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"We Don't Believe in Transitional Justice:" Peace and the Politics of Legal Ideas in Colombia

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This article draws on law and society theories on the circulation of legal ideas to explain the instrumentalization of transitional justice in Colombia. Most scholarship explains transitional justice as a theoretical framework or as a set of instruments that helps redress mass violence. In contrast, this study reveals that the idea serves as a placeholder for different political actors to promote their respective interests. Drawing on over fifty interviews, the study suggests that the power of transitional justice lies in its malleability, which is both its strength and its weakness, as those with different political agendas can appropriate the idea in contradictory ways. The findings emphasize that understanding transitional justice requires a turn from abstract analyses that either take the idea for granted or try to define its meaning toward examining how people on the ground understand the idea, and how they translate those understandings into political action.

INTRODUCTION

Colombia's guerrilla insurgency began in 1964, when the Armed Revolutionary Forces of Colombia, or FARC, began fighting the government in order to establish a communist state. The conflict grew to encompass dozens of different armed groups, including other leftist guerrilla organizations, paramilitary groups, narco-traffickers, and state actors. The ongoing violence has displaced millions of Colombians, has left hundreds of thousands dead, and, until recently, has seemed unlikely to end. However, over the summer of 2015, the Colombian government and FARC found common ground on issues that plagued the three-year peace process and

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almost led to the negotiation's collapse. In June, the two parties agreed to create a commission that would clarify the causes and consequences of the violence, a quasi-judicial body also known as a truth commission. In September, FARC members agreed to lay down their arms and submit to special tribunals that would "restrict their liberty" for five to eight years. Observers extolled the agreement as a mutually acceptable "formula for transitional justice," and a necessary compromise to end the sixty-year conflict (Brodzinsky 2015).

This agreement paved the way for the June 2016 peace accord, a major milestone in Colombia's efforts to end the armed conflict. This agreement would not have come about, or been described as a formula for transitional justice, without a deal struck ten years earlier, in 2005. That year, the Colombian government passed Law 975, also known as the Justice and Peace Law, which offered armed actors the option to participate in an alternative criminal justice process whereby individuals would disclose their crimes and receive lower sentences. Law 975 also established a National Commission on Reparation and Reconciliation (*Comision Nacional de Reparacion y Reconciliacion* or NCRR), an administrative body to provide monetary reparation to qualified victims. The Commission, moreover, housed the Historical Memory Group, which was created to investigate, document, and produce reports on the causes and consequences of the sixty-year conflict. In debates about this law, and in subsequent efforts to explain it, the idea of transitional justice entered public conversations about how Colombia must approach its longstanding conflict (Uprimny and Saffon 2007; Diaz 2008).

While interviewing civil society leaders in 2010 about their understandings of the Justice and Peace Law, I heard a common refrain: "We don't believe in transitional justice." This condemnation of transitional justice at first appears puzzling. Transitional justice, at least as it is described in scholarly literature, is not an idea that one believes in or does not believe in; rather, transitional justice is articulated as a theoretical or normative framework that helps clarify the dilemmas of pursuing justice in the wake of political transition (Teitel 2000). Practitioners and scholars characterize transitional justice in a variety of ways, from a field (Arthur 2009), a jurisprudential theory (Gray 2005), and a toolkit (Scheffer 2001), to a "legal and political frame to assess and operationalize social change" (American Society of International Law n.d.). A growing number of scholars have tried to explain the conditions under which transitional justice works, or improves political or social indicators (Lutz and Sikkink 2001; Olsen, Payne, and Reiter 2010).

However, there remains a dearth of information on how and, more importantly, *why* various political actors, including policy makers and advocates, appropriate the idea. Answers to these questions can help answer longstanding sociolegal questions as to how legal ideas influence politics, and how politics influence legal ideas. Moreover, such an analysis can shed light on the challenges facing the ongoing peace processes in Colombia.

To shed light on how transitional justice was appropriated in Colombia, this study draws on law and society theories about the circulation of legal ideas. Existing theories provide important insights into the ways ideas travel, and how political actors utilize them for specific ends (see Clarke 2009; Levitt and Merry 2009). At

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the same time, they do not adequately capture why ideas such as transitional justice are so appealing to individuals with contradictory or competing agendas.

The article explores this question beginning with a theoretical examination of how and why transitional justice emerged within academic and policy-making circles. The next section provides a background on the qualitative approach used to gather and analyze data on this question in Colombia. Following, the analysis reveals how and why Colombian policy makers appropriated the idea, which has to do with their desire to punish perpetrators of violence according to their own interests. Finally, the article charts how domestic advocates came to understand and utilize transitional justice to challenge the government's policies, and to articulate their understandings of what a transition and justice would look like in the country.

This study reveals that transitional justice has little meaning in and of itself, and political actors such as policy makers and advocates appropriate the idea for their own, often contradictory or competing purposes. The analysis suggests that rather than focusing on the conceptualization of transitional justice, scholars should redirect their attention toward its instrumentalization. In other words, understanding transitional justice in countries wrestling with mass violence requires a move away from abstract definitions of the idea toward an examination of how people on the ground understand it, and how they translate those understandings into political action. Understanding how transitional justice was translated into political action also sheds light on how, and why, Colombians narrowly voted against the historic peace accord with FARC in the October 2, 2016 plebiscite.

THE GLOBALIZATION OF TRANSITIONAL JUSTICE

The Meaning(s) of Transitional Justice

Just three decades ago, scholars and policy makers coined the term *transitional justice* to articulate a range of legal goals and strategies of countries emerging from authoritarianism or armed conflict (Kritz 1995). Unlike human rights, an idea that is often associated with treaties and tribunals that prosecute perpetrators of international crimes, transitional justice refers to both specific processes and unspecific goals about what law offers countries that have experienced mass violence (Arthur 2009; Iverson 2013). Today, scholars often draw on transitional justice to explain so-called tools or approaches such as tribunals, as well as truth commissions, reparations programs, and memorials (see Roht-Arriaza and Mariezcurrena 2006). The varied goals include socioeconomic development, judicial accountability, financial compensation, establishing an accurate historical record after mass violence, and the oft-cited and oft-criticized goal of reconciliation (Clark and Kaufman 2008; Daly and Sarkin-Hughes 2007).

Transitional justice, thus, is an idea used to describe and prescribe solutions to conflicts (see Subotić 2009). Given its descriptive and prescriptive attributes, the idea is useful to both legal and nonlegal scholars who want to compare tribunals, truth commissions, and other approaches to redress mass violence in different

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countries. It is also useful for policy makers and advocates who may have contradictory or competing prescriptions in mind.

As scholars try to develop a consensus on a definition of transitional justice, they often reify simple dichotomies such as local and global, retributive and restorative, and transitional versus ordinary justice (Posner and Vermeule 2004). Much of the early literature on transitional justice focused on South America, specifically the ways in which Southern Cone countries transitioned from military dictatorships to democratic rule (Brito, Enriquez, and Aguilar 2001). There, leaders explored a variety of alternatives to prosecutions, including truth commissions, with the belief that political stability required tradeoffs between judicial accountability and other goals that may benefit survivors (Zalaquett 1992). These leaders did not use the term transitional justice at the time, but soon scholars and policy makers from the United States used the idea to describe policies that South American and Eastern European leaders developed in order to redress past violence and promote the rule of law (Kritz 1995).

Teitel, who claims to have coined the term, suggests that transitional justice has become "globalized" because a variety of actors are interested in "a self-conscious construction of a distinctive conception of justice associated with periods of radical political change" (Teitel 2008, 1). Similarly, Sharp refers to transitional justice as a "global project" (2015, 153) and notes that the question is no longer whether transitional justice should be implemented, but how (153). Such observations may explain the circulation of transitional justice in academic circles. At the same time, they take for granted the value of the idea and provide little insight into why political actors in particular settings are interested in a distinctive conception of justice.

Looking at empirical studies of transitional justice, it is clear that this global project is not without vociferous critics. Scholars now discuss the industry of transitional justice, comprised of advocacy organizations that promote formulaic strategies predicated on legalistic understandings of justice (Miller 2008; Theidon 2009; Subotić 2012). A number of studies have tried to highlight the context-specific initiatives to redress past wrongs, and the difficulty in studying their efficacy (Baxter, Chapman, and van der Merwe 2009; Shaw, Waldorf, and Hazan 2010). Law and society scholars, in particular, have offered important insights into how political, cultural, and social contexts shape transitional justice approaches, and why understanding these contexts matters (McEvoy 2007; Nagy 2008). At the same time, despite burgeoning scholarship on the creation of tribunals, truth commissions, and other approaches associated with transitional justice, less is known about what political actors mean by it, and, by extension, how they make use of it (Madlingozi 2010).

In sum, in addition to focusing on theoretical or normative concerns, it is important to examine how the idea of transitional justice is understood and utilized in countries that are dealing with egregious, often state-sponsored, violence. Analyzing these understandings helps address lingering critiques about whether transitional justice is any different from what might be called ordinary justice, particularly given that the same judicial and quasi-judicial bodies, with the same justifications, are being promoted in countries where there are no discernable transitions (Posner and Vermeule 2004). Transitional justice may be distinct from

ordinary justice precisely because of the ways in which different actors understand and utilize it.

The Circulation of Legal Ideas

In looking at how ideas such as transitional justice circulate across national boundaries, scholars have advanced concepts such as diffusion, brokerage, globalization, and localization (Basu 2000; Santos and Rodríguez-Garavito 2005; Goodale and Merry 2007; Tilly and Tarrow 2007). These concepts are useful for the study of transitional justice because they reveal how political actors, including policy makers and advocacy organizations, blend different understandings about the relationship between law and politics in order to pursue their goals. At the same time, these theories fail to capture *why* ideas such as transitional justice take hold, as well as the dynamic processes through which legal ideas are given meaning on the ground.

Scholars who refer to the circulation of legal ideas as *vernacularization* focus on how key players, called translators or intermediaries, mediate the spread of new ideas related to law (Merry 2006b; Merry and Stern 2005). In the process of vernacularization, legal ideas become "decontextualized and recontextualized" in ways that, while unpredictable, reflect existing social structures and local meanings (Clarke and Goodale 2009, 7). Current understandings of human rights are closely associated with international law, as well as ostensibly universal values related to human dignity and good governance (Merry 2006a; Levitt and Merry 2009). In recontextualizing human rights, local activists draw on these universal values to make sense of their own social and political struggles, and to make demands on their governments.

Instead of defining and measuring human rights, law and society scholars often take a more critical approach on how ostensibly universal ideas such as rights and justice acquire specific meanings in local contexts. Massoud (2011), notably, reveals how human rights is the latest idea to promote Western, democratic-style governance, yet the idea serves elites rather than survivors of violence. His study of Sudan charts how international organizations attempted to empower refugees by teaching them about their individual rights under international human rights treaties. However, Sudan is an authoritarian state that does not recognize international human rights obligations. The government even banned humanitarian organizations after the International Criminal Court indicted Sudanese president Al-Bashir for international crimes. In this context of government repression, appropriating and adopting the idea of human rights was irrelevant, if not counterproductive, for refugees (Massoud 2013).

While there are a number of studies on how the idea of human rights is appropriated, there is little comparable scholarship on the idea of justice and, in particular, transitional justice (Kennedy 2004; Santos and Rodríguez-Garavito 2005; Clarke and Goodale 2009). In looking at how the International Criminal Court promotes the idea of justice in Africa, Clarke (2009) points out the limitations of existing theories on the circulation of legal ideas, particularly vernacularization,

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because they fail to explain the power dynamics between the supposed purveyors and beneficiaries of justice sufficiently. She reveals how legalistic notions of justice as international criminal law were simply imposed on African nations. This understanding of justice was not appropriated and adopted, nor could it be resisted, because of the power differential between policy makers and advocates who promoted international criminal law and the supposed beneficiaries.

Studying the circulation of legal ideas reveals how power dynamics can influence the meaning-making process, and it can also reveal why certain ideas take hold. The globalization of alternative dispute resolution is particularly instructive in thinking about the circulation of transitional justice (Nader 1999). The theory of *harmony ideology* suggests that promoting alternatives to courts can be a tactic to control dissent through "coercive consensus decision-making" in which people or groups are pressured to limit their dissent, and to compromise or give up opportunities to pursue legitimate grievances (Nader 1997, 305; Nader and Grande 2002). Both transitional justice and alternative dispute resolution are predicated on specific processes that take place outside the formal justice system, with unspecific goals related to justice (Alberstein 2011). Much like critical studies of alternative dispute resolution, examining the circulation of transitional justice in different contexts can help illuminate whether or to what extent the idea's appropriation and promotion work to control dissent and silence those with grievances.

In sum, rather than looking at when transitional justice works, it is important to look at how the idea is produced on the ground, or transitional justice at work (McCann 1994). Thinking about the transformative nature of ideas can reveal how transitional justice can be used to reinforce or undermine law, as well as the ongoing utility of the idea as a way to make sense of conflicts and prescribe solutions for them. In this respect, this is a theoretical question that goes against the grain of most studies of transitional justice, which have tended to assume that the idea offers a desirable alternative to legalistic understandings of justice, and have mainly questioned the particular modalities of its implementation. Understanding transitional justice, and its future in domestic and international politics, requires an examination of how the idea is given meaning in different political contexts.

AN INQUIRY INTO TRANSITIONAL JUSTICE IN COLOMBIA

Transitional justice entered Colombian political discourse when there was no discernible transition, as the armed conflict was ongoing. This political context makes the country a generative case to examine the circulation of the idea. Rather than examine cases where there has been a tribunal, a truth commission, or even a radical political transformation that can be readily identified, studying the appropriation of transitional justice in Colombia can provide important insights into how and why the idea continues to circulate. In countries without a discernable transition, those appropriating and promoting transitional justice engage in a self-conscious construction that reflects their understandings of what the idea means (Teitel 2008, 1).

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The qualitative case study approach I adopted in Colombia enabled a grounded examination of transitional justice, which helped illuminate how the idea is both understood and utilized by individuals who are engaged in political activity (Massoud 2011, 9). The data include fifty interviews and dozens of organizational documents gathered in Colombia in January and February 2010. Follow-up data on Colombia, including thirty additional interviews with scholars, policy makers, and advocates working on the peace process, were collected in May 2015 and helped shed light on how the meaning of transitional justice has evolved since 2010.[1]

Interviewees were initially selected with a niche and snowball sampling technique, meaning that interviewees referred me to others with insight into the appropriation of transitional justice in Colombia. The study initially focused on organizations that identify their work as transitional justice.[2] As the research got underway, it became clear that there is a complex web of organizations shaping the meaning of transitional justice in Colombia. After collecting the interviews, I differentiated between four types of advocacy organizations: (1) transnational organizations that provide advice and assistance to domestic actors, (2) judicially oriented nongovernmental organizations (JoNGO), which focus on bringing cases to domestic and international courts, (3) research-oriented nongovernmental organizations (RoNGO), which focus on research and publishing related to the longstanding conflict, and (4) victims' associations, which are organizations consisting of individuals and family members of individuals who were victimized by the paramilitaries, guerrilla, and/or the state. In addition, it was necessary to expand the sample to governmental actors, including policy makers and individuals working for government agencies, as they played an important role in shaping understandings of transitional justice.[3]

Interviews lasted thirty to ninety minutes, were conducted in Spanish, and were later professionally translated and transcribed. They were semi-structured, in-depth, and dialectic, meaning that much of the data was gleaned through dialogue about individual and organizational goals and strategies. Each interview began with the following two questions: "Can you tell me about the goals and strategies of your work?" and "Can you tell me about your understandings of transitional justice?" The interview data were triangulated with field notes from participant observation in fifteen public seminars related to the Justice and Peace Law. They also drew on Web sites, documents, and publications from organizations engaged in advocacy around the Justice and Peace Process, as well as ongoing research on the Colombian peace processes.

1. This study is part of a larger project on the appropriation of transitional justice, which involved a web-based survey and more than 200 interviews with scholars, practitioners, and advocates around the world.

2. The sample was selected based on information from prior contacts from ongoing work on transitional justice advocacy in different countries. These prior contacts include the director of the Human Rights Data Analysis Group, who has worked closely with the International Center for Transitional Justice-Colombia, the Associate Director of the Berkeley Law School Human Rights Clinic, who has been involved in human rights litigation against paramilitaries, and a Colombian academic who studies social movement organizations in Colombia.

3. After six weeks in Bogotá, I traveled to four cities—Medellin, Cartagena, Baranquilla, and Santa Marta—at the suggestion of interviewees who mentioned important actors based in these cities.

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All notes, transcripts, and documents were coded and themes inductively generated using qualitative analysis software. After a first round of coding, I categorized the themes according to (1) beliefs about what Colombia needs for peace, (2) beliefs about the origins of transitional justice, (3) beliefs about the Justice and Peace Law, (4) beliefs about other organizations, and (5) beliefs about the government more generally. On a second round of coding, I further refined the codes to clarify how these different themes interact and intersect in relation to domestic politics. The appropriation of transitional justice in Colombia reflects beliefs about those who introduced the idea, beliefs about the Justice and Peace Law's ability to meet victims' needs, and beliefs about what the country actually needs in order to stop the violence. These themes help reveal how the idea of transitional justice both reflects and shapes domestic politics, for better or worse.

TRANSITIONAL JUSTICE AT WORK IN COLOMBIA

The Government's Interest in Transitional Justice

> As far as Colombia is concerned, what we're witnessing more than a transitional justice movement is the manipulation of transitional justice rhetoric in order to devalue human rights standards and in order to conduct a denial strategy of state-sponsored violence. (Interview with RoNGO director in Bogotá, Colombia, January 2010)

In the early 2000s, the reality of a political transition, let alone justice, in Colombia was difficult to imagine. The country had been struggling with its armed conflict for decades, and the parties to the conflict struggled to negotiate with one another. The most violent period of the twentieth century was between 1948 and 1957, after the liberal leader Gaitan was assassinated and a war between the conservatives and liberals left 300,000 dead. After 1957, the National Front unified these two political parties and held power until 1974, alienating the burgeoning communist movement. When the government attacked communist-held land in 1964, FARC emerged as a guerrilla defense force rooted in Marxist ideology, and soon other leftist guerrilla groups emerged throughout the country. Wealthy landowners funded new sets of armed actors, and paramilitary groups, often with government support, emerged. The paramilitaries were banned in 1989, but they continued to amass political and economic power, uniting in 1997 under the title Autodefensas Unidas de Colombia. While various parties maintained their ideological commitments, the conflict took a new turn as different groups fought for control of the drug routes. With the US involvement in funding the Colombian military to eradicate the drug trade, the influx of arms and terror increased. The violence has displaced an estimated 6 million people, killed many thousands of people from all parts of Colombian society, wreaked havoc on the environment, and made large parts of the country ungovernable.

While official accounts of the violence often describe abuses by the guerrillas and by paramilitary organizations, the government is clearly implicated in rights

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abuses as well. In the early 1980s, nearly 3,000 former guerrillas were murdered after they agreed to demobilize. Although paramilitary groups were condemned, evidence suggests that the military, with state sanction, supported the massacre. The government has also been accused of so-called false positives: between 2003 and 2008, the Colombian military killed 3,000 individuals in questionable contexts, claiming the deaths were part of their counterinsurgency campaign. Officials at all levels of government have been found guilty of receiving money from paramilitary groups, a relationship that is called *parapolítica* (de León-Beltrán and Salcedo-Albarán 2008). Moreover, the United States has provided the government with ongoing financial aid to eradicate drug-related crops and to fight guerrilla groups, which decimated many rural communities.

The government's interest in transitional justice has to do with its desire to end the conflict, as well as minimize the legal, political, and economic repercussions of its role in fomenting it. The Colombian government was used to negotiating amnesties with armed groups, but its ability to do so changed under domestic and international law. Colombia's 1991 constitution guaranteed the right to peace, but also guaranteed that there would be due process for perpetrators of violence. The Interamerican Court of Human Rights ruled over a dozen times on Colombia, requiring that perpetrators of violence, particularly the government, be investigated, judged, and sanctioned. By 2002, the International Criminal Court had jurisdiction over crimes against humanity committed in Colombia,[4] and the government was well aware that it needed a new approach to demobilize armed actors and to guarantee victims' rights.

In 2002, Alvaro Uribe successfully ran for president on a platform to end the violence by negotiating with the paramilitaries but defeating the guerrillas by military action. FARC members had killed Uribe's father, and he preferred a military solution to a negotiated settlement with the guerrillas. Uribe's government first tried to encourage demobilization by offering pardons to the paramilitary (Jacobson 2006; Bell and O'Rourke 2007; García-Godos and Lid 2010). Law 782, passed in 2002, extended an earlier framework for peace negotiations by offering amnesty for allegedly political crimes such as rebellion, sedition, and rioting, but denying amnesty for more serious violations such as kidnapping, disappearances, and massacres. This law helped facilitate the 2003 Ralito Pact, which led to the demobilization of more than 31,000 paramilitaries. However, Uribe's effort to ensure amnesties through a proposed law on alternative sentences was quickly condemned by domestic and international advocacy groups. The government knew it needed a new approach to meet the growing demands for judicial accountability (Diaz 2008).

As it pursued negotiations with the paramilitary groups, Uribe's administration consulted with international experts, including leaders of the International Center for Transitional Justice (ICTJ) and others who worked with the South African Truth and Reconciliation Commission (Uprimny and Saffon 2007). However, transnational actors were not the only influence on the government. As early as 2003, Colombian political scientists were drawing on the idea of transitional justice

4. When ratifying the Rome Statute, Colombia postponed the Court's jurisdiction over war crimes until 2009.

in order to explain how the government should think about the ideal of justice balanced with the need for peace (see Rettberg 2005).

Drawing on the insights of these different scholars and advocates, the government developed a new approach to demobilize armed groups. In 2005, after another round of negotiations about the amnesty provisions, the legislature passed Law 975, the so-called Justice and Peace Law, which created an entirely new penal process for individuals who applied for protections under it. Candidates for this alternative procedure petitioned to be on a special list in the prosecutor's office and followed certain procedures in order to receive legal benefits. In the judicial process, applicants were required to provide free confessions (*versiones libres*) in which they were to confess all crimes committed, to disclose all illegally gained property and goods, and to surrender such goods to the reparation fund for victims of violence. The alternative judicial process provided for sentences of five to eight years in return for these depositions, reparations to the victims, and a promise to not return to lawlessness.[5]

Scholars, policy makers, and advocates often refer to Law 975 as a transitional justice policy because it encompassed goals ranging from judicial accountability to reparations (Summers 2012). In addition to the alternative penal process, Law 975 created the NCRR.[6] This administrative body provided financial reparation to survivors but, importantly, there was no compensation for victims of the state, many of whom were killed for their leftist political activities.[7] In its twelve offices, which were located in major cities throughout the country, staff recorded testimony and distributed funds to victims of paramilitary and guerrilla groups. The Commission also included the Historical Memory Group (*Grupo Memoria Histórica*), a group of academics who investigate and publish reports on well-known massacres. As a result of the Historical Memory Group, scholars referred to the Commission a "sort of truth commission," and described Law 975 as a transitional justice process (Laplante and Theidon 2006, 93).

To understand why the Uribe administration was interested in transitional justice, it is important to understand how they were trying to work within Colombia's

5. Upon reviewing the law, the Constitutional Court held various parts unconstitutional for violating the rights of victims, and suggested that failure to tell the truth could disqualify someone from the benefits, rendering him or her eligible for much harsher sentencing (up to a 1,000 percent increase). For a comprehensive description of Law 975 and the legal challenges to it, see Kalmanovitz (2010).

6. Among its various obligations, the NCRR was in charge of (1) guaranteeing victim participation in judicial truth-finding (*esclarecimiento judicial*) operations; (2) issuing a public report explaining the upsurge and evolution of illegal armed groups; (3) following and evaluating the evolution of victim reparation as outlined by the Justice and Peace Law, and making recommendations to ensure adequate execution; (4) recommending the criteria for victim reparation and management of the National Reparations Fund; (5) coordinating the operation of the regional restitution commissions; and (6) proposing national policies and programs that promote reconciliation and prevent the resurgence of violence.

7. The definition of victim status has created a number of controversies. Under Decree 1290 (2008), the determination is made by the Administrative Reparations Committee, which includes members of the NCRR and the Ministry of the Interior and Justice. The money was first given to vulnerable groups, including the children who were recruited by illegal armed groups and who later left the conflict while still minors, the individuals who were victims of sexual violence in events already described in the *versiones libres*, the families that received exhumed bodies from the National Prosecutor General's Office, and the victims of antipersonnel landmines. Following these groups, victims receive money on a first-come-first-served basis. Most importantly, victims of state violence did not receive money.

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domestic and international legal obligations. As one of Law 975's key architects, a high-ranking official in Uribe's government, explained, policy makers viewed the new law as a way to avoid obligations under domestic and international law:

> Transitional justice is the best instrument to go from war to peace in our case, or dictatorship to democracy in the Chilean case.... The Justice and Peace Law is soaked with transitional justice, but Colombian judges don't even know what transitional justice is. State officials don't either, so we walk limping. It's a major pedagogical failure, because some people are stuck to legality, lawyers have a dogmatic interpretation of the law. Transitional justice makes political interpretation very flexible, which is what is needed for these changes. (Interview with government official in Bogotá, Colombia, February 2010)

Drawing on the framework presented by transnational advocates who introduced the idea, this government official explained transitional justice as an instrument that is crucial to make peace. The government and international experts who consulted them were well aware that Colombia was not in a period of transition in the same way that Argentina and Chile were decades prior, but they saw the utility of transitional justice as a way to describe the tradeoffs that governments must make when negotiating peace agreements.

For the government, the utility of transitional justice lay in its flexible approach to law, meaning that it enabled the government to decide whom to punish and how much. The Uribe administration drew on transitional justice to explain and justify legal benefits for the paramilitaries who were willing to disarm, and also to suggest that it was providing financial benefits for victims (Uprimny and Saffon 2007). However, from the perspective of Uribe's critics, transitional justice reflected the interests of the state, which wanted to show that the guerrillas were more culpable than the paramilitary, and that the state was not culpable at all.

Transitional Justice as a Foreign Idea

> It started after the peace talks, right after Mr. Uribe took office. Right at the beginning the idea was to have a legal framework more oriented to an amnesty law than to the full guarantee of the rights of victims.... [T]hat was when this idea [transitional justice] entered, mainly by foreign governments, international organizations like intergovernmental and international NGOs. (Interview with victims' association director in Bogotá, Colombia, January 2010)

The comment above succinctly explains how domestic advocates viewed transitional justice: the idea is foreign, introduced by foreigners and appropriated by the government. Not a single interviewee said that it was an idea that originated in Colombia, and all mentioned foreign advocates, foreign academics, or the government when talking about their initial exposure to it. Indeed, most described learning about transitional justice from seminars and trainings conducted by scholars

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from international organizations or universities. True, the idea of transitional justice may have originated from political trade-offs made in South American transitions, but many actors questioned its utility as well as appropriateness in Colombia given the nature of the conflict and distinct political context.

In addition to concerns about the government, part of the skepticism and cynicism had to do with how domestic advocates viewed the "international experts" who came to explain transitional justice to them:

> If you stay here for a year, you are going to attend twenty-five international seminars on [transitional justice]. It's incredible. Name one international expert and I can tell you, 90% of them have been in Colombia in the past three years. . . . Except for Pablo [de Greiff, a Colombian working at the ICTJ], I don't think many of them know the particularities of Colombia. It is more like the United Nations' idea of best practices and lessons learned, like, this worked here, don't do this, in terms of tools. (Interview with RoNGO staff member in Bogotá, Colombia, January 2010)

Other advocates echoed concerns about the utility of the idea. Some suggested that transitional justice is better suited for academics than for individuals working on practical solutions to the conflict. The director of a victims' association that helps family members of the disappeared, for example, expressed the opinion that transitional justice was an impractical academic "trend":

> They are very theoretical . . . and I ask "But besides from theories, what do you know?" Nothing! They haven't worked the field, they don't come to get tanned under the sun because they are in Bogotá or big cities in their offices doing some research of what goes on in other countries and trying to fit it to here. So the trend started from a bunch of intellectuals that started transitional justice. (Interview with victims' association director in Bogotá, Colombia, February 2010)

Rather than reveal concerns about the idea of transitional justice in and of itself, the individuals expressed thinly veiled disdain toward those who promoted transitional justice, and how they did so. Some advocates echoed scholarly concerns that Colombia is just one more stop on the transitional justice circuit, where professionalized transnational advocates try to spread their message about how the idea applies to any conflict regardless of the particular political context (Subotić 2012). Representatives from victims' associations, in particular, were bothered by what they saw as suggestions that did not sufficiently acknowledge or incorporate their own knowledge and experience.

When asked about their understandings of transitional justice, most of the interviewees specifically mentioned the ICTJ, which has been simultaneously lauded and criticized for popularizing the idea of transitional justice around the world. The ICTJ's mandate includes the goal of helping local actors to develop context-specific initiatives, and the leadership has tried to draw on local expertise in countries where it works. Though its headquarters are in New York City, the

center created a regional office in Bogotá to assist both government and civil society in the implementation of Law 975.

At the time of research, Bogotá was the largest and best resourced of the ICTJ's regional offices. It was also staffed with well-respected domestic advocates who had worked for years to ensure victims' rights. Despite decades of experience in advocacy circles, three staff members at the ICTJ's Bogotá office relayed how their organization initially struggled to collaborate with other advocacy organizations. Staff suggested there were concerns about the organization's New York headquarters and whether transitional justice was euphemistic of yet another US policy imposition. Some advocates also suggested that, by its very name, the ICTJ exists to promote alternatives to judicial accountability. A leader from a victims' association, for example, explained her view that transitional justice is promoted by transnational organizations like the ICTJ in order to misrepresent the political and social realities in the country:

> There are organizations here like the ICTJ that are trying their hardest to say that there is a process of transition here in Colombia. We don't agree. If transition is amnesty or impunity, there is no point in it; but our bet is on peace, a peace that has to come from truth and justice. It is very complicated for a person to be told, "forget about it" when they have to see the person who murdered their family member in the mayoralty. (Interview with victims' association director in Bogotá, Colombia, February 2010)

Although a variety of advocates echoed concerns about the ICTJ's agenda, most of those who collaborated with the Bogotá office did not believe that the organization promoted impunity. Rather, they noted how their understanding of transitional justice shifted in light of their interactions with its staff, many of who were outspoken critics of how the government appropriated the idea.

To counter concerns about transitional justice, various organizations, including the ICTJ at the time, that promoted transitional justice tried to explain how the government was using the idea for problematic ends:

> The problem has been that, ever since this transitional justice paradigm and reparations have become administrative reparations, there is a slippery slope of conceptual devaluation where everything including the Kleenex or this tea or the Coca-Cola or the money that you received ten years ago based on humanitarian assistance is now reparations, and this is a very kind and generous state. (Interview with RoNGO director in Bogotá, Colombia, January 2010)

In addition to pointing out how the idea of transitional justice has been misused, these organizations tried to focus on the theoretical elements of the idea in order to highlight what the idea could offer. One staff member from a prominent research-oriented organization explained how he saw the Justice and Peace Law as

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an example of a more comprehensive policy, but not enough to be a real transitional justice approach:

> This idea of different tools to work in a comprehensive and systematic manner in order to set up the ground to a new idea of democracy or state. That's what was missing. I think that is why the idea of [transitional justice] could work in Colombia in some way. (Interview with RoNGO staff member in Bogotá, Colombia, January 2010)

Like him, others who viewed transitional justice as a useful idea tried not to focus on the actual elements of the Justice and Peace Law; rather, they made suggestions for what future laws might contain. Although transitional justice may have been decontextualized to describe the Justice and Peace Law and to prescribe solutions in Colombia, these actors believed they could recontextualize it to foster peace in the country.

Such decontexualization and recontextualization calls to mind theories of vernacularization, whereby domestic advocates appropriate foreign ideas in ways that make them culturally resonant (Goodale and Merry 2007; Levitt and Merry 2009). Given that transitional justice is vague, without clear legal standards, the government decontextualized the idea to promote a flexible interpretation of the law. However, given the common belief that the government tried to promote Law 975 with transitional justice in order to pacify rights claims, expressing approval of transitional justice as an idea implied approval of Law 975. For many advocates, recontextualizing transitional justice required them to explain that there was no transition, and no justice, in Law 975.

Transitional Justice Is Not *Justicia*

Though skeptical, domestic advocates did not reject transitional justice outright. Rather, they appropriated it in subtler ways that reveal the idea's malleability and utility in domestic politics. In response to the idea of transitional justice, advocates began to articulate their goals with the now common slogan of *verdad, justicia, y reparation*, or truth, justice, and reparation (Diaz 2008). This phrase was repeated in newspaper articles, seminars, and even political debates as candidates sought to prove that they were considering victims' demands in negotiations with armed actors. This slogan suggests a holistic conception of justice that, in theory, resembles general understandings of transitional justice but, in practice, was a way to reject the idea.

Most advocacy organizations, particularly those that work on behalf of victims, wanted the criminal justice system to deal with perpetrators of violence. They disapproved of the alternative penal process and, by association, transitional justice. The Movement for Victims of the State (MOVICE), a well-known victims' association, was a particularly outspoken critic of transitional justice because it saw transitional justice as a way to legitimate the Justice and Peace Law. MOVICE members were emphatic that the government was utilizing the idea of transitional justice to

ensure impunity for the paramilitary and itself. At a meeting in the group's office in 2010, labor organizers from around the country talked about the ongoing violence, including murders, and threats that they still face. It was clear that they had reason to be wary of any government initiative, particularly one claiming to offer justice for what they have suffered, or one claiming to reflect a political transition toward peace.

In February 2010, MOVICE filled a large downtown auditorium with advocates interested in its new publication, *Forgetting and Impunity* (*Olvido y Impunidad*), which is the organization's summary of the Justice and Peace Law. The title is a wordplay on the government's claim that it is pursuing justice and peace with Law 975, and a direct criticism of what the organization sees as a manipulative euphemism. The event provided information about financial reparations and truth seeking, but the most striking part was a presentation on the growing number of Senate members who have been investigated and/or indicted for receiving money from paramilitary groups. In making this presentation, the organization was trying to reframe the Justice and Peace Law by coupling it with *parapolítica*, the idea used to express the collusion between paramilitaries and the government.

By suggesting that the Justice and Peace Law is an excuse for impunity and forgetting, MOVICE and others were trying to demonstrate that there is no transition or justice in the country. In so doing, they argued that both are possible. When asked his opinion of transitional justice, a director at the Lawyer's Collective (*Colectivo de Abogados*) immediately contrasted the idea with human rights:

> There are either human rights or there are no human rights; that is to say, they kill or they don't kill, they disappear or they don't disappear. In terms of human rights, the consequences are concrete. Either there is complete historical truth independent of the legality, either there is justice or there is impunity, either there is complete reparation or a remedy of this type, or there is prevention and guarantees of no repetition. [Either this] or the conflict continues and then there is a more serious violation. (Interview with JoNGO director in Bogotá, Colombia, February 2010)

By articulating this dichotomy between human rights and no human rights, he implied that there are legal standards for truth, justice, and reparation, and that ensuring each is necessary for a transition. He saw human rights as an idea that has implicit standards, while transitional justice is an idea that does not. Just as transitional justice became decontextualized and applied to a country not undergoing formal political transition, he and others recontextualized it to articulate the opinion that that legal standards related to truth, justice, and reparation are necessary and possible (Diaz 2008).

In studying the appropriation and adoption of human rights, Merry (2006b) suggests that domestic advocates may prioritize local contexts and histories over universal notions of justice, particularly notions of justice that are predicated on Western legalism. However, this case reveals the opposite problem: that domestic

power holders may prioritize political expedience, or indeed their own private political interests, over what others regard as substantive justice. The skepticism that many advocates expressed about transitional justice reflects their belief that local contexts and histories matter, but that universal notions of justice exist for a reason. For many, justice entails punishment for wrongdoing. They contested the appropriation of transitional justice in Colombia because they wanted legal rectification of rights violations. They did not trust a flexible interpretation of the law that they suspect is meant to allow selected categories of perpetrators to evade punishment or restitution to victims.

The Ideal of Transitional Justice: *Verdad*

> This fad [transitional justice] came to be because of the [NCRR], because we were copying what happened in other countries and [we] tried to make it fit by forcing it and seeing what resulted from it. (Interview with victims' association director in Bogotá, Colombia, February 2010)

Various scholars, advocates, and policy makers immediately mentioned truth commissions when asked about transitional justice. Some were cynical, much like the victims' association director quoted above. Their opinions about truth commissions reflected concerns about whether a truth commission was possible in the midst of a conflict. At the same time, for some, a truth commission became central to their vision of what a transition entails. In this way, they drew on the idea of transitional justice as they developed new strategies.

In addition to the reparations program, the NCRR also produced in-depth reports on the violence. For this reason, it has been called a "sort of" truth commission, and analyzed as an example of transitional justice in Colombia (Laplante and Theidon 2006). The NCRR, however, was limited by the fact that Uribe would not recognize the existence of a civil conflict in Colombia. His administration's policy was that the guerrillas were terrorists, and individuals claiming to be victims were guerrilla sympathizers, economic migrants, or other marginalized populations to whom the government was not responsible. Thus, for many, the most critical transition was one in which the government recognized the armed conflict and its victims. A staff member from a research-oriented NGO explained how an accurate historical record, or truth, might be secondary to including victims in creating the narrative of violence:

> Interviewer: What do you think the value of a truth commission would be?
> Interviewee: First, in terms of recognition. In terms of the state recognizes, acknowledges this happened, it happened and it is not going to happen again, and society needs to know. (Interview with RoNGO staff member in Bogotá, Colombia, January 2010)

This idea of recognition reflects beliefs about what transition in Colombia would entail: not only would the state recognize the existence of an armed conflict,

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but also victims would have a national platform to voice their experience and, ideally, to participate in policy decisions that affect them. The commission would not contribute to a transition, but would be a product of it. This ideal of a truth commission, in turn, affects their understanding of transitional justice in Colombia. A real transition would be a society in which victims have a public platform, such as a truth commission, to voice their suffering.

While truth commissions and voice are often coupled (Rowen 2012), this relationship has a distinct character in Colombia due to the idea of *memoria histórica*, or historical memory. This idea plays an important role in how individuals understand the goal of truth and, thus, what a transition in Colombia would entail. Historical memory refers to the collective nature of truth seeking and its importance for individual and community well-being. The term contrasts with the idea of truth seeking for historical or judicial ends, which is what *verdad* sometimes refers to. The Historical Memory Group (which later became the Historical Memory Center) is the research branch of the NCRR. It was created to fulfill the Commission's mandate to produce a "public report on the reasons for the illegal armed actors' creation and evolution" from 1964 onward (Historical Memory Group n.d.). Several group members, like the historian who offered this reflection, emphasized their role in providing voice to victims:

> Historical memory, I think, carries out the role of making the voices of the victims be the main focus, which isn't the only aim, but it's one of the goals that are set from the beginning. (Interview with Historical Memory Group member in Bogotá, Colombia, February 2010)

This understanding of historical memory, which links truth and voice, shapes beliefs about transitional justice. Three other members, including the president, of the Historical Memory Group distinguished their work from that of a truth commission by the fact that the group did not hold public hearings. For it, voice is a central component of a truth commission, and voice would only be possible if the violence ceases.

Although nearly all interviewees said that creating a truth commission was not possible, various advocacy organizations and government offices still drew on the ideal of one as they contemplated a transition from armed conflict to peace. The mayor's office in Medellin published several edited volumes with survivors' narratives, while the ICTJ published a volume titled *Remembering in Conflict: Non-Official Memory Initiatives in Colombia* (Carillo 2009). This volume notes that authors are not trying to supplant the state's obligations to create judicial and quasi-judicial bodies such as truth commissions, but, rather, to provide preliminary information for future bodies and to instruct the government on democratic practice.

Along these lines, the Foundation for Development and Peace created a Web platform for new stories called Open Truth (*Verdad Abierta*). According to the project's director, one of the founders exclaimed that it was "just like a truth commission" at a development meeting (Interview with RoNGO staff member, Bogotá, Colombia, February 2010). The director noted that, rather than publicize

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the site as one that tells *the* story of violence, which he saw as the goal of truth commissions, Open Truth wanted to provide different perspectives through a public platform. *Verdad Abierta* has emerged as an important resource for ongoing investigations and documentation about the violence.

As part of its advocacy campaign to ensure truth, justice, and reparation for victims of state violence, MOVICE brought together a variety of advocates from Colombia and elsewhere in Latin America to create a proposal for a future truth commission. For the organization, victim participation was the main goal:

> We consider there are no conditions for a commission and what is important for organizations is to continue to document the cases and prepare ourselves for a future truth commission. . . . [A] person [who] has worked for the NCRR [and] belongs to the impunity process side cannot be part of the Truth Commission. We consider it is important that victim organizations take part in deciding who those people would be. . . . We have an ethic and political proposal [for the future commission]. (Interview with MOVICE staff member in Bogotá, Colombia, February 2010)

This description highlights how MOVICE appropriated transitional justice for its own agenda. She explained that both the process of creating a truth commission, and a commission itself, are means to ensure that victims are a central part of any new policy. Only then would she trust that there was a transition in the country.

These diverse opinions about the value of a truth commission provide important insights into the circulation of transitional justice in Colombia. Actors coupled transitional justice and truth commissions, hoping that, in the future, they will be able to learn about the causes and consequences of the violence. They knew that a truth commission would not be beneficial if the violence continued, particularly violence perpetrated by the government. In this way, they resisted harmony ideology, believing that a government-sponsored truth commission would be a tool to pacify their calls for investigations, an accurate historical record, and voice. At the same time, thinking about creating a truth commission in the future enabled them to articulate an idealized political transition in which the government would ensure their claims to truth, justice, and reparation.

THE TRANSFORMATION OF TRANSITIONAL JUSTICE IN COLOMBIA

> Is it transitional justice? What to feel for all these families? Here, we have the wife of a disappeared man: Gilberto was chopped up, but she found a tiny fragment of his finger, she could establish that it was his. But where is the rest? What does her son, who was eight years old and is now fifteen, think? To know that he couldn't do anything. . . . Is this transitional justice? And even worse, you know what happened to the person responsible for the crime? They had him a few months in prison and [he] is out by now; and you know what he's doing? Chasing the widow! He has her corralled, moving every so often, living lonely and in fear. This cannot be

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> transitional justice. (Interview with victims' association director in Bogotá, Colombia, February 2010)

By looking at how Colombian advocates appropriated and promoted transitional justice, the initial paradox becomes clearer. It is not that they do not believe in transitional justice. In fact, they do believe in transitional justice, if one considers transitional justice to be a holistic framework for justice that goes beyond judicial accountability. As the quote above reveals, even when articulating resistance to the idea, they still appropriated it as a way to contest the government's approach to truth, justice, and reparation. For government officials in Colombia, transitional justice provided a new way to articulate the problems with international and domestic criminal law, particularly the way that courts have limited their ability to negotiate amnesties in the peace negotiations. These contradictory understandings reveal that transitional justice has little meaning in and of itself. The idea's meaning is under construction, and it should be analyzed in the different contexts where it is being appropriated and promoted.

Ironically, the fact that transitional justice is viewed, at once, as a way to ensure judicial accountability and as an alternative to Western legalism makes it a powerful idea for scholars, policy makers, and advocates. Given the variety of ways in which these different actors articulate transitional justice, one might see it as meaning everything and, therefore, meaning nothing. However, the idea is still important, precisely because it continues to be appropriated and promoted in ways that have tangible effects on policies and on advocacy strategies.

While theories about the circulation of legal ideas provide important insights into how intermediaries translate new ideas, these theories tend to overlook why certain ideas tend to circulate and, in particular, the local power dynamics that cause particular appropriations of those ideas to prevail in particular contexts. A context-specific approach to understanding transitional justice reveals the idea's malleability and, thus, its utility for different political actors.

For years, scholars have suggested that human rights works as a language that can "incorporate any moral or ideological position" (Wilson 2001, 5). However, the idea of human rights continues to be associated with international treaties and, now, international criminal law. In contrast, transitional justice is less defined and, instead, predicated on the notion that the meaning of justice in times of political transition must be more expansive than retributive justice (Arthur 2009). The idea ostensibly bridges the universal claims associated with human rights with local tradition and practices that may not focus on judicial accountability (Merry 2006b; Shaw, Waldorf, and Hazan 2010). Thus, a range of actors, from policy makers trying to assert their sovereignty to advocates pursuing redress for victims, will find the idea appealing. Where both policy makers and advocates are interested in developing alternatives to judicial accountability, the idea will have even more salience because transitional justice has been promoted as a holistic approach to justice that requires more than retributive justice.

At the same time, the Colombia case suggests that promoting transitional justice can help reinforce legalism and even retributive justice. As a foreign implant, advocates may view the idea as a tool to pacify rights claims. In response, they may

criticize the idea of transitional justice and emphasize judicial accountability as the foundation of justice. In this way, the malleability of transitional justice is both its strength and weakness. If policy makers continue to use the idea as a way to promote alternatives to domestic and international criminal law, the idea will be dismissed offhand as a euphemism for impunity. As a result, policies that draw on the idea of transitional justice and may be useful may not be implemented.

On the other hand, although critics may scoff at transitional justice as an idea that ensures impunity, the Colombia case reveals that the idea's circulation is more nuanced. The findings from Colombia challenge both skeptics of transitional justice as an elite discourse that can undermine victims (Robins 2012) and those concerned that the idea is simply a manifestation of harmony ideology (Nader 1991). Domestic advocates in Colombia want a political transition, and they were well aware that the government promoted the Justice and Peace Law as an example of transitional justice in order to pacify their legal claims for truth, justice, and reparation. Transitional justice also provided them with new ways to make their demands, and to criticize the government for not ensuring their rights. By explaining their understandings of what a transition would entail—a political situation in which state actors are also held accountable and victims are able to participate in politics—the idea offered yet another tool for them to make their demands.

In sum, illuminating how different actors negotiate the meaning of transitional justice can help clarify what the idea *does* for those who utilize it. In this way, what we see is not necessarily the globalization of transitional justice but, rather, its instrumentalization around the world. The idea is malleable and ambiguous, which makes it easy for actors to appropriate it and promote it in contradictory ways. Analyzing the circulation of transitional justice reveals that it does not really matter under what conditions transitional justice works, but *how* it works to fortify other kinds of power struggles. These struggles may have to do with conceptual boundaries, organizational boundaries, and ideological boundaries between harmony and rights that may have as much to do with questions about what justice entails as about what the options for justice actually are. Moreover, studying the appropriation and promotion of transitional justice also shows that domestic advocates are not simply passive recipients of foreign ideas, but instead take them up strategically in response to their own political calculus.

THE FUTURE OF TRANSITIONAL JUSTICE IN COLOMBIA AND BEYOND

The meaning of transitional justice continues to evolve in Colombia. While an analysis of the Justice and Peace Law reveals how different actors first instrumentalized transitional justice, the peace process with FARC highlights how politicized the idea has become. The idea of transitional justice has become symbolic of the political battleground for the current administration (now under Juan Manuel Santos, Uribe's former Secretary of Defense, who was elected in 2010 and immediately departed from Uribe's platform by starting a peace process with FARC), the opposition party (which remains under now-Senator Uribe's influence), FARC, and

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the many observers who have their own opinions about what is just, or fair, or necessary for the violence to cease.

Far from its academic and think tank origins, transitional justice has become part of domestic legislation in Colombia. In 2011, a new Victim's Law went into effect, and the preamble mentions that the law is part of transitional justice in Colombia. This law is a significant improvement on the Justice and Peace Law as it provides the opportunity for victims of state violence to receive financial reparation. It also enables those who have been dispossessed to claim their land. This policy signaled that the government might address the untouchable issue of land reform, which could lead to a real social, political, and economic transition in Colombia. However, the reality of victimhood in Colombia is far more complex than the bill recognizes, and highlights the ongoing challenge to ensure justice for the millions of victims.

In general, the description of transition in the Victim's Law is aspirational and its notion of justice is shortsighted. The idea of transitional justice was put into the preamble to the Victim's Law as a way to suggest that the compensation would be finite (interview with government official in Bogotá, Colombia, May 2015). Victims of violence that took place before 1985 do not qualify for compensation, nor do victims of narco-traffickers. The violence is ongoing, and new victims continue to ask for immediate assistance. There are simply not enough financial resources for everyone who needs assistance. Land restitution cases remain clogged in onerous court procedures, and there have been very few successful claims. While this ambitious law provided much-needed relief to some, it has done little to change the social and political conditions that led to the violence.

The idea continues to circulate in Colombia precisely because the government has been able to craft an understanding of transitional justice that fits its needs. Rather than signaling radical political change, the idea of transitional justice has helped the government to provide a temporary solution for Colombia's ongoing conflict. The Legal Framework for Peace, passed in 2012, created a constitutional amendment for the creation of transitional justice instruments to deal with the guerrillas. The Legal Framework for Peace and the subsequent Constitutional Court decision on its constitutionality explicitly mention transitional justice as "a set of instruments" that are "exceptional and necessary" in order to end the conflict. The malleability of transitional justice helped the government to show that it was following international standards while maintaining its right to create alternative sanctions. The framework states that perpetrators of international crimes such as war crimes and crimes against humanity cannot receive modified sentences or pardons. The Attorney General's Office would have discretion in deciding whom to prosecute (for lesser crimes), and how much, or how little, punishment those convicted will receive. The Legal Framework for Peace also mandates a future truth commission, yet another example of how the truth commission became an idealized outcome of a political and social transition.

These developments in Colombia echo Sharp's (2015) observation that policy makers no longer ask if transitional justice is necessary but, rather, what kind of tool or approach they will employ. However, asking either the former or latter question misses the point, precisely because different political actors are using the idea

of transitional justice for their own ends, drawing on their own definitions of the idea. Throughout the negotiations, FARC negotiators said that transitional justice is an unacceptable idea if policy makers use it to jail its members (Economist 2015; Semana 2015). The Santos administration, and its supporters, emphasized that the transitional justice instruments will not allow amnesties for international crimes. However, for many Colombians, transitional justice is a euphemism for impunity. Eighty percent of the population wants FARC to face jail time, and opponents to the peace deal have condemned alternatives to judicial accountability as capitulation to terrorists. Even if they supported alternative sanctions for the paramilitary, many right-wing Colombians dismiss transitional justice as a euphemism for impunity for the guerrillas, and oppose any deal with this label.

In addition to the fallout from public opinion on peace negotiations with FARC, the Santos administration has an even greater problem now that the peace accords are finalized. In June 2015, the government and FARC agreed to create a truth commission after a peace deal is reached. This agreement further reveals how truth commissions have become a symbol of political transition in the country, and the inflated hopes about what a commission can do. The FARC has been emphatic that the commission must investigate the role of state actors, and even the United States, in fomenting violence. It is unclear who or what the commission will investigate, and how the commission will complement judicial processes. In Colombia, as elsewhere, few agree on what caused the violence and what the country needs in order to move past its violent history. A truth commission is unlikely to change opinions, let alone have the capacity to provide substantive redress to the millions of victims who have lost their livelihoods.

Coming full circle, in December 2015 the government and FARC signed their agreement on victim's rights, and the peace accords were finalized in June 2016. Even the *New York Times* referred to the importance of "so called transitional justice" in this peace accord (Casey 2016). FARC agreed that it would lay down its arms, acknowledge its responsibility for its role in the violence, and submit itself to special tribunals. These tribunals would decide on a sanction that would be an "effective restriction of liberty" for five to eight years, which could be increased or changed if FARC members do not confess to all their crimes.

While a remarkable achievement in Colombia's fraught history of peace negotiations with FARC, many Colombians do not support this agreement, largely because they believe it does not adequately sanction the guerrillas. Senator Uribe, who is highly influential and still critical of negotiating with FARC, told his supporters to vote against the plebiscite that will approve the accord, saying that: "More than the presumption of innocence and other universal guarantees . . . in the Havana accord with FARC, the government has newly equated the armed forces of our democracy with a terrorist organization and wants to apply the same transitional justice" (El Tiempo 2015). Given that the October 2, 2016 plebiscite to approve the peace accord lost by a very slim margin, it is clear that Uribe, who introduced transitional justice to explain and legitimate his efforts to demobilize the paramilitaries, was able to delegitimate his opponent's efforts. While the high abstention rate and misinformation campaigns about the accord contributed to Santos' failure,

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it is clear that disputes over the meaning of transitional justice, and who deserves it, undermined support for Santos' efforts (Rowen 2016).

The developments further reveal how and why transitional justice continues to circulate, and the problems that can arise when malleable legal ideas enter political discourse. In Colombia, and elsewhere, transitional justice has become a placeholder term that individuals and groups employ to make claims about deeper political conflicts. These conflicts must be addressed directly to create the kind of long-term political and social change needed to end the violence. Individuals and organizations with different agendas may appropriate and promote transitional justice, but they may be prescribing very different solutions to entrenched political problems.

As the idea of transitional justice continues to spread around the world, there is an ongoing need for more bottom-up inquiries into how the idea is given meaning in different political contexts. In particular, special attention must be paid to countries where conflicts are ongoing. In these fraught situations, different actors may appropriate and promote transitional justice in ways that obscure the histories and remedies for the violence. In the end, promoting transitional justice may do little more than provide a new discursive tool to promote competing and contradictory goals and strategies, both by governments and their adversaries. Transitional justice scholars and advocates must take heed of the dilemmas noted here, and recognize that transitional justice in theory may look very different from transitional justice in practice.

REFERENCES

Alberstein, Michael. 2011. ADR and Transitional Justice as Reconstructing the Rule of Law. *Journal of Dispute Resolution* 1:127–44.

American Society of International Law. n.d. Interest Groups: Transitional Justice and Rule of Law. https://www.asil.org/community/transitional-justice-and-rule-law (accessed May 10, 2016).

Arthur, Paige. 2009. How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly* 31 (2): 321–67.

Basu, Amrita. 2000. Globalization of the Local/Localization of the Global Mapping Transnational Women's Movements. *Meridians* 1 (1): 68–84.

Baxter, Victoria, Audrey R. Chapman, and Hugo van der Merwe, eds. 2009. *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*. Washington, DC: US Institute of Peace Press.

Bell, Christine, and Christine O'Rourke. 2007. The People's Peace? Peace Agreements, Civil Society, and Participatory Democracy. *International Political Science Review* 28 (3): 293–324.

Brito, Alexandra Barahona de, Carmen Gonzalez Enriquez, and Paloma Aguilar, eds. 2001. *The Politics of Memory: Transitional Justice in Democratizing Societies*. New York: Oxford University Press.

Brodzinsky, Sibylla. 2015. FARC Peace Talks: Colombia Nears Historic Deal After Agreement on Justice and Reparations. *Guardian*, September 23. http://www.theguardian.com/world/2015/sep/24/farc-peacetalks-colombia-nears-historic-deal-after-agreement-on-justice-and-reparations (accessed September 24, 2015).

Carillo, Felix. 2009. The Victims Remember: Notes About the Social Practice of Memory. In *Recordar en Conflicto: Initiativas No Oficiales de Memoria en Colombia*. International Center for Transitional Justice. On file with author.

Casey, Nicholas. 2016. Colombia and FARC Agree to Put Down Their Arms and End America's Longest War. *New York Times*, August 24. http://www.nytimes.com/2016/08/25/world/americas/colombia-farc-peace-deal.html (accessed August 25, 2016).

Clark, Philip, and Zachary Daniel Kaufman. 2008. *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*. New York: Cambridge University Press.

Clarke, Kamari Maxine. 2009. *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. New York: Cambridge University Press.

Clarke, Kamari Maxine, and Mark Goodale, eds. 2009. *Mirrors of Justice: Law and Power in the Post-Cold War Era*. New York: Cambridge University Press.

Daly, Erin, and Jeremy Sarkin-Hughes. 2007. *Reconciliation in Divided Societies: Finding Common Ground*. Philadelphia, PA: University of Pennsylvania Press.

Diaz, Catalina. 2008. Challenging Impunity from Below: The Contested Ownership of Transitional Justice in Colombia. In *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor, 189–216. Oxford: Hart.

Economist. 2015. Time to Call the FARC's Bluff. *Economist*, July 5. http://www.economist.com/news/americas/21656694-colombias-peace-process-risks-drifting-collapse-time-call-farcs-bluff (accessed August 20, 2015).

El Tiempo. 2015. Uribe Insiste en Que Gobierno Iguala a Militares con Guerrilleros. *El Tiempo*, December 22, www.eltiempo.com/politica/congreso/opinion-de-uribe-sobre-justicia-transicional-de-militares/16464979 (accessed May 21, 2016).

García-Godos, J., and K. A. O. Lid. 2010. Transitional Justice and Victims' Rights Before the End of a Conflict: The Unusual Case of Colombia. *Journal of Latin American Studies* 42 (3): 487–516.

Goodale, Mark, and Sally Engle Merry. 2007. *The Practice of Human Rights: Tracking Law Between the Global and the Local*. New York: Cambridge University Press.

Gray, David. 2005. An Excuse-Centered Approach to Transitional Justice. *Fordham Law Review* 74 (5): 2621–93.

Historical Memory Group. n.d. About. http://www.centrodememoriahistorica.gov.co (accessed December 20, 2014).

Iverson, Jens. 2013. Transitional Justice, Jus Post Bellum and International Criminal Law: Differentiating the Usages, History and Dynamics. *International Journal of Transitional Justice* 7 (3): 413–33.

Jacobson, Douglas. 2006. Break with the Past or Justice in Pieces: Divergent Paths on the Question of Amnesty in Argentina and Colombia. *Georgia Journal of International and Comparative Law* 35:175–205.

Kalmanovitz, Pablo. 2010. Introduction: Law and Politics in the Colombian Negotiations with Paramilitary Groups. In *Law in Peace Negotiations*, 2d ed., ed. Morten Bergsmo and Pablo Kalmanovitz, 1–25. Oslo: FICHL.

Kennedy, David. 2004. *The Dark Sides of Virtue*. Princeton, NJ: Princeton University Press.

Kritz, Neil J. 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, DC: US Institute of Peace Press.

Laplante, Lisa J., and Kimberley Theidon. 2006. Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz. *Michigan Journal of International Law* 28 (1): 49–107.

León-Beltrán, Isaac de, and E. Salcedo-Albarán. 2008. *Narcotráfico y Parapolítica en Colombia, 1980–2007: Evolución del Capital Social Perverso*. Bogotá: Metodo.

Levitt, Peggy, and Sally Engle Merry. 2009. Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States. *Global Networks* 9 (4): 441–61.

Lutz, Ellen, and Kathryn Sikkink. 2001. The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America. *Chicago Journal of International Law* 2 (1): 1–34.

Madlingozi, Tshepo. 2010. On Transitional Justice Entrepreneurs and the Production of Victims. *Journal of Human Rights Practice* 2 (2): 208–28.

Massoud, Mark Fathi. 2011. Do Victims of War Need International Law? Human Rights Education Programs in Authoritarian Sudan. *Law & Society Review* 45 (1): 1–32.

——. 2013. *Law's Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan*. New York: Cambridge University Press.

McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago, IL: University of Chicago Press.

McEvoy, Kieran. 2007. Beyond Legalism: Towards a Thicker Understanding of Transitional Justice. *Journal of Law and Society* 34 (4): 411–40.

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

——. 2006b. Transnational Human Rights and Local Activism: Mapping the Middle. *American Anthropologist* 108 (1): 38–51.

Merry, Sally Engle, and Rachel E. Stern. 2005. The Female Inheritance Movement in Hong Kong: Theorizing the Local/Global Interface. *Current Anthropology* 46 (3): 387–408.

Miller, Zinaida. 2008. Effects of Invisibility: In Search of the "Economic" in Transitional Justice. *International Journal of Transitional Justice* 2 (3): 266–91.

Nader, Laura. 1991. *Harmony Ideology: Justice and Control in a Zapotec Mountain Village*. Stanford, CA: Stanford University Press.

——. 1997. Controlling Processes: Tracing the Dynamic Components of Power. *Current Anthropology* 38 (5): 711–38.

——. 1999. Globalization of Law: ADR as "Soft Technology." *American Society of International Law Proceedings* 93:304–11.

Nader, Laura, and Grande, Elisabetta. 2002. Current Illusions and Delusions About Conflict Management: In Africa and Elsewhere. *Law & Social Inquiry* 27 (3): 573–91.

Nagy, Rosemary. 2008. Transitional Justice as Global Project: Critical Reflections. *Third World Quarterly* 29 (2): 275–89.

Olsen, Tricia D., Leigh A. Payne, and Andrew G. Reiter. 2010. *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy*. Washington, DC: US Institute of Peace Press.

Posner, Eric A., and Adrian Vermeule. 2004. Transitional Justice as Ordinary Justice. *Harvard Law Review* 117 (3): 761–825.

Rettberg, Angelika, ed. 2005. *Entre el Perdón y el Paredón. Preguntas y Dilemas de la Justicia Transicional*. Bogotá, Colombia: Universidad de Los Andes.

Roht-Arriaza, Naomi, and Javier Mariezcurrena. 2006. *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*. New York: Cambridge University Press.

Rowen, Jamie. 2012. Mobilizing Truth: Agenda Setting in a Transnational Social Movement. *Law & Social Inquiry* 37 (3): 686–718.

—— 2016. Colombians Rejected Transitional Justice for Guerillas, They Want Criminal Justice Instead. *Washington Post-Monkey Cage, Oct. 8*, https://www.washingtonpost.com/news/monkey-cage/wp/2016/10/08/colombians-rejected-transitional-justice-for-guerrillas-they-want-criminal-justice-instead (accessed October 24, 2016).

Santos, Boaventura, and César A. Rodríguez-Garavito, eds. 2005. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. New York: Cambridge University Press.

Scheffer, David J. 2001. The Tool Box, Past and Present, of Justice and Reconciliation for Atrocities. *American Journal of International Law* 95 (4): 970–77.

Semana. 2015. Kofi Annan se Equivoca, no Vamos a Pagar ni un Sia el el Carcel. March 2. http://www.semana.com/nacion/articulo/farc-dicen-que-no-pagaran-carcel-en-respuesta-declaraciones-de-kofi-annan/419700-3 (accessed April 20, 2015).

Sharp, Dustin. 2015. Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition. *International Journal of Transitional Justice* 15 (1): 150–70.

Shaw, Rosalind, Lars Waldorf, and Pierre Hazan, eds. 2010. *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*. Palo Alto, CA: Stanford University Press.

Subotić, Jelena. 2009. *Hijacked Justice: Dealing with the Past in the Balkans*. Ithaca, NY: Cornell University Press.

——. 2012. The Transformation of International Transitional Justice Advocacy. *International Journal of Transitional Justice* 6 (1): 106–25.
Summers, Nicole. 2012. Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict? *Harvard Human Rights Journal* 25:219–37.
Teitel, Ruti G. 2000. *Transitional Justice*. New York: Oxford University Press.
——. 2008. Editorial Note: Transitional Justice Globalized. *International Journal of Transitional Justice* 2:1–4.
Theidon, Kimberly. 2009. Editorial Note. *International Journal of Transitional Justice* 3 (2): 295–300.
Tilly, Charles, and Sidney Tarrow. 2007. *Contentious Politics*. Boulder, CO: Paradigm.
Uprimny, Roderigo, and Maria P. Saffon. 2007. Usos y Abusos de la Justicia Transicional en Colombia. *Anuario de Derechos Humanos* 165–95.
Wilson, Richard Ashby. 2001. *The Politics of Truth and Reconciliation in South Africa*. New York: Cambridge University Press.
Zalaquett, José. 1992. Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations. *Hastings Law Journal* 43 (6): 1425–38.

STATUTES CITED

Colombian Justice and Peace Law, Law 975 (2005).
Colombian Law 782 (2002).
Colombian Legal Framework for Peace, Legislative Act No. 1 (2012).
Colombian Victim's Law, Law 1448 (2011).
Government of Colombia, Presidential Decree 1290/08, adopted on April 22, 2008.