

Writing Transitional Justice: An Empirical Evaluation of Transitional Justice Scholarship in Academic Journals

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Abstract

This article examines transitional justice scholarship published in academic periodicals over a six-year period, 2003–2008, to identify the disciplines that contributed to the literature and the nature of scholarly questions they posed during a period of burgeoning scholarship. The article is the first to identify empirically which disciplines contributed to the scholarship and which were most influential among the social sciences and humanities. Law, political science, and sociology are the disciplines that dominated the field as reflected in academic journals. The most influential transitional justice articles in the social sciences and law suggested that readers were drawn to scholarly treatments that theorized the field or were analytical in nature. Scholars were wrestling with basic questions with regard to what transitional justice is and how it works. This historical perspective establishes a baseline from which to examine ongoing and future research and writing in transitional justice.

Keywords: empirical study; multi-disciplinarity; transitional justice; scholarship

Introduction

Transitional justice is dynamic and ever-evolving. The authors, who have served as editors of a journal that solicited papers devoted to different facets of this field of inquiry, began to question whether, despite a quarter century of scholarship, very few new, foundational questions were being addressed. In order to examine how the field had developed we undertook an investigation of the contribution of scholarship during the period 2003–2008, one of vibrant intellectual production as well proliferating transitional justice mechanisms. Every new field of inquiry must address questions of identity, coherence, and boundaries as it evolves to generate a stable body of knowledge, a history, and, for praxis-based fields, the training of its scholars and practitioners. What would an investigation of transitional justice scholarship during this time frame reveal? In this article we examine a snapshot of the scholarship of transitional justice to shed light on who was writing in this area, what they were saying, and

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what ideas were circulating most widely. Such a perspective contributes to a history of transitional justice and establishes a baseline from which to examine ongoing and future research and practice in this area.

Christine Bell is one of a few scholars who have sought to study transitional justice as a scholarly enterprise (Bell 2009). Her account offers insights into how the contestation over disciplinary influence on transitional justice as praxis affects transitional justice as an area of inquiry. Bell observes that transitional justice scholarship broadened as the conceptualization of transitional justice expanded beyond the goals of accountability and democratization to include outcomes such as restorative justice and reconciliation (ibid: 9). Scholars from non-legal disciplines began to raise non-legal questions (ibid: 10–13). While Bell is writing after the period under study, her questions invite us to examine further the multi-disciplinary nature of the field.

Transitional justice emerged out of the experiences of reckoning with the fall of military dictatorships in the southern cone (Aspen Institute 1989). Transitional justice only became possible as part of a larger geopolitical realignment that enabled an international consensus to emerge that it was no longer acceptable to turn the page and ‘start over’ when large-scale violence has ravaged societies. Two guiding principles took anchor: (1) the idea that states must reckon with the past, and (2) that wrongdoing committed by leaders of past regimes should be considered and addressed not as the inevitable detritus of political upheaval but as criminal behaviour (Arthur 2009). Thus transitional justice coheres as an intellectual project focused on pragmatic outcomes designed to conclude a period of conflict (Teitel 2003: 69). It has multiple goals that include retributive and restorative justice and societal restructuring (framed around truth, justice, and reconciliation) that invites local inputs and customs within an international legal framework.

Nevertheless, Arthur concludes that transitional justice is a belief-based system of thought, noting that ‘there is no single theory of transitional justice and the term does not have a fixed meaning’ (Arthur 2009: 359). Despite this observation, accountability as a norm became foregrounded, casting the dye for the eventual development of an international system of criminal justice (McEvoy 2007; Arthur 2009), which may have served to limit the perspective of what transitional justice is and can accomplish.

This article, through an empirical methodology, investigates which disciplines contributed to the scholarship and which were most influential during this period. The first section describes the methodology, with a focus on both the scope of scholarship and an assessment of its impact. The second section reviews the findings through a quantitative lens; it lays out our findings with regard to which disciplines were most represented in the journal literature. The third section offers a qualitative analysis of a sample of the most influential articles and identifies the key themes and debates. The fourth section discusses the implications of our findings for understanding the evolution of transitional justice theory and practice. The fifth section concludes.

1. Methodology

This study was designed to accomplish three goals. First, to identify the scope of transitional justice scholarship during the period in which transitional justice mechanisms proliferated. Second, to characterize the topics addressed by authors writing in this area. Finally, we sought to assess the development of scholarly thinking about transitional justice during this time.

1.1 Study design

This methodology had to accommodate available data and practicalities (see Appendix for further detail). While much of the transitional justice literature is found in book form, a systematic analysis of books and monographs is not feasible, for reasons discussed below. However, there are a substantial number of relevant periodicals that publish transitional justice articles that are catalogued and available in searchable databases. Thus focusing on articles published in academic periodicals allows us to sample a range of literature and glean from it the disciplines that are contributing, the likely categories of topics discussed, and their relative frequency. The databases we used included relevant literature across languages and countries.

The 2003–2008 period was chosen to capture an era of intensive transitional justice interventions. The transitional justice literature expanded after the initiation of the two UN-sponsored ad hoc criminal tribunals in the early 1990s followed by the completion of the Rome Treaty in 1998, which established the International Criminal Court (ICC) in 2002. We reasoned that the 2000s would see a maturation of the literature and so we examined the numbers of transitional justice-related publications on an annual basis from 2000–2010 and observed a sharp uptick in 2003 that began to level off in 2008.¹ We took 2003 as our starting point for the six-year dataset we created (see Fig. 1). To be sure, many important and influential works on transitional justice were written earlier (Aspen Institute 1989; Orentlicher 1991; Kritz 1995). While selecting an earlier starting point would capture the influence of seminal or defining articles, the relatively low number of articles published makes it difficult to discern trends. As we sought to examine the dynamic quality of the field during a period of rapid growth, we restricted the period under study to the six years following the establishment of the ICC.

In recognition that authors from multiple disciplines write on transitional justice and based on our familiarity with the field, we looked for transitional justice-relevant papers published in eight disciplines—anthropology, education,

1 We conducted a preliminary search for articles on transitional justice published between 1992 and 2010, in two separate databases of periodicals, one legal and one capturing social science publications. Based on further research, we refined the search terms and databases we utilized for the database.

history, law, philosophy, political science, psychology, and sociology.² While scholars outside of these disciplines write on transitional justice, our reading of the literature suggested that these eight reasonably captured most of the published articles. We then coded the articles to categorize their topic and discipline.³

Finally, we wanted to assess the evolution of transitional justice thinking and the character of debates that emerged over this time by identifying and qualitatively analysing a sample of the top five most-cited papers in law and social science, respectively, over the period and chose the years 2003, 2006 and 2008, utilizing citation analysis.⁴ By this method we are capturing the most frequently cited papers published in those years and measuring the frequency of citations to them from 2003 to 2010, to allow articles published in the later part of the 2003–2008 period to be referenced by subsequent authors. However, these parameters do not capture citations to articles in the dataset after 2010. There was no single database that included scholarship from all the disciplines we wished to examine. We therefore identified the 30 top-cited papers using one database for law and a second for social sciences. Excluding non-articles (e.g. book reviews) or publications with only one citation, we included 26 papers for more intensive analysis.

We categorized the top-cited articles based on their type of knowledge generation—analytic, descriptive, empirical, and theory-building—to more closely identify the nature of intellectual inquiry in the field. The ten categories of transitional justice articles used to organize the dataset of all relevant publications enabled us to identify *which* mechanisms scholars found worthy of attention (international criminal justice, national responses, truth-seeking, etc.); the knowledge-generation categorization of top-cited articles assists us in understanding *how* scholars approached these topics. In short, our general categorization of all transitional justice articles written during the period under study tells us on what topics scholars wrote, while the distribution of top-cited articles according to the type of knowledge-generation tells us about the type of inquiries valued by other scholars.

2 We determined the relevant discipline by the nature of the journal, the title of the paper and its abstract, but did not capture sub-disciplines (see Appendix).

3 We identified ten categories, which capture the types of transitional justice mechanisms initiated at the international, national, and local levels as well as the primary units of analysis in the field—state, community, and individuals. We also captured the primary lens of analysis, i.e. gender, institutional, psychological, and theoretical as well as perspectives that link transitional justice to economic development. While there is some overlap among the categories, they capture the major segmentation within this praxis-based field while allowing us to see distribution of attention among these topics (see Appendix).

4 This method is defined as ‘the study of the impact and assumed quality of an article, author or an institution based on the number of times works and/or authors have been cited by others’ (University of Michigan 2013).

1.2 *Limitations of the method*

This approach has several limitations. We have focused only on published journal articles and have excluded books, monographs, chapters, book reviews, and reports. In many disciplines, such as political science, anthropology, and philosophy, the publication of a book based on the scholarship of its author is critical to achieving tenure in a university. Given the difficulty of accessing data on book publication in the same way as on journal articles, we have chosen to confine our study as described. This means that we may have missed important areas of work that characterize the development of transitional justice. Thus, while offering some insight into the scope of transitional justice scholarship, we cannot generalize our findings to all published transitional justice literature during that period.

While much of the academic literature is found in books, especially in the humanities and social science fields, there is a problem in making a determination about quality and impact. There does not appear to be a standardized approach to peer review in book publishing. Verleysen and Engels note: ‘Is it only the book proposal, or also one or more of its chapters, or the full manuscript that is reviewed? Is the review conducted by academic peers only or also the acquisitions editor? Is peer review of books focused on the academic content or is it also an assessment by the publisher of the commercial potential of the book?’ (Verleysen and Engels 2013). They also note that the peer review process ‘may be in the hands of the publisher, an academic board, a series editor, or the book editor’ as opposed to a double-blind review process by academic peers. This variation makes a systematic review of book impact difficult to implement. Even so, the scope of the transitional justice scholarship that we have captured in almost 500 papers suggests that this method offers an important snapshot that suggests trends and the evolution of transitional justice at a time of increased dissemination of ideas and experience.

It is challenging to identify both quality and impact of scholarly research. Quality is most often determined by utilizing a peer review process where a judgement is made about the appropriateness of methodology, analysis, and interpretation. Questions have been raised about the effectiveness and objectivity of this method, which characterizes the practice of scientific, social, and humanities periodicals (Derricourt 2012; Verleysen and Engels 2013). As described by Meho in an assessment of the current state of citation analysis, there are other potential confounders in evaluating impact (Meho 2007). Scholars may cite the work of their colleagues (‘cronyism’); classic papers in the field are often referred to over and over, especially by younger scholars, almost in a dutiful acknowledgement of the founders of an area of scholarship; journals may unconsciously or even consciously decide to give priority to publishing papers by those who are well known; different databases may yield different citation figures. Some disciplines may cite more authors per article, such as articles in medical journals. Finally, there is evidence of a

gender bias in citations favouring male authors (Maliniak et al. 2013). All of these may influence the citation rates and mask true impact. Peer review is not customarily conducted for articles published in law reviews. Although peer review is not an available proxy for quality, nonetheless citation analysis is available and a reflection of impact. We do not include citations to articles after 2010 and therefore the data will not capture influence (as measured by citations) after this date. Such limitations are inherent to this type of study, in which scholars may continue to write and cite to articles published during our time period.

While we can be criticized for selecting a metric-based system to assess impact, we have done so on the basis of the increased use of such a method in determining the importance and impact of scholarly publications using the Thompson Reuters impact factor.⁵ The importance of the impact factor in journal prestige cannot be ignored. Journal rankings are now considered in decisions around academic promotion and tenure and increasingly in what is termed ‘performance-based research funding systems’ (Hicks 2012) where state support for university research is partially determined by research productivity often measured by metrics such as citation analysis. These national systems are now found worldwide in countries as diverse as the United Kingdom, New Zealand, Hong Kong, and the Scandinavian countries. While criticisms abound about these methodologies, particularly from academics, there is no question that they are being utilized to assess impact (Archambault and Larivière 2009). Clearly, there are limitations to any method designed to assess impact, but this method is the only systematic process available at this point in time.

Our assessment of transitional justice articles across the international literature suggests that while English is the predominant language of publication in this area, this method does miss papers published in other languages. While the social science databases do cover an international spectrum, using foreign search terms does pick up some differences.⁶ These are minor in this analysis but may be a source of bias. In this study, we did not explore how these papers (a minority in the larger scope of published articles) might differ from those in the English-language databases, but such an exploration would be a useful further step in understanding how transitional justice is understood across cultures. Finally, in searching a database, we chose key words to access the relevant data. If these words were not present in the titles or abstracts of the papers, then it is possible to miss citations to transitional justice literature because of the limitations on terminology. However, as noted, the search terms were carefully selected to maximize the retrieval of the relevant data.

5 This measurement ranks journals on the basis of ‘the number of citations in the current year of items published in the previous two years divided by the number of substantive articles and reviews published in the same two years’ (Garfield 2006).

6 The legal database we used (Westlaw Next) did not include foreign language journals; we ran a comparable search using the Index to Foreign Legal Periodicals (see Appendix).

2. Quantitative findings

The total number of papers that met the criteria for the search over the years 2003–8 was 486. The majority of these papers were written in English (88.9 per cent) followed by French (4.7 per cent), Spanish (3.7 per cent), and German (1.6 per cent). Between the first and final years, there is an upward trend in the number of relevant transitional justice papers.

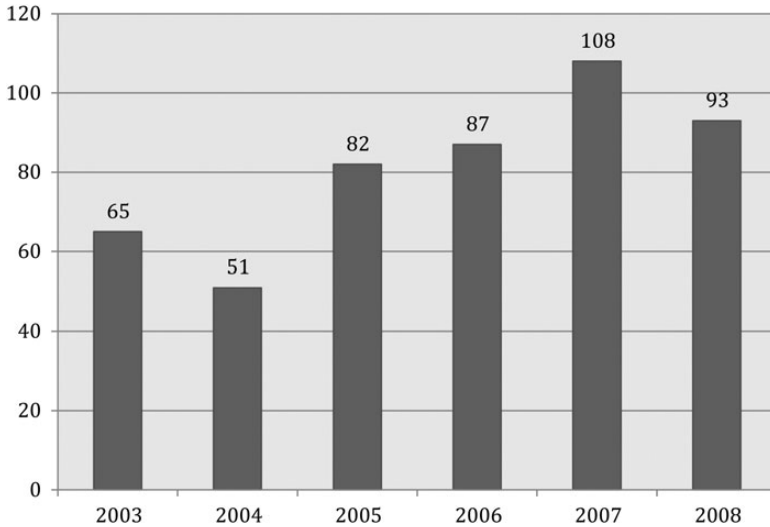


Figure 1. Number of articles by year 2003–8

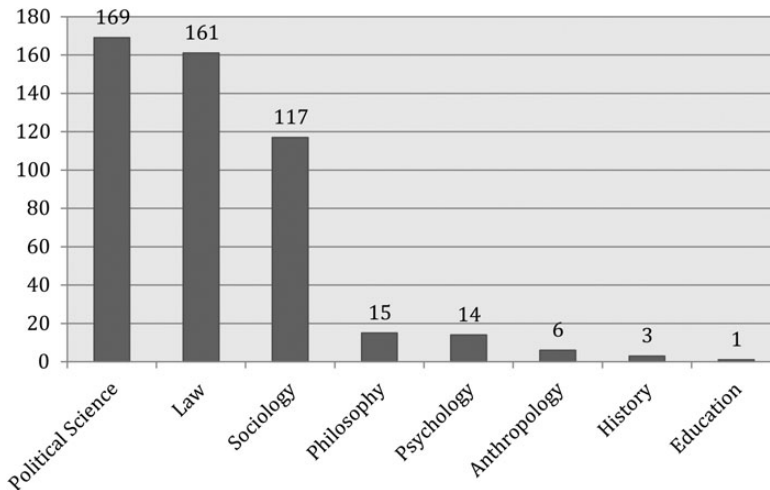


Figure 2. Number of articles by discipline 2003–8

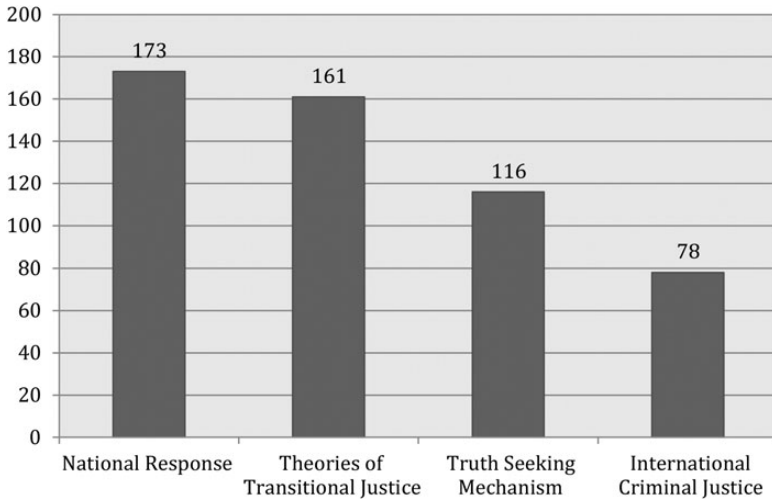


Figure 3. Number of articles by theme 2003–8

Most of the papers emerge from the disciplines of political science, law, and sociology with much smaller numbers from philosophy, psychology, anthropology, history, and education.

If we look at the distribution of articles by theme, the most frequent themes that papers address are, in order: national response, theories of transitional justice, truth-seeking mechanisms, and international criminal justice. Some papers address more than one theme. All of these tend to be either top-down approaches or theoretical examinations of these types of interventions. The ranking for the remainder of the articles is, in descending order, gender, economic/development, history, individual response, and lastly, lustration and vetting.

It is interesting to examine the most frequent themes addressed by the major disciplines writing in the field (political science, law and sociology). From political science, the themes exactly mirror the overall distribution (articles per theme are 59, 57, 36, and 22, respectively); for law, there is again congruence for the four highest with gender following (62, 46, 45, 30, and 11). Sociology shows a somewhat different pattern of distribution: there are equal numbers of articles for national response (40), theories of transitional justice (40), and truth-seeking, (38) followed by local/community response (11) and then international criminal justice (9).

What we see, then, is discipline convergence and divergence—the three most productive disciplines in the field converge in the papers devoted to national response, theories of transitional justice, truth seeking, and international criminal justice. After these four themes, for all disciplines the proportion of papers devoted to any particular theme drops off markedly. However, the relative ranking of themes addressing local/community response, history, and individual response varies; in sociology these three themes ranked higher than

in law and political science. Economic development ranked last in sociology as opposed to seventh in law and in political science. Gender ranked fifth in law, sixth in political science and eighth in sociology.

The geographic focus of the articles reveals that Africa leads the list followed closely by a global perspective, likely reflecting a more theoretical examination. Next in order are Europe, then Asia, the Americas and Oceania. If we look at the geographic distribution of the most-cited articles then we see that the global focus appears to be the most influential.

South Africa, Rwanda and the Balkans are the specific countries that were of greatest concern in the dataset of transitional justice papers. These countries were sites of transitional justice initiatives that have come to represent two approaches to addressing legacies of mass violence and repression: truth commissions and international criminal prosecutions. The South African Truth and Reconciliation Commission offered a new model for reconciliation, while the ad hoc international criminal tribunals for Rwanda and the former Yugoslavia, respectively, promoted individual accountability for mass violence. However, if we look at the dataset of most-cited transitional justice papers, then we see a different priority: seven papers discuss Rwanda, three papers focus on the Czech Republic, and Timor Leste, Israel, Peru and Sierra Leone, each with two papers, emerge as salient. This may reflect several factors—what is of most interest in a particular time period, which in turn, may reflect geopolitics, which journals are most influential, authorship, and selection bias.

The set of 52 most-cited articles was generated from the five top-cited articles in law and the social sciences disciplines we defined, for each of the years 2003–2008.⁷ The relationship of academic discipline to number of citations is instructive. Note that we cannot compare law to the social sciences as the legal citations are not included in the social science databases but in their own database, WestLaw. While this is an unfortunate quirk in bibliographic database development, we can at least examine the absolute number of journal articles. In the following table, we see that political science, as a discipline, is the most prolific in terms of citations among the social sciences. Law has more than twice the number of most-cited journal articles than political science but we cannot compare the two numbers as the databases are separate. However, the data indicate that authors from law and political science are the most numerous in the area of transitional justice.

Finally, we look at the most-cited transitional justice articles by discipline and theme. Papers were multiply coded if more than one theme was developed. In law, the most common themes, in order, were theories of transitional justice (13), international criminal justice (11), and national response (9). In the social sciences, for political science, the themes were truth-seeking

7 Adjusted for the exclusions, noted above. Because there is an exclusive citation database for law, we identified the top five most-cited transitional justice law articles for each year. The other seven disciplines are in a separate citation database and therefore they compete with each other for the top five slots.

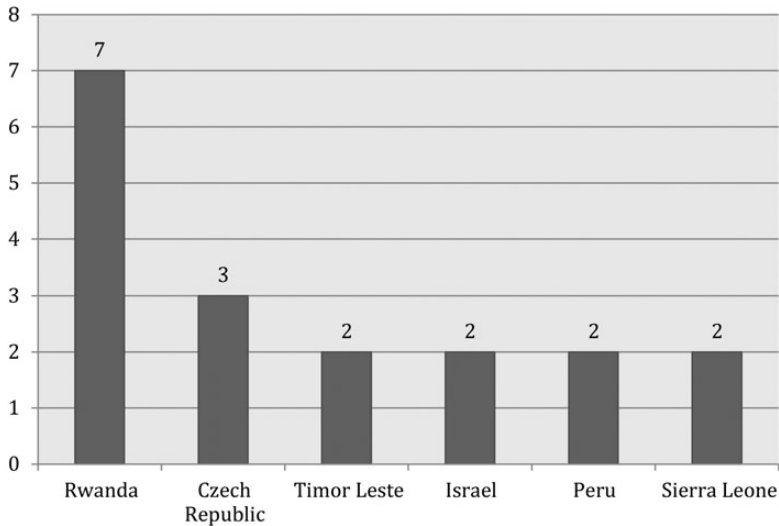


Figure 4. Number of most-cited articles by region 2003–8

Table 1. Most cited transitional justice articles 2003–2008

Discipline*	Number of articles
Law	32
Political science	15
Psychology	2
Sociology	2
Anthropology	1

* There were no articles from the disciplines of education, history, or philosophy.

mechanisms (6), theories of transitional justice (5), and national response (4); in psychology, the themes were individual response (1), local/community justice (1), and theories of transitional justice (1). Anthropology's themes included local/community response (1) and theories of transitional justice (1), while the themes in sociology were theories of transitional justice (1) and truth-seeking mechanisms (1). We should point out that these are small numbers and there is little differentiation among the most commonly cited themes. As noted, education, history and philosophy were not represented in the most-cited group.

3. Qualitative findings

We coded the majority of the most-cited articles over the period as analytic or theory-building (a total of 34 were analytic articles and nine were theory-building).

We selected the three years of 2003, 2006, and 2008—the first and last years of the period and as well as one intermediate year⁸—to examine in greater detail. We chose these intervals to identify the characteristics and broad development of influential transitional justice scholarship published in academic journals over this period. Within this sample of 27 articles, 16 were analytic, seven were theory-building, two were descriptive, and one was empirical.⁹ We focus here on the analytic and theory-building articles as these appear to be the types of contributions most valuable to scholars.

The plurality of most-cited articles was analytic, raising the question of what was the nature of these analyses? Central to the articles in our three-year sample was an accepted, general framework for transitional justice: one that defines transitional justice as addressing the question of how societies respond to periods of mass violence or repression with the goals to promote truth, justice and reconciliation. Within this sample, authors utilized this framework in various ways. Several articles applied the transitional justice framework to particular contexts, making the case that a particular country or initiative should be considered as an example of transitional justice (Campbell and Aoláin 2003; Cavanaugh 2003), or arguing for the application of a particular transitional justice mechanism to a specific case (Oko 2003). Others evaluated transitional justice interventions, testing how these measured up against their claimed goals (David 2003; David and Choi 2006; Daly 2008) and proposing reforms or new approaches to improve implementation of the framework (Arriaza and Roht-Arriaza 2008; Nevins 2003; Sriram 2003; Blumenson 2006).

A few articles offered sharp critiques of mechanisms, predominantly of the *gacaca* courts that Rwanda instituted. Initially touted as a culturally-grounded alternative to conventional criminal trials, these state-instituted adaptations of traditional dispute resolution procedures have been heavily criticized for being politicized (Waldorf 2006; Sosnov 2008; Oko 2008). In the main, however, the scholarship was sympathetic to the ambition of transitional justice. To the extent that it was critical, authors sought to draw attention to tensions within the transitional justice paradigm, such as how the goals of truth and justice may be reconciled (Laplante and Theidon 2006; Leebaw 2008), or to areas that had been overlooked, like the relationship of transitional justice to gender

8 The number of total articles published in the field was 65 in 2003, and rose to 82 in 2005, and then to 87 in 2006. We selected 2006 rather than 2005 for our sample year of most-cited articles, as the later year, i.e. 2006, may better reflect the focus of scholars as publications in the field accelerated.

9 The breakdown by year is as follows: in 2003, all seven of the most-cited articles were analytic (three were eliminated because they had only one citation); in 2006, four of the ten most-cited articles were analytic and the same number of articles was theory-building. There was one that was empirical and one that was descriptive. In 2008, five of the ten articles were analytic, three were theoretical, and one was descriptive (one paper was eliminated because it was a book review).

(Aoláin 2006), the need to incorporate redress for structural inequalities as part of the transitional justice framework (Laplante 2008; Nevins 2003), or offering a ‘bottom-up’ rather than ‘top-down’ perspective on this project (Theidon 2006).

Like the analytic pieces, the theory-building articles in the three-year sample offer ways of conceptualizing transitional justice that strengthen¹⁰ or solve shortcomings in the paradigm. Authors proposed theories to address the problem of selective prosecution of mass criminality (Gray 2006), for example, or for resolving the apparent trade-off between establishing peace after repression or violence and the moral demand to hold those responsible for their crimes accountable (Dimitrijevic 2006). Two of the articles offered theoretical frameworks that explicitly incorporated the dismantling of structural inequalities as part of the transitional justice paradigm (Laplante 2008; Miller 2008). One theorized the psychological dimensions of reconciliation to promote a model for developing political leadership after mass violence (Staub 2006).

Among the articles in this qualitative analysis there is convergence on what is accepted as the definition of transitional justice. This definition serves as the primary analytic framework for scholarship. The influence of the disciplines of law and political science is seen in their emphases on a normative and universal framework. Scholars apply the framework to evaluate how well it is working, to point out what is excluded by its frame, and to explore the implications of the definition for how the field is theorized. In looking across the three sampled years, it is possible to observe an evolution of the most-cited articles. We see increased attention paid to such broader issues as gender, structural violence, and local experiences as important. These offer a new perspective on overlooked aspects of the now-traditional focus of transitional justice as top-down interventions designed to do justice and truth work based on the assumption that these will promote peace and stability. At the same time, articles that question the ability of transitional justice mechanisms to achieve their ambitions gain attention. Although none of the most-cited articles in 2003 were theory-building, this category grew in the two later sample years. These are pieces of scholarship that seek to say something about how the paradigm is working or should be working. There is little pure descriptive work.

4. Discussion

The published articles of this study are part of the broad evolution of the field. The larger sample of writing indicates academic study of the major types of mechanisms and the instances in which these have been implemented. The most influential works were those that apply, test, evaluate, or theorize the accepted transitional justice paradigm. Scholars were filling in gaps in its

10 Carsten Stahn (2008) offers a legal theory for a system of law that would govern state and international organizations in post-conflict transitions.

application, pressing for areas in which to extend its scope and incorporate other perspectives, but largely did not question the foundational assumptions of the field that countries should initiate a response to mass violence and repression to promote societal rebuilding.

4.1 *Shaping a field*

The literature reviewed in this article suggests that several disciplines contributed to the generation of relevant knowledge and new questions. Social scientists were interrogating the boundaries of transitional justice, raising questions about goals and testing the empirical claims of the efficacy of mechanisms. However, the principal conception and treatment of transitional justice in our sample emerges from three disciplines: law, political science, and sociology. Therefore, as framed by these disciplines, the questions asked of transitional justice were essentially socio-legal ones.¹¹ It follows then that disciplines oriented or easily adapted to policy and prescription found themselves dominant (Balkin and Levinson 2006; Vinjamuri and Snyder 2004). In other words, law as a set of normative obligations around which justice claims are negotiated is seen as central to this area and affords the discipline of law a privileged place in the conversation. Similarly, the political context of transitional justice—both in terms of the conditions under which transitions are taking place and in terms of the normative judgments to be made about whether and how to advance justice in transitions—means that the discipline of political science has had much to offer as well. Transitional justice is also a social practice, which makes the institutions, societal dynamics, and social effects of transitional justice interventions ripe for sociological inquiry. This is not to say that the other disciplines are irrelevant, however, and indeed some of the most influential articles in our study were drawn from disciplines beyond these three.

The most influential scholarship took the conceptualization of transitional justice as a provocation to be tested and evaluated; the leading articles tended to cluster around particular themes. However, the debate is not a binary one between legal scholars who prioritize justice principles and social science scholars who explore contextual and cultural/local understandings of justice. Legal scholars like Blumenson (2006) and Gray (2006) join social scientists like Dimitrijevic (2006) who sought to reconcile the debate by expanding the range of interventions that count as justice. In other words many influential transitional justice scholars, both legal and social science, were pushing back against the basic assumptions that underlie transitional justice.

What perspectives dominated the scholarship published in academic journals during this period? The categories of knowledge building into which

11 It is worth observing that some of the power dynamics of transitional justice scholarship have not been discussed in the leading articles. For example, the dominance of English language literature privileges the voices of those who publish in English and the effects of this dominance have been little studied.

most of the influential articles fell were analytic papers and theory-building ones, suggesting that consumers of transitional justice scholarship prioritized work that offered lessons and models that could be applied across particular cases and contexts. Even those articles that explored the local or quotidian experience of transitional justice, such as [Arriaza and Roht-Arriaza \(2008\)](#) and [Theidon \(2006\)](#), mined the particular for its application to the general case. Perhaps this reflects the policy-oriented focus of the area. The disciplinary conventions of history, psychology, and philosophy do not foreground normative prescriptions in their treatment of a topic. These disciplines offer knowledge and insights that may inform such judgements, but their orientation to policy prescription is not hardwired as it is in law, or readily accessible, as in political science and sociology. None of the theoretical papers proposed ways of considering how to respond to state transitions that called into question the values of justice, rule of law, and human rights as driving principles.

While many of the papers in our sample have a theoretical perspective, we as well as others suggest that transitional justice is under-theorized ([de Greiff 2012, 2013](#); [Hansen 2011](#)). It is unclear how its recognized components relate to each other or how they contribute to a theory of change ([Gray 2010](#); [Ramji-Nogales 2010](#); [Posner and Vermule 2004](#)). Although authors of journal articles during this period did grapple with theory, it was not the primary focus of scholarship. Theory was the second most frequent topic among scholars writing in this period, as measured by the number of articles as well as by those which were most cited. Nevertheless, among the top-cited articles, analytic treatments (34) far outstripped theoretical ones (9). Analytic questions target different components of the paradigm but their interrelationships remained underdeveloped. Our point is not to denigrate the work that has been done to date but to observe its limitations.

It is striking that in our identification of the most-cited articles, there were no contributions from history, philosophy, and education. If we accept the premise that citation rates reflect scholarly influence, this suggests that transitional justice scholars gave little consideration to antecedent comparable events, or to the moral underpinnings of the field, or to how school curricula (and theories of child development and moral reasoning) and the tasks of psychological development may contribute both to mass violence and toward social reconstruction. However, the absence of these disciplines in the periodical literature may reflect a bias towards publishing scholarship in book form by leading scholars.

While there was consensus about the basic concept of transitional justice that served to catalyse interest in the topic, the implications of this finding are less clear. The accepted transitional justice framework represented in our findings could be understood as a degree of parochialism or it could be understood as the natural evolution of a nascent field that will develop in new directions not yet evident. While we are unable to generalize the data from this study to all relevant transitional justice articles during the 2003–2008 time

period or to the current state of the field, these findings have implications for practitioners as well as for further research.

4.2 *Implications for practice*

With the active involvement of community-based and non-governmental organizations, international and domestic lawyers, diplomats and politicians, transitional justice practitioners are on the front line in responding to the consequences of crimes against humanity, war crimes and genocide. What does this study of the evolving literature offer to those on the ground who confront these horrors? And similarly what can scholars glean from the experience and knowledge of those in the field?

From the perspective of transitional justice practice, the scholarship produced over this period is of great utility. Scholars generated a considerable body of knowledge that provides the legal and moral foundation for the field as it examines specific mechanisms and types of interventions. More importantly, those researching in this area were largely sympathetic to the transitional justice project—an aspect that should not be overlooked or its significance underestimated—and their work aimed to strengthen the efficacy of the established transitional justice mechanisms, even as many questioned the goals of interventions, identified conceptual gaps in their design, and shortcomings in their implementation. Nevertheless, the research contributes data to policymakers and advocates from scholars who support the field's aspirations to ameliorate suffering. Further, because the research generated largely tracked the dominant, top-down, transitional justice interventions, the scholarship serves as a history of the practice as well as academic writing of this period.

The studied literature also suggests two key factors that influence the impact of transitional justice interventions and offer lessons to practitioners: first, domestic political will and leadership are essential to effecting change on the ground; and second, the sociocultural context in which the atrocities occurred and where the transitional justice mechanisms are put into place is a critical component of response. In the first instance, it has been too often the case that truth commission recommendations are ignored or modified so as to be less than effective. As it is up to the government in power to put these into practice, it becomes clear that transitional justice advocacy demands attention to pressuring leaders and governments to respond. With regard to the importance of the context in which transitional justice interventions take place, community-based organizations, domestic NGOs, and frontline workers may be more effective by paying attention to issues of power and culture and by questioning the application of 'toolkit' mechanisms and programmes that may not be culture-congruent. Advocates cannot ignore the need for political organizing to complete the work of retributive and restorative processes on the ground.

At the same time, it is important to identify the limits and indeterminate answers the scholarship offers. The evidence suggests that there is no certainty in terms of knowledge or practice in the area of transitional justice. It is

evolving and much that is done represents normative beliefs and assumptions that have yet to be substantiated from the perspective of data-driven evidence; the metrics for social repair are elusive and messy. While retributive justice may not prevent future wrongdoing, it does represent a society's consensus that certain actions must be punished. Given that perspective, advocates for retributive interventions are on solid ground. However, they must also be aware that such actions have limited effects and their ability to constrain a culture of impunity may be far less than desired. Similarly, while there has been much hype and support for judicial alternatives such as truth commissions, their effects on post-conflict societies have been limited as well. How much these restorative justice approaches can contribute to victim well-being and/or social reconstruction remains a question.

Yet in a norm-driven field, transitional justice interventions such as writing a country's history or acknowledging that people have suffered may be an end in itself, reflecting a society's wish to morally engage survivors and instantiate values for the country's future regardless of whether these efforts may be quantified. These approaches have value in and of themselves and may contribute to the social reconstruction of a country. Accepting that reality does not mean that these approaches have no value, only that expectations must be toned down and a realistic view developed of what is possible.

Finally, our study suggests that transitional justice is an area of praxis in which practitioners and scholars are each generative of the field. The period of study ends in 2008. Nonetheless, our review of developments in the last several years suggests that there has not been a major shift in the transitional justice paradigm and this may continue to influence scholarly inquiry. There have been no major breakthroughs in the 'toolkit' of transitional justice despite recent articles critical of the claims made about transitional justice interventions (Clark 2013; Nagy 2013; Thoms et al. 2010). International transitional justice policy, spearheaded by the UN Special Rapporteur on Transitional Justice, remains a rights-based approach framed around truth, justice, and reparations (UN Human Rights Council 2012: paras 19–21)—essentially consolidating a legal basis for the field. This framework has not dampened academic interest in the area. Transitional justice scholarship continues to be sufficiently vibrant to sustain a speciality journal (the International Journal of Transitional Justice began publication in 2007), warrant its own encyclopedia (Stan and Nedelsky 2013), academic programmes, and a forthcoming research handbook.¹² These markers of the current state of transitional justice study suggest that its intellectual energies and dynamics have not fundamentally altered since its emergence. Our study suggests that transitional justice continues to grow and reflect critically on its components. It is, however, still

12 Research Handbook of Transitional Justice is a forthcoming volume in the Research Handbook on International Law Series, issued by Edward Elgar Publishing.

struggling for a consistent definition that reflects a worldwide consensus. As its roots stem from multiple disciplines, we have yet to see the final pathway. For a nascent field, this is both exciting and challenging but so are the issues it is attempting to address. Scholars and practitioners can seize the opportunity to collaborate in the best interests of those who suffer.

How the relationship of practitioners and scholars evolves deserves ongoing study. While the establishment of the ICC suggests that international criminal law will continue to be a prominent feature of transitional justice, its very centrality may become a destabilizing force. If the permanent court becomes the dominant transitional justice mechanism, will transitional justice become a sub-field of international criminal law? Or will transitional justice become defined as the study of alternatives to legal justice, that is, a *non-legal* field? This could liberate transitional justice to focus instead on process-based change to bring about deeper cultural and structural changes in post-conflict societies. Given the origins of the field in law, should transitional justice evolve in this direction it will need to generate new legitimating theories that will be informed by both scholars and practitioners.

5. Conclusion

Our review of six years of the transitional justice literature published in academic journals reveals the increasing productivity of the field, led by law, political science, and sociology. The period we studied can be characterized as one of consolidation of the framework of transitional justice as measured by this body of scholarship. Our findings suggest that while there has been a plethora of influential articles devoted to analysing aspects of transitional justice and offering theoretical frameworks, there was very little challenge to the dominant paradigm of transitional justice as a menu of interventions to promote justice, political stability, and human rights (variously defined). While some may take issue with our methods and the limitations of the study design, we offer these findings to encourage a conversation among scholars, advocates, and practitioners. With few exceptions, the literature reviewed rarely attempts to consider how structural drivers of conflict may undermine the paradigmatic transitional justice interventions, thereby subverting any processes of reconciliation. The article does not attempt to measure the extent to which recent scholarship takes up such critiques or to identify new areas of questions that scholars are identifying. Rather, this historical perspective of transitional justice scholarship during a time of significant growth provides a fuller understanding of how the field is developing. It allows us to begin to assess how framing of the issues by scholars over time may influence current research and practice. Historical knowledge of how a new field evolves allows us to revisit earlier assumptions in light of a quarter century of study and experience.

Appendix: Databases and methods¹³

To identify published works in anthropology, education, history, law, philosophy, political science, psychology, and sociology, we searched in two databases: CSA Illumina Social Sciences database¹⁴ (including the Philosopher's Index) and the Westlaw Next database. We searched the databases using the terms 'transitions', 'justice', and 'reconciliation'. We selected these terms based on our experience of the literature and after piloting searches that would maximize relevant results.

1. Scope of scholarship

CSA Illumina database

This database contains databases in arts and humanities, natural sciences, social sciences and technology but does not contain legal periodicals. It searches more than 9,000 titles and offers access to more than 100 databases. In addition to English, some of the indexed materials are published in French, German, Italian, Portuguese, Spanish, and other languages.¹⁵

Westlaw Next database

To identify transitional justice articles published in legal periodicals, we searched the 'All state and all federal' collection of Westlaw Next in order to obtain a broad scope. This database searches US legal periodicals and associated legal instruments; it includes over 1,000 journals and law reviews, newspapers and news, statutes, cases, and similar materials.

Index to Foreign Legal Periodicals and International Bibliography of the Social Sciences

While the databases we chose to review, excepting Westlaw Next, searched the relevant literature across languages and countries, as a check, we selected two additional searchable databases: the Index to Foreign Legal Periodicals (IFLP) and the International Bibliography of the Social Sciences (IBSS). For these two databases we conducted searches in French, German, and Spanish using terms comparable to those used in searching CSA Illumina and WestlawNext. We consulted with transitional justice scholars who were native speakers in the relevant foreign languages regarding the appropriate equivalent search terms.

For the IFLP, there were 22 articles in German that we did not have in our database; there were 166 papers in the Spanish search (90 of which were written in Spanish) that had no overlap with our database; and finally, there were six results from the search in French (one written in French) and no overlap. For the IBSS database, we found one result for the German search

13 Additional details of the methodology can be obtained from the authors.

14 As of the date of this writing, the databases previously searched using CSA Illumina are now available on an electronic database platform offered as ProQuest Social Sciences.

15 See ProQuest (2014).

and none written in German; 11 results for the Spanish search (seven written in Spanish) and ten were already in our database; the French search revealed 539 results (36 written in French) of which 522 were in our database. The majority of the literature on transitional justice is written in English.

Exclusions from the dataset

We did not include books, book chapters, and book reviews in the dataset as the available catalogues and indexes were not as comprehensive as for published articles. Symposia articles with citations were included in the dataset. We counted papers found in multiple databases as well as multiple entries for the same paper only once.

Organization of the dataset

Each paper was coded by (1) language of manuscript, (2) discipline, (3) theme(s) of manuscript, and (4) geographic focus of the subject matter. While this analysis does not take into account sub-disciplines (such as political theory, international relations, social anthropology, etc.), it does allow for a relative differentiation among disciplines. We then coded the themes of the papers under the following categories: economic/development and transitional justice, gender, history, individual responses (e.g. to trauma), international criminal justice, local/community response, lustration and vetting, national responses, theories of transitional justice, truth-seeking mechanisms.

2. Assessment of impact and scholarship

We selected for qualitative analysis the five most-cited publications as indicated by two databases—SSCI/Web of Knowledge and WestLaw, the former containing articles written in the humanities (excluding law) and social sciences, and the latter database containing legal articles exclusively, published in the years 2003, 2006, and 2008. Papers that had only one citation were eliminated as the citation referred to its inclusion in the bibliographic database, as was one publication that was a book review.¹⁶

SSCI/Web of Knowledge

The SSCI (Social Sciences Citation Index) culls information from ‘some 3,000 of the world’s leading social sciences journals across 50 disciplines . . . including . . . anthropology, sociology, urban studies etc.’¹⁷ It is used to identify the papers cited most often and names the author(s) and publisher.

Organization of analysis

The authors identified each paper according to one of four categories of knowledge generation—analytic, descriptive, empirical, and theory-building.

16 Heller (2008).

17 See Thomson Reuters (2013).

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References

- Aoláin, F. N. 2006. Political Violence and Gender during Times of Transition. *Columbia Journal of Gender and Law* 15(3): 829–49.
- Archambault, E., and V. Larivière. 2009. History of the Journal Impact Factor: Contingencies and Consequences. *Scientometrics* 79(3): 1–15.
- Arriaza, L., and N. Roht-Arriaza. 2008. Social Reconstruction as a Local Process. *International Journal of Transitional Justice* 2(2): 152–72.
- Arthur, P. 2009. How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly* 31(2): 321–67.
- Aspen Institute. 1989. State Crimes: Punishment or Pardon. Papers and Report of the Conference, 4–6 November 1988, Wye Center, Maryland. Queenstown: Justice and Society Program of the Aspen Institute.
- Balkin, J., and S. Levinson. 2006. Law and the Humanities: An Uneasy Relationship. *Yale Journal of Law and the Humanities* 18(2): 155–89.
- Bell, C. 2009. Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’. *International Journal of Transitional Justice* 3(1): 5–27.
- Blumenson, E. 2006. The Challenge of a Global Standard of Justice: Peace, Pluralism, and Punishment at the International Criminal Court. *Columbia Journal of Transnational Law* 44(3): 801–74.
- Campbell, C., and F. N. Aoláin. 2003. Local Meets Global: Transitional Justice in Northern Ireland. *Fordham International Law Journal* 26(4): 871–92.
- Cavanaugh, K. A. 2003. Selective Justice: The Case of Israel and the Occupied Territories. *Fordham International Law Journal* 26(4): 934–60.
- Clark, J. N. 2013. Reconciliation through Remembrance? War Memorials and the Victims of Vukovar. *International Journal of Transitional Justice* 7(1): 116–35.
- Daly, E. 2008. Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition. *International Journal of Transitional Justice* 2(1): 23–41.
- David, R. 2003. Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland. *Law and Social Inquiry* 28(2): 387–439.
- David, R., and S. Y. P. Choi. 2006. Forgiveness and Transitional Justice in the Czech Republic. *Journal of Conflict Resolution* 50(3): 339–67.
- de Greiff, P. 2012. Theorizing Transitional Justice. In M. S. Williams, R. Nagy and J. Elster (eds), *Transitional Justice: NOMOS LI: 31–77*. New York University Press.

- . 2013. Transitional Justice Gets Its Own Encyclopedia: Vitamins or Steroids for a Developing Field? *International Journal of Transitional Justice* 7(3): 547–53.
- Derricourt, R. 2012. Peer Review: Fetishes, Fallacies, and Perceptions. *Journal of Scholarly Publishing* 43(2): 137–47.
- Dimitrijevic, N. 2006. Justice beyond Blame: Moral Justification of (the Idea of) a Truth Commission. *Journal of Conflict Resolution* 50(3): 368–82.
- Garfield, E. 2006. The History and Meaning of the Journal Impact Factor. *JAMA* 295(1): 90–3.
- Gray, D. C. 2006. An Excuse-Centered Approach to Transitional Justice. *Fordham Law Review* 74(5): 2622–93.
- . 2010. Extraordinary Justice. *Alabama Law Review* 62(1): 55–110.
- Hansen, T. O. 2011. Transitional Justice: Toward a Differentiated Theory. *Oregon Review of International Law* 13(1): 1–46.
- Heller, K. J. 2008. Confronting War: Deconstructing International Criminal Law. *Michigan Law Review* 106(6): 975–99.
- Hicks, D. 2012. Performance-Based University Research Funding Systems. *Research Policy* 41(2): 251–61.
- Kritz, N. (ed). 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, DC: United States Institute of Peace.
- Laplante, L. J. 2008. Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework. *International Journal of Transitional Justice* 2(3): 331–55.
- Laplante, L. J., and K. Theidon. 2006. Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz. *Michigan Journal of International Law* 28(1): 49–106.
- Leebaw, B. A. 2008. The Irreconcilable Goals of Transitional Justice. *Human Rights Quarterly* 30(1): 95–115.
- Maliniak, D., R. Powers, and B. F. Walter. 2013. The Gender Citation Gap in International Relations. *International Organization* 67(4): 889–922.
- McEvoy, K. 2007. Beyond Legalism: Towards a Thicker Understanding of Transitional Justice. *Journal of Law and Society* 34(4): 411–40.
- Meho, L. I. 2007. The Rise and Rise of Citation Analysis. *Physics World* 20(1): 32–6.
- Miller, Z. 2008. Effects of Invisibility: In Search of the 'Economic' in Transitional Justice. *International Journal of Transitional Justice* 2(3): 266–91.
- Nagy, R. L. 2013. The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission. *International Journal of Transitional Justice* 7(1): 52–73.
- Nevins, J. 2003. Restitution over Coffee: Truth, Reconciliation and Environmental Violence in East Timor. *Political Geography* 22(6): 677–701.
- Oko, O. 2003. Confronting Transgressions of Prior Military Regimes: Towards a More Pragmatic Approach. *Cardozo Journal of International and Comparative Law* 11(1): 89–142.
- . 2008. The Challenges of International Criminal Prosecutions in Africa. *Fordham International Law Journal* 31(2): 343–414.

- Orentlicher, D. F. 1991. Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime. *Yale Law Journal* 100(8): 2537–615.
- Posner, E. A., and A. Vermule. 2004. Transitional Justice as Ordinary Justice. *Harvard Law Review* 117(3): 761–825.
- ProQuest. 2014. PAIS International. www.proquest.com/products-services/pais-set-c.html (referenced 18 March 2014).
- Ramji-Nogales, J. 2010. Designing Bespoke Transitional Justice: A Pluralist Process Approach. *Michigan Journal of International Law* 31(1): 1–71.
- Sosnov, M. 2008. The Adjudication of Genocide: Gacaca and the Road to Reconciliation in Rwanda. *Denver Journal of International Law and Policy* 36(2): 125–52.
- Sriram, C. L. 2003. Revolutions in Accountability: New Approaches to Past Abuses. *American University International Law Review* 19(2): 301–428.
- Stahn, C. 2008. Jus Post Bellum: Mapping the Disciplines. *American University International Law Review* 23(2): 311–47.
- Stan, L., and N. Nedelsky (eds). 2013. *Encyclopedia of Transitional Justice*. Cambridge University Press.
- Staub, E. 2006. Reconciliation after Genocide, Mass Killing, or Intractable Conflict: Understanding the Roots of Violence, Psychological Recovery, and Steps Toward a General Theory. *Political Psychology* 27(6): 867–94.
- Teitel, R. G. 2003. Human Rights in Transition: A Transitional Justice Genealogy. *Harvard Human Rights Journal* 16: 69–94.
- Theidon, K. 2006. The Micropolitics of Reconciliation in Postwar Peru. *Journal of Conflict Resolution* 50(3): 433–57.
- Thoms, O., J. Ron, and R. Paris. 2010. State-Level Effects of Transitional Justice: What Do We Know? *International Journal of Transitional Justice* 4(3): 329–54.
- Thomson Reuters. 2013. Social Sciences Citation Index. <http://thomsonreuters.com/social-sciences-citation-index> (referenced 10 August 2013).
- UN Human Rights Council. 2012. Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff. A/HRC/21/46.
- University of Michigan. 2013. Welcome to Research and Technology Guides. <http://guides.lib.umich.edu/content.php?pid=98218&sid=736298> (referenced 24 July 2013).
- Verleysen, F. T., and T. C. E. Engels. 2013. A Label for Peer-Reviewed Books. *Journal of the American Society for Information Science and Technology* 64(2): 428–30.
- Vinjamuri, L., and J. Snyder. 2004. Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice. *Annual Review of Political Science* 7: 345–62.
- Waldorf, L. 2006. Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice. *Temple Law Review* 79(1): 3–87.