of a sample of 486 transitional justice articles published between the years 2003 to 2008, 89% were written in English, 5% in French, 4% in Spanish, and 2% in German). The lead journal in the field, the *International Journal of Transitional Justice*, is moving to increase publication opportunities for authors writing in Spanish. Spanish language-manuscripts that are accepted will be translated into English for publication. The editors are working with the Oxford University Press to enable publication in Spanish as well.

## I. WORKSHOP FORMAT

Twenty-five participants attended this Workshop from all major regions of the globe and comprised of a mix of academics and practitioners. Pablo de Greiff, UN Special Rapporteur on the right to truth, justice, reparations and guarantees of non-recurrence delivered the keynote address. We organized our discussion around a series of panels, each exploring a particular dimension of transitional justice. Panelists were asked to act as “animateurs,” that is, to put forth some ideas about the question addressed from their own perspectives and experience, and to provoke discussion among all the participants. We made a deliberate decision not to have formal papers, as this format tends to narrow discussion and privileges academic voices over those of practitioners.

There were four panels organized around the following questions:

- Is there a North/South gap in understandings and beliefs about what transitional justice is and what it can do?
- In the evolution of transitional justice, what has been the contribution of various disciplines to the transitional justice framework?
- What has been the relationship among transitional justice research, policy advocacy, and practice?
- Based on 30 years of research and experience, what is it that we should be doing in response to mass violence?

## II. WHAT DID WE LEARN?

The pages that follow contain an edited transcript of the day’s proceedings. Readers interested in how the conversation developed and how ideas introduced earlier in the day morphed or were reinterpreted by subsequent participants will be aided by the preservation of this archive. Here we offer our synthesis of the recurrent dynamics that emerged from the conversation, informed by our experience in the field: 1) colonialism and its legacies in the field of transitional justice; 2) the politics of transitional justice and how the field frames decisions about how transitional justice is implemented; 3) characteristics of the practitioner-academic relationship as mediated through the North-South prism such that most researchers are from the North and research subjects are in the South; and 4) the dynamics of North-based funding, through which the needs and priorities of victims and their advocates are mediated or distorted and which influence the kind of research that is carried out, as well as the transitional justice strategies that are employed.

Two underlying themes emerged as critical to our discussion: first, North-based attention to the legacies of colonialism and North-based transitional justice interventions are perceived as hypocritical by many in the Global South.

Workshop participants surfaced this feeling of hypocrisy, how it colors attitudes of communities in the Global South, leading to suspicion and rejection of transitional justice. A second theme emerged around questions of ownership: Who owns transitional justice and its implementation? Is transitional justice driven by the international community, domestic elites, local practitioners or some coalition formed from these and other constituencies? This theme reflects a lack of power or constrained agency felt by recipients of North-based transitional justice concepts and strategies.

These themes and dynamics illuminate some of the drivers of the North-South friction in transitional justice.<sup>4</sup>

#### A. *Dynamics of Colonialism in Transitional Justice Interventions*

A refrain that runs through the Workshop discussion centers on the maldistribution of power and particularly how the legacies of colonialism<sup>5</sup>—on former colonizers and the formerly colonized alike—affect transitional justice work. International transitional justice initiatives frequently play out against the legacy of colonialism as a political backdrop. States in the South targeted for transitional justice interventions by international actors may resist such efforts as being part of a neo-colonial project. Anthropologists have increasingly taken the perspective that colonialism is “a struggle that constantly renegotiates the balance of domination and resistance.”<sup>6</sup> This latter perspective underlies the suspicions and resistance that fuel antipathy towards Western-based international institutions. For example, the Government of Kenya undermined the International Criminal Court’s (ICC) prosecutions of its President and Vice President based on such arguments and the African Union resisted collaboration with the ICC on the

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<sup>4</sup> We identified these dynamics based on our interpretation of the discussion and our experience as transitional justice researchers and practitioners and they necessarily reflect our perspective on the proceedings. We undoubtedly have blind spots as to the ways in which our experience as North-based academics affects our interpretive lens. While this analysis does not necessarily reflect a consensus among all participants, we circulated an earlier draft to Workshop participants and sought to address the feedback we received. All errors and omissions in the final version are our own.

<sup>5</sup> Colonialism has been defined as “a practice of domination which involves the subjugation of one people to another and the political and economic control of a dependent territory (or parts of it).” Lea Ypi, *What’s Wrong with Colonialism*, 41 *PHIL. & PUB. AFF.* 158, 162 (2013) (internal citations omitted). See also, Margaret Kohn & Kavita Reddy, *Colonialism*, in *STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Edward N. Zalta ed., Fall ed. 2017), <https://plato.stanford.edu/archives/fall2017/entries/colonialism/>. Writers have described the effects of colonialism from various perspectives including from philosophy and post-colonial studies. FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Richard Philcox, trans., 2004); PAOLO FRIERE, *THE PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., 30th Anniversary ed. 2001); MAHMOOD MAMDANI, *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM* (1996) (sociopolitical analysis); AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999) (development). Adam Hochschild has etched the horrors of Belgium’s colonial grip on Congo in *KING LEOPOLD’S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA* (1999).

<sup>6</sup> Peter Pels, *The Anthropology of Colonialism: Culture, History, and the Emergence of Western Governmentality*, 26 *ANN. REV. ANTHROPOLOGY* 163 (1997).

same basis: the ICC focus on African countries reflects the ongoing imperialist attitudes of the international justice regime.<sup>7</sup>

The invocation of colonialism to shield political leaders from international intervention is not just a cynical manipulation of history. It is also a strategy to forge national unity within a population for which another legacy of colonial rule is that the consolidation of national identity remains an active project. As explained by one South-based participant:

In many African contexts, transitional justice is deeply embedded in two meta-discourses: anti-colonialism and nation building. These world views (or ideological frameworks) position transitional justice as a political process that ascribes to it a role in promoting national dignity in the *context of being a victim of historical injustices* and as a visionary goal of building a collective identity in a context of deep ethnic divisions and a shallow collective civic allegiance to a central State. (emphasis added)

Transitional justice activists—based in country as well as international allies—see the instrumental use by domestic elites of the charge of “neo-colonialism” as an excuse to avoid accountability and to confer impunity upon wrongdoers. These activists are alert to the political manipulation of the colonial legacy by authorities. Elites of a State that has inherited and adapted the authoritarian governance structures that were left by the colonizers may use the rubric of anti-colonialism as a cover for their own agenda, that is, to protect their own positions of power.<sup>8</sup>

But what do we make of the resistances to transitional justice that are found among affected communities in the Global South (as opposed to political elites) based on similar arguments? Superficially, the resistances to transitional justice based on rejection of neo-colonialism appear similar between the South-based political elites and the affected communities. Yet, colonialism’s legacy operates differently based on who controls the levers of power. Our discussion pointed to a more nuanced understanding of how South-based practitioners and scholars perceive North-based interventions as a manifestation of neo-colonialism. This view represents a critical component of the “gap” between the North and South. It also confirms what we uncovered in our academic research as well as in the informal field-based encounters and survey research that led to the Workshop itself.

More significantly for our Workshop, North- and South-based transitional justice researchers and practitioners discuss even less with each other the ways in which colonialism’s legacy emerges in our work, and how it generates or

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<sup>7</sup> President and Commander in Chief of the Defence Forces of the Republic of Kenya Uhuru Kenyatta, C.G.H., Speech by His Excellency at the Extraordinary Session of the Assembly of Heads of State and Government of the African Union, Addis Ababa, Ethiopia (Oct. 12, 2013), <https://www.nation.co.ke/news/-Uhuru-stinging-attack-at-the-West-and-ICC--Speech/1056-2029518-11b3ny0z/index.html>.

<sup>8</sup> William C. Johnstone, *Legacies of Colonialism*, 5 SAIS REV. INT’L AFF. 4 (1961).



contributes to ambivalence or resistance of South-based academics and practitioners to external transitional justice actors and initiatives. Similarly, our discussion revealed ways in which North-based academics and practitioners may fail to challenge, and therefore unwittingly reinforce, this problematic dynamic. One participant laid out the problem succinctly: “[T]ransitional justice seems to depend on the ‘law of the strongest.’ And, nowadays, in the international arena, what we call the ‘North’ or the ‘West’ ... is the strongest.”

### *1. Collective Memory and Legacies of Colonialism*

This linkage between transitional justice and a power differential seems to reflect two dimensions. The first is the reality that former colonial powers in the West (the Global North) continue to wield economic and international political power in the Global South. The second dimension has to do with collective memory and how it transmits and renews social memories of the violence and historic oppression perpetrated by former colonizers. The term “collective memory” was used first by sociologist, Maurice Halbwachs.<sup>9</sup> As Coser notes, Halbwachs saw collective memory as a “socially constructed notion”<sup>10</sup> in which “the past is stored and interpreted by social institutions.”<sup>11</sup> Whether it is termed “social memory” or “historical memory,” the critical point is that while all of us have our own memories of the past, there is a form of remembrance that lies outside of individuals and is contained within the structures of society. It is a group memory that endures.

The collective memory of the colonial enterprise surfaces in how transitional justice is perceived in countries in the South. When the international community supports criminal trials or truth commissions for a contemporary episode of mass violence, local voices may legitimately ask: “What about the victims of colonial crimes? When will the transitional justice process be applied to us/them? When will the truth of colonial crimes be revealed and justice for that violence be served?” For many, current approaches to transitional justice are less valid because the colonial past is ignored. Thus, during the Workshop one participant captured this sentiment as: “There is no gap between North and South in understandings and beliefs about transitional justice, but there is a double language and double standard built on the law of the strongest, and it is time transitional justice serves to benefit all of the victims, including the victims of the so-called North.”

It is important as well to differentiate the colonial era from the post-colonial. Just as a short-term view of “transition” in the idea of transitional justice makes little sense, so too is the idea of “post-colonialism” very limiting if focused solely on the initial period after independence is gained. Collective memory is powerful and the after effects of colonialism are far-reaching. In an early paper, William

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<sup>9</sup> MAURICE HALBWACHS, ON COLLECTIVE MEMORY (Lewis A. Coser ed. & trans., 1992).

<sup>10</sup> *Id.* at 22.

<sup>11</sup> *Id.* at 24.

Johnstone<sup>12</sup> described three legacies of colonialism: *authoritarianism* that reflected the pre-colonial past, enhanced by the colonists and taken up by the independence leaders; *separatism* in that the borders of the newly-independent state were often devised in government offices far away with no conception of the many different groups that dwelled within and whose loyalties were to an ethnic or religious group, not to a central and unified state; and *educational systems* maintained by the colonial power limited the education opportunities for the indigenous inhabitants and relegated them to low-level positions.

A recent article by Bruce Gilley on the “beneficial” effects of colonization provoked a storm of rage and ultimately was withdrawn because of threats of violence.<sup>13</sup> Scholars debunked the paper citing economic, political, and development arguments to refute the notion that colonialism was somehow a positive factor in states that had been colonized. What appears left out of these discussions are the psychological and social effects of colonization in “post-colonial” societies and their ongoing presence in the collective memory of the societies. The collective memory of colonization experiences—some factual, some mythic—shapes the attitudes and reactions of those living in post-colonized societies. As one participant from Asia expressed it: “Despite the *mea culpa* of international organizations, academics, and global activists, transitional justice interventions are still made mostly as foreign impositions on communities seen and treated as savages.”<sup>14</sup>

## 2. *Collective Amnesia and International Transitional Justice Interventions*

Compounding this phenomenon is the amnesia that colonizing States exhibit with respect to their own histories as colonizers, and their inability to confront the current traces of those pasts. The history of imperialism makes States that were the recipients of European and Asian ambitions for hegemony vulnerable to any hint of “cultural imperialism.” Anabelle Sreberny describes a “‘hypodermic’ needle model of international effects, ‘American’ values being injected into Third World hearts and minds.”<sup>15</sup> South-based transitional justice actors are affronted when former colonizers find it hard to see that the transitional justice premise—that societies need to face their tainted pasts—applies to *them*. Of particular concern is the amnesia of “settler societies” such as Canada, Australia, New Zealand, and the United States, where ignorance or outright denial of past abuses has been the norm. It is not surprising that transitional justice strategies and

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<sup>12</sup> Johnstone, *supra* note 8.

<sup>13</sup> Bruce Gilley, *The Case for Colonialism*, THIRD WORLD Q. (2017), [http://www.web.pdx.edu/~gilleyb/2\\_The%20case%20for%20colonialism\\_at2Oct2017.pdf](http://www.web.pdx.edu/~gilleyb/2_The%20case%20for%20colonialism_at2Oct2017.pdf).

<sup>14</sup> Roland Paris, *International Peacebuilding and the ‘Mission Civilisatrice’*, 28 Rev. Int’l Stud. 637 (2002); Louise Mallinder, Siobhán Wills & Thomas Hansen, *Transitional Justice Inst., Ulster Univ., Economic Liberalism, Democracy, and Transitional Justice: Workshop Report* (2018).

<sup>15</sup> ANNABELLE SREBERNY, *THE GLOBAL AND THE LOCAL IN INTERNATIONAL COMMUNICATIONS, IN MASS MEDIA AND SOCIETY* (James Curran & Michael Gervitch eds., 1991).

approaches based on research and policy derived far from local experience and history will be viewed with skepticism and even resistance.

Several participants alluded to this phenomenon. For example, a colleague from Africa commented:

The European Union's policy on transitional justice is basically a policy of how the South should deal with its transitional justice. It says absolutely nothing about colonial legacies. It says nothing about what the European powers should do about their responsibility for hundreds of years of abuse.... There is a temptation for me, as a Southerner, to say the transitional justice policy of the African Union should be a list of demands for what the Europeans should do. They have refused to take responsibility for the mess that was left....

Transitional justice encourages such selective memory of the past by international interventionists. The “transition” is from the most recent episode of violence, and a narrow focus on immediate actors and direct victims appears to be responsive to the crisis at hand. Yet local actors see the continuities from the recent to the more distant past and view the North-based transitional justice policies through the freighted history of external intervention. As one participant put it succinctly: “There’s, I think, a very clear sense of hypocrisy that is a North/South one. From an African perspective, that is a discourse that dominates or a deep sense of resentment and understanding of how this field is viewed.”

Comments on the uses and abuses of power during the Workshop revealed the critical importance of the dependence–independence dilemma for many States in the South. The power of the United Nations and its institutions, the power of development aid, the World Bank and the IMF, and the dependence on the largesse of funders (public and private) awaken the collective memory with their threats of powerlessness and lack of agency. More critically, the push for “universality” is code for “Western values” and, therefore, subsumes local voices and traditions: while basic values of human rights and justice may be similar across cultures, the manner in which these are defined, interpreted, and practiced may vary widely. For many, transitional justice strategies as currently devised become imperialism in a new guise that undercuts the possibility of justice and social repair.

A few participants commented that the goals of security, justice, and non-recurrence are universal and are not defined by North or South. The question remains as to how these goals can be translated into mechanisms that reflect the aspirations of those who have been directly affected by human rights abuses and not are perceived as impositions from afar that mirror an imperialist past.

### *B. Dynamics of the Legalization of Transitional Justice*

Many transitional justice scholars and practitioners have become frustrated by how the field has been legalized. International acceptance of legal norms that mandate processes and outcomes—truth, justice, reparations—offers the pretense of legalism as an apolitical application of rules. But the invocation of transitional

justice, and the legal norms that provide its international foundation, too often mask deeply contested visions about what comes after the bloodshed. Conversation during the Workshop repeatedly returned to the political dimensions of transitional justice: how legal norms themselves are politicized or create particular types of politics; the ways in which locally-based transitional justice practitioners are caught in political struggles with national and international elites; and the questions of “what is” and “who owns” transitional justice. These dimensions are in a constant state of reappraisal, and as a result, transitional justice becomes politics by other means.

1. *The Legal Framework of Transitional Justice and the Politics It Promotes*

The oft-noted triumph of transitional justice is that it has succeeded, in the span of a single generation, in changing the background assumption that perpetrators will escape legal sanction for their crimes to an international expectation that societies will undertake affirmative efforts to hold wrongdoers to account. The so-called “justice cascade”<sup>16</sup> is ascendant. Dictators can no longer be confident they will secure assurances of impunity as part of a quid pro quo to leave office; unconditional amnesties in peace agreements no longer pass international muster. These are striking changes which confirm that among international policymakers, the “peace versus justice debate” is over on the terms on which it was once waged.<sup>17</sup> Among many legal and human rights advocates, the trope is that justice is the winner as are the victims. The clear-eyed international political realists who justified amnesties as necessary to achieve political stability have been defeated by the starry-eyed idealists who successfully won the argument that the international community cannot subscribe to norms that countenance impunity for mass violations. The slew of international criminal courts and tribunals, principles to combat impunity, standards for peace negotiations, and policy prescriptions are seen to have laid to rest the argument that impunity and amnesia for past bloodshed is the price societies must pay for peace. But this international consensus, often invoked by South-based victim advocates, can also be deployed to deflect or silence countervailing views among affected communities.

In other words, the terms of the peace versus justice debate have had an afterlife that many protagonists did not anticipate in the heat of the struggle. Equipped with law, the idealists won the fight. Supporters of transitional justice marshalled long-standing, but seldom enforced, international laws of armed conflict and human rights that required States to prosecute egregious violations.<sup>18</sup>

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<sup>16</sup> Kathryn Sikkink & Carrie Booth Walling, *The Impact of Human Rights Trials in Latin America*, 44 J. PEACE RES. 427 (2007).

<sup>17</sup> See ASPEN INST., STATE CRIMES: PUNISHMENT OR PARDON: PAPERS AND REPORT OF THE CONFERENCE, NOVEMBER 4-6 1988 (1989); Diane Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991).

<sup>18</sup> Orentlicher, *supra* note 17; Theodor Meron, *The Case for War Crimes Trials in Yugoslavia*, 72

But the emphasis on legal approaches to addressing mass violence, and in particular the application of international criminal law, has led to the consolidation of transitional justice as a set of law-centered practices which mask the political debates that lurk beneath them.<sup>19</sup> This “law of transitional justice” has led to policies and practices which can distort or obscure what local populations want.

International actors play a role in these politics. In many countries that initiate transitional justice processes, the ideas about what this undertaking should look like come from elsewhere. For example, one participant explained that in Bosnia, international criminal trials shaped what transitional justice was understood to be. Inside the country, people viewed prosecutions in The Hague as imposed from abroad. While trials succeeded in removing perpetrators from power (just as early transitional justice advocates claimed), international prosecutions did not succeed in softening inter-ethnic attitudes. Convictions of Bosnian Serb war criminals did not lead to greater acceptance or “rehumanization” of “ordinary” Bosnian Serbs by Bosniaks nor did guilty verdicts lead to the “rehumanization” of Bosniaks by Serbs. The purported payoff that trials would promote social reconciliation has not materialized and, in fact, has encouraged popular thinking that retribution is the only acceptable alternative to impunity. In this case, pursuit of criminal accountability created a politics of justice but not necessarily a politics that facilitated social cohesion.

Similarly, the importation or imposition of accountability as the “gold standard” transitional justice response sidelines other, particularly community-generated, ideas about what would best serve the establishment of peaceful relations between victims and former perpetrators.<sup>20</sup> Restorative justice practices such as *mato oput* in Uganda offer important insights to international conceptions of what constitutes transitional justice interventions. But a non-government organization (NGO) practitioner from Uganda explained that national and international criminal trials dominate national and international attention, leaving local communities and their preferences outside the mainstream political conversation. Activists from varied contexts—Cambodia, Tunisia, Sri Lanka, Uganda—spoke about their work with communities directly impacted by the violence. Members of local communities may not use or be familiar with the international vocabulary of transitional justice, but they do have ideas about what they need in order to recover. And they may not find locally-generated practices on a “prix fixe” menu of options, which always includes, but may not be limited to, criminal trials. Serious engagement with communities is vital. South-based

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FOREIGN AFF. 122 (1993).

<sup>19</sup> Kieran McEvoy, *Letting Go of Legalism: Developing a ‘Thicker’ Version of Transitional Justice*, in TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 15, 18-21 (Kieran McEvoy & Lorna McGregor eds., 2008).

<sup>20</sup> For a trenchant examination of this phenomenon see Samuel Moyn, *Anti-Impunity as Deflection of Argument*, in ANTI-IMPUNITY AND THE HUMAN RIGHTS AGENDA 68 (Karen Engle, Zinaida Miller & D.M. Davis eds., 2016); Paul Gready & Simon Robins, *From Transitional to Transformative Justice: A New Agenda for Practice*, 8 INT’L. J. TRANSITIONAL JUST. 339, 357-60 (2014).

participants emphasized that local engagement is needed to ensure transitional justice interventions are *identified by* affected communities. Instead, what they see is a thin form of “consultation” with community members which too often consists of informing victims about what constitutes transitional justice—mechanisms that distant national and international authorities have devised based on Western conceptions of justice. The assumption is made that these mechanisms offer a universal response to the needs of all victims everywhere.

The problem of the dominance of criminal accountability is thus the result of a larger issue: the adoption of an international legal framework for transitional justice. Early transitional justice supporters advocated for the application of international law. Their aim was not simply to advance the international rule of law in the abstract, it was to effect change on the ground. The move to reject impunity and political transitions that advanced the interests of the negotiating parties at the expense of victims was instrumentalized through law. Advocates pressed a political agenda to promote victim-centered justice by insisting that governments comply with their international human rights obligations.

Victims and their allies could internationalize their demands by relying on arguments that governments had to implement the human rights to truth and to justice. This was effective as long as governments complied and as long as implementation of legal agreements reflected the priorities of victims. As discussed at the Workshop, however, compliance is continually contested, requires constant attention and energy of practitioners, and is nowhere fully realized. Transitional justice in practice becomes heavily politicized. Local practitioners often are frustrated with international lawyers who play a leading role in advocating for the establishment of legal institutions to implement transitional justice processes, but who are notoriously ill-equipped to ensure that legal institutions work to satisfy the needs of victims. The legal institutions established to realize these goals often are poorly-functioning and exist in theory but not in practice. Those working on the ground see up close the price that victims pay because of the gap between the promise of international law and what it is capable of delivering.

The isolation of practitioners from international lawyers is exacerbated by the ways in which the dominance of law forms a wedge between the priorities of communities and the available mechanisms to achieve them. Once advocates find themselves operating within the dominant international transitional justice legal paradigm, they are speaking the language of rights compliance rather than articulating expressly political demands about what victims need and want. Victims’ recovery might have nothing to do with criminal trials. Yet the discourse about victims’ rights in transition narrows attention to particular aspects of victims’ experiences: violations of civil and political rights resulting from particular episodes. The underlying causes of the violence, and the systemic dimensions of the social, economic, and political vulnerabilities that preceded and followed it, are avoided or dismissed because they are not embedded in formal legal instruments which are amenable to judicial enforcement.

Another political dimension that undermines victim empowerment is the gap between victims who are often poor and living in rural communities, and South-based practitioners who are seen to be members of the urban elite. A South-based practitioner traced this problem to the general trend toward professionalizing the practice of transitional justice (and human rights more broadly) in the Global South. Local communities directly targeted during the violence may not feel a shared experience with civil society advocates. Many such transitional justice actors are well-heeled professionals based in the capital cities of their countries who descend on remote, affected communities to inform victims of transitional justice policies that have been formulated without their input. The “local” policies may reflect the views of the elites who, in turn, may represent the power structures that disempower the communities which bore the brunt of the violence.

This dynamic is not universal in the “South.” As pointed out by one participant, in Latin America, victims tend to be more urban and demand legal justice, even as they raise doubts about the integrity of their national legal systems. Rural communities in Central and South America voice demands for legal remedies even though they may not have firm ideas about what such relief should look like, and despite the fact that legal results often do not live up to their expectations.

## 2. *The Politics of Social Justice as Transitional Justice*

Participants talked about the political obstacles to achieving justice for victims. Some of these are ideological. For example, one participant argued that the nesting of transitional justice within efforts to consolidate liberal democratic regimes means that the goals of transitional justice are to stabilize a particular political system of a country. Addressing root causes and creating “just” conditions in society is a far more radical project than national and international elites generally have in mind. But when the starting point for the discussion about justice is rights-based, the contest is one over which intervention is feasible and will satisfy the rights to truth, justice, and if lucky, the right to reparation. This is transitional justice politics.

What it is *not*, as pointed out by a Workshop participant, is a discussion about what is necessary to *respond to injustice in order to create social justice*. In other words, the aftermath of mass violence and repression offers the political opportunity to disrupt the status quo of the institutional and political arrangements that produced the violent rupture. However, old as well as new politically relevant actors frequently resist such efforts. More troubling, they too rely on transitional justice framing and vocabulary to advance their political agendas. However, transitional justice mechanisms do not currently address the challenges of the hollowing out of State institutions through corruption and State capture. Thus, through omission and commission transitional justice becomes weaponized in national power struggles.

Several examples emerged throughout the day’s discussion of ways in which governments and powerful interests undermined, discredited, and thwarted the

justice demands articulated by victims. In the decades since the parties signed the peace accords in Guatemala, political authorities have resisted implementing fully the recommendations of the truth commission, which include measures of reparation and structural reforms. Recently, State actors have taken to discrediting victims by using their calls to implement reparations as proof that the beneficiaries are acting out of economic self-interest rather than allegiance to justice values.

Another political tool authorities employ to thwart victims' demands is the discourse of counter-terrorism. For example, as one participant recounted, in Kenya in the aftermath of the election-related violence and the failed ICC prosecution of political leaders responsible for it, elites promoted national security and counter-terrorism as key national priorities. Making the country strong, including through development projects, thus became part of counter-terrorism strategy. This deflected attention from the victims of the political violence. More specifically, linking nation development to State security meant that questioning the effects of such development can be characterized as "unpatriotic." Civil society demands that the State attend to the negative impacts of development on poor communities are then conveniently delegitimized. Calls to address the social marginalization and the economic roots of the political unrest can be ignored. Thus, the momentum of local communities to link their victimization to the underlying causes of the violence is stalled by the political manipulation by elites who benefit from the economic status quo.

Sometimes, the challenges victims face are not discursive but straightforwardly political. Victims and their allies can have the law on their side, as they do in Sri Lanka, but as explained by one participant, if trials, truth commissions, and vetting processes threaten national political elites, the formal agreements authorities have signed to initiate transitional justice become hostage to domestic politics. Another example came from Cambodia, where the authorities resisted victims' demands for restorative justice measures as part of transitional justice processes because former Khmer Rouge cadre members are part of the government.

But to say that transitional justice is political does not mean it is always bad for victims and affected communities. NGOs working to advance victims' interests wield power too. Several participants offered first-hand accounts of victories they had secured by acting to influence political decisions. Some pointed to more recent instances in which conflict ended through a mediated settlement, giving victims the opportunity to shape the political reform agenda; Colombia is the most recent example.<sup>21</sup> But even where victim representatives may not have a formal seat at the negotiations, civil society actors can and do lobby political stakeholders for support. They seek to opportunistically leverage international policy makers and international transitional justice networks. One example is how

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<sup>21</sup> Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera [Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace], Colom.-Fuerzas Armadas Revolucionarias de Colom. (FARC), Nov. 24, 2016, <http://www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Documentos%20compartidos/24-11-2016NuevoAcuerdoFinal.pdf>.



civil society looked for ways to use the Human Rights Council hearing on Sri Lanka as an opportunity domestically to thaw the frozen state of the government's transitional justice policy.

At the same time, when transitional justice practitioners behave as political actors, shaping their practices and advocacy with the aim of influencing decision makers, they may find themselves confronting ethical questions about their professional role. Researchers in South Africa crafted their transitional justice policy advocacy to omit international framings and speak within a vocabulary of "local knowledge" practices. They succeeded in persuading authorities to take on board their recommendations. This may seem like a sensible strategic decision and not political activism. But, for example, what about a scenario where researchers or legal advocates have a victim-centered policy goal in mind and then conduct the research to justify it? They would then blur what for many is a sacrosanct divide between an "objective" researcher and "partisan" advocate. In this instance, researchers are entering the politics of transitional justice.

Law permeates the field of transitional justice, but so too does politics. Practitioners, researchers, and scholars operate on both sides of this dyad. Advocates for victims deploy law politically by grounding claims for justice as rights claims. Researchers and scholars advancing the claim that transitional justice must transform the social and political fields to rectify injustice are making a political claim about the status quo. To make these statements is not offering normative judgments about transitional justice stakeholders but, instead, making observations about the field and our understanding of the Workshop discussion. To acknowledge that law and politics are marbled into the terrain is not a condemnation of the field but opens up new lines of reflection about how to steer an ethical path through the thicket.

### *C. Dynamics of Research Extraction*

Transitional justice is constituted both as an area of academic study and as a set of practices based on a core group of beliefs that have evolved over some 25 years. Researchers examine transitional justice interventions, the influences that shape the conditions under which these policies are developed, the institutions that implement laws and policies offered to address the legacy of mass violence, etc. NGO activists and other civil society actors form and advance pragmatic agendas, frequently justified by reference to the preferences of victims, about what interventions should look like and aim to accomplish. For the most part, the academic-practitioner relationship is based on shared professed values, an alliance of sorts. To identify as a transitional justice scholar or practitioner, is to declare to a core set of shared broad normative commitments: justice, community/society rebuilding, and the realization of human rights—each group working within its separate domain.

Transitional justice practitioners are *doing* transitional work aimed to meet the needs and goals of communities that have been directly harmed by mass violence. Researchers are *doing* studies and publishing findings because they want

to see transitional justice *work*. Many researchers consider themselves to be “activist-scholars”—including some in the Workshop who self-identified as such—and are comfortable “taking sides” in political struggles. They unapologetically orient their work to support the goals of victims and communities. Given the nature of the horrors visited upon individuals and communities by civil wars, State-sponsored violence, and social upheaval, a cooperative and mutually supportive relationship between researchers and practitioners is not only worthwhile but critical. The goals of each group are aligned and oriented to promote positive outcomes in transitional justice processes.

### 1. *North-Based Researchers, South-Based Sites*

At first blush, it might seem odd that there would be a friction between practitioners and researchers, united as we are by commitments to support the recovery of victims and create a more just social order. Yet, as one participant based in the Global South offered in his provocative remarks, transitional justice must confront the same paradox that afflicts humanitarian relief industries: “the suffering of some creates opportunities for others.” He developed the metaphor of the economic model of colonialism as a conceptual tool to illuminate how the North-South frictions seep into the relationship between North-based researchers and South-based practitioners: transitional justice “factories” run by “experts” are located in the Global North, while the “raw materials” for transitional justice—the violence, victims, their advocates—are found in the Global South.

There is objective truth in the metaphor. We know from our research that transitional justice scholarship is written primarily in English, dominated by the disciplines of law and political science, and written *about* transitional justice interventions that take place in Africa or Asia, or countries newly independent from the Soviet Union.<sup>22</sup> The major conferences at which transitional justice scholars discuss their research take place in Europe or the United States and are dominated by academics working in those regions. The research is about people, events, and practices that take place “over there”—outside the advanced industrial countries and mostly in places in which the eruptions of violence cannot be entirely separated from the processes of colonization and decolonization that indelibly mark those regions. South-based research is limited by lack of funding and when it is carried out, it is ignored for the most part by academics in the developed States partially because of language, lack of access of South-based researchers to major publications, and perhaps, suspicions by scholars in the North about its rigor. The end result is that the majority of studies are extractive, leaving those whose lives are affected with little input into interpretation of findings or their application to policy.

Colleagues based in the South shared stories of encounters “across the divide” with researchers in the North. These reveal that even well-intentioned,

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<sup>22</sup> Fletcher & Weinstein, *supra* note 3, at 183-86.

ethically-conscious researchers and scholar-activists may be challenged to carry out their work in ways that South-based colleagues and research subjects experience as personally supportive and politically empowering. It is hard to get this stuff right. Foreign research teams take time and resources from locally-based organizations that facilitate their work. This time and work required of local groups may or may not be compensated. The larger the research scope, the more disruptive to local partners. Major undertakings are more likely to occur with well-funded research, but there are also lone researchers or graduate students conducting field work who request an interview here and access to contacts there. It all adds up. And it *is* extractive, in a strict, crude sense. Researchers need access to “the suffering of others” and local NGOs and practitioners are the guardians or gatekeepers of that pain. North-based researchers in their conduct, wittingly or not, also contribute to the feelings of South-based colleagues of being exploited, taken for granted and overlooked—the laborers in the fields.<sup>23</sup>

For example, several heads nodded in agreement when one South-based colleague lamented at the number of foreign researchers with whom he had collaborated to facilitate their fieldwork, but who almost never returned to discuss their findings with local stakeholders. The “crops” of transitional justice research may grow in the South, but can only be “consumed” around conference rooms in the North. And there was shared laughter at the mention by a South-based practitioner of how galling it is to have former interns from the North return after receiving their degrees from prestigious institutions as transitional justice “experts.” Having earned their fieldwork credibility under the tutelage of a local group, these newly-credentialed, junior researchers traipse through their former office with all the arrogance and privilege of colonial descendants.

But there also were examples of better practices that go against the grain of the North-based-researcher-South-based-subject binary, even if they were not in the end wholly successful in influencing policy. For example, participatory action research offers the possibility of enlisting local actors in the data gathering and analysis, thereby simultaneously empowering participants and producing new knowledge. One current example came from a North-based researcher who is involved in research in Tunisia on the transitional justice processes there. He and his colleagues are training individuals who are working in that country’s truth commission to gather and analyze data on how the mechanism is working. Local knowledge will be strengthened and local actors will be able to access and harness their expertise to influence transitional justice public policy. At the time, another North-based researcher brought up a counter-example from Rwanda. There he and a team of North-based researchers implemented participatory action research methods with local educators to design a new history curriculum to teach about the historical antecedents to the genocide. The research process made the

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<sup>23</sup> Kate Cronin-Furman & Milli Lake, *Ethics Abroad: Fieldwork in Fragile and Violent Contexts*, PS: POL. SCI. & POL. 1 (2018), [https://www.cambridge.org/core/services/aop-cambridge-core/content/view/1D3AA6FCCB5C50F502A99C4B317048F4/S1049096518000379a.pdf/ethics\\_road\\_fieldwork\\_in\\_fragile\\_and\\_violent\\_contexts.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/1D3AA6FCCB5C50F502A99C4B317048F4/S1049096518000379a.pdf/ethics_road_fieldwork_in_fragile_and_violent_contexts.pdf).

Rwandan participants feel included and agents of curricular change, but in the end the government refused to adopt the curriculum. Research methods do not necessarily ensure they will in fact empower local actors.

Over time, there have been some positive developments to reduce this North-South power imbalance. For example, in Latin America there is a history of regional networking among transitional justice practitioners. Similarly, African civil society has organized a transitional justice network to amplify the role of African NGOs in post-conflict settings.<sup>24</sup> These initiatives hold promise to strengthen South-South regional ties and a research agenda driven by South-based priorities. Increased activity among South-based transitional justice organizations is a prerequisite to shifting the dynamic from North-based prescriptions of what it means to study transitional justice and towards a research agenda driven by South-based groups.

## 2. *Extractive Pressures on North-Based Research*

Researchers in the North acknowledged some of the ways in which they contribute to the extractive dynamic, voicing some of their choices as influenced by their intellectual interests and others as constrained by the institutional pressures under which they work. In the context of discussing the extractive research dynamic, a European academic raised the question of whether she and her colleagues have a moral obligation to research the colonial violence perpetrated by their own States rather than, or in addition to, more distantly-related transitional justice contexts. Thus, should Dutch transitional justice researchers be studying the war crimes committed by the Netherlands in the Dutch West Indies during the Second World War? Is there a need for North-based researchers to address the wrongdoing of “our” States before we amass evidence to demand that States in the South undertake transitional justice measures? Beyond raising the question of obligations to history that should influence the research agendas of individual academics, discussion focused more on the institutional and structural factors that contribute to the extractive dynamic.

Many universities in Europe have a requirement that research be made relevant to the larger public. However, rather than seizing this opportunity to engage and adapt their study findings to equip their research subjects and locally-based practitioners with materials to support South-based advocacy efforts, Workshop participants acknowledged that the common practice is for academics quickly to edit their “academic” work into a popular primer—“educational outreach”—and call it a day. They do not use this as an opportunity to pursue collaborations with local research partners to generate materials shaped by and in service of local research agendas.

It is hard to resist these practices. The economic and political playing fields in which these encounters occur are decidedly tilted. South-based practitioners

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<sup>24</sup> ADVOCATING TRANSITIONAL JUSTICE IN AFRICA: THE ROLE OF CIVIL SOCIETY (Jasmina Brankovic & Hugo van der Merwe eds., 2018).

and researchers are rarely in a position to challenge their North-based partners. South-based NGOs and academic institutions generally do not have the human and material resources that match those of their North-based counterparts to carry out similar research and to publish it in English-language publications that reach the global transitional justice audience. South-based transitional justice agendas are mediated through North-based researchers to reach a global audience.

At the same time, there was acknowledgment that some of the extractive dynamic has nothing to do with individual intentions but is shaped by North-based systems of academic knowledge production. Most of the world's most prestigious universities are based in Western Europe and North America and the academic tenure standards and the disciplinary incentives promulgated in these elite institutions are hegemonic in the global academy.<sup>25</sup> Researchers based in institutions in the North must meet performance standards that shape their research agendas, how they conduct fieldwork, how they disseminate their findings, etc. For example, in disciplines like law, in which sole authorship is the norm, North-based academics would not normally seek out a collaborative research project in which South-based colleagues would be equal intellectual partners. In the social sciences, a single authored book is far more valuable in advancing a career. Other disciplines may have expectations regarding the frequency of publications that militate against pursuing collaborations with partners in the South where doing so feels risky because it might interfere with expeditious publication.

Compounding the problem of exclusion of South-based colleagues from participation in production and consumption of transitional justice literature are the economic barriers for South-based academics and practitioners to access the published scholarship. The highest ranked scholarly journals—in which North-based academics want to place their work to impress their colleagues and secure the professional imprimatur of excellence—are published by North-based institutions. Universities generally have institutional subscriptions, making access to journals free to individual professors and students. However, practitioners and researchers in the South must pay a fee to download articles. This effectively puts the “final product” of transitional justice production beyond the reach of those who tended the fields in which the raw materials were grown.

Another aspect to the problem is that in many cases transitional justice scholars may feel marginalized within the academy, and, therefore, they may be less likely to transgress professional norms that could push back against the extractive pressures. Transitional justice is not an established discipline or specialty “belonging” to any one area. The topic of post-conflict transitions can be approached from many directions; it is an area defined by events, not by a

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<sup>25</sup> Prestigious universities in Australia, New Zealand, and Asia (e.g., Singapore and Hong Kong) also follow similar standards. Diana Hicks, *Performance-Based University Research Funding Systems*, 41 RES. POL'Y 251 (2012); Eric Archambault & Vincent Larivière, *History of the Journal Impact Factor: Contingencies and Consequences*, 79 SCIENTOMETRICS 1 (2009).

method of inquiry.<sup>26</sup> It has its own encyclopedia,<sup>27</sup> but it is an open question as to whether it has matured into a theoretically defined and academically distinct subject. The fragile academic identity of transitional justice marks those who research and write in the area. Those researchers based in the Global North have to justify the value of their work to their brethren in the academy. This may exacerbate the pressures on these researchers to shape their research to satisfy traditional criteria of academic respectability: publish in mainstream journals, follow norms of authorship, satisfy the criteria of prestigious research funders, etc.

Further, as participants pointed out, within what we call “the field” of transitional justice, the disciplinary research norms work against breaking down the domain between researcher and subject to form more horizontal relationships. Law and political science dominate the published literature. The conventions in both of these fields place the researcher in the role of fact gatherer and interpreter of the data, and relegate research *subjects* to a separate domain. One participant defended the conventions that every discipline uses to evaluate research. These, he suggested, are necessary to maintain rigor and excellence. Transitional justice thus is served by maintaining high (read traditional) standards of each discipline. It was suggested that other disciplines, like theatre studies, offer more promising alternatives as disciplines with which to study transitional justice. Looking for disciplines that accept, if not embrace, a blurred the line between “researcher” and “research subject” may be a place to start developing alternative models for research collaborations.

### 3. *South-Based Researcher-Practitioner Dynamics*

The tensions in the practitioner-academic relationship are not exclusive to North-South dynamics described here, although they graft onto it in particular ways. There was an exchange among South-based academics and South-based practitioners that pointed to the challenges of building a South-South alternative to the North-based-researcher-South-based-practitioner model of knowledge production. Academics in the South are not necessarily allies of local activists. The “activist-scholar” model is not a widely-accepted research profile in some regions of the Global South. A more common practice is for academics to adhere to the professional role of the “neutral,” “objective,” and “removed” observer to social phenomena. They do not see themselves as involved or engaged in the political struggles of local activists seeking to influence policy. These professional strictures mean that civil society actors do not think or look to the academics in their countries as allies. South-based academics may not be trusted precisely because they do not claim to have a stake in the practical outcomes that South-based practitioners are focused on achieving.

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<sup>26</sup> Christine Bell, *Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’*, 3 INT’L J. TRANSITIONAL JUST. 5 (2009).

<sup>27</sup> ENCYCLOPEDIA OF TRANSITIONAL JUSTICE, *supra* note 1.

#### *D. Funding Dynamics*

Transitional justice grew in international prominence and influence because of international financing.<sup>28</sup> Despite the importance of donors to the work of NGOs responsible for organizing and advocating for victims, pressuring national and international authorities to act responsibly, and serving as critical intermediaries between transitional justice mechanisms and affected communities, there is little public dialogue about the role of funding. Interspersed among the comments on colonialism, power, and lack of meaningful input by victims into transitional justice interventions was an ongoing discussion regarding the influence of money on how transitional justice is perceived and practiced.

Funders can influence the practice of transitional justice in several ways: first, by funding certain mechanisms, such as truth commissions or trials, and not supporting others, such as indigenous justice practices and other local approaches, funders make transitional justice selectively visible. Funders may choose to support the work of specific NGOs that pursue goals consonant with international perspectives on “best practices” for transitional justice. By so doing, funders suppress locally-based innovations. Second, funders influence how research is carried out. Funders invest in studies that are short-term and focused on immediate and tangible deliverables. Lack of money for long-term and broad-based studies narrows the participation of South-based researchers to a limited genre. The constant search for funding also limits the ability of South-based researchers to devote time to write and contribute to the transitional justice literature. Finally, funding for reparations has significant impact in terms of who receives money and who does not, whether funders support community or individual reparations, and how monetary reparations interact with societal transformation.

##### *1. Funding Top-Down Priorities*

Much donor money has focused on financing transitional justice aims within a rule of law framework. This framework effectively negates other victim agendas but meets the needs of funders for tangible results. A participant from Latin America noted: “All the money goes to governance and rule of law.... [J]ustice is very far away from us. ... That is not the justice we want.” And another offered: “I think transitional justice has been treated largely as an extension or application of international human rights law, international humanitarian law, international refugee conventions, and the rest, with total disregard for local politics.” What this means, in essence, is that the large scale and costly interventions that are legally-based or national in scope (criminal prosecutions and truth commissions) may not be responsive to the needs of those on the ground. They may, however, reflect more the top-down views of bureaucrats and professionals in New York or Geneva in collusion with national elites. However, as a South-based participant noted, local practices can offer valuable lessons and insights to international

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<sup>28</sup> Frances Pinter, *Funding Global Civil Society Organisations*, in *GLOBAL CIVIL SOCIETY* 195–217 (Helmut Anheier, Marlies Glasius & Mary Kaldor eds., 2001).

transitional justice policy and practice. Despite international policies and assumptions, “[t]here is no gold standard [for transitional justice].”

The focus of donors on “quick results” and “money well-invested” means that money is steered towards trials and truth commissions; these can produce measurable results in terms of trials held or number of consultations, etc. It is far more difficult to measure economic, social, and cultural interventions that may effect change in the long-term and even then, it may not easily be quantified. As one African participant said “It’s actually much cheaper to invest in prevention than it is in cure. [J]ust think ... of the mind-boggling ... budgets that international courts and tribunals are consuming every year.” The participants discussed the difference between short-term and long-term transitional justice, the latter focused on institutional reforms that might lead to non-recurrence. While this guarantee is part and parcel of the goals laid out by the international community for transitional justice, that is not where most of the funding goes.

## 2. *Funding Interventions vs. Funding Structural Changes*

This differential in funding transitional justice mechanisms versus investing in efforts to promote structural change raises the question of how and whether transitional justice should encompass the redistribution of resources or economic development which would prioritize long-term investment in change. However, such investment becomes caught up in the geopolitics of the global financial and economic systems. It also has to contend with the histories of Western financing and interventions intended to undermine post-colonial Socialist governments. Governments justify the current crackdown on civil society worldwide as a legitimate effort to protect State sovereignty from pernicious meddling by foreign interests.

Faced with government resistance to their demands that transitional justice measures go beyond symbolic interventions, activists in the South have few national allies upon whom they can call to promote social justice as the full response to past violence. A participant from Africa summed this up with these questions:

[W]hy is there violence in the Congo? Why is there violence in the Middle East? Without us looking beyond and seeking to address those particular issues that are more geopolitical, that are about the economic system, the global economic system, we will always be in this field, talking about transitional justice day in, day out, decade after decade.

Whether financing for interventions to address structural causes is seen as empowering victims or undermining the government depends on the political context. Too often, national elites have vested interests in maintaining the current mechanisms for distribution of resources and in merely changing who controls them. As one practitioner from the South put it: “Certain States want to engage with other States on the business of key interests, mostly around natural



resources.” Money then drives how States reorganize after mass violence or repression.

### 3. *The Dilemma of South-Based Grantees*

Clearly, civil society is critical in ensuring just outcomes in times of change. Yet, when one participant referenced a study that suggested only one percent of the funding flow for transitional justice goes to civil society work, a foundation participant was shocked: “I think, if that’s true, that’s truly scandalous . . . . We cannot really talk about power and agenda setting without talking about where the money goes and how those decisions are made.” This particular foundation had shifted eighty percent of its funding in this area to local initiatives. Of course, as we shall see, that has significant implications for research funding and even for this organization. The reality is that short-term successes are critical to continued funding even in the context of a multi-year award.

From the perspective of civil society, NGOs need money to survive and they must turn to donors for those funds. But donors do not always understand the practicalities of life in the field where organizational survival depends on chasing external sources of funding for programs that do not meet the criteria specified by Western-based donors. Practitioners either must change direction in order to secure funds or limp along as best as they can, often in defiance of national governments that are threatened by the openness and challenges raised by civil society. NGOs in the South are seen often as naive or incapable, and as needing to be held financially accountable in ways that their colleagues in the North are not.

Two problems were highlighted in our conversation: the first is that donors are committed to preconceived ideas. One North-based practitioner described his experience as an international expert flown into a country for a national conference to discuss which transitional justice mechanism the country would implement. This practitioner related that the donors had pre-determined that the country should establish a truth commission. He found himself in the position of presenting a “checklist:” “‘Here is a checklist. This is what a truth commission is supposed to look like.’ That’s a big problem.”

The second problem is that international donors fund in specific areas and demand “deliverables” and accountability for how their money is spent. As one participant explained: “It’s a little bit like the chicken and the egg” concerning how donors determine the relationship of transitional justice processes to the actual atrocities. “How do we get out of this vicious cycle and bring the benefits of transitional justice . . . more to the ground?”

For small NGOs in the Global South, spending an excessive amount of time completing forms and meeting donor demands for housekeeping functions becomes not only a distraction but seems far removed from the real work of making change on the ground in what are often intense conflicted environments. And yet, the NGOs are caught between survival, which depends on meeting the donor demands, and choosing their own paths, risking their demise.

How research is conducted, by whom and for whom is also affected by funding. The gap between research findings and policy decisions is often a manifestation of how ideology trumps evidence. While many North-based researchers are forced to comply with government expectations that their work will be policy-relevant, this is more often a matter of a presentation than real-life impact. One researcher from the South commented: “Research thus needs to challenge the framing of how costs and benefits are calculated.” State funding often comes with a request for policy-relevant studies. Thus, funding then becomes an arm of government expectations and new directions of study become limited. These distortions in funding are of great concern to South-based researchers who want their research to reflect the actual context, desires, and goals of those with whom they are working.

South-based researchers grapple with a lack of funding. South-based academic institutions usually do not fund fulltime researchers so researchers in the South are forced to work multiple jobs in order to support themselves. In addition, their expertise, valuable to the NGO community and frontline work, is all-encompassing. There is little time to develop and carry out the kinds of studies so valued in the North. Finally, these researchers are cut off from academic communications by the cost of obtaining books or journal access. One Latin American academic showed an advertisement from a US-based journal: “Speaking of power structures and gaps and limitations, I think this is exhibit A, and look at the prices here.” (Holds up a list of prices for journal articles). “These are real problems,” he said. “Sometimes I come across this fantastic article that could help, but to read it once costs \$60.00.” Travel to international conferences is a significant challenge as well. By way of illustration: none of the South-based participants could use their grant funds to finance their attendance at the Workshop, while all North-based participants had unrestricted funding, however challenging to obtain, which they could allocate to use for travel.

It is not a surprise, therefore, that the South-based practitioners spoke forcefully of the extractive nature of the current research dynamic—researchers from the North studying populations in the South. Money is indeed a driver of how transitional justice is studied, and who does the studying.

#### *4. Funding Reparations*

Finally, it is international donors and multilateral institutions that primarily fund reparation schemes. How these schemes are determined, by whom, and for whom often result in unforeseen consequences. Anger at those who receive money, debates about who is a victim, whether community reparations are of greater importance, the amount of money available—all of these become bound up with monetary recompense. Attitudes towards money frequently are over-determined but even more so when victimization is involved. One participant voiced her concerns: “The effectiveness of reparation policies requires victims to ‘feel repaired.’” Money is not always the answer; it often drives further discontent.

### III. WHAT'S NEXT?

The Workshop dialogue was instructive. Transitional justice publications frequently have documented, analyzed, and theorized the gap between expectations for what the field can accomplish and its often-disappointing results. The Workshop conversation drew from this tradition but invited transgression of the unspoken norm that transitional justice scholars and practitioners are all “in it together,” united to promote progressive, victim-centered responses to mass violence. Framing the conversation around what divides us rather than what unites us enabled a sustained conversation, fragments of which many participants had accumulated over time, that pointed to a deeper critique of transitional justice. It confirmed and gave texture to the observation that the Global North and Global South differentially engage transitional justice—both in its conception and in its practice.

Many in the North may shrug off this observation as another example of how attitudes in the First and Third Worlds reflect differences borne of living in countries of vastly different levels of economic wealth. Further, in a subtle manifestation of underlying stereotyping, those who dismiss this gap may attribute the differences in attitudes toward transitional justice to less sophisticated understandings of human rights and the international approach to the field. Those who hold these views may reject South-based criticism as a tendency by those in the South to hold on to anger at the colonial past or a manifestation of Third World elite power holders protecting their own. Fueled by ignorance of local cultures and traditions, avid supporters of international approaches to transitional justice may dismiss South-based criticism as naïve and idealistic, even romanticized. The trope is that if South-based colleagues “understood” international transitional justice better, they would embrace it. However, ignoring this gap in attitudes and beliefs would be a mistake. Unless Global North protagonists take seriously their own biases and narrow visions and their histories of colonialism and abuse of power, there can be no response that can legitimately be called international. Disregarding this gap impoverishes the global community and undermines our capacity to understand how transitional justice operates in the world, in all its indeterminacy and messiness. To promote practices that advance transformation, we need to forthrightly engage the schism between North- and South-based perspectives on transitional justice.

The Workshop conversation pointed to several levels at which the North-South gap operates. The international approach to transitional justice is top-down and norm driven, even as it gives lip service to eschewing a “one-size-fits-all” approach. This leaves South-based practitioners often struggling against the tide (even with allies in the North) to insert victim-based perspectives that run counter to national and international policies. Or perhaps even worse, local advocates who initially supported international approaches find themselves unable to effect a change of direction when, over time, that approach manifests in hardening divisions between communities, as in Bosnia.

For the most part, transitional justice policy gets implemented in the Global South and victims and their advocates have limited power to influence the institutional design of mechanisms and to ensure their accountability to the communities that are supposed to benefit. Here, South-based transitional justice practitioners and often researchers engage in transitional justice politics, leveraging the resources of international and North-based allies in their efforts. These alliances generate formal and informal collaborations across the North-South divide. Such contacts also become sites where North-South dynamics play out. Research and funding practices may inadvertently unfold in ways that recall, if not re-instantiate, neocolonial relationships. Frustrations, misunderstandings, and micro-aggressions flare and erode what, in the abstract, should be mutually-beneficial partnerships. Can we treat transitional justice not as a sacred concept to defend, but as a conceptual tool, with flaws like any other, to support just transformation after mass violence? If so, how does this help us to move forward?

Given the conflictual dynamics surfaced in the Workshop—the lasting impacts of colonialism, the legalization of the transitional justice response, the negative consequences of research extraction and the differential and limiting effects of funding—any approaches to narrowing the North-South gap must consider ways to mitigate these effects. While all these cannot be addressed simultaneously, a coordinated approach at multiple levels (civil society, national and regional institutions, multilateral organizations, and funding agencies) could be mapped out. Of course, the ultimate objective is to change the norms around transitional justice—a challenge that will elicit resistance from many stakeholders. Norm change suggests a need for education, advocacy, policy strategies, and political mobilization, not a small endeavor. Yet, even though the idea sounds overwhelming, focused and graduated steps may prove significant.

Not surprisingly, we did not arrive at any definite prescriptions in the short time we had together. But some ideas for how to engage the North-South dynamics that pervade the field did emerge. Some of these centered on possible structures to support on-going dialogue among scholars and practitioners from the North and South. Such dialogues needed to be balanced, both with regard to scholars and practitioners as well as between those based in the Global North and Global South. They need to resist the two dominant ways that international convenings in the transitional justice area are organized: either as academic conferences or as donor-sponsored meetings. Funding a few South-based participants to participate in a North-based academic conference and calling it a “North-South” dialogue is tokenism at best and recapitulates neocolonial social formations at worst. Having North-based funders convene South-based grantees for an “outcome-orientated” meeting in which a few scholars offer input also falls short of the mark. While there is appeal to directing such efforts toward immediate, material result—e.g., providing input into international and/or national transitional justice policy or practices—this likely will leave to the side the structural issues like the on-going impacts of colonialism in the conceptualization and implementation of transitional justice.

New formations are needed. Could a North-South group of scholars and practitioners be created that could deepen dialogue among us? And could this be a site from which to generate a different kind of engagement with policy makers?. Perhaps one led from the South that draws from the local and international expertise grounded in the geographical diversity of struggles for a just response to mass violence could generate needed change. Such a formation might be mobilized to discipline the legalization of transitional justice or at least, assure that its contributions are clarified, contextualized, and do not displace locally-based mechanisms where appropriate. Given the difficulty in funding this Workshop, we have no illusions about the challenges to bring this idea to fruition. An interregional network of North- and South-based participants would require significant resources and while there could be a stepwise progression that builds on various projects, funding for at least a two- or three-year trial would be necessary.

#### CONCLUSION

Transitional justice is an evolving field that, while embraced at the highest levels of international policy, is interpreted and practiced at the local level. Its growth and maturation invite reflection and interrogation of the ways in which the field constitutes itself conceptually and practically. The gap between the Global North and Global South is a feature of the field that urgently calls for greater attention. The Workshop was an initial effort to foster dialogue on this topic. This essay is our attempt to synthesize and highlight the essential features of our wide-ranging discussion that are contained more fully in the edited transcript that follows. We are indebted to our colleagues for their candor, sensitivity, and thoughtful insights. Only through facing uncomfortable truths about our field with unflinching honesty can we improve it.