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Function and Dysfunction in Post-Conflict Justice Networks and Communities

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ABSTRACT

The field of post-conflict justice includes many well-known international criminal law and rule of law initiatives, from the International Criminal Court to legal reform programs in Afghanistan and Iraq. Less visible, but nonetheless vital to the field, are the international staff (known as internationals) who carry out these transitional justice enterprises, and the networks and communities of practice that connect them to each other. By sharing information, collaborating on joint action, and debating proposed legal rules within their networks and communities, internationals help to develop and implement the core norms and practices of post-conflict justice. These modes of collaboration are particularly important because the field's fundamental norms and practices are still evolving dramatically. But at times, these networks and communities are dysfunctional. Then, internationals' ability to engage in robust dialogue and work together is compromised, to the detriment of the effectiveness of their work and the maturation of the field as a whole. In examining these issues, this Article draws on a

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series of interviews with internationals who have worked in post-conflict justice.

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I. INTRODUCTION

The field of post-conflict justice includes many well-known initiatives, from the International Criminal Court (ICC) trying accused war criminals in The Hague to the United States organizing massive programs to rebuild the justice systems in Afghanistan and Iraq. Less visible, but nonetheless vital to the field, are the international staff (known as internationals) who carry out these transitional justice enterprises, and the networks and communities[1] that connect them to each other.

In international criminal tribunals and in post-conflict states, internationals form tight-knit social communities. As they move from one job and post-conflict setting to another, these local relationships become transnational networks. Internationals share soccer scores and job opportunities with their local and transnational connections, to be sure, but they also debate new legal developments, collaborate on joint projects, and offer professional advice and assistance. Internationals conducting rule of law (ROL) programs form working relationships for the purpose of training judges or passing reform legislation, for example; those working in international criminal law (ICL) e-mail each other with news of the latest decisions and judgments.

When used in these ways, internationals' communities and networks become a source of knowledge production and circulation, simultaneously contributing to and putting into action the core norms and practices of post-conflict justice. Or at least, they do so when they are characterized by a common purpose, mutual trust, and the free flow of information. But at times, these networks and communities are dysfunctional. Then, these modes of interaction and collaboration are disrupted by competition, mistrust, or simple unawareness of each other's activities.

These dynamics are important because, in the young field of post-conflict justice, the core norms and practices are still evolving dramatically. Over the last 20 years, international criminal tribunals and national courts have been creating the modern standards of evidence, procedure, and criminal responsibility in ICL proceedings. The United Nations and other organizations working in ROL have been developing indicators for measuring progress and guides to best practices. In this context of rapidly emerging legal rules and policies, internationals' ability to engage in robust dialogue and joint action with others in their field is critical both to the maturation of ICL and ROL systems and to the effectiveness of their initiatives.

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1. As discussed at length in Part II, *infra,* a network is a set of connections between individual actors, while a community is a set of connections with a shared identity relating to some common subject or purpose.

This Article examines the networks and communities of internationals working in post-conflict justice from the perspective of the internationals themselves. It is based on my interviews with fifty internationals about their perceptions of their work and their connections with others in the field. The Article identifies factors that influence how internationals' networks and communities form and function, with particular attention to the role of these relationships vis-à-vis the development of the core norms and practices of ICL and ROL.

In so doing, this Article builds on the existing legal literature on transnational communities and networks. [2] This literature has recognized that post-conflict justice (PCJ) networks and communities are important, but the scope of its inquiry into these networks and communities has been limited in several ways. Thus far, it has primarily looked at what high-functioning networks are already doing or could potentially do and has mainly focused on assessing these networks' legitimacy and effectiveness in comparison to other mechanisms for accomplishing the same tasks.[3] The literature has focused less on trying to understand what factors enable networks and communities to form and influence their level of function or dysfunction. It has also not previously considered the role of network

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2. *See, e.g.*, MARGARET E. KECK & KATHRYN SIKKINK, ACTIVITSTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS (1998) (examining networks of activists that coalesce and operate across national frontiers); Hari M. Osofsky & Janet Koven Levit, *The Scale of Networks? Local Climate Change Coalitions*, 8 CHI. J. INT'L L. 409 (2008) (examining the role of localities in transnational environmental networks); Margaret E. McGuinness, Medellin, *Norm Portals, and the Horizontal Integration of International Human Rights*, 82 NOTRE DAME L. REV. 755 (2006) (discussing the role of norm portals in faciliating international human rights convergence); Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1 (2002) (assessing the future of international cooperation by examining transgovernmental networks and evaluating their relationship to liberal internationalism); Jenia Iontcheva Turner, *Transnational Networks and International Criminal Justice*, 105 MICH. L. REV. 985 (2007) (describing developments in the theory of transgovernmental networks and providing a conceptual defense for networks being useful in ICL).

3. *See* Elena A. Baylis, *Reassessing the Role of International Criminal Law: Rebuilding National Courts Through Transnational Networks*, 50 B.C. L. REV. 1, 69 (2009) (proposing that transnational networks are as effective a mechanism for international involvement as international and hybrid courts); William W. Burke-White, *Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice*, 49 HARV. INT'L L.J. 53, 53–54 (2008) (recommending active engagement and encouragement by the ICC with national governments); Turner, *supra* note 2, at 986 (discussing and evaluating the potential impact of networks on the implementation of ICL).

and community interactions in contributing to shared practices and ideas transnationally throughout ROL and ICL settings.[4]

This Article seeks to advance the literature by systematically examining these fundamental features of PCJ networks and communities. This subject is important for several reasons. On a theoretical level, achieving a better understanding of network and community formation, function, and participation in norm development contributes to more robust concepts of networks and communities. On a practical level, it is valuable to study these communities and networks because they are performing important functions within post-conflict justice—sometimes effectively, but sometimes not. By assessing networks' and communities' key characteristics, this Article identifies ways of enabling them to operate more productively. Finally, this analysis also provides an additional way to engage with several particular discussions in the literature and in policy-making, such as controversies over new ICL norms, questions about the legitimacy of ROL models and best practices, and efforts to extend PCJ networks and communities to include nationals of post-conflict states.

Part II of this Article introduces the concepts of networks and communities of practice. It provides a narrative description of how PCJ networks form and are used by participants, followed by an overview of the factors that seem to affect these processes.

Part III focuses on case studies of two PCJ communities: a community of embedded ROL internationals who work full-time in post-conflict states and an ICL tribunal community. This section analyzes in some detail whether and how the members of these communities are able to share information with each other and develop common norms and practices. While most interviewed members of the ICL tribunal community felt that they are able to freely share professional information and work together on joint projects, the interviewed members of the embedded ROL community tended to feel constrained from doing so by the existence of structurally created competition among community members. Correspondingly, many internationals working in ICL tribunals expressed a sense of common purpose and identity focused on building a system of ICL; embedded ROL interviewees did not express such views. This Part explores the several characteristics of ROL and ICL that seem to contribute to these perceptions, as well as the consequences for the development of common norms and practices in each area.

Part IV summarizes my findings concerning the factors affecting PCJ community formation and function. It also explores the

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4. *See* Elena Baylis, *Tribunal-Hopping with the Post-Conflict Justice Junkies*, 10 OR. REV. INT'L L. 361, 364–65 (2008) (a preliminary essay identifying the ideas that were then systematically explored in the research study on which this Article is based).

boundaries of ROL and ICL communities, their intersections with other communities and networks, and the implications for the development and implementation of their core norms. Following the conclusion in Part IV, Appendix A provides information about the study methodology, and Appendix B sets forth aggregate information about the interviewees.

While the appendices describe the study and its methods in some detail, for purposes of engaging with the issues discussed in this Article, the reader should have in mind the following fundamental aspects of the nature, scope, and limits of the study and of the information gathered in the interviews. First, this was a qualitative study based on thoughtful analysis of interviewees' perceptions of their work experiences. Most interviews were recorded and transcribed with the permission of the interviewees; I coded the transcripts for relevant concepts and experiences, and analyzed the coded materials.[5] Second, the study was designed to identify themes that arose across a variety of institutional and national contexts and to look for convergences and divergences in how those themes emerged in different settings. Accordingly, the study includes participants from many different institutions and settings, but frequently there are only a few participants from any particular institution or setting.[6] Finally, while the participants have worked in a wide variety of institutional contexts and post-conflict settings, the vast majority of interviewees are, by nationality, from the United States, the United Kingdom, and other European and Commonwealth countries. As such, my analysis focuses on the experiences and perspectives of people from those regions and, when relevant, the practices and policies of the governments and other institutions with which they have interacted. The information provided by my interviewees suggests that the experiences of internationals from other regions may differ from those examined here.

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5. Appendix A provides more detail about the study's methods.

6. As detailed in Appendix B, my interviewees include people working for or with all of the international and hybrid criminal tribunals (ICC, ICTY, ICTR, ECCC, SCSL, STL, Timor-Leste Special Panels, Bosnia Special War Crimes Chamber), as well as the United Nations, Organization for Security and Co-operation in Europe, European Union, agencies of the U.S. government, agencies of several other governments, the U.S. and British armed forces, ABA-CEELI/ABA-ROLI, and numerous other institutions, non-governmental organizations, and private contracting companies. My interviewees have worked in or on a wide range of post-conflict countries, including but not limited to Iraq, Afghanistan, Lebanon, Timor-Leste, Cambodia, Nepal, Liberia, Sierra Leone, Rwanda, Congo, Uganda, Sudan, South Sudan, Somalia, Kenya, Peru, Colombia, Guatemala, Haiti, Cyprus, Georgia, and all the countries of the former Yugoslavia. Because most of the interviewees requested anonymity, their names and institutional affiliations are not divulged, but aggregate information about the interviewees and their professional experiences is provided in Appendix B.

II. NETWORKS AND COMMUNITIES

In this Part, subpart A defines networks and communities and discusses what can be learned about post-conflict justice by analyzing internationals' networks and communities. Subpart B explores how PCJ network relationships are formed, maintained, and used; it also identifies some factors affecting network formation, as well as several broad categories of use of network connections.[7] Section C introduces Wenger and Adler's concepts of communities of practice. This explanation lays the foundation for an analysis of the shared identities and other communal characteristics of PCJ connections in Part III

A. *Defining Networks and Communities*

At the most basic level, a network is simply a set of connections between individual actors.[8] All of the members of a network are linked to one another by their relationships, either directly, or indirectly through other network members. So a network can be thought of as a structure formed of relationships. In social network theory, the relationships, as much as the actors, are the constituent elements of the network.[9]

Understanding the structure of relationships among internationals working in post-conflict justice provides insight into the flow of information, power, and action among them. From the perspective of social network theory, such an analysis "provides a perspective on social phenomena that focuses on relationships among individual actors as the key building block of group and individual behavior."[10] Such interpersonal relationships function as conduits for transferring information, exercising power, and coordinating action.[11]

Identifying a set of connections that forms a network does not in itself characterize the qualities of the network's constituent relationships. Networks can be composed of relationships that are formal or informal, horizontal or vertical, or any kind at all. Network

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7. A full analysis of PCJ networks using a social network theory approach would require detailed data about the entire set of network participants and is outside the scope of this Article.

8. *See* David Krackhardt, *Social Networks, in* ENCYCLOPEDIA OF GROUP PROCESSES AND INTERGROUP RELATIONS 817, 817 (John M. Levine & Michael A. Hoggs eds., 2010) ("Social networks is a field of study that focuses on the pattern, or structure, of relations among a set of actors.").

9. *See id.* at 819–20 (exploring the origins of dyadic network ties). Social network theorists studying networks map or diagram them, with each actor represented by a point, and their connections to others in the network represented by a line, presenting the network visually as a geometric shape.

10. *Id.* at 820.

11. *See id.* at 817–20 (examining the effects of different network shapes on "what people see, how they think, and how the groups or system behaves").

members may or may not be aware of their indirect connections with other network members with whom they do not have direct relationships, and they may or may not perceive themselves as being part of a group.[12]

Scholars have described many different kinds of networks, including personal, regulatory, and transgovernmental networks, as well as PCJ networks like those that are the subject of this Article. In so doing, these scholars have added descriptors to characterize and limit the qualities of those networks. But those descriptors are not necessary characteristics of networks as such; rather, they are observed qualities of the particular networks that are being described.[13]

In addition to being a network, a set of connections may also constitute a community of some kind. A community is a group with a sense of shared identity relating to some common subject or purpose. There are many theoretical concepts of communities.[14] Of these, Emanuel Adler's theory of transnational communities of practice is particularly useful for understanding the communal aspects of PCJ networks.[15] Adler's theory is a development of Etienne Wenger's concept of local communities of practice, which is also relevant.[16] Both Adler and Wenger focus on communities of practitioners. They explore how community members develop common practices and bodies of knowledge through the process of interacting with each other while carrying out their work or other shared activities.[17]

While analyzing the network aspects of PCJ internationals' relationships illuminates how those relationships serve as conduits of information, analyzing their communal aspects illuminates how

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12. *See id.* at 820 (discussing the cognitive social structures of networks).

13. *See, e.g.*, Raustiala, *supra* note 2, at 88 (discussing "deadlock" and "power asymmetry" as distinct but not mutually exclusive descriptors); Turner, *supra* note 2, at 1006 (discussing "coordination and support" and "joint action" networks).

14. *See, e.g.*, KECK & SIKKINK, *supra* note 2, at 1–39 (discussing transnational advocacy networks); Peter M. Hass, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT'L ORG. 1, 3 (1992) (discussing epistemic communities and epistemic policy coordination); LEONHARD DOBUSCH & SIGRID QUACK, MAX PLANCK INST. FOR THE STUDY OF SOCIETIES, EPISTEMIC COMMUNITIES AND SOCIAL MOVEMENTS: TRANSNATIONAL DYNAMICS IN THE CASE OF CREATIVE COMMONS 3 (2008) (analyzing the organizational and ideational features of Creative Commons as a transnational community).

15. *See* EMANUEL ADLER, COMMUNITARIAN INTERNATIONAL RELATIONS: THE EPISTEMIC FOUNDATIONS OF INTERNATIONAL RELATIONS 13–26 (2005) (explaining Adler's theory of transnational communities of practice).

16. *See generally* ETIENNE WENGER, COMMUNITIES OF PRACTICE: LEARNING, MEANING AND IDENTITY (1998) (setting forth Wenger's concept of local communities of practice).

17. *See id.* at 72–102 (discussing the engagement of the community and the learning that comes about through this community interaction); ADLER, *supra* note 15, at 19 ("[L]earning occurs in and by means of communities of practice.").

internationals develop shared norms and ideas and put them into practice. Thus, the concepts of *community* and *network* are not mutually exclusive nor in opposition to each other but rather are focused on different aspects of social groups. While a community is certainly a set of relationships, its defining characteristic is a sense of common identity; networks, in contrast, represent the connections and their structure as such.[18] Accordingly, this Article will go on to explore both the network and communal aspects of the group of internationals working in the field of post-conflict justice.

Networks and communities are also not separate from or in opposition to institutions, governments, or other organizations; instead, network ties and communal identity exist within and across organizational boundaries.[19] Thus, this Article will discuss network and community relationships within PCJ institutions like international criminal tribunals, as well as relationships that are transnational and transinstitutional. Looking at relationships within institutions draws attention to the aspects of PCJ work that are not defined solely by formal policies and procedures, staff hierarchies, or organizational charts, but rather are bounded also by the intersubjective qualities of relationships, interactions, understandings, and practices. But the network and communal characteristics of these interactions should not be understood to replace or delegitimize the formal activities of an organization. Rather, they exist in relation to each other: network and communal interactions affect the meaning of the organization's formal policies as instantiated in practice, and the organization's policies frame network and communal engagement.

Thus, the terms *network* and *community* are not mere catchalls for any sort of informal or amorphous group. Instead, these concepts illuminate the characteristics and functions of the connections between individuals as such, without superimposing other social structures upon those relationships. Analyzing these connections as network conduits and as aspects of a common identity reveals how shared knowledge and joint action develop in those relationships; as such, this analysis provides insight not only into the function of the

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18. Etienne Wenger characterizes networks and communities as "two aspects of social structure in which learning takes place" rather than "two different types of social structure." *See* ETIENNE WENGER, BEVERLY TRAYNER & MAARTEN DE LAAT, PROMOTING AND ASSESSING VALUE CREATION IN COMMUNITIES AND NETWORKS: A CONCEPTUAL FRAMEWORK 9 (2011), *available at* http://www.open.ou.nl/rslmlt/Wenger_Trayner_DeLaat_Value_creation.pdf [http://perma.cc/69EV-KFD2] (archived Feb. 13, 2014).

19. *See* ADLER, *supra* note 15, at 22 ("[C]ommunities of practice are not necessarily 'congruent with the reified structures of institutional affiliations, divisions and boundaries.'" (quoting WENGER, *supra* note 16, at 118–19)); WENGER, *supra* note 16, at 241 (analyzing the relationship between communities of practice and institutions).

networks and communities, but also into the knowledge and actions they engender.

B. *How PCJ Networks Are Formed, Used, and Maintained*

Internationals' PCJ networks are composed of both local and transnational connections, which they use for social, career, and professional purposes. Networks are formed from in-person and long-distance contact, communication, and joint action. The vast majority of interviewees reported actively using these networks in some way, but the strength, number, and uses of their connections varied considerably. This subpart begins with a narrative description of how PCJ network connections form and are used by participants; it concludes with a set of factors that tend to contribute to network formation, as well as discussing a few other key issues.

1. Narrative of PCJ Network Formation and Use

People usually begin their careers in post-conflict justice with at least some existing transnational PCJ connections, often from school or work. Indeed, while some internationals simply apply for their first PCJ jobs without knowing anyone in the field, many interviewees reported getting their first jobs in post-conflict justice through a friend or former colleague already working in the field. Some ICL interviewees and most ROL interviewees entered the field from other domestic or international work. Increasingly, universities are offering courses and degrees in ICL, where many participants learn about ICL before they begin their careers in the field and where some go on to teach about ICL afterward. Such programs also serve as a point of entry into an ICL career, as students may obtain internships under the auspices of formal joint programs or through the connections of professors or alumni.[20]

Then, in ICL tribunals and in post-conflict states, expatriates are thrown together into what are often intense workplaces, doing work about which many are passionate. Particularly in post-conflict states,

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20. *See, e.g.*, *International Human Rights and Criminal Justice*, UNIVERSITEIT UTRECHT, http://www.uu.nl/university/international-students/EN/intlaw/Pages/default.aspx?refer=/university/internationalstudents/en/intlaw [http://perma.cc/BDH9-6AE5] (archived Feb. 13, 2014) (describing the International Human Rights and Criminal Justice L.L.M. program at Universiteit Utretcht); *L.L.M. (International Criminal Law)*, NUI GALWAY, http://www.nuigalway.ie/courses/taught-postgraduate-courses/law-international-criminal.html [http://perma.cc/R3RC-85XS] (archived Feb. 13, 2014) (describing the International Criminal Law L.L.M. program at NUI Galway); Interviews with A, Beta, D, Delta, I, Kappa, L, M, R, Rho, S, T, Tau & Theta (all interview transcripts on file with author); *see also* Appendix B (providing information about interviewees).

but also in The Hague, they are in a foreign culture, where they frequently do not know any nationals or the local language upon arrival. As such, it is no surprise that tight-knit local social communities of internationals tend to develop, as indicated by this series of observations by interviewees:

> It's very social. It's like it's just a mini-world in there. Everyone's friends and everyone knows each other and that's kind of the world. . . . [I]t seems like everyone's friends are from the court.[21]
>
> Of course, particularly in the green zone in Baghdad, there is a big expat community who don't have much choice but to socialize and mix with one another.[22]
>
> Yeah, people are very friendly and this institution has—I have never been on mission, but it has a sort of mission culture to it, because the majority of people came to work here [from somewhere else]. . . . [A]ll of my friends are either from [my workplace] or one of the similar institutions . . . and I think that is pretty much the same for most people who have come here.[23]
>
> It's tight-knit but transient. So you can have these very intense connections with people. But in [this country] in particular, because of the security restrictions and because of the contracting methodologies, there are plenty of people who have been here for a while, but there are a lot of people who move in and out in six- to one-month increments. So it's friendly but not very deep rooted. But this is the kind of environment where you can quickly form these very intense attachments.[24]

While interviewees often referred to their local relationships with adjectives like "tight-knit" and "intense," the character of these local communities does of course vary according to location, time, and social group. Depending on the size of the local expatriate community, the array of international institutions that are present, and workplace culture, among other dynamics, internationals' local networks are formed to a greater or lesser extent from working relationships with colleagues and may or may not extend significantly beyond those workplace connections. While some interns reported participating in a whirlwind of social activity, senior personnel tended to describe measured but close working and social relationships. In contrast, some—especially those who are committed to a particular locale long term—may eschew much involvement in expatriate communities and immerse themselves in social relationships with nationals of the state where they are living.[25]

Notwithstanding these differences, PCJ internationals' local expatriate communities seem to function reasonably effectively for social and career purposes. That is, to a greater or lesser degree,

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21. Interview with Rho.
22. Interview with Kappa.
23. Interview with Z.
24. Interview with T.
25. *E.g.*, Interviews with D, Epsilon, N, Rho & Theta.

people get to know each other, hang out together, form friendships and rivalries, and share information about jobs. On these levels, information flows relatively freely and relationships are easily formed.[26]

On a professional level, the picture is more complicated. Within the workplace, which sometimes comprises a significant part of internationals' local networks, there is typically a great deal of information exchange. In general, internationals reported learning an enormous amount in their jobs and from their colleagues, especially, as one would expect, in their first PCJ jobs. This includes the substantive information and technical skills one would anticipate and also some relatively ephemeral but highly practical knowledge, such as an understanding of institutional dynamics. This is not to say that workplaces are a utopia of learning and information sharing; there are also dysfunctional workplace dynamics. Interviewees reported several common institutional patterns that detract from learning in the workplace, including a lack of sufficient training, mentoring, and handover information. They also raised the constraints posed by short contracts and postings as a hindrance both to their own learning and to finding someone knowledgeable to learn from.[27]

Another important aspect of internationals' local networks is their relationships with internationals and nationals who are in the same location, but not in the same workplace. A major factor affecting use of these local connections for work-related matters is the extent to which different areas of specialization and types of work activities demand such interactions. In this regard, there are significant differences between ROL and ICL work.

In the ROL context, local coordination, cooperation, and joint action with others outside one's own institution tend to be central to the nature of the work. ROL interviewees reported that strong professional relationships with internationals working in other ROL organizations are highly desirable, because organizations are often working on interrelated projects and need to avoid duplicating each other's efforts and to coordinate joint action. In addition to the expatriate community, ROL interviewees often referred to the development of relationships with national actors as one of the most important aspects of their work, because implementation of their PCJ agenda must happen by and through nationals of the post-conflict state. However, while forming and maintaining strong local interorganizational networks with both internationals and national actors is important for ROL work, quite a few ROL interviewees

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26. *E.g.*, Interviews with I, Iota, R, W & Z.

27. Elena Baylis, *What Internationals Know: Improving the Effectiveness of Post-Conflict Justice Initiatives*, 14 WASH. U. GLOBAL STUD. L. REV. § II.B Movement: Factors and Turnover (forthcoming 2015).

reported that it was difficult to use their networks for professional purposes, and some felt that their local networks were essentially dysfunctional on a professional level.[28]

In contrast, most people working in ICL tribunals reported freely consulting other members of their local expatriate community on professional matters, within the bounds of their ethical duties of confidentiality. ICL interviewees viewed these relationships, by and large, as easy and unproblematic. However, these interactions are typically ad hoc and voluntary, rather than a direct response to the requirements of their work. ICL internationals working at international tribunals do not seem to rely heavily on other local expatriates outside their institutions, as ICL work tends to be inwardly focused on the prosecutions taking place in each individual tribunal. ICL interviewees who needed to engage with nationals or internationals outside their workplace to do their jobs raised some of the same issues as ROL interviewees. But these situations seem to come up less frequently and less intensely in the international tribunal context, due to its predominantly internal focus and the ritualized nature of the litigation process. At hybrid tribunals and within national court systems, ICL interviewees were more likely to have been placed in direct, everyday contact with nationals of the concerned post-conflict state, and accordingly, were more likely to talk about the nature of their relationships with nationals and the interconnections between their institutions and the relevant post-conflict states.[29]

Internationals' shared experiences in post-conflict settings are intense but often transient. This is especially true for interns and short-term consultants, whose positions are by their nature brief, and for entry-level personnel, who are typically looking for opportunities to advance, wherever those opportunities may present themselves. However, it is also not unusual for higher level personnel to move between institutions and locations. There are numerous reasons for job movement. Among other reasons, within ROL, such changes are often considered part of the job. In ICL, there can be incentives to move in the form of openings at other tribunals, as well as pressures in the form of the impending closure of several ad hoc tribunals.[30]

As internationals transfer from one position, institution, and location to another, their local connections become transnational ones. Many interviewees reported staying in touch with some friends and colleagues from former workplaces. On the social level, internationals talk casually with their transnational friends and

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28. *E.g.*, Interviews with B, Kappa, Omicron, T & W.

29. *E.g.*, Interviews with Eta, I, J, Psi & Xi. However, there are people in some positions in international ICL tribunals, such as outreach, who do liaise regularly with people outside the tribunal.

30. *E.g.*, Interviews with Alpha, B, Chi, I, Mu, O, Rho, Theta, Z & Zeta.

former colleagues and keep up with each other's lives via e-mail and social media. They also use their relationships more purposefully, for example, to gather information about job opportunities or discuss the substance of their work. In addition, internationals sometimes offer each other assistance or engage in joint projects. Interviewees expressed varying degrees of comfort with sharing work-related information and engaging in joint action on the transnational level. As at the local level, ICL interviewees seemed consistently at ease with sharing information with their transnational connections, although they did not always see a need to do so; ROL interviewees were more likely to problematize such interactions.[31]

But while job movement facilitates the development of transnational networks, it disrupts local networks. To the extent that these networks are being used primarily for social and career purposes, this has limited consequences for the field of post-conflict justice as a whole. But to the extent that these local networks are serving as conduits for sharing substantive work-related knowledge, skills, and news, or as points of connection for undertaking joint projects, coordination, or cooperation, these disruptions can be significant. As discussed above, such local networks tend to be particularly important in ROL work, and accordingly, many ROL interviewees noted very negative effects of job movement on their relationships and work. In ICL work, the role of local networks is considerably more limited, and so the effects are also reportedly not felt to be as significant as in the ROL context.[32]

In addition to the movement by individuals that is described above, sometimes job movement takes the form of a mass migration. Typically this happens as international resources are redirected from a long-established post-conflict zone to a new post-conflict location, and accordingly, a large number of new jobs are created in the new location in a short period of time. In such instances, there is a critical mass of people connecting the old and the new settings, facilitating the flow of information and assistance between them.[33]

In addition to these relatively organic means of forming and maintaining connections, there are also deliberate, organized efforts to foster work-related connection and engagement. Internationals meet and reconnect at formal events intended for that purpose, like meetings of ICL tribunal prosecutors or ROL program managers. There are also online venues aimed at connecting people in the same field, like the International Network to Promote the Rule of Law.

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31. *E.g.*, Interviews with B, Beta, I, J, Theta & Upsilon.
32. *E.g.*, Interviews with A, Alpha, Gamma, O, Omicron, P, Psi. T, W, Xi & Zeta.
33. E.g., Interviews with D, Epsilon, U & Xi.

Whether the meetings occurred in person or digitally, interviewees uniformly described them as positive measures.[34]

The characters and uses of ongoing connections tend to change over time. As people move repeatedly within the circuits of ICL and ROL locations and institutions, they begin to see people they know from prior jobs in their new institutions and post-conflict settings. Accordingly, as jobs and locations change, internationals' existing connections shift from transnational to local and back again. And as people cycle in and out of PCJ work and other domestic or international work, their uses of their networks may also change to reflect the nature of their interest and involvement in the field at any given time. Some people stay tangentially involved in the field, for example, by teaching at a university or by doing occasional consulting work; often that involvement is facilitated by or carried out through their existing network connections. Others move between post-conflict justice and other international and domestic work periodically and make various social, career, and professional uses of their networks as they deem appropriate throughout these changes. Yet others leave post-conflict justice completely while maintaining some connections with people still in the field on a primarily social basis.[35]

There are also differences in how individuals prefer to maintain and use their networks. Some people reported having close connections with other internationals while in the same place and then losing touch upon moving to a new location. Others said that they spend a great deal of time and energy keeping up with friends and former colleagues in other places. Some interviewees prefer not to discuss work matters outside of working hours, while others like to talk shop. While network members' personalities and habits are not subjects of this Article, these characteristics appear important to network formation and use. However, I heard nothing from interviewees to make me believe that these individual preferences formed patterns or had a systematic effect on PCJ networks.[36]

Overall, the structure of internationals' PCJ networks is dynamic, not static. Network connections and the ways in which network members maintain their connections with each other evolve over time. The extent to which those connections replicate institutional boundaries or cross over them also shifts, as do the types of activities for which members use their network connections. Often, what sparks these network changes is job movement by the network

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34. Interviews with Eta, J, Sigma, Upsilon & Zeta; *see* INT'L NETWORK TO PROMOTE THE RULE OF LAW, http://www.inprol.org [http://perma.cc/4PAG-PRJU] (archived Feb. 13, 2014) (connecting members and providing news and resources for practitioners involved in ROL reform in post-conflict and developing countries).

35. *E.g.*, Interviews with A, B, Beta, Delta, Eta, I, K, Kappa, N, O, P, R, S, Sigma, Upsilon & X.

36. *E.g.*, Interviews with C, E, I & Z.

members. Indeed, job movement and network formation and use seem to operate as mutually reinforcing cycles of behavior. Looking at job movement patterns, for example, people use their networks to share job information and recruit friends, which facilitates movement, which leads in turn to new connections, which produces more information sharing and begins the cycle again. Thus, the circulation of internationals amongst post-conflict settings, institutions, and positions operates in a dynamic relationship with the transnational networks that form in part because of that circulation.[37]

The sharing of work-related information through PCJ networks is also part of another mutually reinforcing cycle of behavior. The use of the networks for professional purposes facilitates the development of certain communal characteristics among network members, such as a sense of common purpose and culture. Then, the sense of a common purpose and culture makes network participants feel more comfortable in using their network connections for professional purposes.

As will be discussed in more detail in later Parts that deal with the communal aspects of PCJ connections, the combined effect of internationals' job circulation and network use is to facilitate the development of common cultures and subcultures with their own professional norms, expectations, practices, and behaviors, as well as affecting the development and transfer of skills, knowledge, and information. The extent to which any of these phenomena—a sense of common purpose, collaboration, information and skills development and transfer, or an overarching professional culture—occur in any PCJ network or community depends on a number of factors particular to the network, its members, and the relevant professional activities.

2. Key Factors in Network Formation and Use

a. Development of Network Ties

As suggested by the narrative above, several factors seem to facilitate the development of transnational PCJ networks:

(a) *Local connections.* Almost always, interviewees described their relationships as being local first. They had gotten to know people by working with them or by spending time with them in a post-conflict institution or setting. Many internationals spoke about how intense local settings and PCJ work are and discussed the corresponding strength and

37. Baylis, *supra* note 27, §§ II.A, Movement: Movement Patterns, & III.B.1.b Knowledge and Skills: ICL: Internationalized Tribunals: Other ICL Skills.

uniqueness of the bonds that form around those experiences that outsiders do not understand.

(b) *Job movement.* By moving between post-conflict settings, internationals extend their local connections into transnational ones and make new connections in their new locale. Internationals' transnational movement between jobs and institutions accordingly facilitates transnational network formation, but it tends to disrupt local network relationships and activities. There are several common patterns of individual job movement, and people may move between PCJ jobs or in and out of PCJ work.[38]

(c) *Organized, formal meetings.* Some interviewees also reported using online message boards and blogs to maintain and expand their networks through structured channels. Others reported attending organized meetings and conferences for the same purposes. Some institutions are deliberately fostering these venues for the purpose of developing such connections and facilitating information exchange.

(d) *Technology-based casual communication.* Implicit but nonetheless fundamental to internationals' transnational relationships is their confidence that they can be in touch long distance. All interviewees who discussed their long-distance relationships reported using email, social media, or both to keep in touch.

b. Categories of Network Use

In keeping with the description in the narrative above, I have grouped interviewees' accounts of their uses of their networks into three categories: social, career, and professional:

(a) *Social use.* The *social* category includes all interactions that do not concern work as the subject matter—essentially, friendships. Interviewees reported talking and emailing about their families, soccer, and other personal matters and hobbies. They also mentioned participating in social activities together like dinners and parties.

(b) *Career use.* The *career* category includes interactions related to the mechanics of obtaining or leaving one's employment. Here, interviewees reported sharing job opportunities with each other, asking each other about opportunities, and discussing pros and cons of available positions.

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38. *Id.*

(c) *Professional use.* Finally, the *professional* category includes everything related to the content or substance of one's work. People reported talking about ongoing cases and projects, conferring with friends who were experts in a particular area, asking for assistance, and engaging in other interactions concerning the subjects of their work. Obviously, some such interactions are obligatory. One must interact within the workplace with at least some colleagues, and some types of work require interchange with internationals or nationals outside one's workplace as well. Interviewees also reported various levels of voluntary exchange about work-related matters.

In reality, these categories of network use often overlap or intersect. In the same email or conversation, people may cover all three categories. Likewise, a discussion of a work problem may implicate one's career goals and personal friendships. The remainder of this Article will focus primarily on the professional category of network use, discussing social and career uses only as it is relevant to understanding how internationals use their networks for work-related purposes.

Interviewees also identified two different functions of their networks:

(a) *Information-related function.* One function of the networks relates to information and ideas; internationals use their networks to share information with each other, and to discuss, contest, and debate ideas.

(b) *Action-related function.* The other function relates to action: internationals reported collaborating, coordinating, and engaging in joint action. Of course, action is interrelated with knowledge, especially when the action in question relates directly to knowledge transfer, as when one group of internationals trains another.

Notably, internationals also reported not doing those things; that is, they identified circumstances in which they or others did not share information or did not engage in action via their networks.

As outlined in the description of social network theory above, these two categories represent two of the three types of functions one would expect from social network theory. As for the third category:

(c) *Power-related function.* Interviewees rarely talked explicitly about their use of power. This is not particularly surprising, as the use of power is a less tangible and more sensitive subject than information or action. The question of power arose explicitly at times in discussions of network relationships and interactions between internationals and

nationals of post-conflict countries, and where managerial relationships were concerned; otherwise, the use and exchange of power was largely hidden in interviewees' reports.[39]

C. *PCJ Communities*

1. Communities of Practice

By examining the structure and use of PCJ networks, the analysis above addressed how network connections serve as conduits for social, career, and professional information. But in addition to simply sharing information through their networks, some internationals try to leverage their PCJ relationships for more ambitious efforts, such as implementing joint projects in action-oriented networks or developing fundamental norms in knowledge-oriented communities. To understand these more robust forms of interaction, this Article turns now to an analysis focused on the communal qualities of internationals' relationships.

This subpart introduces and adapts the literature on knowledge communities from learning theory and international relations. I will focus primarily on two closely interrelated theories: Etienne Wenger's concept of communities of practice and Emanuel Adler's model of transnational communities of practice, which is built on Wenger's work.[40] I selected these theories for two reasons. First, their ideas fit well with interviewees' descriptions of their relationships and activities. Second, community of practice theories are aimed at understanding communities' relationship to knowledge—specifically, how a group of practitioners develops a common body of knowledge and common practices by engaging in their field in interaction with each other. In so doing, these theories provide a basis for assessing what such a knowledge creation process means for the development of the field of post-conflict justice as a whole.

Drawing from Wenger, Adler describes a community of practice as "a community of people" developing a "common domain of knowledge" by engaging in a "shared practice."[41] The engine of this activity is the group's sense of "joint enterprise" to develop and act upon their common area of knowledge.[42] In pursuit of this shared goal, community members "mutually engage" with each other and draw upon the "repertoire of communal resources, such as routines,

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39. *E.g.*, Interviews with D & P.

40. *See* ADLER, *supra* note 15, at 22–27 (discussing the nature, identity, boundaries, structure, agency, authority, and interests of transnational communities of practice); *see generally* WENGER, supra note 16.

41. *See* ADLER, *supra* note 15, at 15 (defining *communities of practice*).

42. *See id.* ("The knowledge domain endows practitioners with a sense of *joint enterprise* that is constantly being renegotiated by its members.").

words, tools, ways of doing things, stories, symbols and dialogue" that constitute their shared practice.[43] Adler and Wenger each elaborate considerably on these concepts, of course, but these are the theory's most basic elements.

While this description may sound highly abstract, it is in fact an effort to conceptualize the significance of everyday activities. Wenger famously used the example of insurance claims processors to explore his ideas. He described a group of claims processors who worked together in a close set of cubicles and used a variety of techniques to get the claims processed in such a way as to meet their daily quotas, avoid having their conclusions questioned by customers or reviewers, and get out of work on time. In so doing, they built up a set of agreed-upon methods: checking with each other about how to handle questionable claims, leaving notes for each other in the files to explain what they had done, and offering guidance to new processors on the most effective way of working, whether it was the approach sanctioned by official policy or not. Thus, the "community" was the group of processors; the "common domain of knowledge" was everything they knew about how to get claims processed; the "shared practice" was all the ways they actually went about processing the claims; the "joint enterprise" was not only getting the processing done but ensuring that everyone in the group knew how to do it in the agreed-upon way; the "mutual engagement" was the constant interaction between the processors like asking questions and commenting on what was going on; and the "repertoire of communal resources" included the jargon and habits they used.[44] While Wenger and Adler's ideas may sound arcane when summarized, the reality that fills out these concepts comprises the most basic and everyday of activities.

The foundation of Wenger's theory of communities of practice is his observation that people learn and develop knowledge socially, in the context of their relationships with others who are engaged in the same activities and concerned with the same matters. By so doing, they create and maintain a common body of knowledge that defines their community and their community's practices. That body of knowledge and practices intersects but is not coextensive with any official policies, rules, or mission statements that may exist. Such official statements, as well as organizational structures and other external inputs and constraints, form a framework within which people develop their practices. Those practices then serve as a way of bridging the gap between the structural framework and the realities of community members' day-to-day experiences. Such practices also

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43. *Id.* at 14.

44. *See* WENGER, *supra* note 16, at 18–41 (setting forth the example of claims processing).

function as a way of pursuing community members' common and individual goals.[45] Wenger focuses on practitioners, the people who engage in an activity, and not on those who think, write, or advise about the activity. His focus is also extremely local. His case studies are of people in immediate, frequent contact with each other and of the nuances of their direct interactions. Likewise, Wenger views communities of practice as an ordinary mode of interaction; a community of practice is what draws people of like interests together when they engage in inherently social activities like music bands, bowling, or their work.[46]

Emanuel Adler extends Wenger's local theory into the transnational realm. Like Wenger, Adler views transnational communities of practice as a typical phenomenon. Transnational communities of practice consist of the connections that arise naturally from internationals taking part in common transnational enterprises. Indeed, Adler considers transnational communities of practice to be constitutive of the international community: "[W]e can take the international system as a collection of communities of practice; for example, communities of diplomats, of traders, of environmentalists, and of human-rights activists."[47]

The significance of Adler's concept of transnational communities of practice rests in his assertion that this is where meaning develops, often unintentionally, through shared practice:

> It is social communication—i.e. the transmission of meanings, rather than the mere transmission of information—that allows communities of practice to evolve and interact with other communities. This feature helps differentiate communities of practice from networks. Whereas networks are the interpersonal, intergroup and inter-organizational relationships through which information flows, communities of practice, in addition to their networking capacity, also involve social communication through which practitioners bargain about and fix meanings and develop their own distinctive identity and how to practice it.[48]

This is one reason that it is important to understand the operation of communities of practice: doing so offers insight into the evolution of ideas and their instantiation in action.[49]

Moreover, like Wenger, Adler sees the process of learning as a social one, in which individual actors learn from their community's knowledge and then contribute to it by their enactment of and interaction with it:

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45. *Id.* at 3–4.

46. *See id.* at 6–7 (noting that communities of practice are everywhere, especially in an individual's social interactions).

47. ADLER, *supra* note 15, at 15.

48. *Id.* at 18.

49. *See id.* at 15 (explaining the relationship between communities of practice and shared practices).

> For individuals, learning means redefining reality by means of contextual "community" knowledge, from which they borrow in order to get their bearings. Practitioners arrive at their outlook and do what they do, consciously and knowledgeably, because they draw upon the community's collective knowledge. They also contribute to the practices of their communities. As such, individuals acquire their knowledge when they learn to participate in the knowledge of others.[50]

Thus, not only do individuals learn by drawing from the existing knowledge of the community, but they also advance that knowledge and even participate in redefining it, in a self-reinforcing cycle that takes place in the context of everyday discussions and activities. This is relevant for two reasons. It is how the core norms and practices of the field are created and how they evolve. Also, these individuals and communities make up the formal organizations and states on which analytic attention is usually focused, and the knowledge and practices they create become the actions of organizations and states:

> From the perspective of a community of practice, learning means the evolution of background knowledge (intersubjective knowledge and discourse that adopt the form of human dispositions and practices) or the substitution of one set of conceptual categories that people use to give meaning to reality to another such set. Learning thus requires the creation, diffusion, selection, and institutionalization of new knowledge. It takes place as a result not only of the internalization of new knowledge by individuals, but also, and mainly, when a growing number of individuals become acquainted with and disposed to use a new practice. Thus understood, we may see organizations as the venues used by members of communities or practice in order to institutionalize their practices.[51]

Thus, understanding what communities of practice know and do produces a better understanding of what organizations, states, and other formal entities know and do.

While Wenger focused on insurance claims processors, Adler offers international security communities as an example of a transnational community of practice:

> Security communities are marked by a domain of knowledge, a community of people, shared practices, and a sense of joint enterprise, all of them sustained by a repertoire of ideational and material communal resources.[52]

As such, he argues, peace is not "the absence of war" or an "idealistic goal" but "the practice of a security community."[53] This illustrates another reason that it is important to understand how such communities operate, rather than solely analyzing the actions of formal organizations. According to Adler, this is not merely a

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50. *Id.* at 20.
51. *Id.* at 20–21.
52. *Id.* at 17.
53. *Id.*

relevant level of interaction but the determinative level of interaction at which peace or conflict is enacted, as the members of security communities engage in the practices that then represent the actions of the organizations and states for which they work.[54]

Finally, it is worth emphasizing once again that the *community* designation is not reductive but additive. That is, identifying a PCJ network as a community does not mean that it is a community instead of a network, but that it is a community in addition to being a network. In Wenger's words:

> The network aspect refers to the set of relationships, personal interactions, and connections among participants who have personal reasons to connect. It is viewed as a set of nodes and links with affordances for learning, such as information flows, helpful linkages, joint problem solving, and knowledge creation. The community aspect refers to the development of a shared identity around a topic or set of challenges. It represents a collective intention—however tacit and distributed—to steward a domain of knowledge and to sustain learning about it.[55]

It is also not necessary that a community and a network be co-extensive. From the way that interviewees expressed themselves in the case studies below, it was clear that some felt a sense of shared identity and responsibility for the norms and practices of the field while others did not. Unsurprisingly, it was those who had been in the field longer who were more likely to express that sense of community. In addition, those who worked in ICL tribunals (whether hybrid or international) were more likely to express a sense of community than those who were more immersed in local settings.

The power of these community of practice theories is that they conceptualize for analysis some dynamics that usually elide discussion in legal scholarship because they seem too intangible, submerged as they are under more readily identifiable written policies, rules, and organizational structures. These dynamics include many that may resonate as intuitively familiar: people engage with each other individually in their work in ways that are not entirely determined by job titles, responsibilities, or ranks. They develop habits of working and ways of thinking and speaking about their work in conformity to those around them. Employees' working habits cannot be entirely predicted by an organization's formal policies, in part because there are gaps between the generalities of such policies and the details of everyday life and in part because people develop their habits by reference to what works in their social context rather than by reference to policies. Ultimately, an outsider's experience of

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54. *See id.* at 16–17 ("[W]e must begin by viewing security communities as transnational regions whose members/inhabitants *practice* peaceful change.").

55. WENGER, TRAYNER & DE LAAT, *supra* note 18, at 9.

what an organization or other formal imagined entity does is the product of the collective habits of those inside the organization.

By applying these theories to the post-conflict justice context, the next Part of this Article endeavors to elucidate the evolution of PCJ norms and practices. This analysis also provides a new perspective on the deliberate deployment of (or resistance to) those norms and practices by tribunals, international organizations, and other institutions. This is a more robust inquiry than that into networks. In this analysis, rather than serving as mere transfer points for information, human relationships function as the venues for contestation and transformation of norms and practices.

III. TWO PCJ COMMUNITIES

In this Part, I explore function and dysfunction in PCJ communities by focusing primarily on two groups: internationals doing ICL work at international criminal tribunals, including hybrid tribunals, to whom I will refer as ICL tribunal internationals or ICL tribunal interviewees, and people doing ROL work while stationed full-time in post-conflict countries, to whom I will refer as embedded ROL internationals or embedded ROL interviewees. These do not represent the full spectrum of people to whom I spoke. There were also ICL internationals working within national systems and ROL internationals working as short-term experts, among others. The *ICL tribunal internationals* category also does not include interviewees who worked exclusively in defense because, as discussed below, whether defense attorneys should be included as part of the ICL tribunal community is unclear.[56] I will discuss the perspectives of interviewees from these other groups here and there throughout this Part, primarily when they offer an interesting contrast to the two primary groups. I am focusing on these particular groups for three reasons: because they described distinctive patterns of function and dysfunction in their communities; because they are each relatively cohesive as groups on account of sharing certain internal commonalities; and because they offer reasonable points of comparison with each other as groups of internationals immersed

56. In addition to ICL interviewees who had worked solely in defense, I spoke with several ICL internationals who had worked both in defense and for a tribunal organ; those interviewees are included in the "ICL tribunal internationals" category. The fact that people have moved between defense and other tribunal work suggests that at least some defense attorneys may be part of the ICL tribunal community, but the position of those who have worked exclusively in defense may be different than those with internal tribunal experience.

full-time in PCJ work within the settings of post-conflict institutions and states.[57]

When I began talking to interviewees about their exchange of work-related information with others in their networks, I intended to explore whether and how their connections to others in the field transferred work-related knowledge and skills from one post-conflict setting to another. What I found was more complex.

Two key aspects of the development and use of knowledge in both ROL and ICL are that (1) each has been working actively to develop, debate, and legitimize shared core norms and practices, that is, a common body of knowledge; and (2) in the course of their work, each attempts to disseminate and apply that knowledge in ways that affect particular post-conflict national legal and political systems. While each of these processes is happening in both ICL and ROL, and while there are transnational and local aspects to both ICL and ROL networks, there were differences in how interviewees talked about their networks and knowledge. Generally speaking, ICL tribunal interviewees tended to focus on the first process of developing core norms and practices and to conceive of their relevant community as being a predominantly transnational one, extending across all ICL tribunals. Otherwise, rather than talking about the effect on post-conflict national legal and political systems, many ICL tribunal interviewees, especially those in international tribunals, focused on the immediate results of individual trials as the goal of their work. Embedded ROL interviewees tended to focus on the second process of disseminating and applying the information in national contexts, and to conceive of the most relevant network or community as being a predominantly local one.

Thus, while networks are certainly serving as conduits for knowledge, in the ICL tribunal context, they are also acting as the framework for a transnational community that conceives of itself as building the field of ICL. That is, many ICL tribunal interviewees, especially those who had been working in ICL tribunals for a number of years, described a sense of common identity and common purpose with the others in their transnational network and a sense of commonality between the ICL tribunals. They also described a level of interchange over their work that was not merely sharing information, but grappling with it in a more intense and formative way. These perceptions and their implications for the field are mostly implicit in interviewees' explanations of their work, but some interviewees stated quite explicitly that they felt that they were

57. Internationals described their work practicing ICL in national systems as being in some ways different in kind than their practice in international tribunals. Also, international experts operating on a short-term basis have different modes of engaging with other internationals and nationals than those there for the long-term. *E.g.*, Interviews with Phi & Xi.

participating in a transnational community developing and implementing a common body of knowledge.

Embedded ROL internationals focused on their immediate, local connections with nationals and internationals in describing their communities. They viewed it as critically important to be able to share information and act jointly with internationals and nationals in their local networks, but many interviewees identified elements of dysfunction that made it difficult for them to do so. Rather than expressing a sense of common identity or purpose, ROL interviewees tended to focus on the divisions between them and others doing ROL work. As described, their transnational community is bifurcated between casual interactions over social and career matters and deliberate participation in formally organized online communities and in-person conferences to discuss work matters.

By exploring what many embedded ROL interviewees described as dysfunctional local networks, we can better understand what factors contribute to and detract from functionality in these networks. And by comparing the circumstances that made ROL interviewees uneasy in sharing information with those that made ICL tribunal interviewees comfortable in doing so, we can also gain new insight on the functioning of knowledge communities. By looking at the reports of embedded ROL interviewees in contrast to each other and to the ICL tribunal example, we can identify some factors that seem to influence whether transnational communities of practice form and how well they function for purposes of creating and sharing information in a field.

A. *Details of ROL and ICL*

Up to this point, I have been addressing post-conflict justice as a field and have only occasionally examined ROL and ICL separately. But in order to discuss the dynamics of PCJ relationships in more detail, it is necessary to have a basic understanding of how ICL and ROL function, not only in the sense of what internationals working in those fields do, but also in the sense of the kinds of jobs they have and how they carry out their work.

As I engage in this description of ICL and ROL as if they were distinct, it is important to remember that while there are some aspects of ICL and ROL that are relatively separate from each other, they overlap in certain fundamental ways as well. These intersections include their overarching aims, some areas of implementation, and, particularly important for our purposes, the people.[58] Quite a few

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58. *E.g.*, U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Rep. of the Secretary-General*, ¶ 17, U.N. Doc. S/2011/634 (Oct. 12, 2011) [hereinafter *Secretary-General 2011 Report*] ("Transitional

internationals working in one area have at least tried out working in the other area at some point in their careers, although people tend to settle into one area or the other as their predominant area of work.[59] In addition, some internationals' PCJ networks include people who work in both categories.[60] Also, as will be discussed in more detail below, some of the apparent differences between ICL and ROL are more superficial than they seem, and as a consequence, the two areas have some lessons for each other in how to operate through their networks and communities more effectively.

1. Content of ICL and ROL

ICL is the prosecution of defendants suspected of some form of responsibility for atrocities such as genocide, crimes against humanity, and war crimes. ROL is the promotion of the development of effective, legitimate legal institutions that operate fairly and respect basic principles of human rights. Both are core aspects of the field of post-conflict or transitional justice. They are conceptually interrelated because they share the overarching aim of using law as a means of restoring the post-conflict society, whether by addressing the past harms of the conflict or by establishing the institutions and laws needed to fairly govern the state in the future.[61] ROL work writ large is not limited to PCJ situations; people who make a career of ROL often have worked in both post-conflict and nonconflict situations.[62] In contrast, ICL is primarily focused on post-conflict situations, although some cases do not concern long-term conflicts, such as the ICC cases concerning election-related violence in Kenya.[63]

ICL work is a niche area of law comprising a few international crimes. In addition to prosecutions in international and national

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justice initiatives promote accountability, reinforce respect for human rights and are critical to fostering the strong levels of civic trust required to bolster rule of law reform, economic development and democratic governance.").

59. Eleven of my fifty interviewees reported having worked in both areas at some point in their careers.

60. *E.g.*, Interviews with C, Delta, I & Upsilon.

61. *E.g.*, *Secretary-General 2011 Report*, *supra* note 58, ¶ 20 ("There is currently wider acknowledgement that transitional justice processes and institutional capacity-building are mutually reinforcing."). For a detailed discussion of ROL and accountability work in post-conflict contexts, see JANE STROMSETH, DAVID WIPPMAN & ROSA BROOKS, CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS 85–133 (2006).

62. More than 80 percent of those I interviewed who were working in ROL as a long-term career and who had already worked in more than one location had been posted in both post-conflict and non-conflict settings.

63. *See, e.g.*, Prosecutor v. William Samoei Ruto & Joshua Arap Sang, Case No. ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute (Jan. 23, 2012), *available at* http://www.icc-cpi.int/iccdocs/doc/ doc1314535.pdf [http://perma.cc/YQF3-JL95] (archived Feb. 11, 2014) (case involving perpetrators of post-election violence in Kenya, circa 2007).

courts (the focus of the discussion in this Article), there are several other modes of seeking some measure of accountability for such crimes, including truth commissions, commissions of inquiry, and local justice mechanisms, of which Rwanda's *Gacaca* courts are probably the most prominent example.[64] In contrast, ROL work incorporates many different substantive areas of work, including constitutional reform; legislative reform of all aspects of legal codes, including criminal, family, etc.; training judges, attorneys, and others; international trade agreements and other laws relating to engagement in the international community; court administration; prison policies and working in prisons; policing policies and working as police officers; military law and matters relating to defense; and so on.

2. Structure of ICL and ROL Work and Employment

The structure of ROL work and employment is somewhat complex. There are donor states and international organizations that supply the funding for ROL projects. Some donor states and organizations implement their projects themselves, at least to some extent. Some outsource implementation to contractors, which may be private companies or nongovernmental organizations (NGOs). There may be more than one tier of contracting, as contractors may themselves subcontract parts of a project or may partner with a local organization. Contractors and subcontractors may be either international or local. ROL employers include international organizations, governments, private companies, and NGOs. Internationals may be hired directly by the organization running the project or by a contracting company whose role is to implement the project. They may be career employees, contracted employees, independent contractors, or seconded from their regular positions.[65]

In ICL, internationals working in the international and hybrid international criminal tribunals are typically employed directly by the tribunals, but they are not career employees. Usually they are on contracts of a year's duration, sometimes as long as two or three years, and sometimes only a few months if a tribunal is shutting down. The only career employees in the tribunals are those who have been seconded from other positions. People working in special panels in national courts are often hired by international organizations, also

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64 *See generally Gacaca Definition*, UNITED STATES INSTITUTE OF PEACE, http://glossary.usip.org/resource/gacaca [http://perma.cc/XAM6-6Z2L] (archived Feb. 11, 2014) ("The Rwandan government's community-based judicial process, established in 2001 to help deal with the massive number of detainees accused of committing crimes against humanity during the 1994 genocide. These courts were closed in 2009.").

65. *See* Baylis, *supra* note 27, §§ II.A, Movement: Movement Patterns & III.C, Knowledge and Skills: ROL (charting the roles internationalists play in ROL projects).

on contract. Other people working on but not in ICL include, for example, people in NGOs who work to support or assess ICL prosecutions and may be operating under any form of employment. As in ROL, some internationals are seconded.[66]

The internationals who directly implement ROL projects are ordinarily located in the concerned post-conflict countries. They may be there in the capacity of managers of a set of projects, or as short-term or long-term experts focusing on a particular topic. Most international organizations and foreign governments working in this area also have some ROL staff at their headquarters overseas. In contrast, ICL implementation takes place both within and without the concerned post-conflict countries. The first modern ICL tribunals were located outside the relevant countries; more recently several hybrid tribunals have been placed within the post-conflict countries, but the only permanent court, the ICC, is in The Hague. As a consequence, there is a significant ICL community in The Hague, where the ICC, International Criminal Tribunal for the Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR) Appeals Chamber, Special Tribunal for Lebanon (STL), and the Special Court for Sierra Leone (SCSL) Trial and Appeals Chambers for the Charles Taylor trial have all been located. ICL internationals working in the concerned countries—the Balkans, Timor, Cambodia, Sierra Leone—have only people working in or in relation to their own tribunal as a local ICL community, but there tend to be many internationals in the broader PCJ community working on ROL projects in those locations.

Typically, ROL internationals must work with nationals in the concerned country; nationals are the ones who must pass the laws, amend the constitution, and so on. There are some exceptions, as with the UN administration in Kosovo, where internationals literally ran the country for a few years. But for the most part internationals are there in the form of advisers, not as those who act directly on the laws and processes of the state, in contrast to ICL, where internationals are typically direct participants in ICL litigation. ROL work may overlap directly with ICL work when ROL internationals are trying to support national atrocity trials, to encourage ratification of the Rome Statute, or are otherwise working on ICL-related issues in the concerned post-conflict state.

There is a broad spectrum in how closely ICL internationals work with nationals of the post-conflict countries. The most separate are those who work in purely international tribunals; unless they work for the registrar on issues of outreach, cooperation, or similar issues, they may be completely disconnected from nationals of the post-conflict country. Depending on the stage of the litigation and

66. *Id.*

their role, some internationals have contact with nationals in their role as victims, witnesses, or defendants in the course of the proceedings. Some defense attorneys are also nationals of the post-conflict state. Internationals who work in hybrid tribunals are closer to post-conflict nationals in several ways. The hybrid tribunals are staffed by both internationals and nationals, but the extent to which internationals actually work directly with nationals varies. Hybrid tribunals are also typically, but not always, located in the post-conflict country. Finally, internationals who work on separate panels within national courts are also in institutions that hire both internationals and nationals, and also may or may not work directly or closely with national staff. Such panels are always located in the concerned post-conflict country. They also operate within the post-conflict legal system, although they tend to have special rules.

The more immersed ICL internationals are in the national system, and the more direct interaction they have with nationals, the more intersections their work tends to have with ROL work, in several senses. ICL internationals located in the post-conflict country tend to have social connections with ROL internationals in the same country and to be aware of the ROL work being done there. They also tend to have an increased awareness of the local political and social issues surrounding their work and of their ultimate lack of control over the reception of their work in the post-conflict country.[67] ICL internationals in courts where they are working directly with national counterparts also tend to have mentoring or capacity-building roles vis-à-vis nationals that are similar to the mentoring and capacity-building roles some ROL internationals play. All in all, at the international tribunal level, internationals tend to be relatively isolated from ROL work concerning the relevant post-conflict country and from the national dynamics of post-conflict states that affect both ICL and ROL; at the national level, they tend to be significantly more connected to both; and hybrid courts fall somewhere between these two extremes on the spectrum, depending on the specifics of how each hybrid court operates.

3. Development of Modern ICL and ROL

While both ROL and ICL have existed in some form for many years, their current incarnations are relatively new. After a long period of relative dormancy post-Nuremburg, ICL was reactivated in 1993 with the founding of the ICTY. There are now a number of international and hybrid tribunals, as well as trials in national courts. In ROL, as far as the United States is concerned, police-

67. *See infra* notes 74–78 and accompanying text (discussing communities of practice).

training programs began in the 1950s as part of the anticommunist effort, and there was some nascent law and development work in the 1960s. ROL became a focus of U.S. foreign policy in the 1980s with U.S. investment in human rights and democracy-oriented reforms in Latin America, followed by market-oriented legal reforms in post-Communist countries in the 1990s.[68] There are now numerous U.S. and foreign agencies aimed at ROL work, as well as international organizations and NGOs.[69] The wave of ROL work in the Balkans was important to establishing and rapidly expanding ROL work specifically aimed at post-conflict rebuilding, including but not limited to the UN administration in Kosovo; thus, the Balkans have a particular significance for both ICL and ROL. In the last 10 years, the United States and its allies have spent considerable resources on ROL work in Afghanistan and Iraq.

ROL and ICL are not just fields of practice, but also areas of knowledge that have been developing rapidly. In ICL this has included new international crimes, development of the elements and requirements of proof for these and existing crimes, all the procedures and infrastructure associated with ICL tribunals and trials, evolving modes of liability, evolving approaches to the status of the defense in tribunals, evolving approaches to investigating mass crimes, and so on. In ROL, this has included developing best practices, guidelines, and models for work in the wide variety of different substantive areas of ROL work.[70] Thus, the communication and creation of knowledge in ICL and ROL communities and networks take place in these contexts of rapidly developing areas of knowledge and fields of practice.

B. *Local, Intra-institutional Knowledge Communities*

ICL tribunal interviewees described four interlocking ways that they engage with PCJ knowledge: learning new knowledge and skills as they do their jobs, implementing knowledge in their work, talking about developments and how the law should be, and requesting and responding to requests for assistance. In so doing, they did not distinguish sharply between transnational and local connections.

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68. *See* RACHEL KLEINFELD, ADVANCING THE RULE OF LAW ABROAD: NEXT GENERATION REFORM 39–60 (2012) (discussing shifts in the U.S. approach to foreign affairs and development, from reform efforts focused on ROL, to human rights, and finally to economics based initiatives).

69. *See id.* at 19–28 (discussing the various agencies, nations, and international organizations focused on ROL reform efforts).

70. For example, the United Nations has a substantial library of ROL materials evaluating, discussing, and proposing ROL practices and policies in its ROL document depository. *See United Nations Rule of Law Document Repository*, UNITED NATIONS RULE OF LAW, http://www.unrol.org/dr.aspx [http://perma.cc/GJ2B-VC49] (archived Feb. 13, 2014).

Embedded ROL interviewees also talked about learning and implementing new knowledge and skills on the job; otherwise their discussion tended to focus on developing relationships and coordinating action with internationals and nationals locally. Transnationally, they talked about forums for discussing and developing best practices and sharing lessons learned. Because I wrote at some length about learning and implementing new skills and knowledge within the workplace in another article, I am going to touch briefly here only on the aspects that are most important to this discussion and then turn to discuss the other topics in more detail in the following sections.[71]

1. ICL

It is important to remember that the transnational community of ICL tribunal internationals includes local communities. And just as internationals' transnational connections typically begin with in-person meetings and relationships, so also the information and skills that they share with others in their community are typically gained in their immediate work settings.

However, in light of the ubiquity of internationals' job movement among ICL tribunals, it is difficult to draw a sharp line between the local and the transnational. Many of an international's immediate work colleagues will have previously worked in other ICL tribunals and will have connections to those settings and be importing knowledge and skills from those settings, as well as from other communities and environments. In addition, internationals typically begin work at an ICL tribunal with at least one of two kinds of knowledge relevant to that work that they bring from another context or community: book knowledge of ICL law from study at a university or litigation skills from domestic practice. As such, these forms of knowledge, while they are on the one hand implemented locally in the context of internationals' immediate work, are drawn initially from other contexts, and more specifically, from their development in other communities that are connected to but not part of the transnational ICL community.

Interviewees identified several kinds of knowledge and skills that they felt they learned and used at work, including but not limited to the legal knowledge embedded in the judgments and the associated norms and rules discussed in the following section. I discuss the types of knowledge and skills identified by ICL interviewees at length in another article; here, I will outline them

71. *See* Baylis, *supra* note 27, § III, Knowledge and Skills. The following two subparts summarize a few relevant aspects of issues that are addressed in more detail in my other work. *Id.*

briefly. This chart aggregates the information gathered from all ICL interviewees into a set of categories for purposes of presenting that information in a summary form.[72]

ICL Knowledge or Skill	Where Best Acquired	How Acquired
Technical skills, especially litigation skills	Domestic practice; possible but difficult to acquire in an ICL tribunal	Experience
Flexibility about international procedures & processes; people skills	Any international setting	Experience
Legal knowledge of ICL	Any setting	Study
Understanding of ICL institutions	Any ICL institution	Experience
Knowledge of "the facts"	Any setting, but typically acquired in an ICL tribunal	Study, or from witnesses or defendants

There are several important characteristics of this list in terms of our understanding of how the ICL tribunal community develops, propagates, and uses knowledge. First, the expansive view of knowledge and skills expressed by interviewees matches the expansive understanding of knowledge and learning that Wenger and Adler adopt, encompassing not only substantive knowledge but also how to operate effectively in one's workplace.[73]

Also, these skills and knowledge are a point of transnational connection, either because they are subjects of discussion with other community members or because they represent elements of commonality with other members, or both. Legal and factual knowledge can easily be analyzed in conversation or conveyed to others in one's network, and indeed, as will be discussed later, interviewees reported sharing such information locally and transnationally. In contrast, technical skills, flexibility, and an understanding of ICL institutions are not aspects of work that can be easily encapsulated for analysis or passed on to others through conversation. However, they are aspects of work that internationals report they learned through experience, i.e., as some part of the process of litigation and through interactions with their work colleagues, and thus in direct or indirect engagement with those colleagues' local and transnational networks and experiences.[74]

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72. This chart is an adapted version of a chart in another article based on the same research study. *See id.* § III.A, Knowledge and Skills: Core Knowledge and Skills.

73. *See* WENGER, *supra* note 16, at 3–7 (recognizing a more expansive theory of learning that takes into account an individual's ability to understand and learn from the community around him or her).

74. *See* WENGER, TRAYNER & DE LAAT, *supra* note 18, at 10 ("The learning value of community derives from the ability to develop a collective intention to advance learning in a domain. This shared commitment to a domain and to the group of people who care about it is a learning resource . . . . Over time, a joint history of learning also becomes a resource among the participants in the form of a shared practice—a shared

Most important for our present discussion is that, except for "the facts," ICL tribunal internationals felt they held all these forms of knowledge and skills in common with others at other tribunals, that they were used in similar ways at other tribunals, and that they represented common practices and a common culture between them and people at other tribunals.[75] Thus, in Wenger and Adler's terms, ICL tribunal interviewees share a transnational and transinstitutional "common domain of knowledge" comprising the content of ICL law and all the knowledge and skills necessary to put that knowledge into action in the form of ICL trials.[76] This sharing is not only passive, in Wenger and Adler's conceptions; rather, there is a sense of "joint enterprise" toward developing and sustaining that knowledge and the practice it represents, and this is part of what will be explored in the following subparts.[77]

It is also important to remember that the similarities between tribunals cited by interviewees are not the result of serendipity or of some inscrutable, inaccessible, historical institutional choices. Rather, these likenesses are the consequence of internationals' deliberate, recent transfers of the model for the structure of ICL tribunals from one court to the other and the recent and ongoing movement of the same people importing the same practices from one court to another. These choices have produced not just a common structure, but a common culture and common ways of doing things. Wenger and Adler call this a set of "shared practices," which "are sustained by a repertoire of communal resources, such as routines, words, tools, ways of doing things, stories, symbols, and discourse."[78]

So the kinds of knowledge and skills valued by ICL tribunal internationals are, on the one hand, developed and implemented in the very immediate context of their present workplaces, within and through whatever immediate communities of practice may form there. On the other hand, they simultaneously intersect with a

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repertoire of cases, techniques, tools, stories, concepts, and perspectives."); *see also* ADLER, *supra* note 15, at 14–15 (discussing the relationships and interactions between people within "communities of practice").

75. Baylis, *supra* note 27, § III.B, Knowledge and Skills: ICL. But as discussed below, some interviewees distinguished work in hybrid panels and courts from work in other tribunals. *See infra* pp. 29–34.

76. *See* ADLER, *supra* note 15, at 15 (citing ETIENNE WENGER, RICHARD MCDERMOTT & WILLIAM M. SNYDER, A GUIDE TO MANAGING KNOWLEDGE: CULTIVATING COMMUNITIES OF PRACTICE (2002)) (describing communities of practices as "a configuration of a *domain of knowledge*, which constitutes like-mindedness, a *community of people*, which 'creates the social fabric of learning,' and a *shared practice*, which embodies 'the knowledge the community develops, shares, and maintains.' The knowledge domain endows practitioners with a sense of *joint enterprise* that is constantly being renegotiated by its members.").

77. *Id.*

78. ADLER, *supra* note 15, at 14.

transnational ICL tribunal community that utilizes those same skills and knowledge for similar purposes, in similar ways, and in similar contexts.

2. ROL

Embedded ROL interviewees also identified a relatively diverse set of knowledge and skills that are needed for their work. These skills and knowledge once again include not only substantive knowledge of norms but also an understanding of how to appropriately implement those norms and develop effective practices for the post-conflict contexts in which they work. As such, this depiction is also commensurate with Wenger and Adler's conceptions of knowledge and learning.[79]

ROL Knowledge or Skill	Where Best Acquired	How Acquired
Technical and institutional knowledge, e.g., court administration	Domestic practice	Experience
Local knowledge & relationships	Specific national post-conflict settings	Experience
Local knowledge-acquisition skills and relationship-building skills	Any setting, but especially post-conflict settings	Experience
Legal knowledge, e.g., of relevant treaties & laws	Any setting	Study
Understanding of international institutions' activities in post-conflict states	Any post-conflict setting	Experience

Also similar to ICL and in keeping with the communities of practice model is the fact that most of the identified areas of knowledge and skill are most readily gained by experience, with the same import: that these skills are developed socially, in relation to others in their workplace and to those others' transnational connections and experiences. Indeed, several embedded ROL interviewees specifically mentioned the importance of mentors and their connections with others in the workplace in describing how they learned how to do their jobs. As in ICL, these relationships and the related learning blur the lines between the local and the transnational, as they are not only immediate and local, but also grounded in each other's transnational and transinstitutional experiences.[80]

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79. As in the previous section, this is also an adapted version of a chart in another article based on the same research study. *See* Baylis, *supra* note 27, § III.A, Knowledge and Skills: Core Knowledge and Skills.

80. *Id.* § III.C, Knowledge and Skills: ROL.

An important difference, however, is that embedded ROL interviewees valued local relationships and local knowledge of the post-conflict setting very highly. Accordingly, they tended to see their knowledge as far more context specific and far less common to the field than did ICL tribunal interviewees. Embedded ROL interviewees also emphasized differences among the post-conflict settings where they work, rather than describing them as extremely similar, as did ICL tribunal interviewees when speaking about tribunals. As a consequence of these differences in settings, even when ROL internationals' information and skills are relevant in other settings, they have to be significantly adapted.[81]

Thus, while ICL tribunal interviewees described the knowledge they acquired on the job as being a point of connection with others in their transnational community, embedded ROL interviewees were far more ambivalent about the subject. Overall, embedded ROL interviewees tended to emphasize the context-specific nature of their work. Accordingly, as discussed in the following subpart, they focused on local rather than transnational connections, networks, and communities as being the most relevant to their work.

C. *Knowledge Sharing and Assistance*

1. ICL

Looking beyond the workplace, internationals working in ICL tribunals reported that they tend to share information about their work readily with others in both their local and transnational networks, within the bounds of their professional duties of confidentiality.[82] There is no need, as such, for sharing of information between people working in different tribunals in The Hague, or among people doing ICL work elsewhere and their counterparts doing ICL or ROL work in other settings. The work of the tribunals is largely insular, at least for people involved in litigating the trials. But one does nevertheless see the ready flow of information about work, in the form of chitchat and also of more serious discussions about substantive issues.[83] The voluntary nature of these interactions underlines that they are driven by a sense of community—that is, by a shared interest in a particular set of knowledge and activities, and a shared concern with how that knowledge and those activities should be carried out and what they mean. Although participants can, and

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81. *Id.*

82. *E.g.*, Interviews with L & Theta.

83. However, some ICL interviewees felt that they used their networks mainly for career and social purposes. *E.g.*, Interviews with Iota & S.

do, disagree about the answers to those questions, they agree that the questions are valid and important ones.[84]

As described by interviewees, their interactions span a spectrum from simple news updates to intense debates over the fundamental norms of the field. This wide variety of types of engagement is also characteristic of Wenger and Adler's understandings of communities' ongoing, everyday, multifarious forms of interaction.[85] At the more minimalistic end of this spectrum, some people described their interactions as a way of keeping each other up to date on work-related news, whether transnationally or locally:

> [T]he network that I've created through my work at the tribunals is what often keeps me in the loop. It's friends that I've worked with at [my previous workplace] or that know I'd have an interest in reading the judgment and may have just come across it, or maybe if they were sitting in the public gallery, or they're working on the case. So I guess that's usually how I get most of my information.[86]

> [T]here's clearly a lot of interaction between courts with respect to interns, especially . . . in The Hague. It doesn't even have to be so much that the interns go from one court to another, but they all socialize. They quite often share apartments. You'll get people saying . . . "I heard this from somebody who works at the ICC," or "I heard that from an intern at the ICTY" . . . .[87]

At the other extreme, some interviewees characterized their conversations as a robust mode of exploring different views on contested questions, debating ideas, and in some instances, creating consensus:

> I think first of all you've got the regularity of the jurisprudence or the case precedent being published. People are able to see that for themselves. Secondly, there is quite a lot of dinner party conversation that goes on where people sit around the table, and they'll discuss interesting things that have happened jurisprudentially. And there will naturally be an element of, over time, meeting of minds. But not immediately. People disagree about these things rather violently.[88]

> There's a lot of old colleagues that went to the other tribunals. . . . I mean I've got friends at, I think, every international tribunal. And so of course we stay in touch. . . . [W]e talk about soccer, but we also talk about, well, the latest developments and have discussions. And there's of course a kind of professional exchange about these tribunals, not only about the tribunals but also about the law as such, the substance and the most recent developments. I would say also in depth discussions of how things should run differently, how the law should be, etc.[89]

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84. *See generally* ADLER, *supra* note 15, at 19–27 (analyzing the working dynamics of communities of practice).

85. WENGER, *supra* note 16.

86. Interview with Eta.

87. Interview with Iota.

88. Interview with Theta.

89. Interview with Psi.

What all of this meant, at least to some ICL tribunal interviewees, was that they envisioned their role as constitutive of knowledge: that they were not merely carrying out the system of ICL but creating that system, through their actions and through their discussions.

> [Initially, m]ost people . . . had been at [one tribunal] and nowhere else. . . . [Then] you started to see people . . . in the second-generation tribunal employees moving. [They] had moved to their second tribunal, and then they started moving around. They became experts not only in the work of the one tribunal, but more comparative international criminal law experts. And you're seeing them more and more now. . . . [S]ome of my colleagues have worked for four tribunals. And even though people say there isn't really this system of international criminal justice—a lot of people say it's maybe developing or it doesn't exist—I believe there is a system because it's not that the courts are necessarily interconnected, but the individuals [who] have worked in this places have created a system. . . . [T]hey've become more experts on international criminal law than they are in their own domestic criminal law or their own national laws. So there is a sort of system that is developing, because of the people that work in the field.[90]

In addition to discussing developments and debating ideas, knowledge exchange between network members sometimes takes the form of requests for direct assistance or advice from friends and responses to those requests:

> I've shot off lots of emails saying, "Can you help me find precedent of--?" And I've sent that email to a couple of places, and I get back something. . . . [O]ne buddy at [one tribunal] sends me something, someone from [another tribunal] sends something, someone in [a third tribunal]. . . . [S]o it is, in terms of finding applicable persuasive case law within a very short time, it's better than a research database. . . . [H]aving a friend in all the courts is . . . the best timesaver ever.[91]

Interviewees also reported consulting with people in other tribunals to share information about their programs and organize structured assistance for their projects:

> Like now we have been managing [our] program and I've been to [another tribunal] to see what is their own program, how we can improve it. I know [an additional tribunal] keeps contact so we have a lot of exchange about [these] issues. We can improve. Sometimes, you know the same lawyers are working on two trials in two different tribunals. So we can also investigate. There is a lot of cooperation between the tribunals . . . .[92]
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> And so these connections we have through people who have been at other courts and our ability to – the collegial relationships we have with the other courts has allowed us to draw on a lot of resources from these other courts. They actually have seconded a lot of people to us for various special projects. Or when we decide that we have a problem

90. Interview with Eta; *see also* Interview with Psi.
91. Interview with I; *see also* Interview with Beta.
92. Interview with Upsilon.

> that we don't have the right skill set to resolve, they will send . . . in a SWAT team to fix it for us. So that has been extremely valuable.[93]

While these sorts of requests for assistance and consultation can become formalized, as the quotations above suggest, interviewees indicated that it is the personal relationships that often provide the actual conduit for an initial request for help and also create a sense of ease in making the request.[94] And although interviewees did not always say this explicitly, these joint projects seem to bolster both the sense of commonality and the actual commonality between the tribunals; when people from one tribunal assist another using what their own tribunal does as a model, that tends to increase both the actual overlap in tribunal practices and also the awareness of that overlap among all the participants in that project.

Also, while these forms of assistance can be understood as part of a knowledge-building process, sharing and developing tools and information, they can also be understood as joint action. As such, they are linked conceptually to the coordinated action emphasized by embedded ROL interviewees, which will be discussed below.

Interviewees identified three interconnected reasons for the ease of sharing information, assisting each other, and talking about ideas. The first two reasons are the sense of common identity and common purpose that also come through implicitly in people's explanations of enacting their knowledge and skills in their work, as described above. In their express explanations of this sense of commonality, the movement of people between tribunals is an important factor:

> [My interaction with people at other tribunals] operates on two different levels. One is we've talked about the serious issues, you know, "We have this issue, how have you handled it, have you had it, has it come up?" . . . And then there's the . . . more personal type issues . . . I mean this is a little world now where people have—as I'm sure you've seen, people move from tribunal to tribunal. There's a lot of cross-pollination. And so, there's a lot of "Well, how do you find working for that person?" And "Do you think I should move over to this job?" A lot of career, personnel type discussion that goes on. As though it were one big courthouse. Because the people and the issues are common, so I can talk to somebody at [another] tribunal and share certain things. And we have, in some way, we have a common culture and they'll understand exactly what I'm talking about, and what the issues are, and so forth.[95]

> We have a lot of contact with [our counterparts at the other tribunals]. Because you know they are the same people. We know them. So it's very easy for us to be in contact with them and to check what is their own program, how we can improve our program, how they can improve their program, etc. There is a lot of exchange. . . . You know it is very easy like this to be in contact with people because we know each other, especially people who are working for a long time. It's the same people. ICC, ICTR, Lebanon tribunal within The Hague, Sierra Leone, some of

93. Interview with J.
94. *Id.*; Interview with Upsilon.
95. Interview with Beta.

> the trial was in The Hague. Yes, it's the same people. A lot of people are moving between those tribunals. Because it's a specialized field, then people get specialized in this field and now they are keeping in the same environment.[96]

When interviewees said they are "the same people," they sometimes meant this quite literally: that the same people who were previously working at their tribunal are now working at another, and that the people working at their tribunal now were previously working at another one. The sense of common identity between internationals at different tribunals is fostered by the network connections between the tribunals—that is, by the local bonds that have become transnational through job movement.

Of course this expression of a sense of common identity raises a natural question: who constitutes "the same people," and who does not? Are defense attorneys included, for example, or post-conflict nationals working in the hybrid tribunals?[97] This question has implications for the transnational ICL tribunal community's identity and body of knowledge, as well as for its interactions with other networks and communities, including both national post-conflict communities and academic- and domestic-litigation communities. This is discussed in the final Part of the Article.

The third reason for ICL tribunal interviewees' comfort with sharing information and collaborating is the strength of the bonds that form locally between people working in this field, in part because of the intensity of the issues they are working on:

> [T]hose networks are quite active. And I'd have to say both [on the social and professional levels], because when you work in [a location] where there's effectively ten restaurants and a very tight knit, small circle of social interaction, it's almost inevitable that you are going to bond very much so with these people. . . . [Y]ou make significant ties, and you share a significant number of, let's say, interests and history and just the commonality of that unique and maybe one of a kind and once in a lifetime legal experience. No one else from outside your previous circles of friends might be able to share and understand them or will share the same thrill, let's say, at some interesting development coming from that court after the fact. So if there is some interesting news clipping, I can share it with some friends and I'll start -- there's a good amount of chatter coming back following that. And then that these social networks . . . or social circles end up becoming professional ones is almost inevitable.[98]

So, hearkening back for a moment to the discussion of networks at the beginning of this Article, several of the factors that foster the formation of transnational network connections—intense local

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96. Interview with Upsilon.

97. Because their status vis-à-vis the ICL tribunal community is unclear, I have not included either of these groups for purposes of this discussion.

98. Interview with I.

interactions and job movement—also contribute to perceptions of common purpose, common identity, and personal connection that enable not just information sharing but also debate, contestation, and active engagement over norms. This, in Wenger and Adler's parlance, signifies their existence as a community and facilitates a robust interchange, in words and actions, about the group's norms and practices.[99]

2. ROL

In ROL, many interviewees expressed discomfort about sharing work information with others in their local and transnational networks. At the same time, they consistently asserted that coordination and cooperation with others outside one's workplace is critical to the effectiveness of the overarching goals of ROL, and often to individual ROL projects. But several interviewees reported near-total failures of communication about work subjects amongst their local cohort of internationals, notwithstanding the existence of functional networks for social and career purposes.

In contrast to ICL tribunal interviewees, who agreed offhandedly that they spoke to others about work, or disagreed offhandedly, many embedded ROL interviewees regarded information exchange as both important and largely unsuccessful:

> People would talk about what they were doing, but in quite general terms. People were very unwilling to give you details of what they were doing. People wouldn't share information. There was . . . no system for sharing, let's say, translations of laws that existed. So every organization was repeating the work of lots of other organizations, not only horizontally but also vertically, in that other organizations that had been and gone [and] had often done exactly the same work. There was no institutional memory, there was no coordination or no effective coordination between the various different funding bodies like the UN, the US, the EU and other organizations. . . . I went to a lot of coordination meetings, but I didn't notice any actual coordination going on.[100]

> The organizations are very, very closed, do not share information. Others in fact may be working on the same type of resource at the same time, the same place, without any communication.[101]

As these quotations suggest, informal sharing—or the lack thereof—coexists with efforts at organizing formalized coordination between organizations about their programs—or, again, the lack thereof. In ICL, similarly, circulation of official judgments, and organized assistance between tribunals intersects with casual conversations

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99. *See supra* notes 74–78 and accompanying text (discussing the views of Wenger and Adler).

100. Interview with Kappa.

101. Interview with B.

and requests for help. But unlike in ICL, where such information sharing was voluntary and unnecessary to the work of the organization as such, here it is both necessary and the object of concerted effort. And interviewees agreed that where it was not occurring, it was undermining ROL projects:

> The biggest obstacles to progress are not culture, or mistrust of foreigners, or resistance from the government, although all those things do exist. But the biggest obstacles are the lack of coordination between stakeholders, including NGOs, and lack of proper administration, especially HR and financial. There is lots of gap between the reality and the practical difficulties and failure of delivery on the ground, and the grandiose reports to donors that take place at a very high level and are very abstracted.[102]

There are several factors that seem to contribute to the difficulty of sharing information between people in different organizations, either as part of a structured coordination effort or more casually. The complexity of post-conflict situations and of international responses plays a role, as does the disruptively high turnover rate in some of these settings.[103] However, one would expect that local networks might assist with these issues, as people used their personal connections to meet newcomers and to discuss over drinks what they might never learn about other organizations while sitting in their offices. One would not expect to hear about a sense of discomfort with sharing information casually if the problems were solely complexity and turnover.

But according to interviewees' descriptions, another factor is a sense of competition, both between organizations and between individuals, that is founded in the structure of ROL work. This is in stark contrast to the sense of common purpose and identity that characterized ICL tribunal interviewees' descriptions of their relationships with others. People used different terms to characterize the underlying issue, but they all came back around to a couple of interrelated dynamics. Some called the problem "political" or "turf," alluding to the need for control or perceived control of projects and outcomes:

> On the professional level, it's intensely, intensely political, and there's a lot of jockeying among programs. Even people who are . . . friendly colleagues will be extremely political with each other. And there's just a lot of maneuvering around programming here: a lot of overlap of, a lack of planning of how programs are going to coordinate that results in

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102. Interview with A.

103. *See* Baylis, *supra* note 27, § I, Introduction (providing examples of difficulties plaguing certain post-conflict responses due to complexity and circulation).

> professional tensions among people, even people who really like each other.[104]

The structure of funding and contracting in ROL sets up competitive relationships between implementing organizations and also between the individuals working for those organizations. Because funding is granted in short cycles of 1 to 5 years with the expectation of particular outputs, implementing organizations must be able to demonstrate tangible short-term outcomes to donors. This is not simply to justify their use of funds, but also in anticipation of future funding, in order to be in a position to compete successfully for the next contract. And individual contractors similarly are typically under short-term contracts of a few months to a year and are always looking ahead to their next contracts, whether renewed contracts or entirely new ones. As a consequence, they too are also seeking to have some tangible work product to demonstrate their successes. In environments in which tangible outcomes can be difficult to come by, there can be intense competition for ownership of projects and unwillingness to share credit.[105]

As a result, while ICL tribunal interviewees indicated that they felt a sense of common purpose that made it relatively easy for them to interact with other internationals professionally both locally and transnationally, many embedded ROL interviewees, including those cited above, indicated that they felt a sense of competition with other internationals, which interfered with sharing information or engaging in joint action:

> [I]t does create these kind of perverse incentives. Although ideally in this environment . . . we all work under contracts that say our work property is the property of the [our employers] and to a certain extent of our counterparts. But in reality, this is an environment where everybody's an independent contractor even if they have an employment agreement with a company. And so people behave that way. That is, your own work product becomes your ticket to do your next job, right? I mean it's something that you take with you and you protect and guard to a certain extent, because there's no methodology for policing or patrolling credit, so it's quite easy for someone to just steal your work and call it their own. And so it creates, rather than incentives for sharing knowledge, incentives for hoarding knowledge that can be really counterproductive. But . . . they're totally understandable from the personal perspective. People don't have any kind of protection that their work is acknowledged or credited and so they take steps to protect themselves, which unfortunately runs counter to the development principles we're all working towards.[106]
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> [K]nowledge sharing between organizations is really difficult to achieve. Because I've seen before—I mean, when I was in [my previous position], I regularly got contacted by organizations. And at first, I was

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104. Interview with T; *see also* Interviews with Gamma & Lambda (both non-embedded ROL).

105. Interviews with B, Kappa, Omicron & Y.

106. Interview with T.

> maybe a little naïve, and so I'd easily meet with people and share my ideas. And then the next thing I know, my ideas have been transformed into a project that's been funded by a donor. And I saw that on a number of instances. So then I became much more careful about who do I share information with.[107]

> [My organization took steps to share some of our work product with other organizations,] because the idea was that we knew that we would have a limited time there, but we thought that other organizations, either in the future or even contemporaneously, would be able to make use of the work that we did. And I was told by some people that we were foolish to do that because other people would steal our work and we wouldn't be able to get any more funding. And it would set us back in terms of our competitive position for funding. . . . But that I suppose is why people were so secretive, and one of the reasons why there wasn't very much coordination. Because, while there are advantages to competition between organizations—at least theoretical advantages in that it should improve quality, which it didn't seem to be doing, but that it should do—the disadvantages are that you don't have a culture in which people work together.[108]

There are also competitive dynamics between donors, fueled by a struggle for control and credit between those states, agencies, and international organizations. Political pressures and constraints may make donor agencies and organizations feel a need to demonstrate immediate success:

> [T]his is an environment where a lot of donors are very active, where rule of law I think has been largely considered secondary, and to some extent, window dressing for a number of the military efforts, so it's given a lot of face time prominence but not a lot of serious commitment. So there were at the time a whole lot of machinations going on so that various donors could demonstrate to their political constituencies back home that they were taking steps to introduce human rights and to introduce legal systems . . . without wanting to commit too strongly to significant funding for those issues. And of course each of these donors had a slightly different political mandate, so that's challenging.[109]

A donor-level coordination problem that was occasionally mentioned was genuine conflicts between different involved international organizations or governments over the appropriate policy. One interviewee described such a conflict between two involved foreign states over approaches to training nationals, and another described conflicts between agencies about different conceptions of the aims of their work, for example.[110] But interviewees often spoke as if these dynamics were primarily about exhibiting power rather than the substance of the programs:

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107. Interview with Zeta.
108. Interview with Kappa.
109. Interview with T.
110. Interviews with Gamma & Lambda (both non-embedded ROL).

> I think you do get a lot of empire building. . . . [O]rganizations have different funding streams, with sources of funds, and they have to try and show that they're doing something and account for what they're doing.[111]

It is worth noting that local expatriate communities within post-conflict countries seem quite robust, so it is not that these communities do not exist or are not functional on other levels. As discussed above, for social and career purposes, they seem to function reasonably well in ROL as in ICL. But in ROL, often, a sense of competition seems to prevail, preventing those connections from being used effectively for substantive work purposes. So while internationals generally develop social relationships that could in theory smooth their cooperative work in their professional lives, in reality only a few people suggested that this is in fact the case; many others said that there are competitive relationships amongst people working in the same location or subject area.

From interviewees' descriptions, this sense of competition interferes with both the network and communal aspects of relationships. As described above, they directly stated that they felt reluctant to use their connections to transfer information, out of fear it would be misused. While they did not make such clear statements about a lack of a sense of community, there was a notable silence on the subject. Unlike ICL interviewees, ROL interviewees did not make broad statements suggesting that they felt a sense of common enterprise with others working in their area, that they were all the same people, or that they were working toward the same purpose. Indeed, one interviewee actually contrasted ICL as an example of an area of work that benefits from having a common purpose, unlike the interviewee's own:

> [F]or the tribunals it's kind of easier because they're all working with the same—with the same aim. And there isn't this competition between tribunals. . . . They have a particular mandate to fulfill.[112]

In light of these obstacles to sharing information locally, it is not entirely surprising that embedded ROL interviewees also did not tend to describe discussing the substance of their work casually on a transnational level. Instead, when embedded ROL interviewees reported sharing information with each other and talking about norms and practices on the transnational level, they focused on the formal contexts that seemed secondary to, or at least additional to, personal connections in ICL tribunal interviewees' accounts. They suggested that these formal transnational venues offer an

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111. Interview with A. Some ROL interviewees viewed the levels of cooperation and communication they observed as good, however. Interviews with Nu, Upsilon & Y. Also, some interviewees' work was focused within their institution, so they were not concerned with these issues. *E.g.*, Interviews with C & R.

112. Interview with Zeta.

opportunity to break through the sense of competition that usually informs their professional interactions:

> Now of course, you have organizations like INPROL—the International Network for the Promotion of the Rule of Law—that . . . is one of the places where allows better exchange of information. And what's great about INPROL . . . is that people are able to share their information. And then the INPROL staff will use that information to collate and put together a kind of concept note . . . that is then made available to everybody. And so you have research notes on how to build the capacity of bar associations, issues relating to pre-trial detention, how to build the capacity of law schools. . . . And I think that's really, really useful, because when you're starting from scratch, it's good to have that kind of information. Because the people are listed, their names are listed, you then are able to contact them later. Also it's a good way for people to get known as experts in their particular fields. That kind of model needs to be further encouraged, I think — knowledge sharing within those organizations.[113]

Within particular subject areas of ROL work, people reported attending conferences and talking about their work in those contexts:

> I went to a conference . . . a year ago . . . and I met quite a few people that had to do with [my specialty area]. And they were talking about the fact that, yes, we had a small contingent . . . . [I]t's more . . . looking at things as opposed to really making a difference. They're doing more studies than anything else. I think there is probably a couple of a hundred people worldwide that actually do this on a continuing basis.[114]

Everyone who mentioned these websites and meetings was quite positive about them, indicating that these formal group settings enable useful communication about work.[115] In contrast, when they spoke about their direct, casual transnational connections, embedded ROL internationals tended to say that their individual relationships with others in the field concerned social and career matters and not the substance of their work as such.[116]

This conception of transnational ROL communities of practice, in which they are deliberately constructed via formal and organizational efforts rather than arising relatively organically from personal connections, seems to reflect several converging phenomena. The first, of course, is the sense of competition that undermines local discussions about work that was discussed above. In the ICL context, local social relationships seem to progress readily to professional ones, and then to continue to involve interaction on both levels when

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113. *Id.*; *see also* Interview with B. There are other such forums as well, for example the Innovating Justice site sponsored by the Hague Rule of Law Network. *See* INNOVATING JUSTICE FORUM, www.innovatingjustice.com [http://perma.cc/6UCN-YDCR] (archived Feb. 13, 2014).

114. Interview with V; *see also* Interviews with Mu, Upsilon & Zeta.

115. *E.g.*, Interviews with B, Mu, Omicron, Upsilon, V & Zeta.

116. *E.g.*, Interview with B.

extended transnationally. In contrast, in ROL there is a break in this line of development whenever people are unwilling to discuss professional matters with local connections. Without a practice of communication in everyday interactions, it is not surprising that such a practice would not develop in the context of more attenuated transnational relationships that require more deliberate effort to engage one another and share information.

Another factor making it less probable that local social connections will eventually support casual transnational professional discussions is the internal complexity and diversity of the ROL community, which makes it less likely that people with common interests will connect serendipitously. There are several aspects of this complexity. There are many different substantive areas of law and types of projects, so that the people one encounters in any particular ROL setting may be working on a wide variety of different topics. There are also many more ROL locations than ICL tribunal locations. And although I do not have any numbers, impressionistically it seems that there are more internationals working in ROL than in ICL. As a consequence of these factors, while in any ICL tribunal one is surrounded by people working on the same substantive area of law as oneself, in ROL that is not necessarily the case; and while in ICL one can expect to re-encounter one's colleagues in one of a limited range of ICL institutions, in ROL, one's colleagues may scatter far more widely. As such, connecting with others working specifically in one's specialty area (for those internationals that have a substantive area of expertise) may require more deliberate effort than in ICL.

Finally, the websites and meetings mentioned by many embedded ROL interviewees represent a concerted effort by many institutions that work in ROL to develop venues for such communication. In addition to remedying these gaps in casual transnational communication about work, institutional efforts to construct transnational communities also appear to be an effort to address critiques of ROL for lacking a common set of norms and body of knowledge.[117] Indeed within the ROL sector, the concept of communities of practice has been adopted as a tool or technology. None of my interviewees mentioned the term, but it is visible on the websites of several organizations working in the area. The United Nations maintains a list of what it calls "[p]ractitioner networks, also known as communities of practice," for example, and the U.S. Institute of Peace's Rule of Law page touts its communities of practice

117. *See* THOMAS CAROTHERS, PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE 15–28 (2006) (arguing that the field lacks a common body of knowledge).

work.[118] And with or without the *communities of practice* title, one sees the concept at play in the online networks and in-person working groups established by ROL institutions. At the same time, many working in ROL clearly feel the need to develop common norms. There has been an enormous push to regularize the practices of the field, through best practices, indicators, models, and other ways of encapsulating commonly held and agreed upon knowledge, of which the websites and meetings mentioned by interviewees are one aspect.

From an outsider's perspective, apart from the deliberate use of networks for one purpose or another, the degree of commonality of views that internationals expressed in interviews does suggest the existence of transnational communities sharing and promoting certain values in both the ICL and ROL contexts. In ROL, interviewees tended to express common perspectives on their role and purpose with regard to national institutions. For example, while embedded ROL interviewees often disagreed about the best processes or about the appropriate content of norms, all perceived themselves to be playing the roles of providing useful outside expertise in substantive subject areas, contextualizing that expertise to the national setting, and building cooperative relationships with national counterparts. Embedded ROL interviewees do seem objectively to have a common purpose in a similar way to ICL tribunal internationals, at least in this general overarching sense. They also seem to be "all the same people" as concerns those in the field long term, who move from place to place as enthusiastically and frequently as ICL tribunal internationals, at least as far as the participants in this study were concerned. Nonetheless, these apparent commonalities did not yield spontaneous expressions of perceived commonality as they did in the ICL context: no one talked about belonging to a common culture or feeling a sense of co-identity with others in the field.

However, one might more readily find such a sense of commonality among people working in particular areas within ROL. Such groups are smaller and have a particular subject area in common. Several interviewees mentioned that they felt they knew many of the other internationals working in their particular area of work.[119] Such subgroups were not the focus of this project, but in order to better understand the development of knowledge in ROL

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118. U.S. INSTITUTE OF PEACE, http://www.usip.org/ruleoflaw/index.html [http://perma.cc/A2DL-8MRJ] (archived Feb. 13, 2014); UNITED NATIONS RULE OF LAW, http://www.unrol.org/article.aspx?article_id=39 [http://perma.cc/R3FT-UKVV] (archived Feb. 13, 2014); *see also* THE WORLD BANK, http://web.worldbank.org/WBSITE/EXTERNAL/WBI/0,,contentMDK:20212534~pagePK:209023~piPK:207535~theSitePK:213799,00.html [http://perma.cc/4QVX-NTD8] (archived Feb. 13, 2014) (containing a section titled "World Bank Communities of Practice").

119. *E.g.*, Interviews with Mu & V.

work, further research focusing on particular subject areas would be useful.

In ROL, the communal qualities look rather different than in ICL, both locally and transnationally. ROL interviewees' descriptions of transnational work-related discussions focused on websites, meetings, and so on. When asked about transnational connections, embedded ROL interviewees were likely to say they were still in touch with people from previous jobs, but not likely to say that they sought them out to share information directly or casually, as ICL tribunal interviewees did.

3. Reification and Boundary Objects

Interviewees consciously raised and openly discussed the issues of competition, cooperation, and commonality that infuse their relationships, as discussed in the previous subparts. Another factor that they did not mention themselves, but that permeates their explanations, relates more to how internationals preserve and contest knowledge than to their relationships. In ICL, internationals' work is reified in the form of court judgments; ROL has no equivalent for this work product. Instead, ROL knowledge is encapsulated in the forms of models, best practices, reports, and so on that are separately developed outside the day-to-day ROL work process.

As should be evident in the subparts above, ICL tribunal interviewees virtually always reported that their discussions about work with others in their community centered on recent developments in ICL jurisprudence. This is important, first, because it illustrates the interconnection between the ICL community and ICL institutions. The unstructured, voluntary interchange between network members is interwoven with the ritualized, obligatory interchange of litigation and with its eventual product: a judgment setting out and implementing legal rules and norms. The judgment sparks conversations about the norms it presents; those conversations and the understandings they foster inform the participants' involvement in the litigation process, including, for some participants working in Chambers, the writing of additional judgments. As such, this interrelationship contributes to the evolution of ICL knowledge, and the judgment, which is the reification of the litigation, is a focal point of the interaction. This observation correlates to the theoretical discussion at the beginning of this Article: communities and organizations do not substitute for or replace one another; rather, they are interactive. It is worth noting, however, that this interplay was of concern to some interviewees who were troubled by its implications for the malleability and the legitimacy of ICL norms.

This observation surfaces some qualities of ICL work that contribute to the development of the field of knowledge but that participants do not seem to be aware of, because those characteristics

seem so normal and natural to them. The fact that ICL litigation processes result in the regular issuance of written judgments setting out and applying norms is significant to the development of the field, for several reasons. First, it makes those norms and the justifications for them public, making it easy for people to share them. The authors of a judgment do not have a sense of ownership of the contents, and it is not private information. It can be shared and quoted at will. As a consequence, unlike in the ROL context, this work product cannot become an object of secrecy or competition; it is publicly available and appropriable. It instead becomes an object of connection, as people send the judgments to each other and discuss them.

Also contributing to the connective function of judgments is the fact that they come out with some frequency, providing ongoing fodder to fuel continuing discussion. This regularity also sparks continuing contact between people who are no longer working together, keeping those connections active. In addition, it is the litigation process, in which everyone is engaged in one way or another, that produces the judgments. They are, in Wenger's terms, the reified products of participation in the litigation.[120] This creates a sense of connection to the judgments amongst those involved in the process. They are interested in part because it has to do with them, or with people they know, and what they have done.

Finally, as Wenger points out, reifications of a process are not replicas of it but are produced by it and then take on a life of their own as boundary objects that are accessible to those in other communities. [121] Here, once judgments are published, they are boundary objects that can be responded to by those outside the community, in a way that those outside cannot engage with the litigation process itself. As discussed in the final subpart, engagement with people in other communities, like the university community and domestic practitioners, is part of how the field of ICL is being built. The judgments form a point of connection between these communities, in addition to the human connections of people moving in and out of ICL work. As such, judgments are a point of both internal and external expression and engagement.

It should be noted that that the significance of this does not require that the content of the judgments be uncontested; to the contrary, those norms and their application are hotly disputed. What is important is that the judgments present an opportunity for multiple forms of contestation, including academic scholarship and

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120. WENGER, *supra* note 16, at 58–60.

121. *Id.* at 61–62 ("[T]he concept of reification suggests that forms can take on a life of their own, beyond their context of origin."); *id.* at 106 ("Sociologist of science Leigh Star coined the term *boundary objects* to describe objects that serve to coordinate the perspectives of various constituencies for some purpose.").

casual discussion, of which the next round of litigation is one, but only one.

No one with whom I spoke thought that any of these features—the judgments' regular issuance, public nature, connection to the process, or existence as independent objects—were notable, as they are common features of litigation. But they are nonetheless features that enable the development of the norms of the field both within and without ICL tribunal transnational communities of practice, and they are also features that are absent in ROL work, to the detriment of its development of the norms of the field.

In ROL, there is no functional equivalent to court judgments. As we saw in the previous section, the written work products of ROL projects are often considered private and kept hidden, even when they would be useful for others. As a consequence, the field of ROL does not gain all the benefits described above: the regular issuance of assessments and applications of its norms that can be forwarded and discussed, the concomitant reconnection with others in the field, the sense of connection to the process and its result, and the reified product that can be encountered by others outside the field.

What ROL has, instead of judgments, are models, best practices, handbooks, indicators, and other ways of encapsulating developments in ROL knowledge in written form.[122] Whereas ICL court judgments are meant in the first instance to resolve the issues in a particular case, the primary impetus for developing best practices and similar documents is precisely to circulate common norms. Indeed, the development of these sources of information seems also to be a response to a perception that ROL work lacked common norms and that this was hindering the development and effective implementation of the field.[123] There are an enormous number of these documents put out by the United Nations, Organization for Security and Co-operation in Europe, agencies of the U.S.

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122. *E.g.*, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL, U.S. ARMY, CENTER FOR LAW AND MILITARY OPERATIONS, RULE OF LAW HANDBOOK: A PRACTITIONERS GUIDE FOR JUDGE ADVOCATES (2011), *available at* http://www.loc.gov/rr/frd/Military_Law/pdf/rule-of-law_2011.pdf [http://perma.cc/LH7K-VYQS] (archived Feb. 13, 2014); OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, ORG. FOR SECURITY AND CO-OPERATION IN EUROPE, TRIAL MONITORING: A REFERENCE MANUAL FOR PRACTITIONERS (Revised ed. 2012), *available at* http://www.osce.org/odihr/94216?download=true [http://perma.cc/NB2J-GYWV] (archived Feb. 13, 2014); U.N. DEPARTMENT OF PEACEKEEPING OPERATIONS AND U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, THE UNITED NATIONS RULE OF LAW INDICATORS: IMPLEMENTATION GUIDE AND PROJECT TOOLS (2011), *available at* http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf_[http://perma.cc/ZXG7-M6QR] (archived Feb. 13, 2014).

123. *See* CAROTHERS, *supra* note 117, at 15–28 (arguing that the field lacks a common body of knowledge).

government, and other governments and international organizations.[124]

But these ROL documents do not seem to play the same role of stimulating casual, direct transnational discussion and debate that judgments do in ICL. My embedded ROL interviewees did not report talking about such developments with others in their communities or networks or forwarding them to their friends. Rather, as mentioned above, transnational discussions within ROL are typically mediated by organized online fora or in-person meetings. I do not want to overinterpret silence; this question was not the original focus of my research and it is possible that the questions I asked or the people to whom I spoke did not lend themselves to discussion of this particular topic. But there are certain differences between judgments and best practices or handbooks that may be relevant here.

First, ICL judgments are the necessary result of the litigation process; they are the culmination of the process itself. In contrast, best practices documents are typically the results of a separate process; they are not produced by ROL work itself. There is a limit to this contrast; it is only some of the participants in litigation who write judgments, after all. But the sense that the document emerges in some way from one's own activities seems to be a powerfully connecting one. Interviewees reported that their friends at former workplaces sent them judgments that came out after they had left, for example, because their friends knew they would be interested.[125]

Next, as will be discussed in more detail in the final Part, judgments are more universally accepted in ICL than best practices, models, and so on seem to be in ROL. In ICL, the contents of particular judgments may well be subject to dispute, but the concept of issuing a judgment that defines and applies legal norms and rules is not. But in ROL, the concept of developing and applying models and best practices was disputed by some interviewees who said that such an approach is formulaic rather than thoughtful, or worse, that it stems from unadmirable motives, such as laziness or a desire to perpetuate one's own employment. According to these interviewees, ROL work should be undertaken via attention to the particularities of each individual setting, rather than by importing models or best practices concepts from elsewhere.[126]

These concerns are founded in the sense of most ROL interviewees that their work is highly localized in nature. Best practices and models are attempts to abstract general principles from

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124. For a list of resource centers, see *More Databases*, U.N. RULE OF LAW, *available at* http://www.unrol.org/article.aspx?article_id=35 [http://perma.cc/SP4S-XWLR] (archived Feb. 13, 2014).

125. *E.g.*, Interview with Eta.

126. *E.g.*, Interviews with U & W.

specifics, while most people felt that the specifics were the most important part of their jobs. This raises another question for consideration: Why did ICL tribunal interviewees tend to be less concerned with localization than embedded ROL interviewees? One reason may be that most embedded ROL internationals have frequent, intense interactions with post-conflict national communities of practice, to an extent that few ICL tribunal internationals do.

As with other aspects of ROL and ICL communities discussed above, this is another aspect of ICL that is structurally better suited than ROL to casual transnational communication about norms. The regular issuance of judgments that stem from the litigation process in which everyone is directly or indirectly involved spark contact, communication, and debate of norms. In ROL, just as organized transnational communities of practice compensate for a lack of organic transnational communities, so also best practices, handbooks, and models compensate for a lack of organic reification of ROL work into boundary objects that can be encountered and engaged by other communities.

Finally, by describing best practices and organized transnational communities of practice as technologies or as compensatory, I am not criticizing them. Organic transnational communities of practice and reifications seem to serve a useful purpose, and in their absence, it makes sense to deliberately fill those gaps with planned transnational communities of practice and documents for circulating norms. What is less clear and deserves further study is how successful that effort has been thus far, and what factors contribute to its success or failure.

V. CONCLUSIONS

This Part begins with a summary of the Article's conclusions concerning the factors affecting the functionality of PCJ networks and communities. As described in subpart A, these factors fall into three broad categories: perceived commonalities, qualities of relationships, and processes and practices concerning knowledge. Subpart B explores some of the issues of boundaries and intersections between communities that arose earlier in the Article. In ROL, interviewees were concerned primarily with their relationships with post-conflict national networks and communities, while in ICL, these questions were framed in the context of a process of professionalization and boundaries between prosecution and defense attorneys.

A. *Functional and Dysfunctional Communities*

In order to facilitate the formation of network connections, internationals need opportunities for interaction through immediate

local encounters, job movement that draws them into contact with a new set of people, organized meetings, or emails and social media. But it requires more than simple engagement for those networks to also form communities of practice with a sense of common identity around mutual aims, or for PCJ networks and communities to function effectively for purposes of developing and sharing common norms and practices.

Through my interviews with people working in post-conflict justice, I identified a number of factors that seem to affect the qualities of internationals' relationships with others, such as to what extent they are willing to share information or plan joint action with others in their PCJ communities, how successful they feel those collaborative activities are, and so on. Some of these factors are aspects of their work that interviewees themselves identified as important when asked about their work or their professional relationships. Other factors are elements of which the interviewed practitioners seemed to be unconscious. Of these, I gleaned some from hearing them mentioned repeatedly by interviewees in the same area of work; others I pinpointed by hearing about them from one group and then noting their absence in the descriptions of interviewees in another line of work. Many of these factors were discussed in the course of the analysis in Part III; a few are introduced here. Importantly, these factors are not entirely outside the control of PCJ institutions; to the contrary, efforts to deliberately facilitate the development of transnational communities of practice in ROL seem to be appreciated by ROL internationals, although one would need to study these efforts directly to better understand their effect.

I have grouped the factors into three categories: perceived commonalities, factors relating primarily to relationships, and factors relating primarily to knowledge.

(a) *Perceived Commonalities*

Perceived commonalities contributed to interviewees' understanding that they were part of a community of like-minded people working toward the same aims. In some instances, internationals explicitly said that they felt that they could understand each other, help each other, or even work toward creating a common working system or body of knowledge because of these commonalities. Interviewees also talked about the difficulty of working effectively with people who did not share these commonalities. The three perceived commonalities mentioned by some interviewees were:

(1) *Common identity.* Some ICL tribunal interviewees said that those working in their field were "all the same people" and made other, similar characterizations. While embedded ROL

interviewees did not express such a sense of common identity, some indicated that they felt that they knew all or many of the people working in their specialty area. One question that arises both here and with the other commonalities below is who is included in this common identity, and who is excluded from it.[127] This is discussed further below.

(2) *Common purpose.* Some ICL tribunal interviewees said that they felt that they were working toward the same aims as internationals in other ICL tribunals. Others identified shared purposes that are cohesive for some but divisive for others, such as a perceived idealism about accountability in ICL that tends to exclude those in defense.

(3) *Common culture.* Interviewees rarely spoke explicitly about having a common culture. But when talking about the details of their work, interviewees described a set of common practices, jargon, and so on, as well as commonalities and disjuncts in professional backgrounds and expectations.

(b) *Qualities of Relationships*

(1) *Competition.* The most prominent quality of relationships between ROL internationals is the structurally created competition among internationals and among the organizations for which they work, especially over possession of and credit for knowledge. Many ROL interviewees perceived this competition as interfering with their ability to share information with others in their community.

(2) *Institutional divisions.* ICL interviewees sometimes mentioned other institutional structures that prevent interaction and signal difference, such as physical divisions in office space between internationals and nationals, or between defense attorneys and others working directly for tribunals.

(3) *Relationship-building and mentoring.* Many ROL interviewees and a few ICL interviewees discussed relationship building as between internationals and as between internationals and nationals. Some spoke very strategically and consciously about the characteristics of their relationships, relationship-building strategies, and obstacles to effective relationships. Some ROL and ICL

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127. One particularly important and difficult question for understanding the development of PCJ norms and practices is to what extent and under what circumstances post-conflict nationals are included. That question is touched on in this Article and will be discussed more extensively in another paper.

interviewees specifically focused on mentoring, including the value they had received from mentoring relationships and the difficulty of integrating mentoring into their work in light of other, more tangible goals and pressures.

(4) *Intersections with other communities and networks.* Interviewees talked about intersections with several other communities, including domestic litigators and other practitioners from non-post-conflict states, universities, and nationals of post-conflict states. These points of intersection can spark useful exchanges and collaborations but also produce tensions. This is discussed further below.

(c) *Processes and Practices Concerning Knowledge*

(1) *Public availability and circulation of reified boundary objects.* Some information, like ICL tribunal judgments, is regularly released in publicly available documents and so tends to spark interchange. Other information, like ROL work product, is either confidential or treated as a proprietary resource and therefore serves as an object of competition.

(2) *Production of norms.* Interviewees seemed to more actively discuss norms that they were involved in producing or that were the results of a process or institution in which they had been involved, even if indirectly. This was most evident in the interest ICL tribunal interviewees took in judgments from courts where they had previously worked.

(3) *Process for disputing and legitimating norms.* Some processes, like ICL litigation and the associated judgments, had tacit approval from interviewees. Others, like ROL best practices and the process of generalizing specific experiences that generate them, were the subject of criticism by some interviewees.

(4) *Venues for discussing knowledge.* Interviewees mentioned online and in-person venues that institutions have constructed for the purpose of knowledge-sharing. Such venues were particularly emphasized in the ROL context, where the other three characteristics of knowledge mentioned above do not tend to promote casual discussion.

In general, ICL tribunal interviewees tended to describe themselves as sharing the commonalities listed above—common purpose, common identity, and common culture—while embedded ROL interviewees did not. To some extent, ROL interviewees' self-perceptions are contradicted by evidence of commonalities in their use of shared jargon, their common ways of perceiving their roles vis-à-vis counterparts in post-conflict states, and other similarities. But

even if there is some indication that an ROL community may exist, ROL interviewees' accounts indicate that this community has been a relatively dysfunctional one for the purpose of sharing information and developing common norms and practices.

Several factors contribute to this, including a strong sense of competition, the relative heterogeneity of ROL work, lack of consensus on the appropriate process for legitimating and disputing common norms, and the lack of publicly available boundary objects that are reifications of the process of ROL work itself. In contrast, the ICL tribunal community benefits from a relative lack of competition between tribunals, from consensus that litigation and the resulting judgments are an appropriate mode for disputing and legitimating norms, and from the public availability of those judgments as boundary objects that are reifications of the litigation process. Notably, institutions working in ROL are creating tools to compensate for the factors that tend to discourage functional communities of practice, such as online forums operating as deliberate transnational communities of practice, and handbooks, guides, and other documents operating as deliberate boundary objects.

B. *Boundaries and Intersections*

One of the more difficult aspects of analyzing a network or community is defining its boundaries. Especially insofar as communities are concerned, it can be unclear who is included and who is an outsider with network connections to some members of the community but without a role in constructing community identities and practices.[128] This issue arose several times in the discussion above in Part III, with regard to the roles of ICL defense attorneys and of post-conflict nationals in both ICL and ROL.

Also, several theories of communities and networks suggest that people belong to multiple communities and networks and that there is enormous creative potential in the points of intersection between networks and communities.[129] Interviewees described connections

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128. Adler resolves this dilemma, to some extent, by defining his transnational communities of practice as composed of concentric circles, with the innermost circles the most intensely involved in creating norms, and outer circles involved in disseminating and implementing them. This enables him to include those on the periphery of a community while simultaneously acknowledging their more limited role. *See* ADLER, *supra* note 15, at 23–24.

129. *See generally* DOBUSCH & QUACK, *supra* note 14 (discussing the intersection of an epistemic community and a social network that interacted around the non-profit organization "Creative Commons"); David Stark & Balázs Vedres, *Opening Closure: Intercohesion and Entrepreneurial Dynamics in Business Groups* 2 (MPIfG Discussion Paper 09/3, Mar. 2009) ("Entrepreneurship in the business group context is driven by the intersection of cohesive groups where actors have *familiar* access to *diverse* resources available for recombination.").

with several other communities of practice, including those of post-conflict nationals, domestic litigators and other practitioners from non-post-conflict states, and students and academics in universities.

In the PCJ context, these questions of boundaries and intersections are particularly relevant because interconnections with other communities seem to be significant for the field's still-evolving norms and practices and also for the impact of PCJ initiatives in post-conflict states. In the study on which this Article is based, I focused on internal information transfer and development among internationals in PCJ communities, not on intersections with other communities or on defining the peripheries of PCJ communities. But in the course of the interviews, several themes concerning these boundaries and intersections arose repeatedly and seemed to be significant to my interviewees. Accordingly, I raise them here as nascent ideas for consideration and future research.

1. ROL Intersections with Post-conflict National Networks and Communities

In ROL, interviewees emphasized their intersections with post-conflict national networks and communities. These intersections connect to debates concerning the appropriate forms and content of ROL knowledge, specifically, to what extent ROL internationals should develop and rely on shared models and best practices. This is part of a narrative of navigating the tension between localization and international intervention.

Although they did not put it in those terms, ROL interviewees expressed awareness of the need for national communities of practice to integrate any proposed ROL reforms into their own day-to-day practices. In their own terms, ROL interviewees spoke at some length about how to ensure local buy-in for (minimally) or ownership of (ideally) their projects, and about attempts at capacity building and ensuring local sustainability. They characterized these issues as relating to the ultimate effectiveness of their work. While ROL internationals' immediate project timelines are typically short and it may be possible to push one's immediate, tangible goals through with minimal local support, the timeline for real change in the concerned post-conflict legal system is typically measured in decades or generations and is reliant on local implementation of changes at the level of practice rather than policy. That is, it depends on acceptance and use by national communities of practice.[130]

As discussed above, there has been a deliberate effort in ROL to develop common legal models, as well as best practices for assessing a

130. Interviews with Chi, D, Mu, R, U & Upsilon.

state's legal needs and implementing such models. As such, in the course of carrying out their legal reform projects, ROL internationals have to determine whether and how to make use of the models, rules, and other documents that encapsulate certain aspects of ROL community knowledge. Importantly, they also have to do so in such a way as to enable national ownership and sustainability of whatever model they introduce.

Internationals have a wide variety of approaches to this. ROL interviewees agreed that it is inappropriate and ineffective to use external models that are based entirely on internationals' own legal systems or to simply apply existing external models without adaptation. However, they also indicated that such occurrences are not uncommon:

> It's not my example, but it's an example I witnessed. The Iraqi police did not have a standard operational procedural manual. In other words, how to do it, how to do your job. This is your guideline, how you should do it. Someone in the U.S. had one of the U.S. ones translated. And they went, "Wow, this is great. Thank you." They made a big party, celebration. And then the book was stuck in the shelf and never referred to ever again. There [were] two reasons for that. The first reason was that, ok, people were a little bit disappointed, let's say, with the liberation. And secondly, the police manual, of course, was U.S. common law, with U.S. police procedures. But Iraq, their police is based on the British system, but their legal system is based on the French-European system. So it's like using a computer manual on your car.[131]

But there was considerable disagreement as to what sort of use of models is appropriate. Some interviewees took the approach of developing their own models and using them as starting places for intensive discussion with and adaptation to the relevant circumstances by post-conflict nationals:

> [F]rom the very get-go, other than the initial thing that I bring in—because it's easier to add it than it is to start from scratch—that we give them and they go through, they must do all the work. Now if I do any more of the work, then I'm convinced it would be mine. So that's not a problem. Local ownership is not a problem. And of all of the products that we end with, the training manuals and everything else, you have to look real hard to find the mention of anybody's name other than theirs. It's the [national system's name], and all of the editors are local people, and clear at the bottom it says, "with some help from." So even the written material does not have the logos of the [international and foreign entities and governments] I work with. I insist on that.[132]

Others were more actively involved in both the development and adaptation of their models, though they still emphasized the importance of local knowledge and some degree of local participation.[133] But several interviewees expressed doubt about the

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131. Interview with Lambda; *see also* Interview with Zeta.
132. Interview with Mu.
133. Interview with X.

utility of "cut and paste" models being transferred from one ROL setting to another in any manner, either because they saw them as opportunistic attempts at creating "self-perpetuating" employment for internationals,[134] or because they felt that the notion of universal approaches is ill-conceived:

> I don't like using the term *best practices* because to me that's a term that should be totally destroyed or just abandoned in terms of what's "best practice." Every practice is unique and what works is what's best practice and there's no overriding model.[135]

Accordingly, some interviewees believed the appropriate approach is to take a purely facilitative role in relation to their national counterparts' work and to offer expertise or comparative information as requested.[136]

Overall, the constant testing of ROL models and practices against national norms seems to have several effects. First, it creates doubt in some ROL internationals' minds as to whether models, best practices, and common norms as such are appropriate for ROL work. This critique corresponds to the views of some ROL scholars that the proper approach is a systematic evaluation of needs from the ground up in each country, followed by interventions aimed at those needs rather than at producing institutions or processes that fit preconceived models.[137]

Also, the engagement of ROL internationals with post-conflict nationals in many instances seems to produce an alteration or adaptation of the model as applied in a particular post-conflict state. But there is no mechanism for automatically, systematically making observations about or circulating these experiences, as happens via court judgments in ICL. As such, these clashes or convergences between national and international knowledge remain unknown unless they are brought into one of the formal venues for discussion that were referenced in the previous Part of the Article, or unless one of the participants takes part in the process of producing a handbook, best practices guidelines, or other such document. Thus, it is not clear how often or under what circumstances these individual alterations end up circulating through the community and producing changes to or reconsideration of the models themselves.

Finally, these discussions highlight the significance of the place of post-conflict nationals vis-à-vis ROL communities. Post-conflict nationals who are involved in ROL reform processes represent intersections between ROL international communities and post-conflict national legal communities. As such, the nature of their

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134. Interview with U.
135. Interview with Chi.
136. Interviews with C, Chi, D, Mu, Kappa & W.
137. KLEINFELD, *supra* note 68, at 182.

participation in both communities matters to the development and adaptation of common ROL norms and practices and to the effects of those norms and practices in the concerned post-conflict states. Are there ways of better integrating post-conflict nationals into ROL networks and communities? Would doing so have beneficial effects either for the development of common ROL norms or for the adaptation and adoption of ROL projects in post-conflict states?

As we turn to the subject of ICL intersections with other communities, the ROL experience raises a question for ICL: Should the ICL legal model also be systematically reconsidered by post-conflict nationals when it is applied to individual states? And, if it were, would its norms, or practitioners' confidence in the entire structure of the enterprise, be changed by that process?[138]

2. ICL Intersections and Boundaries

As told by ICL interviewees, the story of the creation and disputation of ICL norms and practices in the intersections between domestic litigation communities, universities, and ICL tribunal communities is part of a larger narrative about the professionalization of ICL work. Interviewees described an arc of development in the relationships between ICL tribunals and other communities. ICL tribunals were initially staffed by people with predominantly domestic litigation experience, but the field has gradually come into its own with a staff of experienced international litigators, supplemented by people with domestic litigation experience and people who have studied ICL in universities. Throughout this process, the ongoing circulation of domestic litigators in and out of ICL tribunals has maintained some continuing connection to domestic litigation practices and norms. In the meantime, the circulation of students and scholars between ICL tribunals and academic institutions, together with the steady development of classes and programs concerning ICL law in those academic institutions, has bolstered the legitimacy of ICL as its own independent field; now, many of those who have become involved more recently see it "as a legal system *sui generis*" rather than as an analogue to domestic criminal law systems.[139]

This process of professionalization accompanies an ongoing debate about the extent to which ICL norms and practices should be connected to domestic criminal norms and processes or should be

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138. *See* Jaya Ramji-Nogales, *Designing Bespoke Transitional Justice: A Pluralist Process Approach*, 32 MICH. J. INT'L L. 1, 3 (2010) ("Because norm generation is an inherently communal and contingent social process, transitional justice ought to be primarily locally controlled and always precisely tailored to particular events and societies.").

139. Interview with Psi; *see also* Interviews with Iota, P & Theta.

developed separately, with regard to the unique circumstances of ICL crimes. In the last few years, several trends in ICL have been the subject of considerable dispute among academics and practitioners. Among these is the movement toward expansion of crimes and modes of liability to include new crimes like forced marriage as a crime against humanity and new modes of liability like joint criminal enterprise. Some consider these to be positive steps toward developing the law to take into account the particular harms and modes of participation that exist when large-scale atrocities are committed, while others are concerned that ICL is abandoning basic principles of defendants' rights.[140]

This raises a question of the boundaries of the ICL tribunal community, specifically, whether defense attorneys are members of the ICL tribunal community and to what extent they are taking part in the community conversations and activities that surround the litigation process. Are defense attorneys participating in the forwarding of judgments, in the requests for assistance, and in the conversations about norms that my interviewees described with such enthusiasm? Or are they on the outside of those easy, casual interactions? Are they "all the same people," just like those working within the tribunals? When it comes to rapidly and dramatically evolving norms like joint criminal enterprise, the boundaries between communities might make some difference in who is active in the communities' conversations about norms, and whose practices contribute to norm creation and implementation.[141]

Another hot topic has been the repeated admonishment of the ICC Prosecutor by Pre-Trial and Trial Chambers in several cases for failing to conduct adequate investigations, failing to turn over evidence to the defense, and similar concerns.[142] In addition to understanding these developments through legal analysis, the ICC judges' objections to the Office of the Prosecutor's evidence and handling of evidence could be considered as an indirect counterweight to the expansion in modes of liability discussed above. One way of limiting the growth of conviction-oriented norms is to directly rein them in and keep them commensurate with domestic criminal norms.

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140. *See* Allison Marston Danner & Jenny S. Martinez, *Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law*, 93 CAL. L. REV. 75, 85 (2005) (making a "case for a more careful use of joint criminal enterprise, as well as a reinvigoration of command responsibility"); Mark A. Drumbl, *"She Makes Me Ashamed to be a Woman": The Genocide Conviction of Pauline Nyiramasuhuko, 2011*, 34 MICH. J. INT'L L. 559, 598 (2013) (arguing for other modes of justice in addition to criminal trials, rather than expanding modes of liability, but affirming the increasing recognition of sexual crimes).

141. JCE and other new norms were not the subject of my interviews, and I do not have any specific information about these issues.

142. *E.g.*, Alex Whiting, *Lead Evidence and Discovery Before the International Criminal Court: The Lubanga Case*, 14 UCLA J. INT'L L. & FOREIGN AFF. 207, 225–26 (2009).

But another way is to have a high bar for proof of the expanded modes of liability. Rather than mimicking the balance between fair trial rights and accountability achieved in domestic settings, ICL may be seeking out its own balance. Another possibility is that these developments may reflect some shifts in the relationships within the ICL tribunal community, such as a diminishment in a sense of common purpose as between the Office of the Prosecutor and Chambers, the increasing incorporation of defense attorneys into the structure of the newer tribunals, or the different experience and worldviews of those staffing the Chambers of the ICC, as compared to those staffing earlier tribunals.[143]

These community and practice-oriented explanations are, of course, of no comfort to those who feel that ICL is moving in the wrong direction. But these observations do provide us with another way to understand the internal logic of such changes, not just in regard to the ideals of the law, but also in regard to its practice, in the broadest sense. By attending to how legal norms and their meanings emerge from community identity and practices, we can assess their significance and understand their evolution.

Overall, in addition to representing insights into the functioning of ICL and ROL communities in particular, studying these communities and the factors that affect how they operate serves several other purposes. This Article contributes most directly to existing theories of networks and communities by identifying factors influencing network and community formation and function. Many legal case studies of communities and networks have focused upon those that are functional; such studies have tended to focus on whether their functions are legitimate and efficient, as compared to other organizations or governments that serve the same purposes. But the example of PCJ communities draws our attention to the fact that communities also exist and operate dysfunctionally, and that this dysfunction can affect the development of common norms and practices that are important to the affected field. By recognizing the existence and significance of dysfunction, we may be incentivized to explore and foster the characteristics that will promote better community function and thus facilitate the robust development of post-conflict justice and other fields.

More broadly, examining PCJ networks and communities helps us understand how PCJ norms and practices are developed, contested, and implemented. It also contributes to theories of transnational interactions, pluralism, and norm development. At the most fundamental level, it affirms the importance of human relationships and everyday actions in developing common norms and

143. These were not the subjects of my interviews, and I do not have any specific information about these questions.

instantiating those norms in practice on behalf of governments, international organizations, and other institutions.

APPENDIX A. METHODOLOGY

I. BACKGROUND

A few years ago, in an essay entitled "Tribunal-Hopping with the Post-Conflict Justice Junkies," I drew on my observations in post-conflict countries to write about the internationals who do PCJ work. I focused on a particular subset of internationals, a group I dubbed the *post-conflict justice junkies*, and their pattern of *tribunal-hopping* from one post-conflict setting and institution to another. The quintessential post-conflict justice junkie, as I explained it, is a junior or midlevel professional, an attorney, or a legal officer or adviser working in the field of post-conflict justice. She moves frequently from one internationalized criminal tribunal or legal reform program to another. Wherever she goes, she finds people she knows and people to whom she is connected through friends from her previous postings. I posited that this tribunal-hopping facilitated the production and transfer of skills and information from one post-conflict setting and institution to another, while simultaneously suppressing internationals' ability to attain the local knowledge that is also critical for designing and implementing PCJ initiatives.[144]

The study on which this Article is based explored the ideas introduced in that essay. I began with four hypotheses:

(1) There is a network or epistemic community of post-conflict justice junkies who engage in the characteristic behavior of tribunal-hopping, moving rapidly from one PCJ position to another.

(2) Tribunal-hopping is to some extent part of the structure of international interventions in post-conflict settings, and is not merely idiosyncratic or situational.

(3) Tribunal-hopping promotes the development of certain kinds of knowledge while repressing the development of local knowledge amongst post-conflict justice junkies.

(4) Post-conflict justice junkies convey knowledge rapidly from one post-conflict setting to another and make some use of that knowledge in their new milieu, to good effect and bad.

The study also extended beyond the concepts introduced in the original essay, as I encouraged participants to express their own ideas about their work during the interviews and then explored recurring themes with other participants as the research progressed. Throughout the study, I continued to focus on four aspects of PCJ

144. *See* Baylis, *supra* note 4, at 377–87 (discussing post-conflict justice-junkies' knowledge).

work closely related to my original ideas: (a) movement between jobs and post-conflict settings; (b) networks and communities; (c) knowledge, skills, and legal norms; and (d) how these factors impact effectiveness. This Article focuses on the role of networks and communities. The question of the development and transfer of PCJ knowledge, how this is affected by internationals' movement, and the relevant structural factors are discussed in another law review article.[145]

II. METHODS AND SCOPE

In this study, I chose to compare multiple PCJ contexts for several reasons: to identify systemic patterns that are common across PCJ settings; to explore changes in those patterns across different contexts and thereby to identify relevant factors that may be affecting those patterns; and in particular, to compare how those patterns emerge in the ICL and ROL contexts. A holistic approach also fits the nature of the subject. The studied behavior takes place across the entire field: individuals move from one organization and post-conflict setting to another over the course of their careers. Part of what I examine is the direction and nature of that movement and whether and how it connects disparate post-conflict settings and initiatives. Finally, while there have been numerous case studies and analyses of work in particular post-conflict contexts, like those cited in the introduction, these topics have not previously been explored across post-conflict contexts.

The study consisted of fifty interviews and an online questionnaire, which received 181 validated responses. The interviews and questionnaire were open to internationals who had worked in post-conflict justice. This Article focuses on some of the concepts discussed with interviewees; a second article discusses other aspects of the interviews; and the questionnaire responses will be discussed in another paper.[146] The purpose of conducting interviews was to investigate the several complex and subjective questions raised by the study: interviewees' experiences of network and community, their sense of their skills and knowledge and how those changed over time, the reasons for their job movements, and the relationship of all these factors to the effectiveness of PCJ work, as they conceived of it. Interviews provided the opportunity to explore these issues with people who had a variety of experiences in PCJ work and thus to gain different perspectives on the same issues. The interview format also enabled me to discuss these issues with

145. Baylis, *supra* note 27.
146. *Id.*

interviewees in some detail, and thereby to attain a nuanced understanding of each interviewee's views.

The interviews were conducted via phone, Skype, and in person. All were conducted in English. Interviews lasted between thirty minutes and three hours. Most interviewees requested anonymity, and so I identify interviewees here only by an anonymous code and have redacted identifying details. I use a second set of anonymous codes for analysis that focuses on interviewees' job movement patterns, so as to be able to provide information about those patterns that cannot be connected to the content of their interviews. I also requested permission from interviewees to publish the information provided in their interviews and to quote them in any publications. Most interviewees gave these permissions; those who did not are treated as background, or cited but not quoted, according to their preferences. More information about the interviewees is provided in Appendix B.

The opportunity to participate in an interview was publicized in several ways. Respondents to the on-line questionnaire were given the opportunity to volunteer for an interview after completing the questionnaire. The study was publicized through blogs and message boards concerning international law and post-conflict justice. I also requested names of possible interviewees from contacts who had worked for a variety of institutions, including international and hybrid criminal tribunals, the United Nations and other international organizations, the U.S. government, and NGOs. I then used the snowball technique to identify further interviewees. Eventually, most of the information I gathered in each interview on the main questions of the study served primarily to corroborate or elaborate upon the information given by others, rather than generating new themes. At this point, I identified several trends in the data on which I wished to follow up and conducted a handful of interviews aimed at gaining information on those particular issues. These interviewees were identified by requesting suggestions from contacts and from prior interviewees who worked in the relevant areas.

I used a list of standard topics for the interviews, which were intended to get at the major questions of the study. However, while interested in testing my theories, I also wished to garner interviewees' own concepts of their experiences, and therefore, I endeavored to keep my questions open ended and to follow up on themes introduced by interviewees, both within the interview and in interviews with others. When given permission by the interviewee, I recorded the interviews and had them transcribed; most interviews gave permission for recording. When interviewees did not give permission for recording, I took notes. I then coded and analyzed the transcripts and notes for relevant themes using NVivo research software. In analyzing the interviews, I focused on identifying those themes that arose repeatedly across a range of different institutions

and countries and examining how they emerged in those different contexts. I also noted themes that appeared to be limited to particular institutions or settings. I have the transcripts and interview notes on file.

I attempted to counter the risks of self-selection and bias amongst the interviewees in several ways at different stages of the process. First, interviewees were identified through several different means of publicity and through people who had worked in a range of institutions in a variety of countries over different periods of time. The interviewees themselves worked in a wide variety of institutions and post-conflict settings, as set forth in the indexes in Appendix B. During the interviews, interviewees were also asked about their prior work experience, education, and reasons for getting involved in PCJ work, so as to ensure that I had interviewees from a diversity of backgrounds and to provide insight into the starting point for their PCJ experiences. I also invited interviewees to speak at length in response to my questions and to raise their own observations and concerns; this allowed for a more complete understanding of the interviewees' views and thus for a better assessment of the factors influencing their perspectives. Finally, in analyzing the interviews, I first coded the interviews for the topics under discussion and then reviewed the comments of different interviewees on each of those topics directly against each other, allowing for immediate comparison of the views of people from different contexts and for exploration and testing of the patterns that seemed to emerge. In developing my ideas, I focused on those themes that emerged repeatedly across different settings from people with varying perspectives.

Finally, as mentioned at the outset of the Article, this is a qualitative study, based on analysis of the interview transcripts. Also, it has a limited set of participants. Appendix B provides additional detail about the interviewees and their relevant PCJ experience. As for the interviewees' demographics, I spoke with thirty-one men and nineteen women. Of the fifty interviewees, twenty-six were U.S. citizens, twenty-one came from European or Commonwealth countries, two from South America, and one from the Middle East. Accordingly, as noted at the outset of this Article, the study's results and my analysis represent the perspectives and experiences of people from those regions.

APPENDIX B. INTERVIEW INDEXES

Table 1: Interviewees

Interviewee	Interview Date	Field
A	7/16/11	ROL
Alpha	5/12/11	Both
B	6/22/11	ROL
Beta	7/12/11	ICL
C	6/19/11	ROL
Chi	6/14/11	ROL
D	5/31/11	Both
Delta	8/22/11	Both
E	6/2/11	Both
Epsilon	8/23/11	Both
Eta	9/6/11	ICL
F	4/14/11	Both
G	4/15/11	Both
Gamma	8/23/11	ROL
H	5/15/11	ICL
I	5/12/11	Both
Iota	9/12/11	ICL
J	4/29/11	ICL
K	4/20/11	ICL
Kappa	12/2/10	ROL
L	4/15/11	ICL
Lambda	2/10/11	ROL
M	6/29/11	ROL
Mu	12/6/10	ROL
N	4/14/11	ICL
Nu	6/22/11	ROL
O	9/19/11	ICL
Omega	12/15/10	ROL
Omicron	11/30/10	ROL
P	4/5/11	ICL
Phi	2/9/11	ROL
Pi	12/7/10	ICL
Psi	4/16/11	ICL
Q	3/24/11	Other
R	3/20/11	ROL
Rho	3/29/11	ICL
S	3/9/11	ICL
Sigma	4/6/11	ICL
T	2/7/11	ROL
Tau	6/15/11	ICL
Theta	9/8/11	ICL

Interviewee	Interview Date	Field
U	1/5/11	ROL
Upsilon	3/29/11	Both
V	12/14/10	ROL
W	12/8/10	ROL
X	11/29/10	Both
Xi	11/30/10	Both
Y	11/6/10	ROL
Z	11/29/10	ICL
Zeta	8/25/11	ROL

Table 1 Notes

(1) Dates are in Month/Day/Year format.

(2) ROL = Rule of Law
ICL = International Criminal Law (includes domestic accountability mechanisms)
Both = ROL and ICL
Other = Non-ICL accountability mechanism

Table 2: Aggregate Numbers of Interviewees by Institutional Categories

Institutional Category	Interviewees
ICL tribunals	27
International organizations	21
Foreign governments	14
NGOs	11
Private contracting companies	6
National post-conflict governments	4
Academic institutions	4
Independent consultants	4

Table 2 Notes

(1) "ICL Tribunals" includes international and hybrid tribunals as well as hybrid panels in national courts. This category includes defense attorneys.

(2) "NGOs" includes both international and national post-conflict state NGOs.

(3) Because I included hybrid panels in national courts in the "ICL tribunals" category, I did not include such panels in the "National post-conflict governments" category.

(4) "Academic institutions" includes only people working in nonresearch, nonpublication capacities, e.g., for academic institutions as contractors for other entities. People who were solely teaching, researching, or publishing about post-conflict justice were not included.

(5) "Independent consultants" have their own consulting companies. They may contract directly with funders, private contracting companies, or both.
(6) Interviewees may be included in multiple institutional categories.
(7) These categories includes people working directly for these institutions and indirectly through contractors.
(8) The number of contractors ("Private contracting companies" and "NGOs") is undercounted because people sometimes listed on their CVs or mentioned in their interviews only their funding organization. In addition, some ROL contractors with long careers did not list many of their projects, producing an undercount of both funders and contractors.

Table 3: Aggregate Numbers of Interviewees by Institutions

Institution	Interviewees
UN	14
ICTY	11
US government	10
ICTR	9
SCSL	7 (+2 off-site)
ECCC	6 (+2 off-site)
ICC	6 (+1 off-site)
OSCE	6
EU	5
STL	4
UK government	4
Bosnia State Court	3
PAE/PAE-HSC	3
ABA-CEELI/ABA-ROLI	2
COE	2
ICTJ	2
A national NGO	2
A national post-conflict government	2
Italian government	2
RAMSI	1
Special Panel for Serious Crimes, Timor-Leste	1
World Bank	1
16 private contracting companies	1 person each
15 international NGOs	1 person each
4 academic institutions (in nonresearch capacities)	1 person each
4 independent consultants	1 person each
3 foreign (non-post-conflict) governments	1 person each
3 national NGOs	1 person each
3 national post-conflict governments	1 person each

Table 3 Notes

(1) This table follows the same guidelines as Table 2, as applied to institutions rather than institutional categories.

(2) For tribunals, this table designates separately people who worked solely off-site.

(3) Not all institutions are listed by name. I did not list the institution by name when I felt withholding the name was necessary to protect the identity of interviewees. Also, if there was only one person working for an institution, I consolidated institutions of the same type into a single category for the sake of space, on the understanding that it would be more useful to the reader to get a sense of the number of institutions in each category that were represented, rather than the name of each individual institution.

Table 4: Aggregate Numbers of Interviewees by Region

Region	Total	In-country	Out-of-country
Balkans	28	17	11
Africa	25	13	12
Middle East	17	12	5
Asia	15	13	2
Non-Balkans Europe	4	4	0
Americas	3	3	0
Oceania	1	1	0
Unknown	6	NA	NA

Table 4 Notes

(1) The "Unknown" category represents interviewees who did not list all the countries in which they had worked.

(2) Even if a person worked in multiple countries in a region, I only counted them once for that region. Similarly, if a person worked in a region more than once, I only counted them once.

(3) If someone worked both in-country and out-of-country on the same region, I only counted them in the in-country category for that state.

(4) Individual interviewees may have worked in more than one region.

Table 5: Aggregate Numbers of Interviewees by Country

Country/Region	Total	In-country	Out-of-country
Former Yugoslavia	13	0	13
Kosovo	13	13	0
Sierra Leone	10	6	4
Bosnia-Herzegovina	9	9	0
Cambodia	9	6	3
Afghanistan	8	8	0

Country/Region	Total	In-country	Out-of-country
Rwanda	8	0	8
Other Africa	7	0	7
Iraq	6	5	1
Liberia	5	4	1
Lebanon	4	0	4
Timor-Leste	4	4	0
Georgia	2	2	0
The Philippines	2	2	0
Serbia	2	2	0
Somalia	2	1	1
Sudan	2	2	0
South Sudan	2	2	0
Uganda	2	1	1
Ukraine	2	2	0
Bolivia	1	1	0
Chile	1	1	0
Colombia	1	1	0
Congo	1	1	0
Costa Rica	1	1	0
Croatia	1	1	0
Cyprus	1	1	0
Dominican Republic	1	1	0
Ecuador	1	1	0
Guatemala	1	1	0
Haiti	1	1	0
Honduras	1	1	0
Indonesia	1	1	0
Ivory Coast	1	1	0
Kenya	1	1	0
Malawi	1	1	0
Mozambique	1	1	0
Namibia	1	1	0
Nepal	1	1	0
Pakistan	1	1	0
Panama	1	1	0
Paraguay	1	1	0
Peru	1	1	0
Solomon Islands	1	1	0
Turkey	1	1	0
Venezuela	1	1	0
Zimbabwe	1	1	0
Unknown	6	NA	NA

Table 5 Notes

(1) This Table follows the same guidelines as Table 4, as applied to states rather than regions.

(2) The "Former Yugoslavia" category primarily represents people who have worked at the ICTY. People who also worked specifically on a particular Balkan country were not included in the general "Former Yugoslavia" category; only those who had only worked generally on the region without working in a particular country were included.

(3) The "Other Africa" category represents people who have worked at the ICC. As with the "Former Yugoslavia" category, people who had also identified a particular country in which they had worked were not included in the general "Africa" category.