

# Transitional justice: An Interdisciplinary Landscape?

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## 1. Introduction

Disciplinary classification relates to the spatial ordering of knowledge. The modern discipline is comprised of ‘a group of scholars who share common concepts and methods, forming a community.’<sup>1</sup> Disciplines, it has been argued, ‘like any other classificatory principle of knowledge ... have the function of mediating and directing social change.’<sup>2</sup> In the context of transitional justice, disciplinary silos, and the struggles between them, have the function of determining the boundaries of the field of research and practice.

It is often asserted that transitional justice research is dominated by law and legalism. The early years of the field were characterised by the development of a normative framework for responding to past human rights violations and for guaranteeing the non-recurrence of violence.<sup>3</sup> As a result, the field was shaped by legal inquiry into how best to design institutions for this purpose and, relatedly, how to evaluate the impact of those institutions.<sup>4</sup> However as the field evolved a range of different disciplinary perspectives were brought to bear on the central question of how to respond to a legacy of past human rights abuse.

Reflecting the risk of research falling between the cracks of disciplinary silos, the International Journal of Transitional Justice from its inception has aimed to foster dialogue between disciplines as a means of furthering scholarly inquiry in the field.<sup>5</sup> As Bell noted in response to this aim,<sup>6</sup> transitional justice cannot be defined as a discipline with its own distinct substance and methods, but rather is more loosely held together by a central legitimating concept.<sup>7</sup> More than a decade after Bell’s now foundational intervention on the nature of the field (or non-field) these questions remain as pertinent as they were at the time. To the extent that the field shares ‘common concepts or methods’ they relate to the centrality of the focus on pillars, institutions and underpinning legal regimes- arguably making transitional justice a sub-discipline of law-

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<sup>1</sup>Peter Weingart, ‘A Short History of Knowledge Formation’ in Robert Frodeman (ed) Oxford Handbook of Interdisciplinarity (2012) 3,4.

<sup>2</sup> Ibid.

<sup>3</sup>Marcos Zunino, *Justice Framed: A Genealogy of Transitional Justice* (Cambridge University Press, 2019); Ruti Teitel, *Transitional Justice* (Oxford University Press, 2000).

<sup>4</sup> In particular the use of datasets to measure transitional justice outcomes is a strong feature of US political science scholarship on TJ. More recently Gready and Robbins proposed a ‘theory of change’ model for evaluating TJ. Paul Gready and Simon Robbins ‘Transitional Justice and Theories of Change: Towards Evaluation as Understanding’ (2020) 14 International Journal of Transitional Justice 280.

<sup>5</sup> Editorial Note (2007) 1 (1) International Journal of Transitional Justice 1.

<sup>6</sup> Christine Bell, ‘Transitional Justice, Interdisciplinarity and the State of the “Field” or “non-Field”.’ (2009) 3 International Journal of Transitional Justice 5.

<sup>7</sup> Weingart (n 1) defines the modern discipline as ‘a group of scholars who shared common concepts and methods, forming a community’.

referential to its texts. This creates an impression that the field is dominated by legalism, and that as a result it remains ‘under-theorised’ 30 years after it came into existence.<sup>8</sup>

However while the field remains strongly referential to pillars and mechanisms, and there is evidence that the normative framework of law continues to exert a dominant influence on the field,<sup>9</sup> to say that it is under-theorised as a result is to miss the multi-disciplinary nature of scholarly contributions. While some work is explicitly labelled as a theoretical contribution to transitional justice,<sup>10</sup> much of the theoretical work on its related concepts happens in less overt spaces. It is not labelled in the same way, and as such not as immediately apparent when searching the literature. Yet to ignore this literature is to miss the ways in which alternative disciplinary approaches already enrich our understanding of the field.

A note first on terminology. Interdisciplinarity is characterised by the *integration* of different forms of disciplinary knowledge. Work that is interdisciplinary is characterised by *interaction* between different disciplinary approaches.<sup>11</sup> An example of this in the TJ field is the way in which some forms of engagement with art have sought to disrupt established understandings of justice precisely by bringing radically different disciplinary concepts and methods to bear on the problem.<sup>12</sup> This can be contrasted with multi-disciplinarity, defined as the *juxtaposition* of disciplines, the process of which ‘fosters wider knowledge, information and methods’, yet ‘disciplines remain separate, disciplinary elements retain their original identity, and the existing structure of knowledge is not questioned.’<sup>13</sup> For example, scholarship has examined the relationship between transitional justice and other forms of post-conflict policy and intervention, notably peacebuilding<sup>14</sup> and development.<sup>15</sup> This work takes as its starting point the ‘nexus’ approach which brings two separate fields of inquiry into dialogue with each other without disrupting the epistemic foundations of either field, and as such is different from an interdisciplinary approach.

Within the TJ field multi-disciplinary scholarship continues to critique the dominance of law and institutional approaches to TJ, while legal scholarship resists this decolonising impulse, policing the boundaries of the field by continually (re)orienting inquiry towards pillars, mechanisms and underpinning legal regimes. Partly this tension arises because of a lack of clarity, or perhaps agreement, on the parameters of the field of TJ.<sup>16</sup> Is it solely a form of legal

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<sup>8</sup> See eg. Gready and Robbins (n 4).

<sup>9</sup> United Nations, ‘The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies: Report of the Secretary General to the Security Council (2011) UN Doc. S/2011/634; Laurel Fletcher and Harvey Weinstein, ‘Writing Transitional Justice: An empirical evaluation of transitional justice scholarship in academic journals’ (2015) 7 *Journal of Human Rights Practice*.

<sup>10</sup> Coleen Murphy, *The Conceptual Foundations of Transitional Justice* (Cambridge University Press, 2017); Suzanne Buckley Zistel et al. (eds) *Transitional Justice Theories* (Routledge, 2015).

<sup>11</sup> Julie Thompson Klein, ‘A Taxonomy of Interdisciplinarity’ in Robert Frodeman (ed) *Oxford Handbook of Interdisciplinarity* (OUP, 2012).

<sup>12</sup> Cynthia Cohen, ‘Re-imagining Transitional Justice’ (2020) 14 *International Journal of Transitional Justice* 1.

<sup>13</sup> Julie Thompson Klein (n 11) 17.

<sup>14</sup> Padraig McAuliffe, ‘Reflections on the Relationship Between Justice and Peacebuilding’ (2017) 11 *Journal of Intervention and Statebuilding* 245.

<sup>15</sup> Rama Mani, ‘Dilemmas of Expanding Transitional Justice, or Forging the Nexus Between Transitional Justice and Development’ (2008) 2 *International Journal of Transitional Justice* 253.

<sup>16</sup> Kristin Ainley, ‘Evaluating the Evaluators: Transitional Justice and the Contest of Values’ (2017) 11 *International Journal of Transitional Justice* 421.

response and demand for accountability for human rights abuse? Or is it a matter of lived experience as well? If the answer is the former then it makes sense to look for ways of evaluating performance against that criteria. This reflects a technocratic approach to TJ that has little need of theory. However this approach is limited if the aim is to use TJ as part of a more holistic process of recovery from conflict and violence. If we think of TJ as a set of not just legal but also ethical problems, and orient inquiry towards underpinning concepts rather than institutions, does the landscape look different?

This chapter offers an introductory mapping of the ways in which scholarship in disciplines beyond law and political science- most notably in the humanities and social sciences- has engaged with the foundational concepts of transitional justice. It provides an overview of the different disciplinary lenses that have been applied to these foundations, and how these shape or re-shape thinking when it comes to TJ. If we take the conception of ‘justice in periods of political transition’ as the central legitimating construct of TJ, how does multi- disciplinary scholarship help us to understand the meaning of justice, and indeed of transition?

## 2. The Concepts of Transitional Justice

Underpinning transitional justice are four foundational concepts- those of Truth, Justice, Reconciliation and Transition. Each of these is invoked to varying degrees to legitimate demands for transitional justice, as well as to inform the design, implementation and evaluation of its mechanisms. Yet often the definition of these is not interrogated in any depth, with a generic definition of ‘transitional justice’ relied upon. The following four sections outline how scholarship in multiple disciplines has engaged with these foundational concepts, how it has demonstrated the ways in which they are intertwined, and as a result how it can further our understanding of their role in TJ.

### A. Truth

The relationship between truth and justice in transitional justice is one which has been negotiated over the course of TJ intellectual history. When understood from a legal perspective truth plays a central role as a goal of transitional justice - something that can be established through legal inquiry and in institutions such as courts or truth commissions. From a relatively narrow starting point that associated truth with legalistic outcomes such as trials or reparations, the meaning of truth and its place in TJ has now been conceptualised across disciplinary divides. This scholarship reveals how truth can take different forms and may even be contested. The distinction between forensic and narrative forms of truths helps to break down the idea of truth into its different functions. Forensic truth reflects the established facts of what happened by, for instance, identifying signs of violence on a body and pointing to the circumstances of a person’s death. In transitional contexts this is increasingly recognised as a ‘right’ of victims’ families.<sup>17</sup> The forensic truth of what happened, when established through scientific and legal method, is difficult to deny. A drive towards this form of truth is reflected in the increasing trend in both advocacy and scholarship towards documentation during conflicts in places such

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<sup>17</sup> UN Commission on Human Rights, Human Rights Resolution 2005/66 UN Doc. E/CN.4/RES/2005/66; James Sweeney, ‘The Elusive Right to Truth in Transitional Human Rights Jurisprudence’ (2018) 67 ICLQ 353.

as Syria and Ukraine<sup>18</sup> and forensic evidence has been used in courts and truth commissions to prove atrocity crimes.<sup>19</sup> However the political significance that is attached to forensic truth is often more difficult. On one hand the need for ‘truth’ is well acknowledged as a core driver of transitional justice. On the other, beyond the techniques of forensic archaeology,<sup>20</sup> or the court room procedure, it is well acknowledged that the concept of objective truth is unrealisable and its pursuit can have unintended divisive consequences.

Whereas law prioritises the objectivity of legal adjudication, scholarship in disciplines such as sociology, anthropology and history has engaged with this narrative function of truth, increasingly connecting it not only with information, but with phenomena such as memory and witnessing. What is revealed is a complex web of understandings of truth underpinning the field. The concept of narrative truth refers to the way in which facts and information are ‘narrated’ with reference to underlying values. It is the story that is told of a conflict. This is where truth is often contested. Legal scholars initially praised international criminal tribunals and truth commissions for their claimed didactic attributes and potential to contribute to the creation of a coherent, often objective historical narrative that responds to the demands of stable democracies.<sup>21</sup> However, the legal authority over ‘truth’ is now much more contested, with interdisciplinary scholarship demonstrating the ways that both types of institution are ill equipped to produce ‘history’ of conflict based on procedural, jurisdictional, temporal and material limitations.<sup>22</sup>

#### (i) Landscapes of Truth

Studies in archaeology and anthropology show that in addition to producing forensic truth, practices in these two disciplines can go beyond ‘the strict scientific sphere’ to have a role in constructing cross-cultural narratives.<sup>23</sup> Archaeologists play a significant role in determining which material objects are recorded, preserved and entered into a community or a nation’s cultural heritage and with that are inserted into collective memory.<sup>24</sup> In doing so, they can put forward a deliberately selected commentary on the roles and responsibilities in a certain violent episode of the past. In particular exhumations of human remains as a method can aid creation of narrative truths and historical memories of past atrocities on the basis of the uncovered forensic truth. What may not be visible to an outsider with a distinct disciplinary perspective is that the physical acts of locating and exhuming human remains can be complemented by a

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<sup>18</sup>Brianne McGonigle Leyh, ‘Changing Landscapes in Documentation Efforts: Civil Society Documentation of Serious Human Rights Violations’ (2017) 33 *Utrecht Journal of International and European Law* 44.

<sup>19</sup> Shari Eppel, ‘Bones in the Forest’ in Matabeleland, Zimbabwe: Exhumations as a Tool for Transformation’ (2014) 8 *International Journal of Transitional Justice* 404.

<sup>20</sup> Schmitt, S (et al) ‘Physicians for human Rights: the role of forensic archaeology in transitional justice contexts’ in Groen (et al) (eds) *Forensic Archaeology: A Global Perspective* (Wiley, 2015)

<sup>21</sup> Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (Routledge 1999), Martha Minow, ‘The Hope for Healing. What Can Truth Commissions Do?’ in R.I. Rotberg and D.F. Thompson, *Truth v. Justice* (Princeton University Press 2000).

<sup>22</sup> Barrie Sander, *Doing Justice to History: Confronting the Past in International Criminal Courts* (Oxford University Press 2021).

<sup>23</sup> Jose Pablo Baraybar and Rebecca Blackwell, ‘Where are they? Missing, Forensics, and Memory’ (2014) 38 *Annals of Anthropological Practice* 22-42, 22-23.

<sup>24</sup> Laura McAtackney, ‘Materials and Memory: Archaeology and Heritage as Tools of Transitional Justice at a Former Magdalen Laundry’ (2020) 55 *Éire-Ireland* 223.

range of additional process that work together to conduct historical analysis and build a written as well as visual record of the atrocity and the person affected by it. In Spain, for example, civil society organized exhumations were followed up by graveside interviews with victims' relatives, interviews with people living in the area of the mass grave, archival work and mobile seminars that sought to educate victims' relatives and passers-by about the trauma inflicted on the body.<sup>25</sup> In these ways, exhumation missions created a space for understanding, recognizing and verbalizing what happened,<sup>26</sup> providing a sense of closure to victims' families, disturbing the veil of silence that might exist around coming forward with the truth about mass graves locations and leading to memorialization and commemoration based on the uncovered facts.<sup>27</sup>

## (ii) Witnessing & Memory

International and hybrid criminal tribunals and truth commissions also rely on forensic truth as evidence yet have also been praised for their narrative truth- and history-making functions. The archives of such institutions are largely accepted as pools of 'facts' from which to draw and feed into transitional societies for informational and educational purposes.

The inter- and trans-disciplinary scholarly engagements with memory, archives and witnessing in anthropology, history, sociology, philosophy and geography divert our attention to the discursive and knowledge-production powers of the global project of transitional justice and frequent exclusions, distortion and/or silencing of certain people and certain voices from the processes of truth recovery and their outcomes. They hold that attaining an objective record is genuinely impossible and position 'memory' as multi-layered, multidirectional, and diverse and existing beyond the realms of 'collective memory' which is a seemingly shared memory of the past.<sup>28</sup> Memory can thus expand beyond the limits of national identity and national contexts and has also been theorised as 'cosmopolitan', traveling and 'transcending time and space' in the globalised world.<sup>29</sup> Institution- and state-oriented approaches to the study of truth recovery do not adequately capture these multidirectional, transboundary flows of people's stories, experiences and memories. Institutions of transitional justice and their archives therefore engage in production of knowledge and collective memories in biased ways, privileging certain witnesses, truths, and memories over others.

Memory scholars provide useful insights into the relationships between construction of a seemingly objective 'truth' and collective memories. Narratives that bind a group together in a shared memory continue to be (re)negotiated during and post- violent episodes in a nation's history and, particularly in transition, new or renewed regimes seek to solidify the official story of the violent episode to restore political order and legitimate the new regime. In this body of scholarship we also find extensive use of feminist and social theories on the body and corporeal

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<sup>25</sup> Jonah S. Rubin, 'Transitional Justice against the State: Lessons from Spanish Civil Society-Led Forensic Exhumations' (2014) 8 *International Journal of Transitional Justice* 99.

<sup>26</sup> *Ibid.*

<sup>27</sup> Eppel (n 19).

<sup>28</sup> See, for example, Benjamin Thorne, 'Remembering atrocities: legal archives and the discursive conditions of witnessing' (2021) 25 *International Journal of Human Rights* 467; Kirsten Campbell, 'The Laws of Memory: The ICTY, the Archive and Transitional Justice' (2012) 22 *Social & Legal Studies* 247.

<sup>29</sup> Alejandro Baer and Natan Sznaider, 'Ghosts of the Holocaust in Franco's mass graves: Cosmopolitan memories and the politics of "never again"' (2015) 8 *Memory Studies* 328,329.

politics that place the bodies of the war dead as sites where contentious remembering takes place, with the bodies of fallen soldiers being given a crucial role in creating and maintaining national identities.<sup>30</sup> Putting forward a single, unified narrative about the past, with established roles, grievances and figures typically comes at the cost of perpetuating or exaggerating pre-existing gender and race-based hierarchies in the society. In particular, post-war memorialisation tends to rely to the gender binary to preserve the patriarchal nation-state, recognizing and honouring men's bodies as protectors, martyrs and heroes, while presenting and 'normalising' memories of women's passivity over stories and experiences of agency.<sup>31</sup>

Archives generally serve as sources of truth and can consist of an assemblage of court records and documents collected by a range of state and non-state actors. In theorising archives in TJ, much scholarship draws on Derrida's proposal that no political power exists 'without control of archives'<sup>32</sup> as well as Trouillot's theorising around the social power of archives to prepare 'facts for historical intelligibility.'<sup>33</sup> Viebach, for examples, coins the term 'transitional archives', emphasizing their open-ended nature whereby archives are never completed nor they are ever the truth but 'the reality of what was *found* was true'<sup>34</sup> Court archives thus do not include all testimonies and all truths. Thorne conceptually draws on Foucault's work on discourse to investigate the role of the International Criminal Tribunal for Rwanda in construction of memory, arguing that the pre-trial stages of criminal trials 'filter' and therefore significantly limit who gets to act as a witness and what such witnesses are allowed to remember.<sup>35</sup> Historical scholarship on witnessing evidences that the selection of 'moral witnesses' also influences whose deaths are seen as grievable, therefore shaping 'the Western imagination of collective violence.'<sup>36</sup>

### (iii) Victims

As a process and objective, truth recovery has been valued for its potential to be victim-centred, empowering and re-dignifying victims and survivors by offering them opportunities to tell their story and have their suffering acknowledged, recognised and possibly redressed. Across contexts of transitional justice, victims have provided public and private testimonies before truth and fact-finding commissions and judicial institutions. Yet, truth in transitional justice contexts is shaped by power, by institutional factors, and by the audience, all of which impact how victims are heard,<sup>37</sup> or not.<sup>38</sup> Legalistic and institutional forums for truth recovery privilege

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<sup>30</sup> See, generally, Kevin McSorley (ed.), *War and the Body: Militarisation, Practice and Experience* (Routledge 2015).

<sup>31</sup> See, for example, Cecilia Åse and Maria Wendt, 'Gender, memories, and national security: the making of a Cold War military heritage' (2022) *International Feminist Journal of Politics* 24, 221.

<sup>32</sup> Julia Viebach, 'Transitional archives: towards a conceptualisation of archives in transitional justice' (2021) 25 *International Journal of Human Rights* 25, 403.

<sup>33</sup> Cited in Michelle Caswell, *Archiving the Unspeakable. Silence, Memory, and the Photographic Record in Cambodia* (The University of Wisconsin Press 2014) p. 61.

<sup>34</sup> Viebach (n 32) 403.

<sup>35</sup> Thorne (n 28).

<sup>36</sup> Carolyn J. Dean, *The Moral Witness: Trials and Testimony after Genocide* (Cornell University Press 2019) 2.

<sup>37</sup> Fiona Ross, *Bearing Witness: Women at the Truth and Reconciliation Commission in South Africa* (Pluto Press, 2003)

<sup>38</sup> Jelena Obradovich-Wochnik, 'The "Silent Dilemma" of Transitional Justice: Silencing and Coming to Terms with the Past in Serbia' (2013) 7 *International Journal of Transitional Justice* 328.

forensic truth over oral history and subjective accounts. In doing so, they prioritise the legal scripts of violence and ignore or distort lived experiences of victims, creating an ‘ideal’ or ‘iconic victim’.<sup>39</sup> Hierarchies of victimhood go hand-in-hand with hierarchies of truth, where certain voices and stories have more ‘political currency’ than others, creating only ‘partial and exclusive understandings of the past.’<sup>40</sup> Narratives of lived experience that fall outside set frameworks can directly contradict or dispute elements of the established official histories that the state may want to produce and are thus likely to be silenced or discredited.<sup>41</sup> Criminology and socio-legal scholars point to the widespread politicization of victimhood that exploits victims’ voices and agency in political, and often competing processes of truth recovery towards certain political goals.<sup>42</sup> Scholarship in disciplines such as anthropology and sociology have looked beyond legal form to explore how these dynamics shape the experience of victims. Truth seeking, when seen through a critical lens, risks perpetuating hierarchies of victimhood by using the designations of victim and perpetrator, making an institutional statement about who has the right to call themselves a victim.<sup>43</sup> By doing this it determines who can legitimately claim to have been wronged and thereby seek justice.

## B. Justice

The search for a definition of justice in transition is in many ways the search for a meta-narrative that forms the basis of the legitimacy of the field. Without a shared understanding of justice it becomes difficult to justify normative claims for specific mechanisms and approaches. There is a certain paradox in the fact that the concept of justice is used to justify a field of inquiry whose central concern is the search for the meaning of justice. The centrality of the concept combined with its lack of commonly agreed definition has led to an approach where a shorthand definition is provided as a means of foreclosing the bigger question of the meaning of justice itself in TJ scholarship.

However it is acknowledged that a working policy definition of justice is not the same as an interrogation of the meaning of the underlying concept, and indeed that justice may not mean the same thing as law.<sup>44</sup> In seeking to develop the underlying concept of justice in transition, scholars have drawn on underpinning theories from disciplines such as criminology and political philosophy to justify justice demands. These can roughly be divided into three categories, retributive justice; transformative justice and more recently participatory justice.

### (i) Retributive justice

Some of the earliest theorising of transitional justice was driven by the need to offer a justificatory narrative for criminal trials. Of particular note are early efforts to create a

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<sup>39</sup> Erin K. Baines, ‘“Today, I Want to Speak Out the Truth”: Victim Agency, Responsibility, and Transitional Justice’ (2015) 9 *International Political Sociology* 316, 318.

<sup>40</sup> *Ibid* 907.

<sup>41</sup> *Ibid*.

<sup>42</sup> Cheryl Lawther, ‘“Let Me Tell You”: Transitional Justice, Victimhood and Dealing with a Contested Past’ (2021) 30 *Social & Legal Studies* 890.

<sup>43</sup> Clare Moon, ‘Prelapsarian State: Forgiveness and Reconciliation in Transitional Justice’ (2004) 17 *International Journal for the Semiotics of Law* 185.

<sup>44</sup> Catherine Turner, *Violence, Law and the Impossibility of Transitional Justice* (Routledge, 2016).

normative justification for TJ rooted in the idea of the rule of law.<sup>45</sup> Prosecution, it was claimed, was necessary to ensure deterrence of future atrocities, to combat impunity, and to re-establish the rule of law.<sup>46</sup> In particular, retributive ideas of justice underpinned the desire in the early years of TJ to individualise guilt. Individual criminal responsibility, it was argued, would help to break collective cycles of blame and prevent future violence.<sup>47</sup> This model is defined by a transactional approach whereby the perpetrator of a specific and established crime is punished as a means of ensuring justice for the victim of that crime.

This work was also woven into broader justificatory discourses in the work of social scientists and others who linked retributive outcomes in the criminal justice sense with broader social goals of reconciliation. Much of this early interdisciplinary engagement set the research agenda, identifying broader questions for interrogation in disciplines beyond law.<sup>48</sup> For example in 2000 Osiel interrogated the reasons given for punishment in the case of mass atrocities.<sup>49</sup> Drawing on the work of theorists such as Arendt he explored the justifications and their limitations through a theoretical lens. The transitional literature has therefore from its early years been interdisciplinary in nature, willing to look beyond strict legalism towards the broader social and political context when considering the meaning of ‘justice’.

## (ii) Transformative justice

One of the clearest developments in thinking has been the move towards a model of transformative justice. Early ideas of transformative justice argued that it was necessary for transitional justice as a field of research and practice to go beyond retributive justice to support and achieve socioeconomic justice, both at the levels of individuals and communities. Following Gready and Robins’ theorisation, transformative justice has largely been understood to be a result of ‘the challenging of unequal and intersecting power relationships and structures of exclusion’.<sup>50</sup> Achieving transformative justice therefore necessitates an approach that deals with structural issues in the transitional society, such as inequality and structural and slow violence. Such an approach is inevitably distinct from and largely incompatible with retributive justice as judicial institutions largely focus on direct physical violations on the body, neglecting the underpinning socioeconomic and political conditions that enable and give rise to such violations.<sup>51</sup> Transformative justice is therefore justice for

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<sup>45</sup> Teitel (n 3).

<sup>46</sup> United Nations, ‘Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991’ UN Doc. A/49/342- S/1994/1007 (29 August, 1994).

<sup>47</sup> Ibid.

<sup>48</sup> Laurel Fletcher and Harvey Weinstein, ‘Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation’ (2002) 24 *Human Rights Quarterly* 573.

<sup>49</sup> Mark Osiel, ‘Why Prosecute? Critics of Punishment for Mass Atrocity’ (2000) 22 *Human Rights Quarterly* 118.

<sup>50</sup> Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ (2014) 8 *International Journal of Transitional Justice* 340.

<sup>51</sup> Sander (n 22).



violations and neglect of not only civil and political rights, but also socioeconomic, psychosocial and environmental rights and freedoms.

Transformative justice is also a common thread to feminist scholarship, as it requires engagement with issues and groups on the margins of TJ practice.<sup>52</sup> There is also a strong link to feminist theory in the idea that justice requires not simply the return to a discriminatory status quo, but more fundamental change to the systems themselves.<sup>53</sup> In criminology, for instance, it has been long argued for the focus of transformative justice-seeking to be re-directed to racism and sexism as structural injustice underpinning violence.<sup>54</sup> Feminist scholars have demonstrated that women's experiences of conflict are never fully represented through TJ mechanisms as the mainstream TJ operating as an extension of international law either ignores violence against women entirely or fails to see how it exists on a continuum without clear separations of the before- and post- conflict periods.<sup>55</sup>

In this argument we see influences from the field of development studies that makes closer connections between economic realities and justice. In particular, when discussing elimination of the 'drivers' or root causes of violence, scholars highlight structural socioeconomic issues such as poverty, economic inequality and insecurity, and institutionalized discrimination as factors hampering meaningful attainment of transformative justice.<sup>56</sup> It is through these connections to socioeconomic grievances that transformative justice highlights and seeks to undo some of the hierarchies of both violence and victimhood that retributive justice models perpetuate.

While the retributive justice model rests on the victim-perpetrator binary, prosecuting and punishing the perpetrator to award 'justice' to the victim, the model of transformative justice blurs this binary. Drawing on the work on restorative justice done in criminology and psychology, the practice of transformative justice highlights victim-perpetrator dialogue,<sup>57</sup> as well as inclusion of different stakeholders, including bystanders, into the process to identify the micro-drivers of violence<sup>58</sup> and address individuals' relationship to social breakdown.<sup>59</sup>

### (iii) Participatory justice

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<sup>52</sup> Aisling Swaine, *Conflict-related violence against women: transforming transition* (Cambridge University Press 2018).

<sup>53</sup> Christine Bell and Catherine O'Rourke, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay. (2007) 1 International Journal of Transitional Justice 23.

<sup>54</sup> See more generally Loretta Capeheart and Dragan Milovanovic, *Social Justice: Theories, Issues, and Movements* (Rutgers University Press, 2007).

<sup>55</sup> Swaine (n 52).

<sup>56</sup> Gready and Robins (n 50).

<sup>57</sup> Wendy Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (2008) 3 International Journal of Transitional Justice 29.

<sup>58</sup> Rebekka Friedman, 'Implementing Transformative Justice: Survivors and Ex-Combatants at the Comisión de La Verdad y Reconciliación in Peru' (2018) 41 Ethnic and Racial Studies 701.

<sup>59</sup> Fletcher and Weinstein (n 48).

Another notable trend across more recent scholarship is the drive to find ways to centre the voices of victims in TJ. This is conceptualised as a spatial approach - the ability to map new invented spaces of TJ beyond formal legal or state centric processes.<sup>60</sup> One of the strongest examples of this dialogue is the engagement with art in recent years. Interdisciplinary engagements with art and TJ create space to see the 'justice' component of TJ as participatory, exploring creative and uncensored processes and practices not easily captured by law or political science as disciplines. Participation in cultural and artistic interventions can enable creation or recreation of more inclusive collective memory and enhance social responsibility and social change.<sup>61</sup> This is because art as a medium tends to trigger strong emotive responses in the audience, and invites personal reflection on the experience, creating space for ambiguity and interpretation.<sup>62</sup> Participatory justice asks to reconsider the evaluation of TJ itself where 'success' becomes measured as a process of participation itself, regardless of the outcome, for its capability to enable change, and not merely as evidence of policy implementation.<sup>63</sup>

However engagement with art and the humanities goes beyond simple interaction in existing TJ processes. Reading TJ through art has the potential to disrupt thinking on the meaning of justice and how it is experienced. For example some of the reasons given in favour of bringing art into dialogue with TJ point to the ways in which art 'considers the quality of the lives of ordinary people who have borne the brunt of violence.'<sup>64</sup> By shifting the focus towards the aesthetics of violence and trauma it invites qualities of attention, presence and empathy which are fundamentally different ways of thinking about justice. Focusing on the experience of the individual rather than on the operation of the process opens up the potential for thinking differently about how TJ is defined.

The scholarship on art and TJ is part of a renewed interest in the question of the relationship between local and global approaches, incorporating in particular the need to better include both victims and wider civil society in TJ.<sup>65</sup> This in turn reflects interest in related fields such as peacebuilding in how to understand the 'everyday' nature of peace and justice. While work on participatory justice is less well developed than that on transformative justice, a clear line of analysis is emerging that identifies the need to move beyond facilitating victim participation in existing pre-defined TJ institutions, towards thinking about how TJ could be designed from the

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<sup>60</sup> Alex Jeffrey, 'The Political Geographies of Transitional Justice' (2011) 36 *Transactions of the Institute of British Geographers* 344.

<sup>61</sup> Sherin Shefik, 'Reimagining Transitional Justice through Participatory Art' (2018) 12 *International Journal of Transitional Justice* 314.

<sup>62</sup> Laura McLeod, Jovana Dimitrijevic and Biljana Rakocevic, 'Artistic Activism, Public Debate and Temporal Complexities: Fighting for Transitional Justice in Serbia' in P. Rush and O. Simic (eds.) *The Arts of Transitional Justice: Culture, Activism, and Memory After Atrocity* (Springer 2014).

<sup>63</sup> Shefik (n 59) 330.

<sup>64</sup> Cohen (n12).

<sup>65</sup> Noha Aboueldahab, 'Transitional Justice as Repression and Resistance: Practices in the Arab World' (2022) *Journal of International Criminal Justice*. <https://doi.org/10.1093/jicj/mqac027>; Paul Gready and Simon Robbins 'Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and "New" Civil Society' (2017) 21 *International Journal of Human Rights* 956.

bottom up.<sup>66</sup> Described as moving towards ‘meaningful’ participation,<sup>67</sup> this literature looks at the ways in which demands for justice can be captured in TJ thinking.

### C. (Ir)Reconciliation

From the time of the South African Truth and Reconciliation Commission the concept of reconciliation has appeared within and alongside transitional justice scholarship. A contested concept, its importation by the South African TRC into the discourse and justification of TJ has led to inquiry into its relationship with justice. There are varying conceptions of reconciliation, but the most notable in the context of TJ are those drawn from- but often not named as- theology, and the idea of political reconciliation, which is contrasted with the theological version. A further layer to add is the construct deriving from the anthropological literature of irreconciliation.

The idea of forgiveness appeared in transitional justice literature as an element of the practice of the South African TRC. While originally deriving from the influence of religion and religious leaders on the discourse in South Africa, the idea of forgiveness was taken up in TJ literature from the perspective of social psychology.<sup>68</sup> Early literature on truth commissions focused on the dual element of the release of the victim- summed up as ‘catharsis’- and the rehabilitation of the offender through their engagement with the Commission process. These individual responses came to be woven together into the broader pursuit of social repair, in which individual stories were subsumed into the narrative of healing the nation to be achieved through the work of the TRC.<sup>69</sup> This is the work of political reconciliation.<sup>70</sup> It is not concerned with theological constructs of repentance or remorse. Rather it facilitates a rational approach to dealing with the past.<sup>71</sup> As Mookherjee notes, ‘a dominant strand of transitional justice scholarship has considered a lack of reconciliation to be dysfunctional, a rupture which can apparently be addressed by properly designed legal institutions.’<sup>72</sup>

However what came to dominate the discourse was the idea that an ‘encounter’ at the TRC would result in the victim forgiving the offender, even in the absence of any expression of remorse on their part. There are influences of both religion and social psychology evident in this approach. From a religious perspective, forgiveness arises as a duty to God, with anger and resentment as contrary to God’s wish.<sup>73</sup> The ideal victim is therefore one who can let go of these feelings as part of a duty to their faith. The victim who cannot forgive is compared to this

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<sup>66</sup> Elke Evrard, Gretel Mejia Bonifazi and Tine De Strooper, ‘The Meaning of Participation in Transitional Justice: a Conceptual Proposal for Empirical Analysis’ (2021) *International Journal of Transitional Justice*. doi: 10.1093/ijtj/ijab013.

<sup>67</sup> Pamina Firchow and Yvette Selim, ‘Meaningful Engagement from the Bottom Up? Taking Stock of Participation in Transitional Justice Processes’ (2022) *International Journal of Transitional Justice* <https://doi.org/10.1093/ijtj/ijab031>.

<sup>68</sup> For an overview see Rebecca Saunders, ‘Questionable Associations: The Role of Forgiveness in Transitional Justice’ (2011) 5 *International Journal of Transitional Justice* 119.

<sup>69</sup> Sonali Chakravarti, *Sing the Rage: Listening to Anger After Mass Violence* (University of Chicago Press, 2014).

<sup>70</sup> Andrew Schapp, *Political Reconciliation* (Routledge, 2004).

<sup>71</sup> Hannah Arendt, *The Human Condition* (University of Chicago Press, 1958), discussed by Chakravarti (n 69).

<sup>72</sup> Nayanika Mookherjee, ‘On Irreconciliation’ (2022) *Journal of the Royal Anthropological Institute*.

<sup>73</sup> Discussed in the context of truth commissions by Thomas Brudholm, *Resentment’s Virtue: Jean Amery and the Refusal to Forgive* (Temple University Press, 2009).

ideal. From the perspective of social psychology, ideas of trauma and resilience crept into the discourse.<sup>74</sup> In the desire to look forwards rather than backwards, the unforgiving victim is labelled as ‘traumatised’, as somehow unable to engage properly in the process. The effect of the application of such terms is to silencing them,<sup>75</sup> to diminish the validity of their justice claims, and ultimately to directing the focus of attention towards the failure of the victim to overcome the past, rather than the enduring presence of the social conditions that enabled the harm.<sup>76</sup> As a result, this connection between forgiveness and the resilience or mental well-being of the victim has resulted in significant philosophical critique. Reconciliation, within TJ scholarship, has been fundamentally unable to accommodate the unreconciled victim. This dynamic is captured best in the philosophical and anthropological literature that has conceptualised the unwillingness to participate in the redemptive arc of transitional justice.- the victim who refuses to accept the apology, refuses to participate in the institutions, and ultimately refuses to be ‘reconciled’ to the past.<sup>77</sup> In philosophy this has been done through the lens of Jean Amery’s theory of resentment. For Amery, resentment was a way of resisting the re-writing of the past.<sup>78</sup> In particular, it resists the idea the justice for individual events of the past is sufficient to account for the system that allowed them to happen.<sup>79</sup> It also challenges the idea that for Nussbaum forgiveness in this context remains backward looking rather than ‘transitional’.<sup>80</sup> When the legal structure itself is unjust, the system needs to change, and this requires anger.<sup>81</sup> This type of anger is incompatible with forward looking pragmatic or rational responses to injustice.<sup>82</sup> As such, irreconciliation emerges as part of the essential work of countering impunity, part of a common refusal of reconciliation with the past.<sup>83</sup>

The debate over the role of forgiveness in transitional justice demonstrates the difficulties of dialogue across disciplines. In divorcing the concept of forgiveness from its theological roots the concept was imported into TJ discourse in a way that did not fully account for the fundamental disciplinary differences between theology (from which the concept was first borrowed) and the transitional justice literature. This reveals a start gap when it comes to cross-disciplinary understanding. Philpott highlights this tension in his work on religion and TJ.<sup>84</sup> In particular he explores the different paradigms of thought that underpin the idea of forgiveness in religious versus secular thought. He contrasts the religious paradigm of reconciliation with the secular paradigm of liberal human rights that underpins transitional justice. Importing the concept of reconciliation into the liberal transitional justice paradigm resulted not only in

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<sup>74</sup> Ibid.

<sup>75</sup> Chakravarti (n 69); Jill Stauffer, *Ethical Loneliness: The injustice of not being heard* (Columbia University Press, 2015).

<sup>76</sup> Brudholm (n 73) 93.

<sup>77</sup> Panu Minkinen, ‘Resentment as Suffering: On Transitional Justice and the Impossibility of Forgiveness’ (2007) 19 *Law and Literature*.

<sup>78</sup> Jean Amery, *At the Minds Limits: Contemplations by a survivor on Auschwitz and its realities* (Indiana University Press, 2009)

<sup>79</sup> See Brudholm (n 73)113.

<sup>80</sup> Martha Nussbaum, *Anger and Forgiveness: Resentment, Generosity, Justice* (Oxford University Press, 2016) 76

<sup>81</sup> *ibid* 211-212.

<sup>82</sup> See Chakravarti (n 69).

<sup>83</sup> Mookherjee (n 70); Nusbaum (n 80); Brudholm (n 73).

<sup>84</sup> Daniel Philpott, ‘What Religion Brings to the Politics of Transitional Justice’ (2007) 61 *Journal of International Affairs* 93.

conceptual uncertainty as to the purpose and limits of forgiveness in transitional justice, but arguably led to harmful expectations being placed on victims. Of particular note in this context is the way in which the fundamental structure of reconciliation and liberal human rights operate, and the tension that this creates between individual versus communal ideas of rights. In theology forgiveness is rooted in the broader framework of reconciliation, with an emphasis on returning to ‘right relationships’. This is based on a horizontal approach to repairing bonds within political communities, and rests on other underpinning concepts such as apology and remorse. This can be contrasted with the liberal approach which emphasises enlightenment ideas of the relationship between the individual and the state. Of particular note in the context of transitional justice has been the removal of the idea of remorse from the discourse on forgiveness, and relatedly, reconciliation. Similarly there has been much greater emphasis on apology on the part of the state than on horizontal apologies from non-state actors responsible for human rights abuse. TJ scholars have grappled with how best to recognise the existence of conflicting narratives on the legitimacy of violence, and have consistently fallen short of requiring remorse as a condition of reconciliation. This is difficult to square with a victim centred approach to justice and leads to what Amery identifies as the absence of moral acknowledgement<sup>85</sup>

#### D. Transition

Conceptually, transitional justice is conditional on the existence of a transition. Even though ‘transition’ is a foundational concept for TJ as a field of research and practice, the very concept has evolved over the years and continues not to have one set meaning. The core questions that theorists of the ‘transition’ component of TJ seek to resolve include: transition from what? Transition to what? When does transition start and end? Could transition ever start and ever end? Although today there is a consensus that TJ is inclusive of transitions from authoritarianism as well as conflict, different disciplinary approaches have been applied to theorise the boundaries, scopes and endpoints of such transitions.

##### (i) Political and Economic Liberalism

For field-building theorists such as Teitel, ‘transition’ has been defined as a shift to political and economic liberalism and thus the ‘transition’ component of TJ can be understood as ‘liberal transition.’<sup>86</sup> Considering that TJ was initially developed in the context of transitions from undemocratic authoritarian/socialist regimes, it was widely believed that ‘transition’ as a path to democracy and political and economic liberalism will inevitably lead to a peaceful and just society. Furthermore, TJ is well-positioned within the neoliberal global project and the-end-of-the-Cold-War era, which explains this initial orientation to transitions towards free elections, constitutions, the principles of good governance and the rule of law.

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<sup>85</sup> Brudholm (n73) 141.

<sup>86</sup> Teitel (n 3).

Debates around the meaning and scope of transition are integral to the examinations of fieldhood of transitional justice as a coherent set of distinguishable practices.<sup>87</sup> Seemingly established democracies already benefit from the conditions to which transitional justice shifts societies to, which makes such states sites ‘of non-transition.’<sup>88</sup> Others such Winter defend the ‘fieldhood’ by utilising liberal theory to propose that TJ is suitable even in established democracies as a tool for trans-regime repair of political legitimacy.<sup>89</sup>

When it comes to the meaning of transition more critical work draws on critical theory and philosophy to challenge or entirely disrupt the proposed neoliberal order and highlight the ideological limitations of connecting the idea of transition so closely to neoliberalism. Fourlas critiques the philosophical idea of ‘liberal peace’ on the basis of its inaptness to realise justice in or post-transition but only imposes standards of justice that do not resonate with the social world.<sup>90</sup> Bowsher employs Foucault’s concept of ‘governmentality’ to define neoliberalism as ‘practices designed to produce particular societal norms, social relations, and subjective behaviours’ aimed towards specific ‘strategic ends.’<sup>91</sup> Bowsher theorises that, as a global project, TJ serves to enhance the production of ‘neoliberal contours’ at the point of transition, transitioning the country into not only a neoliberal economy but also a neoliberal society characterised by individualism and ‘empty solidarity’.<sup>92</sup>

#### (ii) Post Colonial critiques

Scholars working within the traditions of post-colonial theory identify that the short-term, outcome-oriented, limited ‘transition’ from a violent political episode to a democratic, liberal future is an imperial intervention and as such can act as an extension of patriarchal, colonial societies<sup>93</sup> or amount to neo-colonialism.<sup>94</sup> The ‘transition’ to neoliberalism that paradigmatic TJ promotes can directly aid and perpetuate colonial projects and injustices as it enshrines the ideas of colonial linear progress.<sup>95</sup> Violence towards indigenous people and cycles and long-term patterns of violence and intergenerational grievances such as, for instance land appropriation are considered as ‘far-off’ or ‘neutralised’ past<sup>96</sup> and therefore outside the scope of the transition.<sup>97</sup> The ‘transition’ in question is therefore limited in its capacity to become a transition from structural injustices and underlying conditions such as racism, sexism and

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<sup>87</sup> Bell (n 6) 5.

<sup>88</sup> Stephen Winter, ‘Towards a Unified Theory of Transitional Justice’ (2013) 7 *International Journal of Transitional Justice* 224, 225.

<sup>89</sup> *Ibid.*

<sup>90</sup> George N. Fourlas, ‘No Future without Transition: A Critique of Liberal Peace’ (2015) 9 *International Journal of Transitional Justice* 109.

<sup>91</sup> Josh Bowsher, ‘Omnus et Singulatum’: Establishing the Relationship Between Transitional Justice and Neoliberalism’ (2018) 29 *Law Critique* 83, 86.

<sup>92</sup> *Ibid.* 85.

<sup>93</sup> Khanyisela Moyo, ‘Feminism, Postcolonial Legal Theory and Transitional Justice: A Critique of Current Trends’ (2012) *International Human Rights Law Review* 237.

<sup>94</sup> Patricia Lundy and Mark McGovern, ‘Whose Justice? Rethinking Transitional Justice from the Bottom Up’ (2008) 35 *Journal of Law and Society* 265.

<sup>95</sup> Augustine SJ Park, ‘Settler Colonialism, Decolonization and Radicalizing Transitional Justice’ (2020) 14 *International Journal of Transitional Justice* 260, 277.

<sup>96</sup> Alejandro Castillejo-Cuéllar, ‘Historical Injuries, Temporality and the Law’ (2014) 25 *Law and Critique* 47.

<sup>97</sup> Bill Rolston and Fionnuala Ní Aoláin, ‘Colonialism, Redress and Transitional Justice: Ireland and Beyond’.

economic inequalities that have sustained colonial ventures and their aftermaths.<sup>98</sup> For instance, Sesay's work, underpinned by political philosophy and political theory, positions the 'transition' component in TJ as a project that seeks to 'restore the integrity of the existing normative and social order' as fundamentally distinct from and incompatible with 'decolonization' that necessitates the dismantling of the underlying system of structural injustices, in whole or in part.<sup>99</sup>

Yet, other post-colonial scholars show an interest in using 'transitional strategies' in established democracies that are also settler colonies (i.e., 'settler democracies') and therefore expand the scope and character of the 'transition' component of TJ.<sup>100</sup> For example, socio-legal scholars Balint and colleagues draw on postcolonial and settler colonial theories to propose that 'the flexibility and potentiality of TJ make it suitable for addressing formerly neglected historical harms.'<sup>101</sup> The strengths of TJ around legal and institutional reform can be enhanced by settler colonial theory's insistence on the continuation between past and present to enhance structural change, therefore reconceptualizing TJ from redressing only what is what visible, recent or immediate to what is 'structural'. TJ in that sense 'enables as well as accompanies transition.'<sup>102</sup>

### (iii) Temporality

Considering the centrality of the concept of 'transition' as a move from one point in time to another, studies of temporality have only recently entered into the mainstream spaces of TJ. In terms of its temporality, TJ has commonly been conceptualised as linear and objective, whereby it serves to 'deal' with the past to prevent future violations, assuming that both the past, present and future are definite points on the linear flow of time detached from individual and group experiences and memories. 'Transition' itself then is a limited period, typically starting with a peace agreement or a regime change, in which a society has broken away from the past violence and is actively working towards ensuring a peaceful, justice time ahead, although it is not always clear when the transition ends. Such linear temporality has been a characteristic of the legal discipline and in particular criminal law.

Scholarly work underpinned by sociology, anthropology and education disrupts this linear narrative by demonstrating that neither the past nor the future are fixed points in time and the perceptions of when transitions start and end, what they constitute and what people and societies are transitioning from remain deeply diverse.<sup>103</sup> These interventions enrich the field in two notable ways: firstly, they suggest that 'transition' in and out of itself is not a limited or

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<sup>98</sup> Makau Mutua, 'What Is the Future of Transitional Justice?' (2015) 9 *International Journal of Transitional Justice* 1.

<sup>99</sup> Mohamed Sesay, 'Decolonization of Postcolonial Africa: A Structural Justice Project More Radical than Transitional Justice' (2022) 16 *International Journal of Transitional Justice* 1.

<sup>100</sup> Park (n 95) 261.

<sup>101</sup> Jennifer Balint, Julie Evans, Nesam McMillan, 'Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach' (2014) *International Journal of Transitional Justice* 194.

<sup>102</sup> *Ibid.*, 214.

<sup>103</sup> Natasha Mueller-Hirth and Sandra Rios Oyola (eds.), *Time and Temporality in Transitional and Post-Conflict Societies* (Routledge, 2018); Victor Igreja, 'Multiple Temporalities in Indigenous Justice and Healing Practices in Mozambique' (2012) 6 *International Journal of Transitional Justice* 404.

extraordinary period of time and secondly, they show that temporalities and, therefore transitions, are subjective and multiple.

The very notion of ‘transition’ in TJ as being exceptional, extraordinary and timebound is challenged. Such a conception largely stems from legal scholars such as Teitel, who saw TJ as ‘caught between the past and the future, bridging the two points in time.’<sup>104</sup> Transitional justice thus becomes both backward- and forward-oriented and extraordinary, a moment of ‘rupture’, ‘a radical break’ from past violence and injustices.<sup>105</sup> Critical scholars such as Hansen deconstruct the notion of ‘transition’ being a limited and exceptional ‘window of opportunity’ on the account of both violations and justice demands and processes being instigated both before and after the limits of transition.<sup>106</sup>

Understanding time as subjective and relative also points to the existence of multiple temporal regimes in the experiences of victims, survivors that are negotiated socially and culturally. For instance, Katz and Shalev Greene argue that families of the missing can experience time as *parallel*, whereby the missing person’s time is ‘divided from their own’ or even *perpetual*, time outside linear where the missing person is presumed neither dead nor alive.<sup>107</sup> Such experiences blur the boundaries between life and death, with that, peace and conflict, showing that some individuals and groups never ‘transition’ out of the past into an enhanced future. Education scholars show that the understandings of multiple temporalities can improve what is counted as ‘legitimate historical knowledge in history education’,<sup>108</sup> extending ‘the backward gaze’ of TJ’ and including in education indigenous temporal knowledge and harms committed in ‘distant past.’<sup>109</sup>

### 3. Conclusion

Traditionally the underlying principle of disciplinary classification was the respective approach or method of *gaining* knowledge (rather than simply ordering it).<sup>110</sup> There is no doubt that transitional justice scholarship is a multi-disciplinary landscape. Insights and methods from a range of different disciplines are applied to the overarching questions and narratives of the field. Disciplines beyond law give us alternative tools to think about the big questions such as ‘where’ does justice happen? By and for whom? And even ‘why’? This enriches thinking on the core concepts of TJ.

However, while it is clear that the foundational concepts of TJ have been interrogated in multiple disciplinary spaces, it is less easy to argue that the disciplinary knowledge and

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<sup>104</sup> Teitel (n 3) 6.

<sup>105</sup> Zinaida Miller, ‘(Re)Distributing transition’ (2013) 7 *International Journal of Transitional Justice* 375.

<sup>106</sup> Thomas Obel Hansen, ‘The Time and Space of Transitional Justice’, in Cheryl Lawther, Luke Moffett and Dov Jacobs (eds.) *Research Handbook on Transitional Justice* (Edward Elgar, Cheltenham, 2017) 34.

<sup>107</sup> Ori Katz and Karen Shalev Greene, ‘Constructing Time in Uncertainty: Temporal Regimes among Missing Persons’ Families’ (2020) 69 *Current Sociology* 7.

<sup>108</sup> Matilda Keynes, ‘History Education for Transitional Justice? Challenges, Limitations and Possibilities for Settler Colonial Australia’ (2019) 13 *International Journal for Transitional Justice* 115.

<sup>109</sup> Julia Paulson and Michelle J. Bellino, ‘Truth Commissions, Education, and Positive Peace: An Analysis of Truth Commission Final Reports (1980–2015),’ (2017) 53 *Comparative Education* 374.

<sup>110</sup> Weingart (n 1) 4.



techniques of those disciplines have been *integrated* in a meaningful way into mainstream TJ scholarship. Philpott describes the temptation to ‘remedially append’ insight from other disciplines and schools of thought into one’s own thinking without understanding it in its fullness and disciplinary context. The importation of the concepts of forgiveness and reconciliation into the secular TJ discourse, divorced from their theological roots, is a good example of this dynamic.<sup>111</sup> This speaks to the existence within the field of distinct epistemic communities which may draw on concepts of techniques from other disciplines, but which do not engage in depth with the complexity of the discipline. Each of these disciplinary communities contains their own distinct core central ideas and traditions around which thinking coalesces. Understanding this helps us to understand the difficulties in establishing a genuinely interdisciplinary theory of transitional justice. When concepts are borrowed without a deeper interdisciplinary approach we are left with a two dimensional importation of ideas that struggle to advance knowledge of the underlying concepts of TJ. For example, Bell and O’Rourke argued that to pursue a properly gendered understanding of transitional justice it was necessary to start from the position of feminism and analyse TJ through that lens, rather than trying to fit feminist aims into the existing TJ structures. This encapsulates the difference between importation of ideas into TJ, and the application of interdisciplinary thinking that draws on structures of thought from beyond law to ask bigger questions about the nature of the field.

This tension plays out in the way in which multi or inter disciplinary scholarship is presented, and fundamentally whether the purpose of applying techniques from other disciplines is to reform the practices of transitional justice, or to disrupt them more radically. For example, much of the interdisciplinary scholarship is engaging in depth with critical theory, including continental philosophy, as a means of interrogating the limits of transitional justice. The work of theorists such as Arendt,<sup>112</sup> Derrida,<sup>113</sup> Foucault<sup>114</sup> Agamben<sup>115</sup> and others is used to construct critical frameworks for understanding some of the conceptual foundations of TJ. These bodies of theoretical work often address questions which are adjacent to those often considered more central to the TJ field, without engaging in the TJ literature. A caveat to note is therefore that what has been presented here is scholarship where disciplinary concepts and methods are in dialogue with the field of transitional justice. What is not captured is the extent of related scholarly fields of inquiry that address related themes but on a parallel track. Examples include genocide studies, atrocity prevention, and even international criminal justice. These bodies of knowledge develop along the parallel tracks of their own sub-disciplines.

Some of this can only fully be understood at a higher level of abstraction, identifying the embeddedness of transitional justice in much broader paradigms, such as for example,

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<sup>111</sup> Philpott (n 84).

<sup>112</sup> Arendt (n 71) used by Chakravarti (n 69).

<sup>113</sup> Jacques Derrida, *On Cosmopolitanism and Forgiveness* Mark Dooley and Michael Hughes (trans)(Routledge, 2001); ‘Force of Law: The Mystical Foundation of Authority’ in Drucilla Cornell et al. (eds) *Deconstruction and the Possibility of Justice* (Routledge, 1992); The Laws of Reflection: Nelson Mandela, In Admiration’ in Jacques Derrida and Mustafa Tlili (eds) *For Nelson Mandela* (Seaver Books, 1987), used by Turner (n 44).

<sup>114</sup> Michel Foucault, *Power: The Essential Works of Foucault 1954-1984* (3<sup>rd</sup> edn) (Penguin, 2002) used by Bowsher (n 91).

<sup>115</sup> Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive. Volume 3 of Homo Sacer* (Zone Books, 1999) used by Thorne (n 28).

liberalism which circumscribes the 'from' and the 'to' of transitional justice as well as importing a range of normative assumptions as to the nature of justice. Being able to see the boundaries of thought from alternative disciplinary perspectives holds the key to deeper engagement with the foundational questions of TJ.