

Is Peace Merely About the Attainment of Justice?

Transitional Justice in South Africa and the Former Yugoslavia

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As a field of scholarship and practice, Transitional Justice (TJ) has become the dominant framework through which to consider 'justice' in periods of political transition ever since the end of the Cold War.¹ Understood here as 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation',² TJ systems are founded on the premise that attaining justice for past atrocities is a fundamental pillar to building lasting peace in societies emerging from conflict.³ This logic, largely disseminated by liberal peace proponents, is relatively persuasive. However, the literature on TJ and peacebuilding too often takes the meaning of 'justice' for granted, focusing instead on other areas of contestation, such as the 'amnesty versus punishment' or the 'peace versus justice' debates, which presume a standardised and narrow conceptualisation of justice as individual accountability for Human Rights (HR) violations.⁴

For this, it is useful to situate the global surge of TJ systems within the broader process of judicialization in international relations, a trend Subotic terms 'global legalism'.⁵ This unquestioning adherence

to law not only fails to respond adequately to the complex realities of conflict and peace, but also confines the potential of 'justice' to alter oppressive power structures to the boundaries of a technocratic, legalistic tradition. A Galtungian distinction between positive and negative peace is thus an appropriate theoretical frame to explore the limitations of the law in delivering far-reaching and holistic transformation to conflict-affected societies. Accordingly, it is argued that in practice, justice often constrains the production of positive peace frameworks by reinforcing the application of seemingly apolitical legal principles to guide and inform political transitions, which may reproduce patterns of direct and indirect violence. An assessment of the role of law in shaping notions of justice in South Africa's Truth and Reconciliation Commission (TRC) and the International Criminal Tribunal for the former Yugoslavia (ICTY) serves to illustrate this argument.

The paper proceeds as follows. First, it locates 'justice' within the liberal peace paradigm, elucidates the distinction between positive and negative peace, and offers a brief background of the ICTY and the TRC, justifying the selection of these cases. It then focuses on three basic legal principles underpinning TJ processes and mechanisms in South Africa and the former Yugoslavia: i) the notion of individual accountability; ii) the emphasis on HR abuses; and iii) a statist ontology, highlighting the ways in which each of these norms limit the potential contribution of 'justice' towards fostering a meaningful peace in both contexts. The conclusion reiterates the critique against depoliticised notions of law and justice.

1 Ruti G. Teitel, *Globalizing Transitional Justice: Contemporary Essays* (OUP 2014) 37.

2 United Nations, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General* (S/2004/616, 2004).

3 Chandra Lekha Sriram, 'Beyond Transitional Justice: Peace, Governance, and Rule of Law' (2017) 19 *International Studies Review* 53.

4 Kader Asmal, 'Truth, Reconciliation and Justice: The South African Experience in Perspective' (2000) 63 *The Modern Law Review* 1, 12.

5 Jelena Subotic, 'The Transformation of International Transitional

Justice Advocacy' (2012) 6 *International Journal of Transitional Justice* 106, 109.

Justice, Law, and the Liberal Peace

The end of the Cold War saw the consolidation of the liberal vision as the dominant set of principles informing the theory and practice of transnational peacebuilding.⁶ Chief among these principles lies the conviction that lasting peace is not possible without justice, a premise that has been the cornerstone for the creation of TJ systems globally.⁷ Indeed, proponents of the liberal peace often suggest that the liberal conception of 'justice' as accountability is the surest route to peace because such a notion is rooted on the apolitical, ahistorical and universal framework of the law, which makes it uncontroversial.⁸ This legal positivism responds to the Western ideal that law is an 'objective, blind and consequently fair arbitrator',⁹ and to the expectation 'that subjecting political behaviour to the apolitical judgement of law will exert a civilising effect'.¹⁰

Yet, liberal peace proponents tend to ignore the core tensions at play between law and politics, and the ways in which these tensions develop in transitional contexts. For instance, Wilson's definition of law 'as an ideological system through which power has historically been mediated and exercised'¹¹, challenges the thin and depoliticised liberal notion of justice. This rationale suggests that the application of law unavoidably implies normative moral and value judgements that cannot be separated from political considerations, thus revealing the inherently politicised nature of 'justice' and of TJ discourses. In fact, Nagy contends that the TJ industry is deeply embedded within the principles of international law, which are themselves based predominantly on Western legal standards, norms and practices.¹² This is perhaps unsurprising, considering the leading role of Western professional and donor networks in envisaging international TJ frameworks, and their advocacy in favour of legalistic responses to wrongdoing.¹³ The way we think about TJ is thus overtly governed by the legal culture of international HR,¹⁴ which displays some intrinsic moral dilemmas that emerge from uncritically reducing justice to law in periods of political transition.

That said, evaluating the substantive contribution of justice towards peace requires a consideration of the *quality* of peace being (re) produced by TJ. Here, Galtung offers a useful analytical lens to survey the transformative potential of a liberal 'justice' that operates primarily through law¹⁵. Galtung develops a distinction between direct and indirect violence that helps him to separate positive from negative forms of peace. Direct violence is conceptualised as

the harm inflicted on a person by means of physical force,¹⁶ whilst indirect violence is understood as a form of violence built into a society's structures of power, and which deprives individuals of their rights or needs.¹⁷ Galtung argues that the absence of direct violence yields a negative peace, whereas the absence of indirect violence produces a positive peace, a concept he equates to social justice, or 'the egalitarian distribution of power and resources' in a society.¹⁸ These maximalist conceptions of violence and peace accurately capture the intricacies underlying processes of conflict and peacebuilding, and are therefore considered to be the ideal framework to explore the role of justice in the pursuit of a holistic and long-term peace.

The TRC and ICTY

Broadly speaking, the focus of this paper is on the two main forms of justice through which a society might cope with a history of past abuses: retributive justice, which generally follows the principles of criminal justice and emphasises the need to punish unlawful activity;¹⁹ and restorative justice, which places a higher value on reconciliation, community relations and truth, and may therefore compromise strictly punitive procedures for amnesties, truth-seeking, reparations and other measures.²⁰ The former kind of justice is explored through the work of the ICTY in the former Yugoslavia, while the latter is assessed using South Africa's TRC. Although these are not the sole types of justice sought by societies emerging from conflict - and acknowledging that law and justice operate differently across contexts where TJ systems are in place - the ICTY and TRC share a normative conception of justice that is profoundly ingrained within the structures of international liberal legalism,²¹ which makes these cases suitable to consider the transformative potential of law whilst integrating two diverse approaches to justice. Indigenous and hybrid TJ frameworks are outside the remit of this essay.

The first case in question, the ICTY, was an *ad hoc* international tribunal established in The Hague in 1993 to prosecute war crimes and crimes against humanity committed during the Yugoslav Wars since 1991.²² Only between 1991-1994, it was estimated that the predominantly ethnic conflict in the Balkans led to over 200,000 deaths, 50,000 cases of torture, 20,000 cases of rape, and more than three million refugees.²³ The ICTY was hence set up to deliver justice to these victims through formal and retributive judicial processes, 'under the conviction that the Tribunal would help restore and maintain peace in a region still at war'.²⁴ Yet, the ICTY also held an important restorative component, given that it attempted to promote inter-ethnic trust and reconciliation in the region. In Teitel's words, at the core of the ICTY was the 'expectation that

6 Roland Paris, *At War's End: Building Peace after Civil Conflict* (CUP 2004).

7 Payam Akhavan, 'Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal' (1998) 20 *Human Rights Quarterly* 737, 742.

8 Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field' (2009) 3 *International Journal of Transitional Justice* 5, 5.

9 Jenny H. Peterson, 'Rule of Law' initiatives and the liberal peace: the impact of politicised reform in post-conflict states' (2010) 34 *Disasters* 15, 19.

10 Leslie Vinjamuri and Jack Snyder, 'Law and Politics in Transitional Justice' (2015) 18 *Annual Review of Political Science* 303, 304.

11 Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (CUP 2001) 5.

12 Rosemary Nagy, 'Transitional Justice as Global Project: critical reflections' (2008) 2 *Third World Quarterly* 275, 276.

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

14 Teitel (n 1) 32.

15 Johan Galtung, 'Violence, Peace, and Peace Research' (1969) 6 *Journal of Peace Research* 167.

16 *ibid* 170.

17 *ibid* 171.

18 *ibid* 183.

19 Janine Natalya Clark, 'The three Rs: retributive justice, restorative justice, and reconciliation' (2008) 11 *Contemporary Justice Review* 331, 333.

20 Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (Routledge 2010) 14.

21 Nigel C. Gibson, *Challenging Hegemony: Social Movements and the Quest for a New Humanism in Post-Apartheid South Africa* (Africa World Press 2006) 6; Teitel (n 1) 86.

22 Clark (n 19) 337.

23 United Nations Security Council, *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (S/1993/674, 1994)* 84.

24 Diane Orentlicher, *That Someone Guilty Be Punished: The Impact of the ICTY in Bosnia* (Open Society Institute 2010) 26.

international criminal justice would establish a form of individual accountability that would break old cycles of ethnic retribution and thus advance ethnic reconciliation'.²⁵

Similarly, South Africa's TRC was established in 1995 to investigate human rights violations committed under apartheid between 1960-1994, a period during which 'over 18,000 people were killed and 80,000 opponents of apartheid were detained, 6,000 of whom were tortured'.²⁶ However, the TRC utilised the discourse of a 'bigger goal' to relinquish conventional legal remedies and instead, pursue a restorative form of justice that could promote social harmony and community-building through truth-telling.²⁷ Consequently, amnesties were offered to individuals 'in exchange for their full disclosure about their past acts'.²⁸ Such an approach to justice points to a salient social element consistent with positive peace ambitions, which, much like the ICTY case, transcend the simplistic notion of peace as the absence of war. South Africa's conception of justice therefore appears to distance itself from the international legal culture that sees justice as inextricably connected to retribution. Nevertheless, a closer inspection of the values informing the TRC reveals that the global legalist paradigm is strongly implicated in producing its understanding of justice; the central difference to retributive justice merely being the absence of formal retribution. The following sections uphold this claim by examining the role and impact of three fundamental principles of transnational legalism on the ICTY and TRC: individual accountability, HR abuses, and a statist ontology.

Individual Accountability

At the heart of the dominant conception of justice espoused by TJ systems globally rests the idea that individuals responsible for mass atrocities should be held legally accountable for their actions. Whilst this might appear commonsensical, the norm of isolating individual wrongdoing is not built into nature; rather, it is a political construct rooted in the principles of international criminal law and predicated on liberal ideals of agency and responsibility.²⁹

Vitaly, the application of such a value in contexts of political transition is problematic, given that it fails to tackle structures of economic, social and cultural violence, and obscures oppressive forms that are crucial to fostering positive peace, such as the vulnerability of socio-economic rights, discrimination or marginalisation. As argued by Gready and Robins, TJ mechanisms only tend to address conflict symptoms, as TJ emerges from a tradition where individual acts of violence 'are of greater interest than chronic structural violence and unequal social relations'.³⁰ Moreover, individualising accountability implies a politics of exceptionalism, which glosses over systematicity in violent practices. According to Akhavan, the criminalistic assumption that a determinate conduct deviates from 'normal' behaviour is 'especially problematic in the context of large-scale crimes (...), which often implicate a significant proportion of the

population as perpetrators'.³¹ The reliance of dominant conceptions of 'justice' on the legalistic norm of individual accountability can thus be said to constrain the impact of justice in creating positive peace frameworks.

The ICTY case displays some of the challenges intrinsic to advancing positive peace through individual accountability, not least because this principle served to reproduce inter-ethnic tensions and violence in the Balkans. Bass contends that by targeting crimes at the elite level through the simplistic mechanism of criminal trials, the ICTY failed to adequately address grassroots ethnic animosity, asserting that 'all the old grievances are still there'.³² Subotic goes as far as to suggest that ICTY rulings fuelled ethnic tensions by reinforcing Serbian and Bosniak ethno-nationalism,³³ an idea developed by Clark's claim that there was 'an intense resistance by many in the region to the reality that their own ethnic kin committed atrocities'.³⁴ This narrative of collective denial and ethnic reaffirmation helped to further entrench divisive narratives among ethnic groups, feeding discursive structures of 'us versus them' that enabled mass atrocities in the Balkans to occur in the first place. Indeed, the thin conception of individual accountability limited the ICTY's capacity to fulfil its objective of promoting inter-ethnic reconciliation, since the Tribunal itself institutionalised ethnic divisions and became an agent in the revitalisation of the conflict it was created to resolve.

Likewise, the TRC's emphasis on individual accountability hampered its ability to confront the structures of apartheid, which fostered the persistence of widespread social injustice and inequalities in South Africa. To elucidate, Nagy critiques the TRC's exclusive prosecution of extra-legal violence committed during this period, since this form of violence 'was facilitated by apartheid's dehumanising message of black inferiority'.³⁵ In Nagy's view, gross HR abuses were committed systematically, as they 'were inscribed within basic apartheid structures'.³⁶ Yet, the TRC's individualised notion of accountability was unable to tackle or redress this collective dynamic of conflict. Furthermore, authors like Evans or Gready have condemned the absence of socio-economic rights violations from the scope of the TRC, highlighting the apartheid legacy of structural poverty and inequality that endures in contemporary South Africa.³⁷ The persistence of economic apartheid is illustrated by the fact that in 2000, 'black average disposable income per person was only 14.9 percent of that of whites', and that 'only 27% of blacks had access to clean water compared with 95% of whites'.³⁸ Although the TRC prosecuted 'exceptional', individualised crimes, the everyday structures and agents of apartheid evaded responsibility, and it is these systems of oppression that continue to reproduce social and criminal violence in South Africa today.³⁹ As with the ICTY in the Balkans, the TRC's individualised accountability could do little

25 Teitel (n 1) 86.

26 Lyn S Graybill, 'Pardon, punishment, and amnesia: three African post-conflict methods' (2004) 25 *Third World Quarterly* 1117.

27 Donna Pankhurst, 'Issues of justice and reconciliation in complex political emergencies: Conceptualising reconciliation, justice and peace' (1999) 20 *Third World Quarterly* 239, 245.

28 Graybill (n 26) 1117.

29 Teitel (n 1) 20.

30 Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 *International Journal of Transitional Justice* 339, 342.

31 Akhavan (n 7) 741.

32 Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton University Press 2000) 17.

33 Jelena Subotic, *Hijacked Justice: Dealing with the Past in the Balkans* (Cornell University Press 2009) 164.

34 Clark (n 19) 335.

35 Rosemary Nagy, 'The Ambiguities of Reconciliation and Responsibility in South Africa' (2004) 52 *Political Studies* 709, 714.

36 *ibid.*

37 Matthew Evans, 'Structural Violence, Socioeconomic Rights, and Transformative Justice' (2016) 15 *Journal of Human Rights* 1; Gready (n 20).

38 Geoffrey Schneider, 'Neoliberalism and economic justice in South Africa: revisiting the debate on economic apartheid' (2003) 61 *Review of Social Economy* 23, 45.

39 Gready (n 20) 1.

for positive peace in South Africa, and its limited transformative capacity served to replicate dynamics of direct and indirect violence instead.

Human Rights Abuses

An additional legal principle that underscores TJ is the idea that justice can be attained by targeting HR abuses. Such violations, which include killing, torture, rape, genocide and other 'inhumane' acts that breach international HR law, should be legally prosecuted by TJ mechanisms insofar as they have been committed against civilians and during wartime.⁴⁰ The dominance of this liberal legalistic norm in TJ responds to the institutionalisation of HR discourses in international politics as the 'lingua franca of global moral thought'.⁴¹ Nonetheless, to frame justice exclusively within the boundaries of HR yields an overly narrow understanding of violence that runs counter to positive peace. Not only does a focus on HR violations overlook a myriad of violent practices present in conflict and post-conflict spaces, but it also reproduces and legitimises a binary narrative of harm founded on reductive dichotomies like war-peace, good-evil, or victim-perpetrator.⁴² Crucially, the attainment of a substantive and positive peace requires a form of justice that can account for violence in the 'in-betweenness' of such binary oppositions, rather than a limited scope targeting a set of specific crimes loosely associated to HR, civilians and wartime.

For example, the ICTY's mandate to prosecute HR abuses against civilian populations during wartime did not adequately match the complexities underpinning the Yugoslav wars. In particular, because the ICTY was established in 1993, in the midst of an 'unfolding bloodbath',⁴³ in which the siege of Sarajevo alone cost 10,000 lives between 1993-1996, when the ICTY was already fully operational.⁴⁴ This seriously questions the coherence of the ICTY's objective to serve justice for past HR violations at a time when populations were still being brutalised. Though it is true that the foundational purpose of the ICTY was to act as a peacemaking force by delivering justice to victims,⁴⁵ the belief that justice can contribute to peace when tensions and direct violence persist to such a degree is highly problematic and contradictory in itself. First, because it challenges the presupposed exceptionalism of the violence being addressed by the ICTY, and second, because the emphasis on HR violations effaces direct and indirect forms of violence taking place at the margins of the disembodied war-peace distinction informing the ICTY. These problems further interrogate the transformative potential of international legal frameworks and their grounding on HR language for building a positive peace through TJ.

Equally, the ubiquity of indirect violence in South Africa questions both the TRC's thin focus on HR abuses and the Commission's prospective contribution towards a positive peace with social justice. The mandate of the TRC specifically covered HR violations committed between the period 1960-1994, under the premise that the violence of this time frame deviated from 'normal', 'peacetime' conduct. In doing so, the TRC prioritised coming to terms with past violence over eradicating the roots of conflict in the present.⁴⁶ This

weak conceptualisation of violence and crime was therefore unable to alter oppressive power structures that perpetuated everyday experiences of exclusion, marginalisation and subjugation suffered by black South Africans, leading to a massive disillusionment with the work of the TRC among black communities.⁴⁷ In this sense, Comaroff and Comaroff rightly posit that the obsession of TJ systems with HR fails to empower those who have conventionally been marginalised.⁴⁸ Thus, the war-peace binary informing the TRC's fixation on wartime HR violations caused it to disregard forms of indirect violence permeating South African society, again highlighting the Commission's role in facilitating the recurring patterns of both direct and indirect violence.

Statist Ontology

Lastly, the primacy of law underlying the liberal notion of 'justice' inherently reifies a statist ontology, which in periods of political transition might serve more to construct and legitimise a liberal ideal of the state than contribute to a positive and transformative peace. According to Teitel, law in transitional periods becomes an instrument for 'the normative construction of the new political regime', given that 'the language of law imbues the new order with legitimacy and authority'.⁴⁹ For Gready and Robins too, this 'state-centred paradigm in which building the institutions of the state and building peace are considered largely equivalent', is a fundamental pillar of the liberal peace statebuilding project.⁵⁰ Crucially, however, the statism that pervades the application of TJ systems globally fails to disturb oppressive power relations that marginalise groups and individuals, and may in fact reinforce them.⁵¹ This is because the consolidation of a Westphalian state is a fundamentally top-down process that empowers liberal elites, whilst neglecting affected populations at the grassroots level by alienating them from the legalistic discourses of TJ.⁵² As such, TJ systems may become sites for renewed conflict dynamics and for the protraction of both direct and indirect forms of violence, hindering the pursuit of a holistic peace in war-hit environments.

To illustrate, the ICTY's reliance on state cooperation displays some of the limitations posed by the trappings of statehood towards the production of meaningful justice and peace frameworks. As argued by Peskin, 'the Tribunals' lack of police powers gave states wide latitude to withhold the vital assistance the Tribunals need to investigate atrocities and bring suspects to trial'.⁵³ This instrumental use of justice by Balkan states also served the domestic political objectives of victor governments, who utilised the ICTY to 'get rid of domestic political opponents, obtain international material benefits, or gain membership in prestigious international clubs'.⁵⁴ For example, the Serbian government under Milosevic regularly rejected the legitimacy of the ICTY and frequently refused to

40 Teitel (n 1) 30.

41 Subotic (n 5) 110.

42 Catherine Turner, 'Deconstructing Transitional Justice' (2013) 24 *Law and Critique* 193, 194.

43 Bass (n 32) 17, 223.

44 Subotic (n 33) 124.

45 Teitel (n 1) 83.

46 Gready (n 20) 8.

47 A Boesak, 'And Zaccheus remained in the tree: Reconciliation and justice and the Truth and Reconciliation Commission' (2008) 29 *Verbum et Ecclesia* 636.

48 John L. Comaroff and Jean Comaroff, 'Criminal justice, cultural justice: The limits of liberalism and the pragmatics of difference in the new south africa' (2004) 31 *American Ethnologist* 188, 192.

49 Teitel (n 1) 104.

50 Gready and Robins (n 30) 341.

51 Bell (n 8) 27; Sriram (n 3) 61.

52 Gready and Robins (n 30) 343.

53 Victor Peskin, 'Beyond Victor's Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda' (2005) 4 *Journal of Human Rights* 213, 214.

54 Subotic (n 33) 6.

cooperate with its legal proceedings, especially after 1999, when Milosevic himself was charged by the Tribunal for war crimes.⁵⁵ Only after Milosevic's resignation from the Serbian presidency in 2000 was he captured and brought forward to the ICTY, an occurrence that, far from reflecting a profound social transformation in Serbia, was part of the successor government's strategy for the removal of economic sanctions and for Serbia's accession to the European Union.⁵⁶ Such elite-level co-optation of the ICTY stands at odds with a pluralist and self-reflective engagement with the past at the local level, preventing the reworking of power relations and violent nationalisms, and thus limiting the impact of 'justice' for positive peace in the Balkans.

In South Africa, the state-centred justice pursued by the TRC failed to meet the needs of local, conflict-affected communities, given that this top-down statebuilding project clashed with the country's grassroots legal pluralism. Critically, the rigid statist ontology buttressing the TRC impeded the inclusion and participation of marginalised populations, revitalising apartheid-era conflict dynamics over the appropriate judicial frameworks to guide South Africa's transition. As per Wilson, the language of law was mobilised to unify and centralise the postapartheid state, and to grant it political legitimacy.⁵⁷ However, this scholar explains, the transitional project of legal homogenisation brought the state 'into conflict with local justice institutions and popular legal consciousness in a legally plural setting'.⁵⁸ This is relevant because at the core of popular resistance against apartheid was the control of state power.⁵⁹ So, the fact that the TRC worked to strengthen state institutions fuelled discontent among communities who saw their customary forms of justice overridden by technocracy and legalism, further sidelining them from state-level structures of power and justice. Accordingly, the TRC not only helped to preserve patterns of indirect violence and exclusion, but also became a vehicle for the reproduction of conflictual state-local relations in South Africa.

Conclusion

To conclude, this essay presented a critique of the normative foundations underpinning TJ as a global liberal endeavour and its technocratic, legalistic approach to justice as individual accountability for HR abuses. It was argued that in practice, this form of justice often constrains the production of positive peace frameworks by reinforcing the application of seemingly apolitical legal principles to guide and inform political transitions. This paradox, it was suggested, may well reproduce and revitalise patterns of both direct and indirect violence. Such an argument does not seek to refute the claim that serving justice for past heinous crimes is central to attaining peace, but rather looks to challenge the taken-for-granted terms framing this debate. A critical interpretation of law as intrinsically value-laden, alongside a more nuanced articulation of 'peace' concurrent with a Galtungian approach, revealed that a liberally framed 'justice' may be inadequate to address atrocities ensuing from political conflict, and might consequently hinder the production of a meaningful peace.

The case studies of the ICTY and TRC exhibit some of the inherent tensions at play between law and politics across two transitional

settings where a distinct type of justice was pursued, the ICTY advancing a purely retributive notion of accountability and the TRC favouring a restorative kind. These cases were employed to demonstrate how the influence of three legalistic principles rooted in international law (individual accountability, HR abuses, and a statist ontology), can limit the impact of justice in producing a holistic, transformative peace. Indeed, as showcased by the ICTY and TRC, the end result is often that TJ mechanisms end up reproducing their own nemesis, since legal remedies so deeply embedded in global power relations tend to replicate structures of hegemony and marginalisation. This paper thus questioned the potential of justice-as-law to elicit the kind of social, political and economic transformation required to build a positive peace in conflict and post-conflict spaces.

Finally, insofar as the normative international law apparatus continues to guide our thinking about the praxis of TJ, the kind of justice pursued by societies transitioning from conflict is unlikely to respond adequately to the everyday needs and interests of individuals in war-hit environments. Law and justice do not exist in a vacuum; they are neither neutral nor ahistorical, and they should not strive to transcend domestic or international political dynamics. Future research should aim to broaden the conception and application of justice outside the parameters of global legalism, helping scholars and practitioners to conceive alternative models of justice in a culturally sensitive and responsive manner. Only by detaching TJ from the destabilising boundaries set by international law can a deeper and truly transformative justice be achieved, because, as Audre Lorde once wrote, 'the master's tools will never dismantle the master's house'.⁶⁰

55 John Hagan, *Justice in the Balkans: prosecuting war crimes in the Hague Tribunal* (University of Chicago Press 2003) 94.

56 Subotic (n 33) 41.

57 Wilson (n 11) 214.

58 *ibid* xvii.

59 Pankhurst (n 27) 245.

60 Audre Lorde, 'The Master's Tools Will Never Dismantle the Master's House' in Cherrie Moraga and Gloria E. Anzaldúa (eds), *This Bridge Called my Back: Writings by Radical Women of Color* (Kitchen Table Press 1983) 94.