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Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change

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ABSTRACT[1]

In reflecting on the contemporary challenges and future directions of transitional justice theory and practice, this article addresses causality, accountability and political form in a triangulated assessment of nationalism's power and 'stickiness' in the present formulations of transitional solutions. Addressing the identity politics of transitional justice brings us to assess the political forms that enable, define and consume transition with a particular hew to power-sharing and consociationalism-type arrangements in the aftermath of systematic atrocity. The authors provide a pragmatic, perhaps cynical account of the triumph of consociationalism as the preferred transitional accommodation, and point to the 'dark side' of governance arrangements in postconflict settings with implications for understanding cycles of violence and repeat conflict patterns. In both contexts, we deploy a feminist lens to understand the implications for women and gender transformation emerging from our framing of the politics of transitional justice in the contemporary moment.

KEYWORDS: Nationalism, feminism, power sharing, consociationalism, memory, identity

Transitional justice (TJ) theory and practice have retained a consistent multidecade preoccupation with accountability for gross and systematic human rights violations. Various permutations of the accountability dynamic have driven scholarly conversations, including the tension between amnesty and accountability, the interaction between local and international accountability and the inevitability of selectivity, deal making and derisory accounting for the totality of harms in the aftermath of atrocities. While causality for human rights violations figures prominently in social sciences literatures, TJ literature has been comparatively less concerned with causality and exploring what a TJ lens brings to bear on causation discussions. Reflecting on the contemporary challenges and future directions of TJ theory and practice, we address causality and

political form in a triangulated assessment of nationalism's power and 'stickiness' in the present formulations of transitional solutions. Addressing the identity politics of TJ brings us to assess the political forms that enable, define and consume transition with a particular hew to power-sharing and consociationalism-type arrangements in the aftermath of systematic atrocity. Consociationalism is a form of governance generally found in deeply divided societies that is based on power sharing among elites from different social groups. Two central characteristics of consociationalism are government by grand coalition and segmental autonomy. We provide a pragmatic, perhaps cynical account of the triumph of these models as preferred transitional accommodation, particularly in conflict-sourced transitions,[2] and point to the 'dark side' of governance arrangements in postconflict settings with implications for understanding cycles of violence and repeat conflict patterns.

In these contexts, we affirm that power-sharing and consociational agreements provide stability in transitions from violence, but caution that they can constrain deeper aspects of political transformation. They are necessary scaffolding and a limiting straitjacket in one handy package, preventing disintegration but also stunting growth. The pragmatism of certain forms of elite and nonstate actor power sharing has, we argue, had a singular effect on deepening nationalist identity and rewarding its expression through political power that enables clientalism, resilience and the intensification of traditional identities and militant expressionism.[3] The structured reproduction of ethnonational identities may be harmless in itself, but it may be accompanied by tight boundary making and the fostering of politically charged narratives of threat and historical hostility. Thus, the elite accommodation of power sharing and especially consociationalism has a much shallower reach into transitional settings than the spectacle of former combatants uniting in government suggests.

In addressing both resurgent nationalisms and forms of political settlement, we deploy two lenses: a feminist lens to understand the implications for women of our conceptualization of the politics of TJ in the contemporary moment, and a micro-level lens. Following the 'everyday' turn in the study of dealing with the past[4] and the increasing focus on the 'local' forge of nationalisms,[5] we pay close attention to how TJ engages or fails to engage with the micro powerhouses of 'hot' nationalism and communal identity.[6] Addressing the perniciousness of local nationalisms allows

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2 We note that there is no fulsome empirical tracking of the exact numbers of consociational deals versus power-sharing deals and that the analysis depends in part on one's definition of power sharing.

3 One counterexample is the Colombian litigation by an assorted group of nongovernmental organizations and right-wing political actors that sought to prevent the governance reward for a nonstate militant group. 'Colombia Court Bars Rebels Guilty of Atrocities from Public Office,' *Reuters*, 6 August 2014, http://www.reuters.com/article/2014/08/07/us-colombia-farc-court-idUSKBN0G703Q20140807 (accessed 4 November 2014).

4 'Transitional Justice and the Everyday: Micro-Perspectives of Justice and Social Repair,' special issue of *International Journal of Transitional Justice* 6(3) (2012); Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,' *Journal of Law and Society* 34 (2007): 411–440.

5 Siniša Malešević, *Nation-States and Nationalisms: Organization, Ideology and Solidarity* (Cambridge: Polity Press, 2013); Niall Ó Dochartaigh, 'Nation and Neighbourhood: Nationalist Mobilisation and Local Solidarities in the North of Ireland,' in *The Challenges of Ethno-Nationalism*, ed. Adrian Guelke (Basingstoke: Palgrave Macmillan, 2010); Tim Edensor, *National Identity, Popular Culture and Everyday Life* (Oxford: Berg, 2002).

6 'In Russia, across Europe and in Asia, nationalist movements and politicians are on the rise, reviving decades old ethnic rivalries and grievances and calling into question internationally accepted borders and institutions.' Gerald F. Sieb, 'Rise of Nationalism Poses Threat to Stability,' *Wall Street Journal*, 27 May 2014, A4.

us to see the extent to which gendered nationalism marginalizes women by exalting 'armed patriarchy.'[7] Cynthia Enloe makes the broad point in discussing anticolonial nationalism that it has 'typically sprung from masculinized memory, masculinized humiliations and masculine hope,' an analysis that has useful application at every nodal transitional point, including the local and specific.[8]

In addressing causalities and impediments to meaningful transition, we explore the extent to which transitional settlements have become enablers rather than dampeners on the politics of division and extremity. We maintain that as nationalist structures are rewarded, male privilege in the community becomes more entrenched. We underscore how nationalism's dominance affirms a premium on communal unity in the name of nation and group advancement, creating 'a priority which can silence women critical of patriarchal practices and attitudes.'[9] Moreover, in many transitional sites uneven but widespread patterns of regression in terms of women's claims and participation are discernable. In taking stock of a corpus of transitional settlements, we think it is highly problematic if, in fact, a bundle of TJ agreements (whether resulting from the end of conflict or the end of repression) have been agents of maintaining or reconstituting political enmity rather than enabling a route to transformative politics. Increased skepticism from critical political science literature on emboldened nationalism has yet fully to permeate TJ discourses.

As our analysis intersects with the exclusion of a gender analysis from TJ literature and policy, we underscore how nationalism's dominance affirms a premium on communal unity in the name of nation and group advancement – a formula which is inescapably male-crafted in its conceptions of nation, national identity and the construction of power. While some significant lacunae have been filled,[10] the bulk of scholarly work addressing violations against women through TJ (and the related fields of international criminal law and the law of armed conflict) has concentrated on physical (read sexual) harms to the female body.[11] We contend that a more fulsome engagement is required both in the realm of political structure and solutions and in terms of engaging with a gender-centered approach to the causalities of human rights violations, providing better explanations for why women often fail to gain substantively from transitional arrangements despite having contributed substantially to struggle, political transformation and military engagement.

This article aims to bridge some of these gaps and offer a research agenda to the highlighted issues. To that end, we start by addressing elite power-sharing models in transitioning societies, then address the complexity of nationalism and group identity

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7   Monica McWilliams, 'Struggling for Peace and Justice: Reflections on Women's Activism in Northern Ireland,' *Journal of Women's History* 6 (1995): 15, n 7.

8   Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (London: Pandora, 1989), 44.

9   Ibid., 56.

10   Fionnuala Ní Aoláin, 'Advancing Feminist Positioning in the Field of Transitional Justice,' *International Journal of Transitional Justice* 6(2) (2012): 205–228; Christine Bell and Catherine O'Rourke, 'Does Feminism Need a Theory of Transitional Justice? An Exploratory Essay,' *International Journal of Transitional Justice* 1(1) (2007): 23–44.

11   Ruth Rubio-Marín, 'Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue,' *William and Mary Journal of Women and the Law* 19 (2012): 69–104.

in such settings. We conclude by reflecting on the sum of these parts in the context of an imagined future for TJ discourse and practice.

ADDRESSING THE POLITICAL FIX, GENDER AND OTHER GAPS AND THEIR TRANSITIONAL INTERSECTIONS

As the ambit of TJ has expanded from a focus primarily on past accountability to a broader array of institutional and legal mechanisms, the form and powers of governance structures have increasingly become part of the TJ conversation. Institutional design conversations hold to tight consensus in these settings.[12] In particular, power-sharing and power-dividing institutions are a central currency in contemporary conversations.[13] In the aftermath of the Cold War, there was decided scholarly optimism about the capacity of negotiated settlements to bring about a resolution to entrenched conflict, racist regime forms and even situations of occupation.[14] The core formula means that if armed groups 'agree to lay aside their weapons permanently, [then] adversaries seek to clarify who is to hold state power, how it is to be exercised, and to what end.'[15] Much effort has been spent on documenting the means to get there, who might be at the table and what the elements of the 'deal' look like.[16] Belatedly, attention is now being paid to the negative aspects of power-sharing and consociational models, specifically their tendency to free communal divisions along ethnonational lines. As Ian Shapiro puts it, rather than resolving the problem, consociationalism may further exacerbate 'the malady it is designed to treat.'[17]

Much less ink has been spilt, not least because the proliferation in peace dealing is a relatively recent phenomenon, on the downstream consequences of the deals. Our instinct is that the value of ending violence has been the primary measure of the success of these arrangements. Hence scholarly preoccupation with measuring the frequency of intrastate conflicts and numerically establishing numbers of battle deaths per year.[18] These are important metrics and measure the success of conflict abatement in important dimensions. However, we suggest that the preoccupation with these metrics has obscured the less savory aspects of the deals, including elite collusion, formal and informal corruption and the costs of conflict by other means, whereby daily politics operates to undo deal integrity and the transformative future

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12 John McGarry and Brendan O'Leary, *The Northern Ireland Conflict: Consociational Engagements* (Oxford: Oxford University Press, 2004); John McGarry and Brendan O'Leary, *Explaining Northern Ireland: Broken Images* (Oxford: Basil Blackwell, 1995); John McGarry and Brendan O'Leary, *The Politics of Ethnic Conflict Regulations: Case Studies of Protracted Ethnic Conflicts* (London: Routledge, 1993).

13 Caroline A. Hartzell and Matthew Hoddie, *Crafting Peace: Power-Sharing Institutions and the Negotiated Settlement of Civil Wars* (University Park, PA: Pennsylvania State University Press, 2007).

14 Ibid.

15 Ibid., 3.

16 See more broadly Christine Bell's masterly study of peace agreements, including armed conflict endings. Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford: Oxford University Press, 2008); Christine Bell, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2000).

17 Ian Shapiro, *Democracy's Place* (Ithaca, NY: Cornell University Press, 1996), 102.

18 The Uppsala Conflict Data Program defines a conflict as active if there are 'at least 25 battle-related deaths per calendar year.' Department of Peace and Conflict Research, Uppsala University, 'Definitions,' http://www.pcr.uu.se/research/ucdp/definitions/ (accessed 4 November 2014).

of compromise.[19] This emphasis on negative peace also obscures the ways in which the very masculinization of measuring success compounds a process of exclusion whereby women are pushed back to their 'accustomed place.'[20] Even as women have contributed to enabling change, they have been sidelined in the new normal.

Studies have (with some evidence) presumed that in power-sharing exercises 'antagonists must typically abandon their interest in sole control of the state in exchange for the compromises associated with the sharing or dividing of power.'[21] What if, instead, antagonists agree to divide the spoils and split polities in ways that maintain their relative advantages, strengths and ideologies vis-à-vis their own constituencies?[22] What if the 'durable' peace is an illiberal shadow land where the spoils are kept and maintained by elite militants or those associated with them? What if, as Bernadette Hayes and Ian McAlister suggest, 'women are frequently ill-served by such peace settlements, since gender equality is often sacrificed in an effort to resolve conflicts over national identity'?[23]

CONSOCIATIONALISM'S DARK SIDE: THE TRIUMPH AND PROTECTION OF NATIONALISMS

Arend Lijphart's claim that the democratic structure most appropriate for a deeply divided society is consociationalism has had considerable influence.[24] In this way of thinking, majoritarian structures undermine the project of remolding culturally fragmented societies. Consociational or consensus democracy requires a number of *a priori* schematic commitments: grand coalitions; stabilizing elite behavior;[25] segmental autonomy (allowing for autonomy within agreed policy fields); proportionality; and mutual veto. Consociationalism (with various tweaks) has become the preferred political model of accommodation for deeply divided polities in post-Cold War conflict settlements, even as critiques have emerged concerning its costs.[26] Consociational models have grown in prominence because they hew to a narrative of elite engagement, which arguably resonates with the external actors and

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19   We note that some empirical work has been undertaken to address the relevance of human rights norms for power sharing. Sahla Aroussi and Stef Vandeginste, 'When Interests Meet Norms: The Relevance of Human Rights for Peace and Power Sharing,' *International Journal of Human Rights* 17(2) (2013): 183–203 (based on a dataset of 82 peace agreements from 20 Sub-Saharan African countries).

20   This is the cogent point that emerges from Kumari Jayawardena's expansive study of feminism and 'third world' nationalism. Kumari Jayawardena, *Feminism and Nationalism in the Third World* (London: Zed Books, 1986).

21   Hartzell and Hoddie, supra n 13 at 4.

22   What if, as per William Evans, a peace settlement is 'the expression of a common understanding, usually forged between elites, about how power is organized and exercised' but not necessarily exercised in positive ways? William Evans, *A Review of the Evidence Informing DFID's 'Building Peaceful States and Societies' Practice Paper: Paper 1: Political Settlements, Peace Settlements, and Inclusion* (London: UK Department for International Development, 2012).

23   Bernadette Hayes and Ian McAllister, 'Gender and Consociational Power Sharing in Northern Ireland,' *International Political Science Review* 34 (2012): 123.

24   Arend Lijphart, 'Consociational Democracy,' *World Politics* 21(2) (1969): 207–225; Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven, CT: Yale University Press, 1977).

25   For Lijphart, the behavior of elites is crucial to creating a stable democracy in a highly plural society. Lijphart, 1969, supra n 24.

26   A key empirical gap is data and there is a compelling need for even a rudimentary survey of political form in such arrangements. Alternatives include integrationalist approaches that advocate the dispersion of

internationalization of conflict management and conflict outcomes.[27] These models have increasingly engaged in parallel with the paradigmatic TJ toolkit, or they are viewed as a necessary precursor to the functioning of the TJ toolkit in societies emerging from conflict or repression. As Edward Laws has noted, the focus on inclusivity has meant that analysis of these settlements has ignored the extent to which inclusive actors actually undo the transitional deal (usually in the implementation phase).[28]

The Bosnian case is one cogent example of a Frankenstein form of state emerging from a transitional settlement in which consociationalism plays a central role. Almost two decades since the end of the war, elite political behavior in Bosnia remains combative, continuing to aggravate mutual tensions and political instability.[29] The marginalization of women political actors is consistent, as the practices and symbols of doing politics code masculinity (and particularly wartime combatant status) as the center of politics while what has been rendered feminine is relegated to the margins.[30] Political cooperation is markedly absent in the common institutions created by the Dayton Agreement, and extensive (or functional) governmental coalitions are not on the horizon. The peace dividend is absent in multiple ways and the governance forms in part produced that outcome through the legitimized reality of the peace agreement itself.

Identity politics dominate the postwar terrain in Bosnia and are central to the politics of accountability, memory and restitution. In the prewar context, privileged ethnic groups were regarded not as minorities but as 'constituent people' under the Yugoslav constitution. There is a vast difference between the two concepts. A constituent people are equal in status with all other 'peoples.' Their rights are not the product of majority charity but an entitlement on the basis of parity. No doubt, it can be said that the terminology of 'constituent people' gave rise to the language of self-determination and secession. While we acknowledge that this link was made as a political matter, one does not necessarily lead to the other. It nonetheless means that to move from the status of a 'constituent people' to that of a minority is a demotion and was collectively understood as such in the break-up of the Yugoslav federation.

In the Dayton framework, the protection of 'entities' hides this demotion quite strategically. Dayton does not address the problem of accommodating peoples accustomed to formal legal equality as a constitutional matter. It simply papers over the

    power across communal lines of division and the allocation of resources to cross-community interactions. Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley, CA: University of California Press, 2000).

27 *Sejdić and Finci v. Bosnia and Herzegovina,* Case Nos. 27996/06 and 34836/06, European Court of Human Rights (2006).

28 Edward Laws, 'Political Settlement, Elite Pacts, and Governments of National Unity: A Conceptual Study,' Developmental Leadership Program Background Paper No. 10 (2012).

29 See, e.g., 'Legal Ethnic Cleansing Keeps Sarajevo Muslim,' *International Herald and Tribune*, 3 February 1998, A4. See also, Martha Walsh, 'Aftermath: The Role of Women's Organizations in Post-Conflict Bosnia and Herzegovina,' in *Women and Civil War: Impact, Organizations and Action*, ed. Krishna Kumar (Boulder, CO: Lynne Rienner, 2000).

30 For a similar analysis in the Israeli–Palestinian context after the Oslo Accords of 1993, see, Sharon Sharoni, 'Gender and the Israeli-Palestinian Accord: Feminist Approaches to International Politics,' in *Gendering the Middle East: Emerging Perspectives*, ed. Deniz Kandiyyoti (London: I.B. Tauris, 1996).

problem by entrenching the spatial and social segregation of those same peoples. The separation has led to the consolidation of ethnic power structures in each Dayton entity, with a peculiar form of elite collusion dominating political space. Despite significant formal differences between the political entities, in practice, male elites in all three political spaces – Serbian, Croat and Bosniak – have a sustained interest in maintaining nationalist identity and jingoism, which remains central to their own maintenance of and access to power. The exclusion of women and minorities from transformative politics has been striking and sustained. Despite the rhetorical elevation of sexual harms to accountability narratives, women remain marginal to the exercise of meaningful political and administrative power, and in practice there is sustained distance from the 'benefits' of victim status in the post-Dayton reality.[31]

The masculinity of the constitutional settlement is confirmed by value-laden constitutional hierarchies and recognition politics. The constitution recognizes three nations within its confines. The Republika Srpska is recognized as one 'entity' – a concession to the aspirations to nationhood demanded by its political leadership.[32] Equally, the Federation of Bosnia and Herzegovina is acknowledged as an 'entity.' In fact, the term 'entity' appears 55 times in the constitution, and the term 'citizen' only seven times.[33] The emphasis on entity identity over citizenship underscores a broader challenge we identify here, namely the ways and means by which transitional settlements enable group identities (often the very identities that produced the conflicts) and does little to advance transformative identities and politics in the transitional domain. Moreover, the linkage of citizenship to value in the transformed polity should give pause, not least because, as Carol Pateman has shown, the social philosophy that gives solid foundations to the rise of state citizenship was constructed in terms of the Rights of Man, a social contract based on the fraternity of men.[34] The exclusionary dimensions of citizenship are compounded in societies emerging from conflict and repression where, as Naomi Chazan aptly observes, 'a [divided] society in a prolonged period of conflict inevitably develops values which underestimate the role of women and [their] essential contribution to the social order.'[35] Women have then tended to rely on activism in the informal political sphere in the form of extrainstitutional grassroots and community networks. These sites create substantial capacity for agency, cross-community connection and transformative thinking. While these alternative spaces have provided a means to work on a range of issues and sometimes to enable transversal politics, the translation to political power in new political institutions has been decidedly limited.

Notably, the Dayton Agreement, including its consociational dimensions, was the precursor for a series of similarly structured peace treaties, including the peace settlement in Northern Ireland (NI). NI manifests many of the same dysfunctional fault lines resulting from the political power-sharing compact at the heart of the agreed transitional process, though spatial geography did not effect the same kind of

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31 See, Medica Zenica, http://www.medicazenica.org (accessed 4 November 2014).

32 Constitution of Bosnia and Herzegovina, Dayton Peace Agreement, signed 14 December 1995, reprinted in ILM 35 (1996) 170–183, annex 4, art. 1.

33 Ibid.

34 Carol Pateman, *The Sexual Contract* (Cambridge: Polity, 1988).

35 Naomi Chazan, 'Gender Equality? Not in a War Zone!' *Israeli Democracy* 3 (1989): 5.

dominant cleavage in the conflict and its settlement. The 1998 NI Peace Agreement is explicitly based on a consociational format.[36] The peace process has been heralded as a success story by the international community, and its transplantation has been actively encouraged.[37] As Rupert Taylor notes, NI now 'shines as the brightest star in the new consociational universe.'[38]

Vignettes from these two countries illustrate some of the broader challenges advanced here. In NI, the power-sharing agreement has been distinctly dysfunctional.[39] While a shift from extremist ethnic outbidding to a more moderate form of government by 'ethnic tribunes' has been detected,[40] this tribune role is still vulnerable to ethnic entrepreneurs, and fears of the politically active 'base' have led to instability and blockage, particularly around legacy issues such as truth recovery, investigations, memory sites, commemorations and on-the-run prisoners. NI's postsettlement realities evidence sustained functional weakness underpinned by a healthy dose of misogynous masculinity. Women's experiences of working within the peace process institutions as well as the democratically elected local Assembly in the postagreement period have been marked by sexist exclusion, gender-based harassment through verbal intimidation and ongoing marginalization of core issues of sexual rights and sexual autonomy,[41] a process of sidelining not unusual in transitional contexts.

As noted elsewhere, postconflict contexts present the possibility of entirely new conditions and systems of governance, and governance programs provide the possibility of radical transformation regarding the place of women in the society's political processes.[42] Transformation is not inevitable, of course, because the transitional state is not a tabula rasa. The political and economic direction the emerging state takes will be heavily influenced by its previous form, the influence of its elites and its prewar and wartime power structure. However, we identify the danger that while power-sharing models offer the illusion of a transformed political landscape, in practice, for women the patterns of exclusion function in deeply familiar ways and

36 Donald Rothchild and Phillip G. Roeder, 'Dilemmas of State-Building in Divided Societies,' in *Sustainable Peace: Power and Democracy after Civil Wars*, ed. Phillip G. Roeder and Donald Rothchild (Ithaca, NY: Cornell University Press, 2005).

37 See, e.g., Gorka Espiau Idoiaga, *The Peace Processes in the Basque Country and North Ireland (1994–2006): A Comparative Approach* (Barcelona: Istitut Català Interacional per la Pau, 2010).

38 Rupert Taylor, *Consociational Theory: McGarry and O'Leary and the Northern Ireland Conflict* (Abingdon: Routledge, 2009), 7.

39 Hayes and McAllister, supra n 23; Bernadette Hayes, Ian McAllister and Lizanne Dowds, 'The Erosion of Consent: Protestant Disillusionment with the 1998 Northern Ireland Agreement,' *Journal of Elections, Public Opinion and Parties* 15(2) (2005): 147–167.

40 Paul Mitchell, Geoffrey Evans and Brendan O'Leary, 'Extremist Outbidding in Ethnic Party Systems Is Not Inevitable: Tribune Parties in Northern Ireland,' *Political Studies* 57(2) (2009): 397–421.

41 Fidelma Ashe and Carmel Roulston, 'The Gender Politics of Negotiating and Renegotiating the Peace in Northern Ireland' (unpublished manuscript, 2014), on file with authors. See also, Cera Murtagh, 'A Transient Transition: The Cultural and Institutional Obstacles Impeding the Northern Ireland Women's Coalition in its Progression from Informal to Formal Politics,' *Irish Political Studies* 23(1) (2008): 21–40.

42 Fionnuala Ní Aoláin, Dina Francesca Haynes and Naomi Cahn, *On the Frontlines: Gender War and the Post-Conflict Process* (Oxford: Oxford University Press, 2011). See generally, 'Enhancing Women's Participation in Electoral Processes in Post-Conflict Countries,' UN Doc. EGM/ELEC/2004/REPORT (20 February 2004) (UN special advisor on gender explaining the link between gender and postconflict governance programming).

pose dangers of backslide. Although governance programs ostensibly contemplate the incorporation of women more centrally into each dimension (cf. UN Security Council Resolution 1325 mandates), practice on the ground demonstrates that where gender is dealt with at all, it is done in governance programs by (1) encouraging women to vote, (2) inserting women into legislative and executive structures via quota requirements and (3) assuming that women will find their voice within civil society, while men maintain their traditional dominance over formal political systems. Thus, transitional systems remain gendered to men's advantage and often function as a means to reassert elite male control over political systems in ways that definitively ouster women. Feminist scholars have consistently argued that the only means to engage a transformative gender politics in transition is sustained practices and institutions of 'engendered governance,' as distinct from the transitional political models currently on offer.[43]

ETHNONATIONALISM, THE LOCAL AND TRANSITIONAL JUSTICE

We now turn to the tensions between TJ and local engagement with ethnonationalism in deeply divided societies. We begin with critiques of the liberal peace and debates about localism and hybridization that can help frame the interchange between TJ and politically salient local identities. The local is conceptualized as a space that liberal frames and approaches of 'top-down' peacebuilding and TJ find challenging. Yet, it is a space of real import. The analysis then examines the make-up of ethnonationalism and memory, before examining preferences within TJ discourse that impinge on its ability to engage with ethnonationalist conflict. A future vision requires TJ not only to seek to define liberal discourses in a particularistic setting but also to be ready to engage with ethnonationalism in a variety of scales.[44] This may not only lead to a recalibration of TJ practice, but at first sight suggests a massive increase in resources, which may overburden the field. Consequently, we argue for a more strategically adaptive approach, based on agonistic approaches, which can enable narratives and testimony to meet and interact.

Transitional Justice, Liberalism and Critiques of the 'Liberal Peace'

This special issue asks whether 'the pivots of liberalism' remain the end results of TJ, and more specifically what TJ, shot through with liberal democratic discourse, could contribute in counteracting bitter ethnic rivalry. In answering these questions, it is useful to unpack broad themes within this liberal discourse. Liberalism presupposes the individual citizen (as opposed to the state or communal group) as the primary unit in society. While there is room for the individual's sovereignty to be overridden, this emphasis on the individual as opposed to a 'collective' is what sets the liberal schema apart from other ideologies. We note here the evident tensions with the political formulas of power sharing and consociationalism addressed above and the

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43 Georgina Waylen, *Engendering Transitions: Women's Mobilization, Institutions, and Gender Outcomes* (Oxford: Oxford University Press, 2007).

44 On the meaning of 'local' in TJ, see, Rosalind Shaw and Lars Waldorf, 'Introduction: Localizing Transitional Justice,' in *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, ed. Rosalind Shaw and Lars Waldorf (Stanford, CA: Stanford University Press, 2010).

tension with core liberal values. Taking the individual as its normative base, liberal-
ism then postulates that individual freedoms should be promoted, and indeed are
universal. Acknowledging that individuals' interests can clash, it argues for tolerance,
pluralism and equal opportunities. An attached tendency is that liberalism retains a
certain 'whiggishness,' a belief in reformability and progression.[45] While this is a sim-
plified thumbnail sketch, it captures something of the amalgam of the liberal dis-
course. One can readily see that its point of origin is the global North, or more
specifically the industrialized nations of Europe and North America.

It is here that critics of the 'liberal peace' enter. Chandra Lekha Sriram was the
first to swing this critical lens over TJ, pointing out that the liberal peace was con-
joined to TJ in the peacebuilding schema constructed by international actors.[46]
She warns that TJ mechanisms, like liberal peacebuilding, may form an imposed
agenda that is a poor fit for local legal and political cultures, contributing to instabil-
ity in postconflict societies. The poor fit is exacerbated in assuming a heterogeneous
context into which the 'fix' is applied, and from a feminist perspective operates (even
when it seeks to include women) to assume the category of 'woman,' rather than
seeing that term as 'a constantly shifting signifier of multiple meaning.'[47] The wider
critique of the liberal peace runs deeper still. Critics are concerned with the rigidity
of liberal discourse and its presuppositions. A summary of the liberal peace critique
by Roger Mac Ginty reveals its poor report card,[48] with the baggage of the liberal
discourse smuggling in deeper ideological problems that impact on the structures of
intervention. The liberal peace prefers to see and reproduce in its own image, gener-
ating state 'foundations' with limited local roots because they are culturally inappro-
priate. It prefers to respond to manifestations of conflict rather than structural
causes. While the liberal peace may appear highly active, it leaves underlying power
relations (in terms of gender, class or identity) mostly unchanged. In its reliance on
liberally based rule of law suppositions, it reproduces the private/public divide in
ways that systematically disadvantage women.[49] Its frames of reference, how it sees
problems, may fail to connect with local expectations, and it lacks nimbleness in
taking account of local political cultures. 'The summary of these criticisms,' states
Mac Ginty, 'is that the liberal peace often produces a poor quality peace in societies
emerging from civil war.'[50]

This presents an arresting, unsettling picture. But its utility lies in exposing the
assumptions carried over from liberal discourse when the liberal peace engages with
deeper structural problems, such as those posed by clashing ethnonationalisms. One
need not subscribe to a hyperbolic and emancipatory vision of TJ to see that many

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45 Norberto Bobbio, *Liberalism and Democracy* (London: Verso, 2005); Jose G Merquior, *Liberalism, Old and New* (Boston: Twayne, 1991).

46 Chandra Lekha Sriram, 'Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice,' *Global Society* 21(4) (2007): 579–591.

47 Jackie Stacey, 'Untangling Feminist Theory,' in *Introducing Women's Studies: Feminist Theory and Practice*, ed. Diane Richardson and Victoria Robinson (London: Macmillan, 1993), 64.

48 Roger Mac Ginty, *International Peacebuilding and Local Resistance: Hybrid Forms of Peace* (Basingstoke: Palgrave Macmillan, 2011).

49 Fionnuala Ní Aoláin and Michael Hamilton, 'Gender and the Rule of Law in Transitional Societies,' *Minnesota Journal of International Law* 18 (2009): 380–402.

50 Mac Ginty, supra n 48 at 42.

of the criticisms of the liberal peace can be leveled at TJ. Too many TJ processes and goals are conjoined to notions of peacebuilding for it to throw up a firewall.[51] Although TJ and peacebuilding often work in partial seclusion, critical interpretations from both now triangulate to spotlight the dangers of top-down approaches and cultural disconnection.[52] The answer given is to ground one's research and practice in the grassroots, to let go of legalism and seeing like a state, to culturally attune the TJ discourse through vernacularization and to allow the hybridization of peace-building interventions. Gender vigilance is essential in this move because consistent intentionality is needed to 'see' how women can and do participate in ethnic and national processes, and how patriarchal orthodoxies can blindside even the most well-meaning enterprise.

As one moves back to the local there must be mindfulness of gender and gender-ing in communities, consciousness raising and the production of gender-aware proc-esses to enable defined structural ends. Naivety as to the depth of the struggle for women in asserting equal rights at the local level is fatal. Equally, underestimating the capacity for self-empowerment, birthing political invention and the ways in which opportunity spaces can be used to alter existing patterns of gender relations should not be misjudged.[53] Embedding and attuning TJ and peacebuilding in the postcon-flict firmament plays to the strengths of local actors, it is argued, who have the neces-sary antennae to diagnose problems and to second-guess what will 'take.' We take this as the nonnegotiable starting point, with a caveat to the necessity of gender prompts along the way. Men and women also have the local social capital necessary to make a meaningful translation and intervention. This is key in deeply divided soci-eties, as ethnonationalism is a powerful actor whose reach is both broad and deep, nestled in local community life.

AUTHENTIC LOCALISM AND SIMULATED AUTOCHTHONY: THE ROOTS OF ETHNONATIONALISM

As Anthony Smith has argued, the link between nationalist projects and the past is fecund. Indeed, in the case of ethnonationalism (rather than civic nationalism) that link is one of dependency.[54] The power of recent memory of conflict is seldom treated in isolation from deeper national mythologies. It can be used to inflect and refashion other ethnic myths from the distant past, whether it be Israel's myth of Masada, Serbian nationalist invocations of the Battle of Kosovo or Lebanese Shi'ite grafting of modern concerns onto the narrative of Ashura.[55] Smith refers to the

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51 See, e.g., 'Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,' UN Doc. S/2004/616 (2004).

52 Oliver Richmond, *A Post-Liberal Peace* (New York: Routledge, 2012); Roger Mac Ginty and Andrew Williams, *Conflict and Development* (New York: Routledge, 2009); Kieran McEvoy and Lorna McGregor, *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford: Hart, 2008).

53 Georgina Waylen, 'Analyzing Women in the Third World,' in *Women and Politics in the Third World*, ed. Haleh Afshar (London: Routledge, 1996).

54 Anthony D. Smith, *Ethno-Symbolism and Nationalism: A Cultural Approach* (New York: Routledge, 2009). See also, Duncan S. Bell, 'Mythscapes: Memory, Mythology, and National Identity,' *British Journal of Sociology* 54(1) (2003): 63–81.

55 Nachman Ben-Yehuda, *The Masada Myth: Collective Memory and Mythmaking in Israel* (Madison, WI: University of Wisconsin Press, 1996); Florian Bieber, 'Nationalist Mobilization and Stories of Serb

power and utility of the deeper past as the 'myth symbol' complex, a dense bedding of narratives and emotionally laden symbols that sediments itself in a national community's cultural memory. Strikingly, as Linda Racioppi and Katherine O'Sullivan See point out, 'if ethnic identity and ethnic group formation are rooted in notions of descent and familiarity . . . then gender is necessarily at their heart.'[56] This process of sedimentation is conducted both by elite actors and by social processes, drawing from local, recognizable histories and practices. In other words, the cultured intellectual, the political demagogue, the local ethnic entrepreneur and the transfer of family or local history are all part of the mix.[57] These actors may serve different purposes separately, but they all add to a potent brew. Crucially, if this mix is opportune and congruent with contemporary circumstances, the myth symbol complex may be yoked to understandings of the recent past to inform political activity. We record the obvious: that avoiding the disappearance of gender from theoretical and empirical analyses of ethnonationalism is a work in progress.

This political potency of memory is easily unpicked. Jan Assmann has categorized collective memory as combining two broad forms: communicative memory and cultural memory.[58] The former represents both autobiographical and oral history. It is memory as lived experience or as 'talk' – the process of socialization at its most affective level, that of family, peers, community. It has a cross-generational reach but not a vast historical one. It provides an historical 'feel for the game,' fixing various dispositions about you, your community, how the past of both relate to one another and how that bundle now relates with the present. Cultural memory, on the other hand, is the representation of the past in material, symbolic and ritual forms and is thus structured around monuments, museums, national, religious and ethnic calendars.

In areas affected by ethnonational conflict, the distinction between communicative and cultural memory collapses, representing a real challenge for TJ. Autobiographical memories, folk histories and intergenerational narratives often coexist with concrete representations of the same. Stories of ethnic riots, assassinations, bombings, repression, forced flight, loss of home, separation from children, strikes and confrontation may be both aired in the home and made concrete and highly visible in public space. Not unexpectedly, gendered narratives of loss and harm have a more taxing journey from home to public space. It is striking, too, that such collapsed memory elevates the masculinity of action and if women appear at all, they do so in luminal and highly essentialized ways. By and large, emotional harms remain locked away, as does a distinct vocabulary of female-specific harms. More often than not, direct physical violence, specifically sexual harms, dominate memory narratives about women. This is not simply a reflection of

Suffering: The Kosovo Myth from 600th Anniversary to the Present,' *Rethinking History: The Journal of Theory and Practice* 6(1) (2002): 95–110; Augustus Richard Norton, 'Ritual, Blood, and Shiite Identity: Ashura in Nabatiyya, Lebanon,' *TDR: The Drama Review* 49 (2005): 140–155.

56 Linda Racioppi and Katherine O'Sullivan See, 'Nationalism Engendered: A Critique of Approaches to Nationalism' (paper presented at the annual meeting of the International Studies Association, Chicago, IL, 1995), cited in Rick Wilford and Robert L. Miller, eds., *Women, Ethnicity and Nationalism: The Politics of Transition* (London: Routledge, 1998), 11.

57 Anthony D. Smith, *Myths and Memories of the Nation* (Oxford: Oxford University Press, 2000).

58 Jan Assman, 'Communicative and Cultural Memory,' in *Cultural Memory Studies: An International and Interdisciplinary Handbook*, ed. Astrid Erll and Ansgar Nunning (Berlin: De Gruyter, 2008).

the need to mourn and acknowledge recent trauma. Nationalism has a hunger for narratives, a predisposition for the production of symbols and a continuous need for the consumption of these narratives and symbols in commemorative forms. It is no accident that the dominant shortcut is the common construction of women as the symbolic form of the nation, whereas 'men are invariably represented as it chief agents.'[59] Reframing these scripts as one turns to narrative, commemoration and memory is an essential but challenging move that requires sequencing, intentionality and reflection.

To the nationalist, museums, rituals and other practices simultaneously attempt to bind communities and instill goals and values, including gender ideologies. In his empirical comparative study of postcommunist ethnonational conflict, Stuart Kaufman notes how

> symbols are powerful because they simultaneously refer to an interest and to an emotionally laden myth, often framing a conflict of interest as a struggle against hostile, evil, or subhuman forces. Ethnic or national symbols are immensely powerful in this context, enabling a politician to reinterpret a conflict of interest as a struggle for security, status, and the future of the group.[60]

We thus see in many ethnonational arenas an intermittent buzz of communicative memory, part echoing around a more structured landscape of memorials, commemorative rituals, vernacular museums and other forms of cultural memory, whether in broadcast, cultural or electronic forms. That ethnonationalist groups value and utilize these processes is evident from the proliferation and pace of their creation, and also from the colonization and upgrading of new forms of representation. The use of the past walks hand in hand with innovation, perhaps providing a further clue to its focus on present needs.

Ethnonationalism Beds into the Local

The study of national identity has taken a turn to the local in examining not simply expression but also the production of national identity. Jonathan Hearn, Michael Billig and Tim Edensor have examined the quotidian accumulation of meaning that builds into national feeling.[61] A sense of 'us' and 'them,' and the importance of symbols and narratives, is flagged in everyday discourse through mass media, culture, schooling and social networks. National identity typically sediments into the individual and group over an extended period. Although almost imperceptible, over time its effect is potent. In the Basque and Palestinian settings the importance of dense social networks in locality for reproducing ethnonational identity has been noted, and ethnonational mobilization based on narratives particularly attuned to the local, familiar and everyday has been observed in the context of NI.[62]

59 Wilford and Miller, supra n 56 at 1 (discussing the relationship between women and nationalism).
60 Stuart J. Kaufman, 'Symbolic Politics or Rational Choice? Testing Theories of Extreme Ethnic Violence,' *International Security* 30(4) (2006): 52.
61 Jonathan Hearn, 'National Identity: Banal, Personal and Embedded,' *Nations and Nationalism* 13(4) (2007): 657–674; Michael Billig, *Banal Nationalism* (London: Sage, 1995); Edensor, supra n 5.
62 Ó Dochartaigh, supra n 5; Laleh Khalili, 'Grass-Roots Commemorations: Remembering the Land in the Camps of Lebanon,' *Journal of Palestine Studies* 34(1) (2004): 6–22; Jan Mansvelt Beck, 'The Continuity

Urban neighborhoods and their own stories of conflict become emblematic for national-level violence.[63] The process works the other way, too, as the grander ethnonational conflict collapses into the local.

It is clear that ethnonational identity has authenticity – roots that draw meaning from the consumption of nationalizing ideas that conduct along very real social networks at the local, everyday level. But it is also true that much of this identity has to be worked at, by purposeful political actors – ethnonational identity is not a primordial given but the product of groups within the broad ethnonational bloc.[64] In short, it is ideological. Yet, it is not the only process of meaning making at the everyday level. We contend that TJ can play a role in allowing other voices to circulate, especially given the turn toward 'thicker' forms of locally shaped practice. In this circulatory process we see the weaving of dense gendered narratives having the capacity to reframe representation and reality for ethnonational identity politics and for the lived and gendered life of all participants.

Transitional Justice and Ethnonationalism: The Past as Compass to the Present

Nationalism and TJ appear as opposites. The former is an ideological project based around particularism and boundary making, while the latter is an outworking of the self-consciously universalist focus of the expanding human rights discourse, itself a subset of the liberal discourse. Underneath the skin of each, similarities may be discerned, at least in terms of structure and focus. Both directly comprehend the influence and usability of the past, acknowledging that the past is not an artifact in ivory tower debates or an ephemeral substance that evaporates in the light of rational choice calculations. It is understood as a socializing, value-creating property in the present. It is simultaneously a guide, an arena of contestation and an ingredient replete with usable symbols. Both TJ and nationalism may yoke 'the past' to goals in the present, whether it be the inculcation of new norms that champion rights and challenge future impunity or values that recapture nationhood.

The Centrality of Victimhood

A further similarity between TJ and nationalism is that both place victimhood at their moral center. In TJ the term 'victim-centered' is repeatedly used to validate or evaluate responses to human rights violations. It associates TJ with speaking truth to power, acknowledgment of harms, breaking silence, ensuring reparation and rebalancing power relations. 'Victim-centered' has been a lever to push more attention toward the harms experienced by women in transitional setting and through TJ mechanisms. At a more emotive level, this may be based on the 'Principle of Job'

of Basque Political Violence: A Geographical Perspective on the Legitimisation of Violence,' *GeoJournal* 48(2) (1999): 109–121.

63 Sara Fregonese, 'The Urbicide of Beirut? Geopolitics and the Built Environment in the Lebanese Civil War (1975–1976),' *Political Geography* 28(5) (2009): 309–318.

64 Rogers Brubaker, Mara Loveman and Peter Stamatov, 'Ethnicity as Cognition,' *Theory and Society* 33(1) (2004): 31–64.

– the simplistic notion that intense suffering carries 'deep moral knowledge.'[65] In the discourse of nationalism, victims provide a different but still central focus. They are representational of historic wrongs, proof positive of the threat of the other and the subjugation of a community. They have a highly representational existence, tied firmly to the metanarrative of the national/communitarian struggle, with an accessible human face.[66]

For nationalism the memory of victimhood has a further charge. Nationalism may idolize heroes, and it likes victories. It venerates martyrs, who are almost invariably men (and helpfully merge the category of victim and hero), but it has a particular attraction to traumas and defeats. As Enloe notes, nationalism also needs women, specifically in terms of the ideological weight assigned to the purity and sanctity of women. This identity piece layers victimhood through narratives of gendered romanticism, heterosexual orthodoxies and the valorization of protective roles.

> [It is] because they see women as the community or the nation's most valued *possessions*; the principle *vehicles* for transmitting the whole nation's values from one generation to the next; *bearers* of the community's future generations – crudely, nationalist wombs; the members of the community most *vulnerable* to defilement and exploitation by oppressive alien rulers; and most susceptible to *assimilation* and cooption by insidious outsiders.[67]

Despite distinct assignments of gender role and ideology, harm to women does not have an easy pathway in the veneration of victims and the perpetuation of trauma discourses.

While some have overextended the psychoanalytical concept of a fixated, chosen trauma to the level of national consciousness, rarely do women's harms gain this elevation.[68] We can posit several reasons for the love affair between nationalism and specific trauma narratives. Firstly, it underlines a connection between the modern ethnonational grouping and the primordial past, and explains the dormant status of the nation in the intervening time. Secondly, it provides a sense of historical grievance around which a grouping can mobilize, and presents the nation as a durable if not invulnerable entity in ways that images of triumph and contentment cannot – the nation does not have a 'glass jaw.' Lastly, it reconstructs a sense of the sacrificial, a cult of the fallen soldier, useful in channeling and organizing political violence.[69] Mass death becomes representational – they died 'for' something – or the traumatic

65   Laurence Mordekhai Thomas, 'Suffering as a Moral Beacon: Blacks and Jews,' in *The Americanization of the Holocaust*, ed. Hilene Flanzbaum (Baltimore, MD: Johns Hopkins University Press, 1999).

66   Marie Breen Smyth argues that 'the construction of the narrative about the victim's experience plays a central role in both individual and collective identity formation,' leading to a foisting of the role of 'moral beacons' upon them.' Marie Breen Smyth, *Truth Recovery and Justice after Conflict: Managing Violent Pasts* (London: Routledge, 2007), 77.

67   Enloe, supra n 8 at 54.

68   Vamik D. Volkan, 'Transgenerational Transmissions and Chosen Traumas: An Aspect of Large-Group Identity,' *Group Analysis* 34 (2001): 79–97.

69   Steven Mock, *Symbols of Defeat in the Construction of National Identity* (Cambridge: Cambridge University Press, 2011); John Hutchinson, 'Warfare and the Sacralisation of Nations: The Meanings, Rituals and Politics of National Remembrance,' *Millennium-Journal of International Studies* 38

event at least shows a moral obligation or message. The archetypal horror of the 20th century, genocide – itself a spur to universalist rights discourse – has also been utilized by states and ethnonationalist movements to reinforce the narratives described above, as in Israel and the Balkans.[70] TJ and nationalism are thus moving in the same circles, albeit in a contrary rotation, and not interacting where it matters most, at the local level.

PRESENT AND FUTURE: WHEN TRANSITIONAL JUSTICE AND ETHNONATIONALISM MEET

When we think of the interplay between TJ and ethnonational memory, we should not think of an absolutist clash or a grafting of one onto the other. When the two meet, memory work can become hybridized, as well as distorted or resisted. Hybridity can be defined as the outworking of thought and practice that results from an encounter of different forms of outlook, practice and organization.[71] In terms of TJ and ethnonationalism, we can model the encounter between the two forms of memory work as being based on: (1) the compliance powers of agents and networks, (2) their ability to incentivize and (3) the ability of local actors to resist, cherry-pick, adopt or adapt from the two forms.

Local messiness can thus be observed in 'memoryscapes.' These can consist of a range of forms, such as memorials, rituals, rhetoric, vernacular exhibitions, amateur drama, publications, video and electronic media. The messiness of messages would jar in a pure TJ frame but they seem to coexist with little cognitive dissonance, even if they elide complexities to do so. Invocations not to repeat the mistakes of the past in order to provide a future for the young (a familiar TJ trope) may share the same symbolic space with more militant forms of ethnic memory, including youth drama that praises organized defense against the ethnic 'other.'[72] We argue that this is the contemporary and future terrain in which TJ mechanisms, from courts to reparations, will be challenged to operate.

The interplay between TJ and ethnonationalism may also indicate the perceived lack of relevance of the TJ 'toolkit' to local actors on two levels. The value system of TJ can tend to elevate the universal and downplay the communal and particular. The latter may be very much higher up the ladder of interests for local communities.[73] As Janine Clark notes in her study of Serb–Croat relations in Vukovar, the

(2009): 401–417; Carolyn Marvin and David W. Ingle, 'Blood Sacrifice and the Nation: Revisiting Civil Religion,' *Journal of the American Academy of Religion* 64(4) (1996): 767–780.

70   Jackie Feldman, *Above the Death Pits, Beneath the Flag: Youth Voyages to Poland and the Performance of Israeli National Identity* (Oxford: Berghahn Books, 2008); David Bruce MacDonald, *Balkan Holocausts? Serbian and Croatian Victim Centered Propaganda and the War in Yugoslavia* (Manchester: Manchester University Press, 2002).

71   Mac Ginty, supra n 48 at 1, argues that 'a focus on hybridisation encourages us to look beyond national capitals to the forces that confront, resist, ignore, disobey, subvert, exploit, and string-along the liberal peace.'

72   Kris Brown, ' "What It Was Like to Live through a Day": Transitional Justice and the Memory of the Everyday in a Divided Society,' *International Journal of Transitional Justice* 6(3) (2012): 444–466; Kris Brown, ' "High Resolution" Indicators in Peacebuilding: The Utility of Political Memory,' *Journal of Intervention and Statebuilding* 7(4) (2013): 492–513.

73   Roland Kostić, 'Transitional Justice and Reconciliation in Bosnia-Herzegovina: Whose Memories, Whose Justice?' *Sociologija* 54(4) (2012): 649–666.

communal narrative tends inflect or deflate TJ narratives in a manner similar to the broad model outlined above – a process of cherry-picking, resisting or ignoring pronouncements by the International Criminal Tribunal for the former Yugoslavia.[74] Discourses of reconciliation may not chime with local actors, and the language itself (oft times in academic, bureaucratic or policy-driven terms) may fail to register or capture the worldview of those most affected by conflict. This is not a result of failing to understand international conceptions of justice, but rather of local actors dealing with the past in different ways, in which the recognition sought may be divisive rather than stabilizing.[75] In parallel, the translation gap of universal human rights norms to local vernaculars is equally salient to the reception of universal norms addressing women's equality, being partly responsible for patchy enforcement and a defined gap between state-level treaty commitments and norm enforcement at the local level.[76]

The groundwork undertaken by ethnonational actors in terms of postconflict memory is immense. The scale, innovation and number of commemorative activities have been copiously examined, in Palestinian communities, within Tamil and Sinhalese nationalism, in Cyprus, Croatia, Bosnia, Kosovo and NI.[77] State-level ethnonational actors may be particularly adept and well-resourced in commemoration.[78] At the subnational ethnosectarian level, communal commemoration of recent conflict is sophisticated and prevalent, as illustrated by the intense memory work of Hezbollah.[79] Memory work then is a valued activity, in which much political will is invested, reflecting the importance that ethnic actors attach to myth, symbol and ritual. It is deemed constitutive and an important political instrument. Yet, in dealing with the past, interplay between human rights discourse and ethnonationalism can have constitutive effects, too, if not in a TJ-molded form. The case of Irish Republicanism, as viewed by several researchers, is particularly illustrative. Kieran McEvoy has found that Republicanisms' reach for law was at first purely instrumental, but as it engaged with legal processes these became more embedded in the discourse and policies of its political project. Numerous scholars accept that this

74   Janine Natalya Clark, 'The ICTY and Reconciliation in Croatia: A Case Study of Vukovar,' *Journal of International Criminal Justice* 10(2) (2012): 397–422.

75   Caitlin McCurn and Anna Di Lellio, 'Engineering Grassroots Transitional Justice in the Balkans: The Case of Kosovo,' *East European Politics and Societies* 27(1) (2012): 129–148.

76   Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006).

77   Laleh Khalili, *Heroes and Martyrs of Palestine: The Politics of National Commemoration* (Cambridge: Cambridge University Press, 2007); Cristiana Natali, 'Building Cemeteries, Constructing Identities: Funerary Practices and Nationalist Discourse among the Tamil Tigers of Sri Lanka,' *Contemporary South Asia* 16(3) (2008): 287–301; Vjeran Pavlaković, 'From Conflict to Commemoration: Serb-Croat Relations and the Anniversaries of Operation Storm,' in *Serbo-Croat Relations: Political Cooperation and National Minorities* (Novi Sad: Center for History Democracy and Reconciliation, 2009); Kris Brown, '"Our Father Organization": The Cult of the Somme and the Unionist "Golden Age" in Modern Ulster Loyalist Commemoration,' *The Round Table* 96 (2007): 707–723; Kristian Brown and Elisabetta Viggiani, 'Performing Provisionalism: Republican Commemorative Practice as Political Performance in Post Agreement Northern Ireland,' in *Performing Violence in Contemporary Ireland*, ed. Lisa Fitzpatrick (Dublin: Carysfort, 2010).

78   Feldman, supra n 70.

79   Lara Deeb, 'Exhibiting the "Just-Lived Past": Hizbullah's Nationalist Narratives in Transnational Political Context,' *Comparative Studies in Society and History* 50(2) (2008): 369–399.

internalization of a hybridized rights discourse has had a constitutive, softening effect and is a product of engagement with legal or state-based agencies.[80] This has shaped aspects of Irish Republican memory practice, evidencing a reach to law and the marbling of human rights narratives in a discourse previously dominated by nationalistic and liberationist tropes.[81] A similar process has been observed within Palestinian memory work.[82] Thus, processes of transmitting narratives from TJ-based initiatives face a crowded and competitive market place, and will frequently be outpaced. A critical future task will be to keep pace and find ways to overcome the challenges of overcrowding.

In other regions, we can see that adaption also takes place through the notion of victimhood. Palestinian memory work, in engaging with nongovernmental organizations and state actors, has reshaped the notion of victimhood to foreground a passive civilian victim, allowing greater reach into a rights discourse with which to rally and broadcast national claims. This has entailed a move away from active conceptions of ethnonational and liberationist resistance. Of course, interplay may be less constitutive, and reflect instrumentalization. A rather obvious form of symbolic lawfare can be seen even in states in the liberal democratic global North, as evidenced by the exchange of legal claims of genocide by Croatia and Serbia.[83]

In hybridization, it need not be that ethnic entrepreneurs are quibbling with the fundamental precepts of human rights – any expression that people do not have certain inalienable rights would hardly be a rallying cry for national mobilization. Rather, there is a tendency to refract the discourse through an ethnic prism. Rights may be depicted as simply a screen to mask a grab for resources and influence by an ethnic 'other,' or to rewrite the history of the conflict to the detriment of one's group.[84] Contained within these incendiary confrontations with human rights values lies the core of the challenge to TJ, with its heavy reliance on the universality of human rights norms. Correspondingly, with notions of reconciliation, hybridization may reflect a deeper problem. The concept of reconciliation becomes so loaded that it is not simply viewed as a potential screen to be used by an 'enemy' but is actually understood in ways that remain shot through with the baggage of communal interest. Reconciliation is understood in ways that promote ethnic goals.[85] As our analysis of power-sharing mechanisms in the first part of this article reveals, this communal interest is consistently gifted raw political process that has become the vehicle for advancing ethnic solidarity, identity and privilege.

80 Kieran McEvoy, 'Law, Struggle, and Political Transformation in Northern Ireland,' *Journal of Law and Society* 27(4) (2000): 542–571.

81 Kris Brown, 'Rights and Victims, Martyrs and Memories: The European Court of Human Rights and Political Transition in Northern Ireland,' in *Transitional Jurisprudence and the ECHR: Justice, Politics and Rights*, ed. Michael Hamilton and Antoine Buyse (Cambridge: Cambridge University Press, 2011).

82 Khalili, supra n 77.

83 Jelina Subotić, 'The Cynicism of the Croatia-Serbia "Atrocity Olympics,"' *Balkan Transitional Justice*, 4 April 2014, http://www.balkaninsight.com/en/article/the-cynicism-of-the-croatia-serbia-atrocity-olympics (accessed 4 November 2014).

84 Cheryl Lawther, 'Denial, Silence and the Politics of the Past: Unpicking the Opposition to Truth Recovery in Northern Ireland,' *International Journal of Transitional Justice* 7(1) (2013): 157–177.

85 Adrian Little, 'Disjunctured Narratives: Rethinking Reconciliation and Conflict Transformation,' *International Political Science Review* 33(1) (2012): 82–98.

TRANSITIONAL JUSTICE, ETHNONATIONALISM AND MEMORY: DEVELOPING INTERACTION

TJ is just one response to ethnonational conflict. Modesty is required in what it can contribute.[86] Those who favor a TJ universe in which universalist liberal values remain nonnegotiable, and who would work to build consensus around these norms, need not be at loggerheads with those of a more critical bent inclined to hybridized forms. Deeply divided societies are zones of contesting narratives, backed by formidable social capital. Rather than attempt to foist a series of norms that may be regarded as an intrusion or confection, and in situations where it lacks the ground-level social capital to transplant in any case, a different course could be navigated.

We suggest that TJ might allow spaces for agonistic (as opposed to antagonistic) debate, allowing these narratives to encounter one another.[87] It could work to facilitate these narratives both in the national arena and at local levels. Agonistic pluralism expects and demands no defined end product to emerge, no agreed narrative. But engaging in this discourse is predicated on respect, the free circulation of narrative and the ability to challenge those narratives. There is no end point, no line to be drawn, and thus transition shades into normal politics – until deeply divided societies get to be 'Belgium' or 'Quebec.' Of course, this is an ideal, and the flip side could be that the past perpetually contaminates the policy present and ethnic lawfare abounds. The issue of victimhood, constructing (or remaking) the moral communities of victim and perpetrator, so central to both ethnonational and TJ discourse, will be particularly contested. To mitigate overheating into stultifying antagonism, TJ could respond in a number of ways, discussed below.

Provide Negotiated Rules of Encounter

Although nonprescriptive and open-ended, agonism requires a framework by which narratives are expounded and can interact. Example processes drawn from truth commissions could obviously assist here, providing initial ground on which agonistic actors might meet to decide how narratives are introduced and contested. The rules of encounter must avoid reproducing old hierarchies, particularly gendered hierarchies in a new form. Narratives also need not merely meet in a quasilegal or commission setting. Local agonistic processes could encounter one another in a school curriculum, a museum or within oral history projects, all aspects of dealing with the past to which more broadly based forms of TJ have turned their attention, and which have greater purchase in a TJ future.

Provide a Range of Claims-Making Tools and Legal Arguments

Statutes, international law, declarations, varieties of soft law and arguments informing case law can all be usefully employed by actors outside of an explicitly legal context.[88]

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86   Paige Arthur, ed., *Identities in Transition: Challenges for Transitional Justice in Divided Societies* (Cambridge: Cambridge University Press, 2010).

87   Andrew Schaap, 'Agonism in Divided Societies,' *Philosophy and Social Criticism* 32(2) (2006): 255–277; Colm Campbell and Catherine Turner, 'Utopia and the Doubters: Truth, Transition and the Law,' *Legal Studies* 28 (2008): 374–395.

88   Joachim J. Savelsberg and Ryan D. King, 'Law and Collective Memory,' *Annual Review of Law and Social Science* 3 (2007): 189–211.

In particular, articulating legal harms in a way that moves us away from an undulating emphasis on masculine claims of harm to body, territory and the use of force offers a new route to identifying and remedying harms as well as mediating perceived and actual threats.[89] These tools might not be used as they are by lawyers, but they could have an effect on future TJ discourses. This may give a different shape to claims that have relied on particularist frames and previously shut down discourse rather than opening it up to agonism. Law may also be used to force 'new' evidence to come to light by opening archives and other sources of information. Again, this would enrich agonistic approaches, not only by adding ammunition to argument but also possibly by creating fissures in ethnonational formations as new information surfaces. In these fissures there may be greater space for interconnectedness, intersectionality and disruptive thinking. Commemoration and memorialization, an expanding facet of TJ as symbolic reparation, can also serve as sounding boards for claims to be made in public space and open up possibilities for new and varied participation in the shaping of transition and memory.

Offer the Means with Which to Test or Elucidate Narratives

Historical commissions encompassing a variety of academics and experts can play a role in testing the credibility of locally based narratives.[90] Feminist scholars have advocated for a disruptive approach to narrative, a willingness to hear silence as well as voice and an ear to the intimate and the everyday, thereby offering fresh understanding of the experiences of historical, communal and individual harms.[91] Married to an agonistic process, a definite verdict on truth claims may be precluded, but myths and hegemonies can be 'busted' or weakened. A range of claims accepted by agonistic actors as 'strong' may spiral outward and over ethnic and gendered boundaries. The evidential standards of the academy and the still higher standards of the court are powerful resources for ethnonational actors to reach for, but in so doing they may have to moderate the particularism of their claims. As many ethnonational claims function to subvert the intersectional claims of internal groups (notably but not exclusively women), the reach to the universal may provide lifelines of claim and grounded challenge to insider actors.[92]

TJ may also prove useful in establishing patterns to harms that occurred in ethnonational conflict, shaping the definition of harm in new ways or even simply enumerating their extent accurately. This again is something that agonistic actors would reach for in developing arguments, and it could have a constitutive effect on intercommunal relations, limiting the ability to mythologize while giving force to claims they wish to make. Hidden harms may emerge from this analytic process that complicate or rupture the intracommunity homogeneity fostered by ethnonationalism. New agonistic actors may thus emerge, but not on *exactly* the same ethnic ground as

89   Cf. Ní Aoláin, supra n 10 at 205. See also, Veena Das, *Mirrors of Violence: Communities, Riots and Survivors in South Asia* (Oxford: Oxford India Paperback, 1990).

90   Charles Ingraor, 'Confronting the Yugoslav Controversies: The Scholars' Initiative,' *American Historical Review* 114(4) (2009): 947–962.

91   Fionnuala Ní Aoláin and Catherine Turner, 'Gender, Truth and Transition,' *UCLA Women's Law Journal* 16 (2007): 229–279.

92   Catherine O'Rourke, *Gender Politics in Transitional Justice* (Abingdon: Routledge, 2013).

before. Testimony, whether from a courtroom, inquiry or oral history project, will be captured that may be put to use in a local agonistic frame. Harms are thus given a human rather than a simply ethnonational face. This presents an emotive benefit to the ethnonational frame, but also a chance that the personal narrative will be in some state of tension with the communal narrative it may prefer.

Offer Repertoire to Aid Silenced Narratives

The above is not a toolkit but a repertoire from which interested constituencies can borrow and blend. By conceptualizing this as a repertoire we might avoid constructing a static, imported frame and adopt a broad-based TJ approach, encompassing legal, quasilegal, symbolic, critical and educational methodologies. Fundamentally, TJ can also open up agonistic processes *within* communities, not only between them, which could complicate mythologies and narratives. Ethnonationalism may be particularistic, but it is by nature homogenizing, which weakens its claims to authenticity. Silences are always hidden within ethnonational memory. They may develop for structural reasons, such as physical dispersal or educational underachievement; they persist in the masculine hierarchies and values in ethnonational ideologies; and they may be the result of blunt censorship and control by elites. Silences can also constitute agency, a choice that has become particularly contested in the context of gendered harms.[93] Reticence with regard to witnessing and testimony can result from political control that is less visible but pervasive. Silences can emerge as the result of an ideological 'given' way of organizing the world, as political formations frame events in ways that match their discourse. This has been noted in the ways ethnonationalism works to relegate other forms of community in historical claims making, such as gender.[94]

Even where women surface in community-framed claims, they simultaneously disappear as collective claims swallow autonomy and relegate the female to reproduction, care and imagery of the nation itself.[95] Yet, allowing space for gendered narratives to circulate may be particularly important. If nationalism transforms the local into a narrative 'hot house,' then an examination of a conflict's impact on the often overlooked public/private interface, an arena in which women have particular insight and agency, could provide a more complicating social and political memory. The 'everyday' need not be ceded completely to nationalism, and there is disruptive potential in viewing nationalism through the prism of everyday memory and accountability.

The liberal discourse of TJ may also be picked up and used by those local actors who chafe at the ascriptive nature of ethnonationalism. In short, an unhybridized TJ may not speedily gel with ethnonationalists, but it will speak to others who have their membership of a community 'imagined' for them. A set of ideas that

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93 Ní Aoláin and Turner, supra n 91.
94 Angelika von Wahl, 'The Politics of Reparations: Why, When and How Democratic Governments Get Involved,' in *Historical Justice in International Perspective: How Societies Are Trying to Right the Wrongs of the Past*, ed. Manfred Berg and Bernd Schafer (Washington, DC: German Historical Institute and Cambridge University Press, 2009).
95 Margaret Ward, *Unmanageable Revolutionaries: Women and Irish Nationalism* (London: Pluto Press, 1983).

foregrounds individual choice can allow some to complicate, layer or break out of ethnic identification. This is unlikely to be a political pastime for a majority within an ethnonational community, but it will speak to the needs of a significant minority and as such will have roots, even if it remains a fragile and uncommon plant. Such actors may play a useful role in an agonistic process of dealing with the past.

THE FUTURE FOR TRANSITIONAL JUSTICE SCHOLARSHIP: CAPTURING MARBLING

How might processes that seek to accommodate agonism *and* the local look in practice? Iavor Rangelov has written of the 'deliberative' nature of trials, inquiries and commissions acting as a spur to wider public debate.[96] Contestation is facilitated in the public sphere, but it is also shaped in the discourse it uses, the standards it applies when judging evidence and narratives, by the formalized process of legal deliberation.[97] Certainly, full control over how contesting narratives shift in the public realm is beyond the ability of any actor to influence, but if this applies to transitional mechanisms, it also applies to ethnonationalist elites. What is key is that the legal arena reach out into the public realm, and preferably be translatable to the local level. As highlighted by Clark,[98] outreach can be a particular challenge for rather distant legal bodies. More structured and perhaps imaginative engagement needs to be built into legal mechanisms, so that they may stimulate discourse while maintaining independence and authority.

Outside legal avenues, a well thought-out process needs to be enacted to source and then present narratives in a meaningful way. A level of depth will be required so that the process captures relevance and authenticity for proponents and audience alike, or it will fail to compete with the social capital of ethnonationalist actors. In capturing detailed enough narratives, and allowing them freely to encounter one another, museums and oral history archives can play an important role. These archiving and exhibiting bodies are geared toward collecting breadth and depth in terms of testimony and material culture, and as such may more faithfully address how ethnonational conflict seeps into the everyday. Opening out the 'quotidian spaces' of ethnonational conflict – employment, the provision of services, family life and schooling, for example – can allow for narratives that complicate hardened nationalist simplifications.[99] It can also expose the public/private boundary, not as a barrier but as a broad region in which women typically engage in forms of political contest. The Historical Museum of Bosnia and Herzegovina is a partial example of this. It reflects the identity preferences of Bosniaks and Bosnians, but this does not mean that nationalism is foregrounded. The museum spotlights the hardships, compromises and anxieties of everyday life at the heart of an ethnic conflict. The school, the

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96 Iavor Rangelov, *Nationalism and the Rule of Law: Lessons from the Balkans and Beyond* (New York: Cambridge University Press, 2013).

97 Ibid.

98 Clark, supra n 74.

99 See, Accounts of the Conflict, http://accounts.ulster.ac.uk/ (accessed 4 November 2014), for examples in NI. For examples in Lebanon, see, Badna Naaref, 'Interviews About the War: Interviews,' http://www.badnanaaref.org/index.php/transcription/2 (accessed 4 November 2014).

shopping trip, working practices, family and social life, healthcare, daily commuting and the home are the key zones in which the effects of ethnic conflict are addressed.[100] These are elements around which disruptive narratives may congeal. They dovetail with feminist calls to pay attention to the everyday, to notice intimate space and places in which power and experience are located for women, and from which a more complete telling of repression, conflict and lived gendered realities can emerge.

A criticism may be that an agonistic approach at the local level would reproduce sterile recriminations that enable ethnonational claims to be hurled by adversaries. The ticklish problem to overcome is that a framework of interaction, or association, has to be found that changes an 'enemy other' into an 'adversary' – one who can or should be challenged but must always be respected. This would be tremendously difficult given legacies of conflict and is at the heart of the challenge to TJ's future relevance. Yet, there is particular strength to a feminism-inspired agonistic approach if one is successfully kick-started. It allows routine challenge and complication; it gives theoretical space for different accounts to emerge that may ripple through the ethnonational bloc. Ethnonationalism constructs a notion of the 'group' as natural and people buy into that sense of identity, for a variety of reasons. It has an existence as lived culture, or habitus. It is also a purposeful ideology promulgated by purposeful political actors. Agonism could allow the mask of wholesale naturalness to slip from the ideological project as tensions within, and similarities between, ethnic groups are allowed to emerge. This is the second challenge to the framework: allowing space for discordant voices to emerge given the weighty influence of political actors at the local level. It is these local processes that TJ mechanisms find difficulty in addressing, particularly in ethnonational settings. The question is, in a TJ future, can they emerge, can they be heard and will they be as disruptive as we expect?

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100   Sarajevo Survival Tools, http://h.etf.unsa.ba/srp/project.htm (accessed 4 November 2014).