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The Performance and Persistence of Transitional Justice and its Ways of Knowing Atrocity

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Abstract: Transitional justice, like other peacebuilding endeavours, strives to create change in the world and to produce knowledge that is useful (Goetschel and Pfluger 2014: 55). But the politics of how this knowledge is produced, shared and rendered legitimate depends upon the relationships between different epistemic communities, the way in which transitional justice has developed as a field, and the myriad contexts in which it is embedded at local, national and international levels. In particular, forms of 'expert' knowledge tend to be legal, foreign and based on models to be replicated elsewhere. Work on epistemic communities of peacebuilding can be usefully brought to bear on transitional justice, speaking to current debates in the literature on positionality, justice from below, marginalisation and knowledge imperialism. This paper offers two contributions to the field of transitional justice: (1) an analysis of the way the field has developed as an epistemic community(ies) and the relevance of this for a politics of knowledge, and (2) an argument for the politics of knowledge to be more widely discussed and understood as a factor in shaping transitional justice policy and practice, and as a call to a more ethical relationship with the supposed beneficiaries of transitional justice interventions.

Introduction: Transitional Justice as Peacebuilding

“In sum, the technical assistance approach to transitional justice encourages de-politicized and de-contextualized engagements. It defines expertise as professionalized and internationally mobile knowledge rather than knowledge that is situated in activist commitments and knowledge of local context; it favours models that are already legible to the field and its ‘best practices’, rather than innovations that may extend or challenge the field as we know it” (Nesiah, 2016: 34 cited in McAuliffe, 2017: 180).

Transitional justice, like other peacebuilding endeavours, strives to create change in the world and to produce knowledge that is useful (Goetschel and Pfluger, 2014: 55). But the politics of this knowledge has received relatively little attention, despite its effect on how we conceptualise transitional justice and what we even imagine to be possible in policy and practice. Drawing on scholarship which signals the importance of epistemic communities in peacebuilding and intervention (Lemay-Hébert and Mathieu 2014), as well as their operation as “sites of a constant struggle over how to define which qualifies as valid knowledge” (Bush and Duggan, 2014: 233), this paper explores the conceptual, practical and ethical implications of transitional justice’s ways of knowing atrocity. These ways of knowing – incorporating the struggles over what constitutes valid knowledge – are the ‘politics of knowledge’ to which I refer in the paper. It encapsulates power relations between different epistemic actors, the structures in which they operate, and the tensions between idealism and pragmatism. Bringing together important threads in transitional justice literature, the analysis presents a particular politics of knowledge characterising the field, unpicks its implications, and suggests key principles for the future of the field.

The quote selected to open this paper encapsulates the critical thinking on transitional justice to which I speak. Identifying a preference for certain types of knowledge within transitional justice, Nesiah draws our attention to the implications of this for who can be a transitional justice ‘expert’, the quality or usefulness of the knowledge, and the way in which this politics of knowledge is able to reproduce itself, marginalising other ways of knowing and therefore other ways of doing. In a similar way the analysis of this paper is not focused on the certainly important questions of knowledge transfer and knowledge translation which have occupied many peace studies scholars. Instead I wish to take a step back and reflect on how the politics of knowledge production shapes what is considered to be possible in the practice and policy domains of activity. By the term the politics of knowledge production, I refer to the processes by which knowledge comes to be regarded as such, a process of defining what counts as knowledge. This politics of knowledge production is part of, and produced by, the politics of knowledge described above and elaborated further in the paper.

Any discussion of transitional justice and its ways of knowing atrocity needs to be contextualised in an appreciation of the evolution of the field. Transitional justice, as the sum of processes and mechanisms intended to address mass human rights violations of the past, has risen to prominence in international policy making as an automatic and indeed necessary response in these contexts (Subotić, 2012). Nagy has written of the ‘global project’ of transitional justice meaning that it has a “three-dimensional landscape....local, national global...within broader processes of globalisation”; and that there is a settled consensus that “there can be no lasting peace without some kind of accounting” (2008: 276). Its crystallisation in United Nations pillars of the right to truth, the right to justice, the right to reparation and guarantee of non-recurrence, which are protected in the person of a Special Rapporteur, reflects a bureaucratisation of transitional justice (Rubli, 2012) and both its material and discursive dominance in reckoning with violent pasts. Transitional justice has thus developed beyond a small and specialist field to be seen as a key ‘tool’ in the international infrastructures of peacebuilding (Sriram, 2007).

In this way transitional justice is part of the “unprecedented project of knowledge production about armed conflict, conflict resolution and post-conflict reconstruction” which accompanied the post-Cold War ascendancy of what is referred to as the liberal peace (Lewis, 2017: 22). Initially this knowledge was generated by certain epistemic communities located in the Global North and its application to the Global South was through external interventions. However, we have seen increasing attention being paid to the politics of knowledge for peace and a ‘local turn’ in peacebuilding has been described by Chandler as focusing peacebuilding interventions on enabling organic systems and existing knowledges, practices and capacities (2015a: 77). The same debates can be seen in transitional justice scholarship with Kagoro referring to the “post-cold war ascendancy of particular, culturally laden narratives about history, society, governmentality and justice” (2012: 10) and transitional justice’s “knowledge imperialism” (Ibid: 12). In particular, the forms of ‘expert’ knowledge which are usually promoted through transitional justice tend to be legal, foreign and based on models to be replicated elsewhere (Jones, 2015). This has been countered by calls for more local forms of transitional justice which both observe the ways in which transitional justice is “destabilized by its local applications” (Shaw and Waldorf, 2010: 4) and call for transitional justice institutions to “broaden *ownership* and encourage the *participation* of those who have been most deeply affected by conflict” (McEvoy and McGregor, 2008: 5).

These critiques of transitional justice have two key implications which are significant for this paper. The first is that transitional justice is framed as a set of policy choices aimed at certain outcomes: reconciliation, peace, stability, democracy. This in turn leads to the second effect of the elevation of more technical, quantifiable and mobile forms of knowledge as supposedly more useful for the

production and evaluation of such outcomes. This implies a dominance of certain 'ways of knowing' and their supposed objectivity. If transitional justice is to be understood as a series of technical policy choices this belies the politics of processes of knowledge production, knowledge which represents transitional contexts and the supposed beneficiaries of transitional justice interventions in particular ways. In this exploratory paper I reflect on what this means for a transitional justice research agenda and what the implications are for how transitional justice processes and interventions take shape empirically. Firstly, I outline key contours of the knowledge and transitional justice intersection: the transitional justice 'industry', the importance of cases and models, the challenges of attribution and measurement, and the dominance of certain frames of reference and knowledge producing positions. Secondly, I reflect on the implications of this for what practices and policies tend to be designed and implemented. Thirdly, I address the possibilities for change, and suggest key principles for future work in this area.

The Intersection between Knowledge and Transitional Justice: Constructing That Which We Name

“There are various intermediaries bearing witness to distant conflicts and atrocities. They travel to distant parts of the world to collect different kinds of evidence and stories, motivated by the assumption that knowledge can evoke change” (Bake and Zöhrer, 2017: 81).

“The transitional justice entrepreneur gets to be the speaker or representative on behalf of victims, not because the latter invited and gave her a mandate but because the entrepreneur sought the victim out, categorized her, defined her, theorized her, packaged her, and disseminated her on the world stage...Despite writing critically and passionately about the situation of the victim, the victim is not only left in the same position but this encounter could be an act of further violence and dispossession” (Madlingozi, 2010: 210-211).

As scholars, policy makers and practitioners it “is in giving words to the unspeakable that we can start to understand it, but that we also, as interlocutors, shape the nature of that which we name” (Palmer, Jones and Viebach, 2015: 177). Like the broader peacebuilding endeavour in which transitional justice is embedded (Sriram, 2007) actors working on and for transitional justice often assume that knowledge will lead to change; that the more we know about how to implement justice the more just our societies will become; that the more we know about how to address trauma and healing the more reconciliation will be possible. This produces the types of interactions described in the quotes cited above: between the distant witness and the object of the witnessing; between the transitional justice entrepreneur and the victim; and between the ways of knowing and the nature of that which is known.

In order to make claims to truth in human rights work, Bake and Zöhrer suggest that authenticity “has to be performed and is thus highly dependent upon the conventions and myths” (2017: 87). Such a constructivist approach to telling, performing and representing the truth of human rights violations is compelling for those seeking to understand more about the ways in which transitional justice as a field has developed distinct knowledge communities. It also leads us to pose the question of what this means for the kinds of changes which are sought by transitional justice actors. If we understand transitional justice actors as performing both material practices and conventions and myths, we begin to see them not as knowledge ‘brokers’ who ‘reveal the truth’ through their interventions of truth commissions or criminal trials, but rather as co-constructors of that which they seek to name. Such a co-construction will be explored here through a focus on three aspects: representations of success, experts and their expertise, and knowledge as action.

Representations of ‘Success’

Representations of success in the transitional justice field are increasingly important due to the global norm and international bureaucracy described above, and should, I argue, be taken into account to a greater extent in our analyses as transitional justice scholars. In reference to the post-war context of Croatia, Greiff and Greiff write that “there is no way to understand even a particular intervention as a singular phenomenon” (2014: 108-109) for each intervention is embedded in contexts and is represented through its success or non-success. Indeed, they go on to write that “the creation of representations of success, for governments of democratic states or directors of international organisations – who are facing the risk of losing their power through either failing to intervene, or failing by intervening – [...] a prime concern” (Ibid). In this sense justice interventions become at least, if not more, about justice being seen to be done as actually being done. This may in part explain a turn in the last 15 years of transitional justice scholarship towards measuring impact (van de Merwe et al, 2009), generating databases attempting to make causal connections between transitional justice mechanisms and outcomes (Olsen, Payne and Reiter, 2010), and reflecting on how applied research, large N data sets and quantitative analysis could improve transitional justice theories and practice (Grodsky, 2009; Hafner-Burton 2014; de Greiff 2017).

However, casting transitional justice as a set of policies or inputs with outcomes that can be measured is not an unproblematic exercise in description, it is an exercise in representation of the ‘problem’ and of the ‘solution’. The desire to generate larger bodies of data to support transitional justice policy implies that outcomes are measurable and should be measured. As stated by Payne et al “[t]ransitional justice mechanisms are the major policy innovation of the late twentieth century to reduce human rights violations and strengthen democracy” (2010: 980) and their transitional justice database project

claims to “confirm for the first time that transitional justice has a positive effect on democracy and human rights” (2010: 982). These representations of the ‘problem’ and ‘solution’ need to be understood not as a snapshot of what transitional justice is or does, but rather as the emergence and crystallisation of a common set of understandings about what and who transitional justice is for. This is part of its coming into being as an epistemic community not born of a distinct intellectual tradition but rather a bricolage of activism and practice which only latterly led to the establishment of a community of scholars increasingly critical in their approach. The field of transitional justice developed as “an international web of individuals and institutions whose internal coherence is held together by common concepts, practical aims”, that crystallised in the wake of experiments with justice and the transitions from communism in Eastern Europe (Bowsher, 2018: 84).

Zunino (2019: 3) offers a helpful distinction between two different dimensions to which the term ‘transitional justice’ can refer, to “a set of practices and the discourse that originates from these practices”. These dimensions sit in synergy and tension with one another, with most definitions referring to the first dimension (Ibid) while much critical commentary and analysis of transitional justice practices draws our attention to the second. Charting the dominance of the practice dimension of transitional justice, we can see its emergence as a set of ‘experiments’ in new areas of law and their application, meaning that it was important to know quickly what worked and what didn’t, with implications for the elevation of certain types of knowledge. Responding to dynamic situations during political transitions the lawyers and human rights activists who worked on the Nuremberg Trials and then the wave of democratisations in Latin America and Eastern Europe were motivated by a post-Enlightenment and then post-Cold War faith in reason, progress and improvement (Colvin, 2008: 416). In this context ‘success’ was given meaning through linear progression as a transition from war, violence and oppression to peace, justice and democracy. This teleology of transitional justice means that transformation processes which are slow, stalled or contested are necessarily cast as unsuccessful, in contrast to a managed and linear transformation (Jones and Bernath 2017). Colvin has referred to this as a reliance on a discourse of ‘technique’ meaning that “they are invested in an idea that with the proper tools and systems in place, their goals can be accomplished effectively and efficiently. A notion of the need for careful planning and proper technique is at the heart of their efforts to remake the world” (Colvin, 2008: 413). In this approach the unplanned and the unexpected have no place in the performance of success and those who dominate in the discourse of technique are elevated.

Experts and their Expertise

The representations of success described above also rely on expertise generated by actors considered to be experts; experts which I contend are narrowly defined by their ability to produce technical

knowledge, to be mobile, and (perhaps counterintuitively) to be distanced from the contexts which are the objects of their expertise. Work on experts in International Relations has been significant for the surge in interest in how experts are historically and materially situated (Bliesemann de Guevara and Kostić, 2017: 1), and Kennedy's *The World of Struggle* particularly useful for this discussion:

“Expert rule mobilizes knowledge as power. The knowledge part combines common sense assumptions about the world that may be neither conscious nor open to debate with technical and more broadly ideological material that is often disputed. But expertise is not just knowledge learned in professional study or downloaded from the culture at large. It is also a mode of work. Expert work provides the interpretive link between decisions about what to do and the context within which those decisions are made” (2016: 7).

Kennedy is writing about experts in global political and economic life, but his insights regarding how experts mobilise knowledge as power is pertinent for transitional justice. Transitional justice combines Kennedy's reference to common sense assumptions about the world – that justice and peace are ‘good’ things – with technical material produced by only a small and well-defined epistemic community to the exclusion of others. Expertise in the transitional justice context has been defined as “a relationship between knowledge and power: we can think of expertise as that knowledge which has been accorded greater legitimacy, partly because of its ability to “speak the truth”, but also partly because of the relationships of power that determine whose voices are heard and whose voices should be heard” (Jones 2015: 294).

To illustrate the working of expertise in and for transitional justice, it is helpful to reflect on the legal space and experts operating within it. This is not only because transitional justice has been dominated by legal responses to past violations, but also because some of the richest reflections have been undertaken by scholars analysing court rooms, witness statements, and the hegemony of the law. For example, Wilson's work on the use of expert witnesses in international courts is particularly illuminating, claiming that it “lays bare the tacit assumptions about the construction of knowledge in a legal process” (2016: 730). More specifically, Wilson finds that the kind of evidence which is most accepted by lawyers and judges during international trials is determined by what kind of evidence does not “undermine the entire legal enterprise of an international trial that is primarily based on the (shaky) premise that a foreign cultural setting is intelligible to them and requires no further specialized scientific knowledge” (Ibid: 742). This is partly due to the structural fragility of international law which directly impacts the knowledge making process “insofar as it generates uncertainty in evidentiary matters and compels judges to exclude evidence that threatens their precarious authority” (Ibid: 243).

Indeed, the assumed expertise of legal actors during trials has been a focus of deconstruction on numerous counts. Wilson's work on the structural fragility of international law and its effect on the knowledge generating process can be complemented by the work of other scholars on the 'clash of knowledge' between legal and other ways of knowing violations of the past and establishing the truth. There are tensions between the way in which lawyers, scholars and local populations "make sense of both the experience of violence, or more broadly construed harm, and the response to these harms...[of] different *ways of knowing*" (Palmer, Jones and Viebach 2015: 174). To apply this to human rights work, "the abuse occurs in a physical sense, but the way or the form in which it is accounted, represented, and interpreted influences how it is known" (Ibid: 176). This work recognises that the knowledge generated and used in transitional justice processes is always incomplete (Ibid: 174-175). This is partly because of the requirements of the law itself. According to Wilson, within international criminal courts the history of a conflict is shaped by the legal actors' strategies and motivations, as they emphasise the most useful accounts of the past and construct categories such as genocide (2011: 70). Kelsall makes a similar point in his political anthropology of the Special Court for Sierra Leone when he observes that the "prosecution team applies linguistic techniques to excavate a particular version of the truth from a contested history" (2006: 587).

Attempts to counter the "hegemonic quality of the law" which "risks being complicit in a renewed disenfranchisement" (Colm and Campbell, 2008: 378, 381) have led to a local turn in transitional justice which, while positive in many ways, does not entirely avoid the risks highlighted above. This work includes justice coming from 'below' (McEvoy and McGregor, 2008), the taking into account different positionalities and standpoints in a 'localized' transitional justice (Shaw and Waldorf, 2010), contesting foreign knowledge in a search for an African transitional justice (Bennett et al, 2012), or struggles over who owns a particular transitional justice process (in reference to the case of Rwanda see Thomson and Nagy, 2011). Contesting dominant knowledge/s has been an important part of the evolution of the field of transitional justice, but we would also be wise to reflect on the persistence of the unequal binary between international 'experts' and local 'knowledge', the latter having instrumental value to the experts as they make policy decisions. I will return to this issue in concluding reflections of the paper, but it is important to note here that any attempt to reclaim, revive or render visible the 'local' in transitional justice is still an act of those with epistemic privilege seeking to give back power to those whose voices have been marginalised. This has the effect of continuing to assume a problematic "*sense of naturalness and inevitability*" of transitional justice (Sharp 2018:14, emphasis in original) rather than deconstructing which voices are seen to be expert and which are seen to be local in the first place.

Knowledge as Action

The contours of the knowledge-transitional justice intersection are fundamental for explaining not only how we think about transitional justice but also how we act in the name of transitional justice. This article shares with Grundmann and Stehr an approach to knowledge as “the capacity to act... a model for reality. Social scientists not only reflect social reality but explain its problems and thereby confer the capability of taking action” (2012: 16-17). Indeed, transitional justice interventions act in and on the world in a way which is based on some version of social reality, a way of seeing the society in question, the kind of remedy that is required but also importantly the definition of the problem in the first place (Nagy, 2008: 276). This means that how we know a society informs interventions, prejudices, assumptions. It determines who we consider to have a legitimate voice to describe and name a society and who not, which will affect who can play which role in a transitional justice process. Importantly it takes us from the abstract, from the ideal moral good of justice, to the practice of transitional justice and how it is experienced by people in context.

Returning to Kennedy, his observation that “Expertise dictates in the name of the universal, the public good, the general will, the practical necessities of reason, or the objective truths of scientific knowledge” (2016: 3) holds for transitional justice, and thus points to the hidden contestations and political nature of the expertise. The act of experts speaking of, writing about, and analysing transitional justice, conditions how we can know those processes and render them ‘readable’. Critical scholars of transitional justice have consistently illuminated how one’s assessment of transitional justice processes depends on one’s positionality. A good example of this is the well-known case of the South African TRC which was “beset by a series of philosophical questions” and “faced the difficulty of whether or not the constructed nature of personal narrative constituted objective facts” (Emmanuel, 2007: 7). According to Emmanuel, where a commentator stood in regard to this question, would directly influence whether she/he would understand the intervention to have been successful (Ibid: 3). This observation underscores how our assessment and measurement of transitional justice interventions and impacts are influenced not only by the content of the intervention but also by our prior assumptions and present standpoints.

This underscores the subjectivity of knowledge that is produced both for and of transitional justice. Data on the impact or success of a given intervention cannot be seen as a window into the truth, nor as an objective basis of facts on which transitional justice interventions can be designed. This is not only because of the representation of success problem which was discussed earlier, but also because our ability to see and to assess is conditioned by the lens through which we (choose) to look. However, such subjectivity has the potential to be enriching for it invites dialogue between these different positionalities. This potential can only be realised if the subjectivity of knowledge is acknowledged. If it is obfuscated by narratives of the universality of human rights, of the knowability of one kind of

justice, then we miss an opportunity for learning through such dialogue, and run the risk of doing harm through the marginalisation of certain positionalities and the rendering invisible of particular experiences. I will come back to this in the final section of the article.

Enacting Change in the World: Transitional Justice and the Research, Policy, Practice Interface

Transitional justice is a field now characterised by a multiplicity of voices and claims to expertise. Previously dominated by lawyers, the bureaucratisation and professionalization of transitional justice practice has led to a burgeoning of think tanks, consultants, university courses (Rubli 2012) and the blurring of the lines between research, policy and practice. These characteristics of the field have emerged in the context of broader shifts in the way expertise and knowledge are viewed in the current context of dominant neoliberalism. Bliesemann de Guevara and Kostić explain why this is so important to consider when connecting the politics of knowledge with enacting change:

“Policy-relevant knowledge is never produced in a void. Those specialising in it - academics, experts, consultants and similar – are bound by broader dominant structures of their times, both material and ideological (Kauppi 2014). While these structures do not determine what knowledge exactly is being produced, they nonetheless create opportunity structures for certain ways of knowing, and foreclose alternatives to accepted bodies of knowledge. What influences policy-relevant knowledge production today, we argue, are the material and ideological practices of neoliberalism” (Bliesemann de Guevara and Kostić 2017: 4).

This quote speaks to a trend towards individuals increasingly straddling public/private, state/non-state, local/global, from the previously more static categories of ‘consultant’ ‘policy maker’ ‘academic’ or ‘think tank expert’ (Ibid: 5-6). The effect of this has been “to question the status and value of expertise in society as such. The multiplicity of voices and heightened public scrutiny of political events has led to increased competition over the authority to speak, framings of conflict situations, interpretations of the causes and nature of political problems, and not least policy solutions. This has gone hand in hand with decreasing public trust in what is being presented by traditional institutions and authorities as facts and truth” (Ibid: 6).

Much of the research, policy and practice undertaken in the field of transitional justice has at its core a sense of purpose. Whether to prosecute violations of human rights, to contribute to long term processes of social and individual healing, to decide how to acknowledge and redress experiences of harm, or to consolidate the authority of a ‘new’ social contract. It is this sense of purpose which can explain much of the tension in scholarship on the ‘rights’ and ‘wrongs’ of the transitional justice

process itself. The more reflective discussions ask searching questions of the way in which decisions are taken, victims are consulted or power negotiated through transitional justice. At the heart of these debates are difficult questions about whether the purpose of a given transitional justice process is legitimately or well defined, whether the ultimate purpose can justify means which may be less consultative or democratic, and whether competing understandings of the purpose of a given process can be reconciled. Underpinning this are the normalised ways of working which condition relationships between different epistemic communities. Miller is worth quoting at length here:

“Transitional justice operates through the actions of a series of groups: policy makers who plan and implement the institutions; victims groups defined by commissions or courts; the larger citizenry implicated, but not named, by a final report or court decision; scholars who write the literature about specific country contexts or the phenomenon in general; and practitioners who work for nongovernmental organizations (NGOs) that consult on the possible manner of transition. Although it can be difficult to map the precise influence of one area upon another, commentary in the literature and descriptions of the process of formation can reveal the degree to which one area models transition for another. The consistency of language and terminology employed in a wide diversity of postconflict contexts reveals a global phenomenon and its seemingly successful export/import from one country or region to another over the course of the past several decades. The quest to reveal a blindness in the field springs from the global nature of the enterprise itself; the movement of ideas about and modes for transition bespeaks not only a series of ‘lessons learned’ but also potentially the transfer of ideological preoccupations that underpin the seemingly neutral discourse of the project” (2008: 271).

This quote is worth including at length as it articulates dynamics which are the concern of this paper. The “vertical expansion” of the field of transitional justice has meant that “actors both above and below the State level are increasingly perceived as being relevant for shaping and implementing transitional justice solutions” (Hansen, 2012: 105). But, as Miller has pointed out, “The role of international actors in the process of spreading the ideas and ideals of the ‘movement’ of transitional justice has not yet been fully explored in the literature, perhaps because of (at least in part) the tendency of scholars or ex-commissioners to become consultants to, rather than fully external critics of, the enterprise” (2008: 290). Miller’s observations regarding the export/import phenomenon of transitional justice policy (and Miller is not alone in such observations) suggest one of two things: either (1) the universal principles on which transitional justice are based are so compelling and so justifiable that the kinds of policies which are generated will, and should, be similar across contexts i.e. the right to truth holds in all cases and the current received best practice suggests truth commissions, commissions of inquiry and official apologies should be implemented, or (2) the

different epistemic communities do not communicate well enough across the divides in order to ensure that more nuanced and varied policies can be implemented as contexts change and evolve.

Whilst the assumption is not, and should not be, that it is researchers and academics who hold the key to more nuanced thought, it is worth bearing in mind that research which surveys victims preferences consistently finds that they are more likely to prioritise present economic needs than the kinds of interventions which absorb transitional justice budgets and energy e.g. international tribunals (see for example Waldorf 2012). There is no easy or clear answer as to why, when the 'evidence' from one epistemic community is so clear, it does not translate into policy change. Perhaps this is because of the dominance of assumed wisdom, illustrated in the concern that "it is disconcerting that a number of countries showing interest in borrowing the South African TRC model have done little research to establish the commission's actual contribution to the transformation process" ... "a serious concern [...] is the tendency for countries to treat the South African TRC as the standard practice and a paradigm to be directly borrowed" (Emmanuel 2007: 12). The lack of direct, easy, translation of knowledge from one epistemic community to another is an indication perhaps of lack of access to certain knowledge, but it is not only this. The persistence of certain 'ways of doing' transitional justice is connected to the persistence in the 'ways of knowing' which have been discussed thus far, and this is a link which we do not know enough about.

As highlighted earlier, transitional justice as a field is characterised by research-policy-practice exchange. The boundaries between these epistemic communities are not always clear or impermeable, and in many ways the academic scholarship derives its existence from that of the policies and practices which are the subjects of its reflections. This has been described, in reference to Development Studies, as an inability to "escape the dirty worlds of practical policy-making which lend it a reason for being, and which render it impotent, apolitical or supportive of a series of interventions that disempower and even infantilize "the poor" (2007: 202). Admirable impulses to enact change in the world, to 'do good', in the face of unspeakable harm, have been led to the disempowerment of the victim by the transitional justice entrepreneur (Madlingozi 2010: 210-211), the valorisation of technical and mobile expertise held by a small elite (McAuliffe 2017: 180), and concern with measuring impact and making claims to success (Greiff and Greiff 2015; Payne, Olsen, and Reiter 2010). Here we have seen a potential blockage in knowledge as practice continues, spurred by an increasingly strong global norm, while critical reflections deconstruct and challenge the very basis of this practice.

As a way beyond this potential impasse in action – to act is disempowering; not to act is inhumane – an interest in pragmatism has offered a potential solution. Writing about peacebuilding in Northern

Ireland, Stanton and Kelly (2015) have mobilised Aristotle's distinction between 'episteme' (theory) and *techne* (skill) to apply the idea of *phronesis* (context dependent knowledge) to examine the ways in which peacebuilders mobilise their knowledge. Such mobilisations may appear from different positionalities to lack uniformity, but Stanton and Kelly argue that they contain their own logic, that of a practical form of wisdom. This echoes recent discussions around pragmatic peace which suggest that we should move beyond a 'liberal' versus 'critical' dichotomy and look at daily life in these contexts as providing the major, and perhaps even only, source for solutions to peace and conflict related problems (Chandler, 2015b).

On the one hand it is certainly appealing to be able to move beyond simplistic dichotomies and just prioritise 'what works' regardless of whose knowledge it is based on. On the other hand, we should not forget to interrogate *how* we know what works and indeed what works for whom. The wisdom of practitioners cannot escape prior assumptions or knowledge. Furthermore, if this wisdom is generated through experience and in context, then we must also take into account biased or uneven ways in which context is experienced. These varied experiences will arise due to the varied starting points which practitioners have when they enter the peacebuilding field, or when they join a particular intervention. These assumptions, standpoints and positionalities will shape what a given individual will see and what they imagine to be possible. Applying the *teche/phronesis* distinction to transitional justice, Zunino (2011) suggests that *phronesis* allows a dialogical approach, which he argues is necessary for mediating between the universal demands of transitional justice in its appeals to the 'universal' good of peace, justice, human rights, and the particular circumstances in which interventions occur.

Looking to the pragmatic as a way forward also requires a greater focus to be placed on evidence-based policy making. Chambers has written of a Development Studies run towards a "Newtonian paradigm of things, with logframes, targets, milestones, value for money, evidence-based and results-based management and randomised control trials, with reductionist concepts of rigour derived from statistics, the physical sciences and medical research" (2014: 526). We can see this too in transitional justice, with a turn towards measuring impact and compiling large N databases which can categorise and label. This work is incredibly helpful for certain 'ways of knowing' societies and represents in many ways an understandable and justifiable aim to increase knowledge, generate change and to ensure the effectiveness and even accountability of transitional justice interventions. But it also limits our frames of reference and contributes to the growing preference for technical knowledge which encourages academics into policy advice and leads to the tendency highlighted above for individuals to become consultants for the transitional justice enterprise rather to position themselves as external critics (Miller 2008: 29).

Contained within the pragmatic demand for more evidence is an implied play-off between the ideal and what is possible under the constraints of reality. Emmanuel describes the South African TRC as “caught up in a conflict between principle and pragmatism” (2007: 12). This is partly because of the reasonable recognition that the lofty aims of transitional justice can only be realised over time, perhaps generations of time, and are difficult to measure. In the absence of clear, measurable short-term fixes policy makers and practitioners opt for doing the best they can with the resources they have. The debate over whether the field of transitional justice should be expanded to include socio-economic crimes and inequalities, thus increasing its potential overlap with what has been traditionally considered the domain of international development work, is often reduced to a debate over what is *possible* rather than desirable (Evans 2017; Waldorf 2012; Arbour 2008). Arguments against an expansion of transitional justice include placing too many demands on a field that is already struggling, that it is more practical for the mechanisms of transitional justice to handle political and civil rights in the time frame and with the resources available, and that a legal approach to political and civil rights makes it easier to identify violations and to address them. Indeed, many criticisms of the workings of international justice cite lengthy and expensive procedures, indicating a desire for efficiency, speedy trials and tangible justice (we see this in media coverage of the International Criminal Court¹).

The question of whether it is the pragmatic or the idealised version of justice which should shape the direction of transitional justice as a field also connects to a debate over whether justice at times of transition is something which is ‘ordinary’ or ‘extra-ordinary’. This is a question of whether specific conditions of transitional societies render the kind of justice being implemented as necessarily different from settled or established democracies. As Jens David Ohlin describes it, justice is meant to evoke a universal, normative goal whereas ‘transitional’ defines an exceptional and limited moment (2007). If we are dealing with a form of extraordinary justice, then certain ‘short-cuts’ may be possible such as a ‘good enough’ or more ‘limited’ justice that is possible given the constraints of the contexts in which transitional justice processes are enacted. Furthermore, an extra-ordinary justice could be justified as serving a political purpose such as to promote a new democracy (Hansen 2012: 109), thereby becoming a ‘policy tool’.

The representation of a choice to be made in transitional justice between what is ideal and what is possible invites us to accept a clear distinction between the practical, the ideal, the visionary, the

¹ See for example www.spiegel.de/international/world/slow-wheels-of-justice-the-icc-s-disappointing-track-record-a-803796.html; <https://www.hrw.org/news/2016/07/18/international-criminal-court-crossroads>; <https://www.opendemocracy.net/open-security/luke-moffett/dominic-ongwen-and-slowgrinding-wheels-of-international-criminal-court>.

realistic. If this is the case, then it is not in fact surprising that the epistemic communities of research-policy-practice have developed and blurred in the ways discussed above and particularly as identified by Miller (2008). Transitional justice as a field was born in and through practice as lawyers and activists in Latin America and then Eastern Europe sought to address large scale human rights violations at a moment of opportunity offered by political transition. The academic work has followed, and quickly increased in volume and variety, bringing in sociology, anthropology, socio-legal studies and political science to interrogate and critique the legal 'ways of knowing' and the increasingly professionalised and bureaucratised field. But the continued relevance of the pragmatic, of what is possible, and the insistence on an exceptional or extra-ordinary form of justice render the "dirty worlds" (Chambers 2014) of practice and policy dominant as epistemic communities. Scholars move between the academy, think tanks and government ministries, seeking to make their work to the empirical unfolding of transitional justice and to enact their version of desirable change in the world.

The Politics of Knowledge of and for Transitional Justice

This paper has focused on the politics of knowledge of and for transitional justice, reflecting on the importance of measurements of success, the role of certain experts and expertise, and the specific character of the field which has porous boundaries between research, policy and practice. We can draw from these discussions some observations which are critical for transitional justice scholars moving forward, both as they continue to critique and shape the epistemic community of transitional justice research, but also as they move between policy and practice worlds influencing the material and discursive practices of transitional justice interventions.

The production of knowledge on and for transitional justice is not a knowledge practice that different actors can engage in equally: "only a particular set of people, in a particular set of circumstances, is able to shape the research agenda which in turn informs policies that shape the world" (Nouwen, 2014: 258). This set of people are internationally mobile and privileged 'experts' educated in the language of international norms and rights and able to draw on internationally legible models and assertions. Nouwen offers a particularly pertinent example of the inequality of what 'counts' as knowledge authority:

"Take, for example, the authority of former Principal Judge in Uganda, Justice James Ogoola. Patiently and poetically, he has answered the questions of many a researcher regarding the Ugandan International Crimes Division (ICD, also known as UWCC), for which he laid the

foundations. He is the authority on the topic. But when his speech on the ICD was published in a US law journal, the editors complemented it with footnotes” (Ibid).

Numerous such anecdotal examples abound in the field of transitional justice research, of projects with ‘local’ partners relegated to mere data collectors while academics based in the Global North advance their careers by extracting such knowledge and translating it for consumption by the most powerful epistemic communities. According to Colvin the problem for transitional justice vis-à-vis the local context is not one of a lack of knowledge, but rather a “failed ethical relationship to the other” (2008: 424). This leads to a different set of questions than those which have illuminated the field and which have been concerned with identifying which models are the most successful and how the impact of transitional justice interventions could be measured. Colvin’s observations instead demand a reflection on how the politics of knowledge of transitional justice produces certain types of relationships between those that claim knowledge and those to whom the knowledge refers.

As a transitional justice scholar I speak to other scholars when I offer my own reflections on how my work, and by implication those of others, can take into account the failed ethical relationship to the other. Even those of us who may see ourselves as part of a critical scholarship which seeks to deconstruct and challenge transitional justice as a norm, policy or practice, should be aware of how our work represents the object of our gaze. As discussed in this article our frame of references, bibliography, chosen concepts, and empirical preferences will represent and indeed even shape that which we research and write about. It may seem impossible to escape the power relations inherent in representing in our work those who have already been marginalised or victimised. This is perhaps even more challenging in the field of transitional justice, influenced so strongly by a form of law (McEvoy, 2007), which does not necessarily address the vulnerable but rather everyone, including those in power, and looks towards the state and donors in particular (Kendall and Nouwen, 2020). This raises challenges for a field which makes claims to a shared humanity, and which holds the victim up as the very reason for its existence (Ibid). It is not always clear who is to be found in the constituencies of transitional justice, and the global norm, donor aid, and state intransigence can stand between those who work on and for transitional justice and communities of victims and marginalised persons. However, the inclusion of more reflexive writing, elaboration of our own positionalities, and varying the sources and ‘expertise’ which we cite, can go some way towards foregrounding and acknowledging these important challenges. If we write openly about our own assumptions in this way then the position of authority from which we speak, whether by design or through the nature of our privileged positions, weakens. Such a weakening is vital if the politics of knowledge is to change.

The subjectivity of knowledge is not, however, only a cause for concern. It can also be an opportunity. As highlighted earlier in this article dialogue requires that interlocutors meet, but also that they speak from different positions. Potentially conflicting claims to knowledge make it only too clear that the same experience, intervention or vision of the future, can be understood in multiple ways. This division does not have to be a block but can be a chance to listen, learn and generate new ways of thinking and seeing. As scholars we have a role to play in this. We can observe and seek to understand frictions, divisions, and differences in ways which place them into dialogue rather than seeking to eradicate, smooth, or seek closure by “settling accounts with the past” (Fletcher, Weinstein et al 2009: 207). Embracing a more agonistic approach to peace in general allows us to take into consideration contestations, politics and power while at the same time remaining attentive to our own position (Shinko 2008). If we can write ourselves in to the complexities which we observe as scholars, and if we see these complexities and contradictions as a chance to enhance the varied positions contributing to a wider dialogue – on what justice is and who it is for – then we can use subjectivity in our analysis and not fear its weakening of our argument. Zunino writes of something similar when he suggests a move towards a dialogue between universal notions of justice and particular circumstances, thus transforming “all interlocutors” by “being open to the truth of the other; recognising that one is inescapably situated; and being aware of the finitude of human knowledge” (2011: 101).

The politics of knowledge and transitional justice has sparked a ‘local turn’ which seeks to democratise knowledge production, expertise and claim-making. This has been important in highlighting the valuable contributions which the objects of interventions can offer to knowledge of injustice and how we can seek to address it. Without wishing in any way to suggest this is not important, I am reminded of Chandler’s warning that one effect of a focus on organic systems and existing knowledges is that it takes the “intervention out of the context of policy-making and policy understanding out of the political sphere of democratic debate and decision-making” (2015a:77). The ‘local turn’ should not be seen as a shortcut to a resource light peace intervention, or an excuse to remove responsibility from other actors at the state level or working in international governmental organisations. A transitional justice process, and the contexts which rendered it relevant, are not contained to one short period of history, nor to one bounded group of actors. As a field we are only just beginning to appreciate the cross-border, multi actor, historical, and colonial nature of the violence which has taken place. In order to seek a justice which takes this into the account all actors need to be part of the knowledge production, from the individual victim to the Secretary-General of the United Nations. The challenge is to ensure that each contribution is seen as equally valid and equally valuable.

As scholars we should thus take a step back from looking outwards and analysing what it detached from us as individuals. Collecting data, measuring impact, codifying, and categorising that which we

observe is a pragmatic path, where the demands of 'reality' test and perhaps weaken the values which underpin the field of transitional justice. There is a role for transitional justice expertise, but only if it is in principle possible for us all to be experts should we chose to voice our knowledge and to share our relevant experiences. As scholars in particular we should be deconstructing the politics of knowledge (in which we are also implicated) and asking how we can re-shape our ethical relationship to the other while keeping in mind the ideals which motivate our interest in violence, justice and peace. This is a more inward facing knowledge agenda for the field of transitional justice and it requires time and commitment.

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