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NOTES AND COMMENTS

Transitional Justice: At Multiple Cross-Roads

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Abstract

Transitional justice's nature has continued to evolve and, consequently, its scope has significantly widened, raising various unsettled issues. As this review essay observes, transitional justice itself has become conceptually "transitional", undergoing profound transitions and doing so within an also increasingly and profoundly changing context. Also, as this essay contends, the orientation of those transitions lies at the core of competing visions for transitional justice as a whole. In this vein, as this essay further argues, two major trends seem to be emerging and giving shape to transitional justice's ongoing transitions: firstly, a trend towards focusing on the (infra)structural dimension of transitional justice processes and thus aiming to reorient transitional justice towards addressing "(infra)structural" factors of (societal) change; and, secondly, a trend towards increasingly relying on public law, in both international and internal legal orders, as a framework to conceptually articulate and implement (infra)structural processes of change.

Keywords: international law;
public law; legal theory; transitional justice; international environmental law; international investment law

Transitional justice's consolidation and continuous, yet not entirely uncontentious, expansion have placed it at multiple cross-roads, raising controversies as to its changing nature in an increasingly changing world. Those controversies feature across the three edited volumes this essay succinctly analyses.[1] Lawther's and Moffett's volume comprises four parts, concerning transitional justice's "concepts", "actors", "mechanisms", and "expanding … gaze".[2] Dam-de Jong's and Sjöstedt's volume contains three parts, analysing international law "normative" and "institutional" frameworks for environmental peacebuilding and how an "integrated approach" can enhance their effectiveness.[3] Bilchitz's and Cachalia's volume, which compares Colombia's and South Africa's experiences, encompasses three parts, examining innovations in transitional justice's conceptualisation and implementation, notably through public law "novel legal structures", and the relationship between

[1] Cheryl LAWTHER and Luke MOFFETT, eds., *Research Handbook on Transitional Justice*, 2nd ed. (Cheltenham: Edward Elgar Publishing, 2023); Daniëlla DAM-DE JONG and Britta SJÖSTEDT, eds., *Research Handbook on International Law and Environmental Peacebuilding* (Cheltenham: Edward Elgar Publishing, 2023); David BILCHITZ and Raisa CACHALIA, eds., *Transitional Justice, Distributive Justice, and Transformative Constitutionalism: Comparing Colombia and South Africa* (Oxford: Oxford University Press, 2023).

[2] Lawther and Moffett, *supra* note 1 at 9–139, 141–211, 212–380, and 382–508, respectively.

[3] Dam-de Jong and Sjöstedt, *supra* note 1 at 17–150, 152–303, and 304–426, respectively.

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transitional justice and distributive justice.[4] Bilchitz's and Cachalia's volume comprises individual and joint contributions revolving around common themes.[5] This essay's remainder proceeds in three parts.

I. Transitional justice's "transitional" nature

Transitional justice's nature and related controversies underpin all the reviewed contributions. Hansen, who contests assumptions about transitional justice's temporal frames, outcomes, and modalities,[6] concludes "transitional justice is itself in transition".[7] While transitional justice may itself be conceptually "transitional", such transition's directions remain open-ended. Lawther's and Moffett's assessment of transitional justice's standing is nuanced, celebrating its status as a consolidated discipline on an "upward trajectory" while recalling its limitations.[8] Without prejudice to such consolidation, as Schkolne and van der Merwe observe, transitional justice remains a site of contestation.[9] However, as this essay contends, such contestation does not render transitional justice's concept "essentially" contested. Indeed, as argued below, emerging trends show the discipline may be reorienting itself while maintaining its major features.

Transitional justice's conceptual expansion has given rise to controversies concerning its interactions with other disciplines. Turner and Davidović discuss transitional justice's multi-disciplinary "concepts" yet conclude it remains non-interdisciplinary, given mainstream scholarship's failure to meaningfully integrate other disciplines.[10] Turner's and Davidović's assessment uncritically assumes interdisciplinarity's necessity and desirability, although, de Greiff argues, interacting with other disciplines may prove more productive than seeking to incorporate them.[11]

The State, like transitional justice, presents itself as a focus of contestation, yet remains central to transitional justice's competing strands of discourse, whether affirming or challenging the State's place in transitional justice. Kochanski assesses truth commissions' impact on transitional justice by examining their design patterns and the norm diffusion processes underpinning those patterns.[12] Those norm diffusion processes, without being conceptualised as "legal", are however triggered when "a critical mass of states has accepted" norms.[13] Before delving further into the reviewed contributions' approach to the State, it is worth recalling a State should not be confined to its set of governmental entities, for it also comprises its people(s).

Peoples are distinctly addressed as actors. Indeed, some contributions focus on the significance of indigenous peoples' traditional belief systems for transitional justice. Metz and Bautista Pizarro reflect on the applicability of South Africa's "ubuntu" in Colombia and

[4] Bilchitz and Cachalia, *supra* note 1 at 33–194, 195–308, and 309–468, respectively.

[5] David BILCHITZ and Raisa CACHALIA, "Developing a Conceptual Framework for Global South Comparisons: Colombian and South African Contributions" in Bilchitz and Cachalia, *supra* note 1, 1 at 21.

[6] Thomas Obel HANSEN, "The Time and Space of Transitional Justice" in Lawther and Moffett, *supra* note 1, 9 at 11, 16, and 21.

[7] *Ibid*., at 24.

[8] Cheryl LAWTHER and Luke MOFFETT, "Researching Transitional Justice: Editors' Introduction" in Lawther and Moffett, *supra* note 1, 1 at 1, 3.

[9] Maya SCHKOLNE and Hugo VAN DER MERWE, "Civil Society and Transitional Justice: Building An Expanded Vision from Below" in Lawther and Moffett, *supra* note 1, 158 at 158–164 and 173.

[10] Catherine TURNER and Maja DAVIDOVIĆ, "Transitional Justice: An Interdisciplinary Landscape?" in Lawther and Moffett, *supra* note 1, 26 at 42.

[11] Pablo DE GREIFF, "Foreword" in Lawther and Moffett, *supra* note 1, xix at xxii (warning against their "colonization").

[12] Adam KOCHANSKI, "Truth Commissions" in Lawther and Moffett, *supra* note 1, 246 at 248–50 and 255–61.

[13] *Ibid*., at 249.

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the relevance of Colombia's "Misak" and "Afroatratenian" communitarian systems to South Africa.[14] Bautista Pizarro studies Colombia's "Misak" and "Afroatratenian" peoples' potential contributions to retributive justice.[15] Indigenous practices warrant further research, given their potential impact on the formation of general principles of law relevant to transitional justice.

Governmental entities remain a central actor in, and focal point for, most transitional justice's discourses, including in discourses critical of mainstream scholarship. McAuliffe contests connections between transitional justice and the rule of law, often assumed to be "causal", and so attributed an exaggerated impact, by mainstream scholarship.[16] McAuliffe's critique posits the rule of law's effectiveness presupposes "effective governance", requiring "at least semi-effective statehood" and governmental entities having sufficient "infrastructural power to penetrate society."[17] MnisiWeeks and Rivera-Drago critically approach the effects of Colombia's and South Africa's transitional justice processes on indigenous peoples, focusing on those processes' challenges and weak outcomes,[18] likely due to those States' (infra)structural limitations. Horne analyses vetting and lustration programmes' roles in transitional justice.[19] Horne's analysis shows governmental (infra)structures are not only preconditions for the effectiveness, but also objects, of transitional justice.

The intra-State relations between a State's government and non-governmental actors feature across many of the reviewed contributions, with States being conceptualised as fora for public decision-making and political participation by non-governmental actors. Cachalia and Milkes discuss Colombia's and South Africa's peacebuilding projects through the lenses of "political inclusion", as one of transitional justice's facets.[20] Cachalia explores procedural justice's violence-mitigating role in South Africa, given its potential to enhance participation in, and the impartiality and justification of, governance.[21] Pimiento Echeverri and Milkes analyse public decision-making's role in transitional justice, notably by reference to how Colombia's peace agreement and Colombia's constitution conceptualise public participation.[22]

The centrality, though by no means exclusivity, of the State in transitional justice processes is confirmed by the shortcomings in accounts overlooking it. Dudai argues for a "social control perspective", articulating transitional justice as reclassification of past

[14] Taddeus METZ and Nathalia BAUTISTA PIZARRO, "Joint Reflection: Economic Goods and Communitarian Values" in Bilchitz and Cachalia, *supra* note 1, 76 at 77–9 and 81–2.

[15] Nathalia BAUTISTA PIZARRO, "Building Peace and Restoring Law upon the Ethos: A Comparison Between South Africa and Colombia" in Bilchitz and Cachalia, *supra* note 1, 54 at 61–9 and 74–5.

[16] Pádraig MCAULIFFE, "Casual and Causal Links to the Rule of Law" in Lawther and Moffett, *supra* note 1, 44 at 44, 50, and 59.

[17] *Ibid*., at 54.

[18] Sindiso MNISIWEEKS and Diana Carolina RIVERA-DRAGO, "Joint Reflection: The South African and Colombian 'Peace Agreements': Restoration of Rights or Continuing Difficulties for Indigenous Peoples?" in Bilchitz and Cachalia, *supra* note 1, 349 at 351–58.

[19] Cynthia M HORNE, "Transitional justice: vetting and lustration" in Lawther and Moffett, *supra* note 1, 324 at 325–27, 330–34, and 338–40.

[20] Raisa CACHALIA and Irit MILKES, "Joint Reflection: Comparative Reflections on Transitional Justice and Political Inclusion in South Africa and Colombia" in Bilchitz and Cachalia, *supra* note 1, 406 at 407–8, 412–13, and 416–17.

[21] Raisa CACHALIA, "Exploring the Relationship Between Violent Protest and Procedural Injustice in South Africa's Democratic Transition" in Bilchitz and Cachalia, *supra* note 1, 363 at 366–72 and 376–83.

[22] Julián Andrés PIMIENTO ECHEVERRI and Irit MILKES, "Beyond Democracy: Meaningful Public Participation as a New Approach to Public Decision-Making in the Context of Colombia's Transitional Justice Process" in Bilchitz and Cachalia, *supra* note 1, 385 at 386–90 and 401–4.

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behaviours via non-judicial social censure,[23] which "involves a much broader repertoire than judicial punishment".[24] Dudai's argument, albeit descriptively sound, given transitional justice's resort to non-governmental/non-formal tools, risks overlooking their limitations and underestimating the (potentially greater) suitability of governmental/formal tools to sustainably achieve and consolidate transitional justice. Sharp, drawing on East Timor's, Rwanda's and Uganda's transitional justice experiences, examines the promises and pitfalls of local justice,[25] noting its potential (realised in Rwanda's case) for reinforcing "traditional power structures ..., with negative human rights consequences".[26] Likewise, Stan examines transitional justice's interactions with religion, assessing religious approaches' positive impacts and limitations, as exemplified by imbalances in reconciliation processes attendant upon those approaches' forgiveness-centeredness.[27]

The inter-State sphere of transitional justice is best reflected in international institutionalised cooperation, notably within intergovernmental organisations like the United Nations (UN) and its political organs, most prominently the UN Security Council (UNSC). Manion and Davidian, drawing on Afghanistan's situation, analyse UN frameworks for transitional justice and how UN mandates have evolved to accommodate competing UN agendas.[28] Dam-de Jong studies the UNSC's position within the UN's peacebuilding structure and the UNSC's environmental peacebuilding practice, particularly in light of climate change's impact.[29]

Non-governmental actors range from "civil society"[30] in aggregate to individuals in their various, often intersecting, capacities. O'Rourke, who examines relevant international normative and policy frameworks, assesses transitional justice's engagement with gender.[31] O'Rourke's analysis is notable for articulating how individuals" gendered private roles translate into transitional justice's public sphere. Mead and Jacobsson address the interlinkages among gender, peace, and the environment in environmental peacebuilding's practice.[32] Hamber, Schulz, and Messmer consider gender's place in transitional justice and focus on conceptions of masculinity, contesting their "violation-centric" character.[33] Similarly, Lawther analyses transitional justice's engagement with victimhood and argues for nuanced approaches accounting for victimhood's complexity, notably through the lenses of voice, agency, and silence.[34] Thorne analyses witnessing within transitional

[23] Ron DUDAI, "Transitional Justice, Denial and Social Control" in Lawther and Moffett, *supra* note 1, 110 at 112, 118.

[24] *Ibid*., at 118.

[25] Dustin N SHARP, "Transitional Justice and 'Local' Justice" in Lawther and Moffett, *supra* note 1, 60 at 62, 65, 67, 69, 72, and 75.

[26] *Ibid*., at 73.

[27] Lavinia STAN, "Transitional Justice and Religion" in Lawther and Moffett, *supra* note 1, 125 at 126–27, 138–39.

[28] Megan L MANION and Alison DAVIDIAN, "The United Nations Aad Transitional Justice: An Enduring Human Rights Priority, Remedy to Securitization and Path to Sustainable Peace" in Lawther and Moffett, *supra* note 1, 141 at 141–42, 145–46, 153–54, and 156–57.

[29] Daniëlla DAM-DE JONG, "The Contribution of the UN Security Council to Environmental Peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 183 at 184–88, and 192–97.

[30] Schkolne and van der Merwe, *supra* note 9 at 162 (focusing on civil society's roles, notably at "global-local" developments' intersection.)

[31] Catherine O'ROURKE, "Transitional Justice and Gender" in Lawther and Moffett, *supra* note 1, 76 at 79–83, 89–90, 93.

[32] Sarah MEAD and Marie JACOBSSON, "Integrating Gender, Peace and Environment: The Gender Dimension of Environmental Peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 381 at 387–91 and 395–99.

[33] Brandon HAMBER, Philipp SCHULZ, and Giulia MESSMER, "Transitional Justice and Masculinities" in Lawther and Moffett, *supra* note 1, 94 at 95–7, 101, 108–9.

[34] Cheryl LAWTHER, "Transitional Justice and Constructing Victims and Victimhood" in Lawther and Moffett, *supra* note 1, 174 at 175–180, 183, 186, and 190.

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justice and focuses on the limitations attendant upon discursive conditions of appearing as witness before international courts and tribunals.[35] Thorne's examination argues individuals, as witnesses, enter a "legal space … where the private sphere interacted and became inseparable from the public sphere",[36] thus portraying the State as a forum for non-governmental actors' participation in transitional justice.

The law's centrality, like the State's place, is a focus of controversy in transitional justice discourses, as exemplified by the reviewed contributions. Yet, rather than being solely object of contestation, (public) law is increasingly relied on as framework to articulate transitional justice's emerging shift towards addressing (infra)structural factors of societal transformation.

Various strands of transitional justice discourse seek to deemphasise law's role, conceptually and heuristically. Quinn delves into the notion of the "psychosocial" and ponders on that notion's importance for transitional justice.[37] The role of memory, as approached in archival and museological practice, is also examined. Rueda Esteban, Potenza, and van den Heever discuss museums' contributions to restorative and transitional justice, emphasising visitors' expectations, emotional responses, and familiarity with transitional justice.[38] Van den Heever and Potenza, building on experiences at South Africa's Apartheid Museum, consider museums' contributions to restorative and transitional justice.[39] Rueda Esteban's empirical study examines engagement with Colombia's transitional justice processes at museums in Bogotá, Colombia.[40] That role is also addressed from a legal standpoint. Viebach, Hovestädt, and Lühe critically reflect on archives' roles in transitional justice, notably in connection with truth, justice, reparation, non-repetition guarantees, and the duty to remember.[41] Likewise, art's role in transitional justice is explored. Berman, LeBaron, and Sierra León compare Colombian and South African artistic interventions and argue for artefactual agency's potential for symbolic reparation.[42] Berman and LeBaron explore interactions between transitional justice and art, focusing on aesthetic negotiation's, aesthetic litigation's, and artefactual negotiation's transformative roles.[43] Sierra León studies aesthetic litigation's role within the Colombian Commission for the Clarification of Truth, Coexistence, and Non-Repetition (CEV), arguing it enhances the CEV's effectiveness.[44]

[35] Benjamin THORNE, "Witnessing and Remembering Mass Rights Violations: The Possibilities and Conditions of Becoming a Witness" in Lawther and Moffett, *supra* note 1, 191 at 193–95, 200–01, and 208–09.

[36] *Ibid*., at 199 (referring to the Eichmann trial as such a space "in respect to the construction of a legal collective memory".)

[37] Joanna R QUINN, "The Psychosocial Dimensions of Transitional Justice" in Lawther and Moffett, *supra* note 1, 436 at 437–38 and 447–51.

[38] Nancy Rocío RUEDA ESTEBAN, Emilia POTENZA, and Adriénne VAN DEN HEEVER, "Joint Reflection: Journey to a New Space: A Comparative Analysis of Museum Exhibitions Within the Context of Restorative and Transitional Justice" in Bilchitz and Cachalia, *supra* note 1, 181 at 186–90.

[39] Adriénne VAN DEN HEEVER and Emilia POTENZA, "Journey to a New Space: The Apartheid Museum's Truth and Reconciliation Exhibition within the Context of Restorative and Transitional Justice" in Bilchitz and Cachalia, *supra* note 1, 140 at 141–47 and 159–62.

[40] Nancy Rocío RUEDA ESTEBAN, "Exploring Visitor Expectations and Experiences of Conflict and Transitional Justice Exhibitions in Bogotá, Colombia" in Bilchitz and Cachalia, *supra* note 1, 163 at 164–67 and 171–78.

[41] Julia VIEBACH, Dagmar HOVESTÄDT and Ulrike LÜHE, "Transitional Justice and Archives" in Lawther and Moffett, *supra* note 1, 341 at 343–52 and 356–58.

[42] Kim BERMAN, Michelle LEBARON, and Yolanda SIERRA LEÓN, "Joint Reflection: How Do the Arts Function in Symbolic Reparations? A Comparative Reflection Between Colombia and South Africa" in Bilchitz and Cachalia, *supra* note 1, 131 at 132–33 and 136–38.

[43] Kim BERMAN and Michelle LEBARON, "Aesthetic Negotiation and Artefactual Agency: Key Processes for Symbolic Repair in Transitional Justice" in Bilchitz and Cachalia, *supra* note 1, 87 at 88–92, 100–02. and 109–10.

[44] Yolanda SIERRA LEÓN, "Aesthetic Litigation as a Mechanism for Building the Truth in the Colombian Truth Commission" in Bilchitz and Cachalia, *supra* note 1, 111 at 115–19 and 129–30.

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These approaches to art interestingly address the intersection of legal and non-legal tools, centring the latter around the former.

Public law assumes a more pre-eminent role, for Dam-de Jong's and Sjöstedt's and Bilchitz's and Cachalia's volumes both recentre transitional justice (and its legal and non-legal discourse) around public law in its internal and international spheres. This public law orientation is coupled with an emphasis on transitional justice's economic and environmental dimensions, transiting from focusing on retributive justice solely to approaching societal change through distributive justice, rendering economically and environmentally viable such transformational (transitional justice-related) processes.

Public law, as a substantive and procedural framework, takes centre stage in several reviewed contributions. Bilchitz and Cachalia regard transitional justice, distributive justice, and transformative constitutionalism as central to Colombia's and South Africa's societal change.[45] Finn and Gutiérrez Beltrán consider collective litigation's roles in transitional justice, specially its participatory dimension, symbolic effects, and limits.[46] Finn analyses the role of class actions in South Africa's transitional justice process, notably their ability to redress distributive injustice, particularly historic wrongs.[47] Gutiérrez Beltrán explores judicial activism's role in transitional justice, specifically analysing the ability of Colombia's Constitutional Court's "structural" judgements to catalyse social change.[48] These contributions postulate public law's role as main catalyst for social change, notably assuming transitional justice is not confined to a time-constrained opportunity window but rather capable of expansion in order to address (infra)structural factors underpinning relevant societal transitions.

The "transitional" nature of transitional justice as a discipline remains an open question, insofar as the orientation(s) of that transition are the object of competing visions for the discipline. Yet, one of the orientations which is increasingly becoming established is its (infra)structural turn. That shift widens transitional justice's scope as much as is necessary to address a society's (infra)structural transformation factors. Gallen revisits transitional justice's well-established paradigms and considers its roles in situations involving social, political, and legal change, yet falling outside those paradigms.[49] The emphasis on structural factors is generally affirmed and emphasised in terms of those factors' historical, including colonial, and economic dimensions. Aiken defends expanding transitional justice's concept to account for structural, as opposed to direct, violence, arguing narrow concepts leave unaddressed structural violence's continued invisibilities.[50] Murphy and Zvobgo advocate transitional justice's role in addressing "historical injustice", notably slavery and colonialism, and examine the challenges and potential of redress models.[51] Yusuf scrutinises transitional justice's insufficient engagement with colonialism and argues for transitional justice's role in addressing structural injustice's continuities in

[45] David BILCHITZ and Raisa CACHALIA, "Preface" in Bilchitz and Cachalia, *supra* note 1, vii at viii.

[46] Meghan FINN and Andrés Mauricio GUTIÉRREZ BELTRÁN, "Joint Reflection: Litigating for a Collective: Structural Judgments and Class Actions in Colombia and South Africa" in Bilchitz and Cachalia, *supra* note 1, 296 at 299–304.

[47] Meghan FINN, "Class Actions and the Scarce Resource of the Law" in Bilchitz and Cachalia, *supra* note 1, 257 at 258–60 and 270–74.

[48] Andrés Mauricio GUTIÉRREZ BELTRÁN, "Forced Displacement and Social Change: Light and Shadows in the Implementation of the Judgment T-025 of 2004" in Bilchitz and Cachalia, *supra* note 1, 276 at 280–83, 287–88, and 294–95.

[49] James GALLEN, "Transitional Justice and Non-Paradigmatic Transitions" in Lawther and Moffett, *supra* note 1, 382 at 383–4, 387–92, and 398.

[50] Nevin T AIKEN, "Structural Violence and Transitional Justice" in Lawther and Moffett, *supra* note 1, 452 at 453–57, 460–61, and 469–72.

[51] Colleen MURPHY and Kelebogile ZVOBGO, "Transitional Justice for Historical Injustice" in Lawther and Moffett, *supra* note 1, 421 at 424–26 and 428–35.

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post-colonial settings.[52] Dixon offers an articulation of interactions between transitional justice and development, examining each field's conceptual boundaries and researching their nexuses.[53] Metz examines national reconciliation's conceptions and limits, notably in light of indigenous values, and its connection with economic goods' allocation.[54]

This (infra)structural orientation is intertwined with the forecited public law focus, particularly since socioeconomic rights are emphasised. Bilchitz and Correa Henao discuss divergences in approaches to historical injustice in Colombia's and South Africa's socioeconomic rights-related constitutional jurisprudences.[55] Bilchitz considers socioeconomic rights' relationship with historical injustice as well as history's role in interpreting socioeconomic rights in South Africa, notably the right to housing.[56] Correa Henao reflects on historical and current injustices' intertwinement, as evidenced in Colombia's Constitutional Court's "structural" cases involving forced displacement victims' right to housing.[57]

II. Transitional justice: changing in a changing world

Transitional justice is not only itself conceptually "transitional" but also experiencing those profound changes in an increasingly, also profoundly changing world. The world surrounding transitional justice is one in which geopolitical, economic, and environmental contexts have fundamentally shifted, questioning some of transitional justice's assumptions and giving rise to competing priorities (and their agendas) and major shifts of overarching conceptions.

Those contextual transformations can be best approached from the standpoint of the normative and institutional universe which public international law has created. Public international law, as a set of general regimes and, heretofore proliferating, particular (normative and institutional) regimes, underpins Dam-de Jong's and Sjöstedt's volume's exploration of the international, inter-regimental, dimension of public law in environmental peacebuilding settings.[58]

Some contributions are notable for analysing general/particular regime interfaces. Pinzauti and Lawry-White discuss interactions between international responsibility and peacebuilding, focusing on reparation's concept, forms, and constraints.[59] Moffett considers reparations within transitional justice, focusing on their theoretical and practical

[52] Hakeem O YUSUF, "Transitional Justice and Colonialism" in Lawther and Moffett, *supra* note 1, 405 at 411–16 and 420.

[53] Peter DIXON, "Transitional Justice and Development" in Lawther and Moffett, *supra* note 1, 359 at 361–63, 366–71 and 377–80.

[54] Taddeus METZ, "The Role of Economic Goods in National Reconciliation: Evaluating South Africa and Colombia" in Bilchitz and Cachalia, *supra* note 1, 33 at 35–8, 41–4, and 48–9.

[55] David BILCHITZ and Magdalena Inés CORREA HENAO, "Joint Reflection: The Difference History Makes: Comparative Reflections on Socio-Economic Rights and Historical Consciousness in South Africa and Colombia" in Bilchitz and Cachalia, *supra* note 1, 244 at 244–45 and 255.

[56] David BILCHITZ, "Does History Make a Difference? The Role of History in the Interpretation of Socio-Economic Rights in South Africa" in Bilchitz and Cachalia, *supra* note 1, 195 at 195–200 and 212–15.

[57] Magdalena Inés CORREA HENAO, "Historical Injustice and Socio-Economic Rights in Colombian Constitutional Jurisprudence: The Case of Victims of Forced Displacement" in Bilchitz and Cachalia, *supra* note 1, 216 at 218–21, 230–35, and 240–43.

[58] Daniëlla DAM-DE JONG and Britta SJÖSTEDT, "The International Legal Dimensions of Environmental Peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 1 at 7–12.

[59] Giulia PINZAUTI and Merryl LAWRY-WHITE, "To Repair or Not to Repair: What are the Questions?" in Dam-de Jong and Sjöstedt, *supra* note 1, 253 at 259–63 and 274–76.

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aspects, including eligibility and responsibility for reparations.[60] McEvoy and Bryson examine apologies' definition and international framework and focus on truth-recovering and the effective delivery of apologies.[61] Mallinder discusses amnesties' concept, legality, legitimacy, forms, and place in transitional justice, notably given their narrative, restorative, and peacebuilding aspects.[62] The role of general international law dispute settlement methods is also appositely discussed. Harwood analyses international commissions of enquiry's roles in transitional justice, notably as manifested by the scope and implementation of those commissions' mandates.[63]

The particular/particular regimental intersection features in several contributions. Some of those inter-regimental interactions exemplify the challenges attendant upon competing priorities and agendas. Charbord and Ní Aoláin analyse transitional justice's interaction with counter-terrorism, examining their tensions and challenges, given counter-terrorism's impacts on crisis-ending and conflict-ending processes.[64] Similarly, sustainability increasingly becomes a competing priority. Das examines sustainable development's concept and linkages with environmental peacebuilding and the challenges and opportunities the former presents for effectively achieving the latter.[65] These interactions also showcase the emergence of competing overarching approaches, notably "ecocentrism". Bruch and Morley consider environmental peacebuilding's and environmental rule of law's respective concepts and linkages, before, during, and after conflicts occur, focusing on post-conflict recovery.[66] Iverson explores the tensions between "ecocentric" environmental protection and "anthropocentric" peacebuilding, notably involving distributional justice issues, and how to manage those tensions.[67]

The interactions involving the transitional justice and environmental particular regimes allow for more complex explorations of interactions among general and particular regimes, as well. While environmental protection during armed conflicts under international law has been addressed in scholarship and practice, Lehto argues, environmental protection in post-conflict settings remains understudied.[68] The relevance of general regimes on formal sources is exemplified by treaty law's prominence. Sjöstedt investigates interactions between international environmental law, notably multilateral environmental agreements (MEA), and environmental peacebuilding, as evidenced by MEA's post-conflict implementation.[69] Yet, treaty law's pre-eminence should not lead to overlooking other formal sources,

[60] Luke MOFFETT, "Reparations in Transitional Societies" in Lawther and Moffett, *supra* note 1, 283 at 290–91, 294–98, and 304–05.

[61] Kieran MCEVOY and Anna BRYSON, "Apologies in Transitional Justice" in Lawther and Moffett, *supra* note 1, 306 at 307–12, 316–17, and 321–23.

[62] Louise MALLINDER, "Amnesties and Transitional Justice" in Lawther and Moffett, *supra* note 1, 262 at 266–267, 269, 273–77, and 281–82.

[63] Catherine HARWOOD, "The Contributions of International Commissions of Inquiry to Transitional Justice" in Lawther and Moffett, *supra* note 1, 228 at 233–37 and 244–45.

[64] Anne CHARBORD and Fionnuala NÍ AOLÁIN, "Transitional Justice (Increasingly) Meets Counterterrorism" in Lawther and Moffett, *supra* note 1, 473 at 477–81, 484–87, and 490.

[65] Onita DAS, "Sustainable Development and Environmental Peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 17 at 23–31 and 40–1.

[66] Carl BRUCH and Isabelle MORLEY, "Environmental Peacebuilding and Environmental Rule of Law: Linkages, Lessons, and Looking Forward" in Dam-de Jong and Sjöstedt, *supra* note 1, 105 at 106–111 and 118–24.

[67] Jens IVERSON, "Managing the Tensions Between a Maximalist Approach to Environmental Protection and Anthropocentric Peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 89 at 91–5 and 100–04.

[68] Marja LEHTO, "Foreword" in Dam-de Jong and Sjöstedt, *supra* note 1, ix at x.

[69] Britta SJÖSTEDT, "Contribution of Multilateral Environmental Agreements and their Institutional Mechanisms to Environmental Peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 200 at 202–05, 210–12, and 217–18.

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notably general principles of law. Barral analyses equity's substantive and procedural functions within environmental peacebuilding and advocates equity's role as framework for allocating responsibility for environmental damage caused by conflict.[70]

The international law on climate change presents itself not only as a particular (sub)regime, within international environmental law, but also as addressing distinct and increasingly pressing priorities presenting a potential for competing interactions with transitional justice. Martinez and Jensen, drawing on Sierra Leone's case, consider UN post-conflict environmental peacebuilding's potential for being both conflict-sensitive and climate-sensitive.[71] Klinsky examines transitional justice's intermingling with climate change, given their involvement with historically rooted harms and systemic oppression.[72] Martinez's and Jensen's analysis posits a balanced, mutually reinforcing, interaction, while Klinsky's examination lends further credence to transitional justice's (infra)structural turn.

Transitional justice's and international criminal law's particular regimental intersection is also explored. McGonigle Leyh discusses interactions between transitional justice and international criminal law, their synergies, and tensions, prompting the former's shift away from emphasising retributive justice.[73] Roux and Silva Santaularia reflect on those interactions as well, notably discussing truth-telling and criminal justice's connection.[74] Roux approaches transitional justice from international criminal law's standpoint and criticises South Africa's ambivalence towards the obligation to prosecute international crimes.[75] Silva Santaularia considers the engagement by the International Criminal Court (ICC) with Colombia's peace processes instantiates positive complementarity, given the ICC's closure of its preliminary examination.[76]

The interactions among the universal and regional international human rights and transitional justice regimes is revisited by various contributors and takes centre stage, given transitional justice's (infra)structural turn. Hulme delves into international human rights law's place, mechanisms, actors, and potential for enhancing environmental peacebuilding.[77] Rombouts enquires into indigenous peoples' protection in environmental peacebuilding, both within universal and regional international human rights regimes, notably the Inter-American system.[78] Other emerging subfields of international human rights, sitting at the intersection of that particular regime and international economic law, include "business and human rights". Morgera discusses fair and equitable benefit-sharing's emergence

[70] Virginie BARRAL, "The Contribution of Equity to Environmental Peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 42 at 44–8 and 52–7.

[71] Albert MARTINEZ and David JENSEN, "Environmental Peacebuilding and Sustaining Peace: The United Nations and integrated approaches" in Dam-de Jong and Sjöstedt, *supra* note 1, 152 at 154–55, 167–71, and 176–80.

[72] Sonja KLINSKY, "Transitional Justice for Climate Change: Transformation through Solidarity" in Lawther and Moffett, *supra* note 1, 491 at 495–502, and 507–08.

[73] Brianne MCGONIGLE LEYH, "Transitional Justice and International Criminal Justice" in Lawther and Moffett, *supra* note 1, 212 at 218–19, 221–22, and 226

[74] Mispa ROUX and Natalia SILVA SANTAULARIA, "Joint Reflection: South Africa and Colombia as Transitional Justice Societies" in Bilchitz and Cachalia, *supra* note 1, 463 at 464–65.

[75] Mispa ROUX, "South Africa and the International Criminal Court: Perpetuating the Legacy of Overlooking the Ergo Omnes Obligation to Prosecute International Crimes by Prioritising Peace" in Bilchitz and Cachalia, *supra* note 1, 419 at 424–29 and 433–37.

[76] Natalia SILVA SANTAULARIA, "Colombia and the International Criminal Court: A Case of Positive Complementarity in Transitional Justice Contexts" in Bilchitz and Cachalia, *supra* note 1, 440 at 454–61.

[77] Karen HULME, "Assessing the contribution of human rights actors to environmental peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 230 at 232–37, 241 and 251–52.

[78] Bas ROMBOUTS, "Environmental Peacebuilding and Indigenous Peoples' Rights to Lands and Resources" in Dam-de Jong and Sjöstedt, *supra* note 1, 401 at 404–08 and 415–21.

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and argues for its use in environmental peacebuilding, as part of human rights-related business due diligence.[79] Similarly, issues such as access to land and water, widely deemed crucial to transitional justice, notably in light of its (infra)structural turn, are approached from an international human rights standpoint, showing again the increasingly (international) public law-orientedness of such discourses. Tignino and Kebebew, relying on international human rights and water law principles, propose strategies to ensure access to water.[80] Dam-de Jong scrutinises land's concept, environmental peacebuilding's priorities regarding land, and international law's roles in addressing those priorities.[81] MnisiWeeks scrutinises South Africa's transition to democracy's implications for South African traditional peoples and the challenges those peoples face, in terms of land rights and poverty.[82] Rivera-Drago and Burgos Guzman assess Colombia's 2016 peace agreement's impact on Colombian indigenous peoples, in light of land rights and reparations.[83] Lastly, the internal and international facets of public law feature in transitional justice discourse dealing with corruption, instantiating transitional justice's (infra)structural turn. Roht-Arriaza analyses the international law on anticorruption and the connections among corruption, natural resource extraction, and internal armed conflicts and repression in environmental peacebuilding.[84]

The particular regimes whose interactions are analysed include some of international economic law's major regimes. Such interactions are welcome since they challenge the presumed unsuitability of international economic law to advance public interests. Fauchald explores the roles of foreign direct investment (FDI), international investment law, and investor-State dispute settlement (ISDS) in post-conflict natural resources-related environmental peacebuilding.[85] Pertile and Faccio consider the role of extractive industry's FDI in potentially advancing environmental peacebuilding, given investment contracts' benefit-sharing features and enforceability, notably through ISDS.[86] These two contributions rightly emphasise the potential contributions of international dispute settlement to transitional justice, an area which warrants further research and is likely to become increasingly prominent not only as a matter of scholarship but also of practice, given transitional justice's (infra)structural turn.

[79] Elisa MORGERA, "The Role of Fair and Equitable Benefit-Sharing in Environmental Peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 62 at 63–72, 74–7 and 84–6.

[80] Mara TIGNINO and Tadesse KEBEBEW, "Access to Water and Peacebuilding" in Dam-de Jong and Sjöstedt, *supra* note 1, 328 at 336–42 and 346–51.

[81] Daniëlla DAM-DE JONG, "Addressing Land Inequality, Rehabilitation and Competing Uses" in Dam-de Jong and Sjöstedt, *supra* note 1, 304 at 305–07, 314, and 325–27.

[82] Sindiso MNISIWEEKS, "Twenty-Five Years of Democracy: The Consequences of South Africa's Post-Apartheid Constitution and Political Economy for Traditional Peoples" in Bilchitz and Cachalia, *supra* note 1, 309 at 314–19 and 324–27.

[83] Diana Carolina RIVERA-DRAGO and Filipo Ernesto BURGOS GUZMAN, "Evaluating the Impact of the Peace Agreement on the Indigenous Peoples of Colombia: Land Rights and Compensation" in Bilchitz and Cachalia, *supra* note 1, 330 at 337–39, 343–45, and 347–48

[84] Naomi ROHT-ARRIAZA, "Natural Resources, Transitional States and Grand Corruption" in Dam-de Jong and Sjöstedt, *supra* note 1, 127 at 128–31, 136–42, and 148–50.

[85] Ole Kristian FAUCHALD, "Environmental Peacebuilding and Natural Resources Management: The Role of International Investment Law" in Dam-de Jong and Sjöstedt, *supra* note 1, 277 at 279–82 and 294–300.

[86] Marco PERTILE and Sondra FACCIO, "Extractive Industry for Sustainable Development? Some Reflections on the Role of Investment Contracts in Ensuring Benefit Sharing and Community Participation in Natural Resource Governance" in Dam-de Jong and Sjöstedt, *supra* note 1, 355 at 363–66 and 376–78.

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III. Concluding reflections

This essay has provided an overview of recently published scholarship examining transitional justice's evolving nature and increasingly, though not uncontroversially, widening scope. It has observed transitional justice is itself conceptually "transitional", although the orientations of those transitions largely remain the object of competing visions. Yet, this essay has identified two growing trends, centring transitional justice's concepts, actors, and mechanisms around the State, whether it is resorted to or contested. That trend, which can be better articulated if the State is understood as encompassing a territory's people(s) and not only its governmental entities, does not only approach the State as site of contestation, but also emphasises States' governmental entities' capacity as infrastructural support and forum for societal change. Alongside this (infra)structural turn, a trend towards widening transitional justice's scope to redress "structural" factors, in ways intended to be economically and environmentally viable, has begun to emerge. In turn, this engagement with (infra)structural, including economic and environmental, dimensions is increasingly framed through public law, within each State's (constitutional and public law) legal and institutional order and within the inter-regimental universe of public international law. In the latter regard, this essay has concluded with an analysis of how transitional justice's changes happen in a profoundly changing world, which involves a more complex context, within which the international community's existing and emerging priorities shift and compete, thus presenting transitional justice with challenges and opportunities which are likely to determine transitional justice's own transitions.

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