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Analysing Resistance to Transitional Justice: What Can We Learn From Hybridity?

Dr. Briony Jones

B.Jones.5@warwick.ac.uk

Department of Politics and International Studies

Social Sciences Building

University of Warwick

Coventry

CV4 7AL

United Kingdom

Bio: Dr. Briony Jones is currently Assistant Professor in International Development at the University of Warwick. She has previously published on the politics of intervention, reconciliation, citizenship, transitional justice and qualitative research methods. In addition to her current post she is an Associate Researcher at swisspeace in Bern and a Research Associate in the Centre for Criminology at the University of Oxford.

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An increased focus on understanding and managing the reactions of affected populations has led to hybridity being an important part of the discussions about, and applications of, transitional justice. However, despite the presence of ‘resistance’ as an active component in theories of hybrid peace, there is very limited in-depth theoretical or empirical work on resistance to transitional justice. The content of this paper addresses this gap in two main ways. First, it asks what we can learn from theories of hybrid peace about resistance to transitional justice. Second, it proposes a particular approach to resistance which would allow for a more dynamic and ultimately more useful understanding of resistance to transitional justice, its intentions and its meanings. By drawing on empirical examples in a number of different transitional contexts, the argument presented here states that not only must we seek to understand the nature of resistance as a part of hybridity, but we must do so by analysing the relational process through which acts come to be defined as resistance.

Keywords: hybridity, human rights, intervention, resistance, peacebuilding, transitional justice

1 Introduction

The term hybridity as it is currently used with reference to peacebuilding interventions refers to the process by which external peacebuilding interventions are transformed through contact with local contexts and agents. With regards to transitional justice this can include a managed form of hybridity, deliberately bringing together the international and local in order to create more legitimate mechanisms and processes, or it can include reference to trying to understand more spontaneous forms of hybridity in the everyday translation and transformation of transitional justice practice in local contexts. The academic and practitioner interest in hybridity of transitional justice can be traced to an increasing interest in the relationship between populations affected by massive human rights violations of the past and the specific

interventions designed to address them. In particular, the recognition that transitional justice as a normative ambition is in fact political and contested has led to a plethora of work exploring the reactions and perspectives of affected populations as well as the biases and practices of marginalisation within transitional justice itself.

The political and contested nature of transitional justice has been convincingly argued elsewhere (see for example McEvoy and McGregor 2008), and the purpose of this paper is not to rehearse such arguments but instead to take them as entry points into an under-explored aspect of these tensions: that of resistance. Whilst much of the literature on transitional justice in the last ten years has highlighted the lines along which disagreement may surface, for example lack of cultural sensitivity, imposition of international norms, and accusations of victor's justice among others, there has been very little detailed analysis of what happens when people do resist transitional justice, why they might resist and what it means when they do. Instead, what we have seen in practice terms is an increased concern with managing the responses of affected populations to transitional justice processes, increasing ownership, legitimacy and decreasing popular discontent through a process of buy in. This has included, among other aspects, hybridity.

Despite the presence of discussions on hybridity in terms of transitional justice practice, reference to hybridity has not yet been mobilised in the literature as an opportunity to engage more directly with resistance to transitional justice. This is interesting given the inclusion of resistance as an active component in typologies of hybrid peace, meaning that hybridity as an analytical framework is in theory well placed to engage more directly with the question of resistance to transitional justice, and how such resistance plays out in the contestation and re-shaping of justice initiatives. The focus of this paper is on exploring whether the way in which resistance is understood and mobilised in theories of hybrid peace enables us to analyse

resistance to transitional justice, and if not, what other areas of scholarship can be drawn on in order to move us forward in this task.

Scholarship on hybrid peace starts from a position of questioning the ways in which external actors intervene in post conflict contexts as part of a liberal peacebuilding agenda¹. Such critiques echo those made in the transitional justice literature, and include the imposition of western norms of liberalism, a lack of understanding of the contexts in which violence and peace occur, a top-down approach which favours external ‘expertise’ rather than local ‘knowledge’ and a one-size-fits all approach in the face of diverse and relevant local cultures (see for example Leeuwen, Verkoren and Boedeltje 2012 for a summary). From these critiques has emerged the use of the term ‘hybridity’ by a number of scholars who propose a new taxonomy of peacebuilding (Heathershaw 2013). In relation to peacebuilding hybridity is described in a multitude of ways according to varied perspectives and priorities, but in general and simplified terms it is used to refer to the mixing and transformation of liberal peacebuilding interventions (read international or external) and the local when they meet in peacebuilding contexts. Peterson refers to this as a ‘contact zone’ between the local and external, the latter of which is characterised as liberal, externally driven aid interventions (2012: 11).

In literature which engages with hybridity in terms of peacebuilding, ‘hybridity’ is at once an analytical category or framework which can act as a lens through which to view societies which are the subject of peacebuilding interventions, and at the same time a descriptive term for what scholars of hybridity believe exists as a reality on the ground. Importantly, underpinning much of the literature on hybridity, particularly that which comes from critical

¹ I acknowledge that liberal peace is not one set of practices and priorities, but such a discussion is not the focus of this paper. There are others who engage directly with this issue, see for example Richmond, Oliver. 2006. “The Problem of peace: Understanding the ‘liberal peace’.” *Conflict, Security and Development* 6(3): 291-314.

peace studies, is a sense of the “supposed transformative power of hybridity” in which resistance against particular forms of hegemony provide hope of an alternative to liberal peacebuilding interventions from the ‘outside’ (Ibid: 16).

I argue in this paper that whilst hybridity has something to offer an analysis of resistance to transitional justice, the static way in which resistance is understood in much of the hybridity literature cannot capture the most useful analysis of the motivations, forms and implications of resistance to transitional justice. Building on this, I develop an argument for a particular approach to resistance as relational i.e. that what counts as resistance is a matter of subjective position of the actor. It is argued that this relational approach to resistance is important because it can move us beyond dichotomies of resistor/resisted and of powerless/powerful which cannot allow for the fluid landscapes of resistance in transition contexts. Such landscapes are shaped by the micro politics of the legitimacy of the transitional justice process, of the divergent voices defining peace and justice, and of the dynamics which prioritise some voices over others.

2 Hybridity in Transitional Justice: Shedding Light on Resistance?

2.1 Hybrid Transitions

As an entry point I accept the assertion that transitional justice – as the sum of mechanisms designed to address human rights violations committed as part of a conflict, authoritarian rule or occupation – is part of liberal peacebuilding (Sriram 2009). As such it has also been accused of imposing externally validated norms in a technocratic, instrumentalist way (Rubli 2012) designed to transform societies not only in terms of institutional reform but also in terms of attitudes and behaviours. Moreover, as a project embedded within the liberal peace it too reproduces the “fundamental narrative of liberalism [which] is one of transformation (or

resistance to transformation)” (MacGinty 2012: 181). As befits an area of scholarship which has been strengthening since the 1980s a recent critical turn has been reflecting on these critiques with a concurrent series of debates, all of which revolve around a core discussion over whether it is the way of doing transitional justice which is the problem, or whether as a normative project it should be abandoned (see for example Rabkin 2005). These debates have been sharpened by a lack of ‘evidence’ on the positive impact of transitional justice².

Reflecting one part of such debates, Ojara has written that “as a moral vocabulary the language of human rights offers ways of talking about the experiences of people; the language offers a way of perceiving, imagining and interpreting suffering” (2012: 180). Indeed, the centrality of human rights language to transitional justice (which seeks redress for such harms) leads to a tendency towards demanding consensus on the nature of the violations which have taken place and on the way in which it should be redressed. This is a consensus which some have described as silencing (Campbell and Turner 2008), disciplining (Iloff 2012) and constraining of debate (Meister 2002). In the realities on the ground there have been examples of dissatisfaction, frustration, refusal to participate and the continuation of justice practices which have been termed, not unproblematically, in the literature as ‘local’ or ‘traditional’ (see for example Baines 2007; Quinn 2014) and which do not necessarily coincide with liberal norms of justice. This reflects alienation from, and dissatisfaction with, the process in reaction to the promotion of certain values over others (Van de Merwe, Baxter and Chapman 2009); values which are held to be ‘good’ for transition such as the rule of law, individual human rights and liberal democracy.

² Impact is a focus in much of the current scholarship on transitional justice. A desire to demonstrate whether or not transitional justice works can be exemplified in the work of Tricia D. Olsen, Leigh. Payne and Andrew G. Reiter (2010) ‘The Justice Balance: When Transitional Justice Improves Human Rights and Democracy’ *Human Rights Quarterly* 32(4): 980-1007.

As a response to these challenges transitional justice has been subject to calls for greater attention to be placed on the local, and for transitional justice processes themselves to reflect this. This reflects ambivalence within the practice of transitional justice: a desire to apply and support international law and norms on human rights and their violations, while at the same time acknowledging that the longer-term processes which transitional justice is supposed to support, such as reconciliation, must become locally embedded in order to affect the kinds of social transformation required for a sustainable and just peace. A concern with such local ‘buy in’ has led to an increased focus on managing local responses to transitional justice processes and on different forms of hybridity, both those which are managed and those which arise in an unplanned fashion. Sriram has written that transitional contexts are themselves “frequent sites of hybridity, in which the interaction of local, national and international actors shape decisions about accountability in ways that evolve over time” (2012: 58). This can be seen as an inevitable result of the nature of transitional justice as a “contested space” (McEvoy and McGregor 2008) in which negotiations and compromises over political, legal and moral dilemmas take place (Sriram 2009). Surprisingly resistance has not often been a core part of these discussions even though we might think about the role of hybridity within transitional justice as at least in part a concern with pre-empting possible forms of resistance.

In the case of managed hybridity, hybrid courts combine a mix of international law, domestic law, international staff and/or domestic staff. It was hoped that such hybridity would be able to overcome the problems of high cost and geographical distance of the international *ad hoc* tribunals such as the International Criminal Tribunal for the Former Yugoslavia by ensuring greater legitimacy and local ownership (Mendez 2009). In addition to hybrid courts we have seen an increase in a planned hybridity through holism in cases where different mechanisms are deliberately intended to complement each other, such as combining the work of an international criminal tribunal with a truth commission (for example in Sierra Leone)

and/or traditional justice (for example in Rwanda). The arguments given in support of designing such hybridity into a formal transitional justice process are that it can draw on the benefits of the international and the local at the same time, and thereby maximise the possible positive impacts as well as gain greater legitimacy on the ground with the people who have experienced the crimes to which a transitional justice process addresses itself (Clark 2007). The desire to increase legitimacy can be reasonably attributed to a desire to design a process which is accepted by the affected populations. Acceptance of the process necessarily means a lack of resistance, and so we can again reasonably assume that a (stated or unstated) goal of such measures is to reduce the possibility of resistance to transitional justice from the affected populations.

The turn of attention towards local contexts in transitional justice is also part of a desire to understand the ways in which people in different places and historical moments select strategies themselves which will best allow them to survive and reconstruct their lives (Shaw and Waldorf 2010). We can see this in detailed empirical work which illustrates the ways in which hybridity may occur through the ‘messiness’ of realities on the ground. Bekerman (2009) has observed that in Israel teachers at integrated Palestinian-Jewish schools negotiate and transform education policies as part of their coping strategies in tense classroom contexts, thereby altering the intended content of integrated-schooling curriculum designed to promote peace. In Nepal Bhutanese refugee children display apparently contradictory behaviour when they attend human rights education classes at the same time as they engage in political violence, in a negotiation of daily life which makes sense for them but which baffles the international peace workers (Evans, 2008). And in Guatemala parts of the local population have mobilised transitional justice education recommendations to use as their own and to serve their own goals in ways not intended by the transitional justice ‘experts’ who introduced the vocabulary and policy recommendations in the first place (Oglesby, 2007).

These practices certainly transform the type of peace and justice which is present in these places, leading to both a designed (top down) and to an everyday (bottom up) hybridity where policies designed with certain purposes in mind are re-shaped in ways which make sense on the ground. As Sriram notes, “it is seldom the case that a mixture of local, national, and international justice mechanisms is designed – it rather emerges in response to demands at all three levels over time, and it may involve a changing mixture of legal, non-legal, and quasi-legal processes” (2012: 67-68). However, for this paper we do not want to stop here with an acceptance that transitional justice is contested and negotiated, leading to different forms of hybridity. Whilst this statement in itself is important, we can go further and add value to the discussion by focusing particularly on the aspect of resistance. This requires us to ask how we can understand those acts which go beyond contestation and which are labelled ‘resistance’. In order to do this we turn now to theories of hybrid peace which address resistance in particular ways.

2.2 *Hybridity and Resistance*

If we acknowledge that hybridity as part of transitional justice is both a response to, and outcome of, a desire to manage how transitional justice processes are received by different groups and individuals, then it is surprising that the transitional justice literature itself has not engaged more directly with the concept of resistance. However, theories of hybrid peace do include resistance as part of their framing of what leads to and constitutes hybridity. When reviewing the literature on hybrid peace one can observe that where resistance as a term is used or implied it is rarely comprehensively defined or theoretically explored. This is a missed opportunity because it is a rich concept which is useful for the types of subtle and important critiques we read in contemporary transitional justice scholarship. Where resistance does

feature in work on hybridity it broadly falls into two interconnected roles as (a) a pre-requisite for the existence of hybridity and (b) as an integral part of what can be described as hybridity.

Much of the hybridity literature begins from a point of criticism of liberal peacebuilding interventions (Laffey and Nadarajah 2012), or at least observations that they are not always locally relevant, contextually informed or consultative. The idea that the worldview and norms promoted by liberal peace are not necessarily locally meaningful, or even acceptable, leads authors to suggest that resistance to such interventions will (inevitably) follow. Leeuwen, Verkoren and Boedeltje point to the individualist and secularist worldview of the European Enlightenment which forms the basis of liberal peacebuilding and assert that “As a consequence, liberal interventions may face resistance” (2012: 303) in local contexts which have, for example, a more communitarian view of society, rights and obligations. Importantly, resistance in such contexts results not only from a disjuncture between two or more worldviews, but also from geopolitical power imbalances which make possible the attempted imposition of one over the other. Resistance is thereby an action of those who are oppressed against those who oppress: “distinct local realities disturb and resist the hegemonic visions of policymakers” (Ibid: 311). When local realities come face to face with liberal interventionism, in the ‘contact zone’ described by Peterson (2012) the resulting resistance is one possible pre-condition for the emergence of hybridity. Referring to the case of the Solomon Islands, Richmond describes the mutual misunderstanding by internationals and locals of each other’s actions and values, which “shows how little they are able to understand each other – echoing mutual resistance and through these emerging agencies, the hints of hybridities to come” (2011: 126).

According to Richmond “Peacebuilding-as-resistance appears, at least from the local level, to offer the main avenue through which to shape the emerging political environment, though this is predicated on the ability to resist overwhelming technical superiority, and to

modify it marginally, or only to mimic it” (2011: 116). Here we come to the second connected role which resistance plays in hybridity, as an ongoing and integral part of that which can be described and observed as hybridity on the ground. MacGinty in his model of hybridity wishes to “capture the dynamism associated with peace, conflict, and the interaction between local and international actors in seeking to bring conflict to an end” in what he sees as “the constant processes of social negotiation, coalescence, cooperation, and conflict that are associated with the creation of hybrid forms of peace and processes of peacemaking” (2011: 208). Building on this, MacGinty (Ibid) features resistance as one of the four key elements of hybrid peace: ability of liberal peace agents to enforce acceptance of the liberal peace; ability of liberal peace agents to incentivise local engagement with the liberal peace; *ability of local actors to ignore, resist, and subvert the liberal peace*; and ability of local actors to present alternatives to the liberal peace. Here is a dichotomy between locals who may hold the agency and have the opportunity structure to resist, and liberal peacebuilding actors who may respond to perceived local resistance and seek to engage with local actors and their practices. The response of liberal actors, particularly with regard to the selection of local partners and choices over how to engage, can affect the type of hybridity which emerges. This can be seen in the work of Jarstad and Olsson on Afghanistan (2012) in their reflection on the relative stability of different forms of hybrid peace vis-a-vis different forms of local ownership, and in the work of Wallis on Timor-Leste (2012) regarding the importance of making space for cultural agency and thus a hybrid peace which is meaningful for people on the ground.

Resistance, however, is not always a given in every situation of hybridity. Locals may also support or be co-opted by liberal peacebuilding. Thus there is a spectrum of actions on which we may find subversion (a purposive attempt to circumvent liberal peace), cooperation and agonism (MacGinty 2011: 77, 2011: 86). This prompts us to ask: in which situations does resistance become the preferred action of choice, or indeed a possible action of choice? And

how do we know resistance when we see it? It is only through engaging with questions such as these that we are able to fully understand the relevance of such a dynamic at the liberal-local interface. However, the literature on resistance and hybridity makes some limiting assumptions or perhaps suffers from certain omissions.

Laffey and Nadarajah criticise recent scholarship on liberal-local hybrid peace for rendering “hybridity as a problem-solving social-scientific concept equated with mixing or interaction” (2012: 404). In this way, we can see how resistance itself comes to be understood more instrumentally as a precondition of hybridity; one piece in the puzzle with its role to play. The way in which resistance is referred to as one pre-condition of hybridity also implies that there is an action or an object of enquiry which can be labelled as ‘resistance’. These actions of resistance can be identified either as visible, concerted and public action, or in their more everyday forms (Richmond 2010). In addition, resistance is often evoked as the preserve of the ‘local’ in the interface. The logic follows that the liberal peace seeks to impose a certain set of norms and practices onto societies where they may not be meaningful or considered legitimate. This leads to resistance by those who are marginalised by the attempt to impose such a liberal peace. In turn resistance brings the liberal and local face to face in a negotiation which results in a hybrid form of peace which is challenged and shaped over time. In this logic resistance is an action undertaken by a particular set of actors in response to the hegemony of another set of actors and the norms they promote.

In the following section this paper moves beyond a static understanding of resistance as a component in a typology of the relationship between the local and the liberal, an approach which is at the core of thinking on hybrid peace, and towards an understanding of resistance as relational, i.e. defined by the subjective position of the actor who is resisting or labelling an act as resistance. In order to do this we need to engage with literature on resistance more directly.

3 Asking What Counts as Resistance

Scholarship on resistance has undergone some significant developments since the 1980s. Prior to this, resistance was primarily understood as organised group action against states (Fletcher 2001: 44). However, influenced by the well known work of academics such as Scott (see for example 1985) resistance is now understood by many anthropologists, sociologists and political philosophers as something present in the everyday. These approaches try to understand the subtlety of resistance and the sites and moments where it may be found. As such resistance is also conceptualised as the result of the agency of an individual in an everyday encounter far beyond the public spaces where it had previously been assumed to be enacted. Such an approach is valuable for its movement beyond the limits of a narrow definition of resistance which cannot capture the multi-faceted nature of power or agency. However, it creates a methodological trap in which contestations inherent in daily life may be caught by the gaze of the researcher and labelled 'everyday resistance'. The analytical danger here is that acts may be labelled as resistance which are not understood as resistance acts by the actors themselves, with implications for how resistance is studied, described and understood.

One approach to this methodological tension may be to think more sociologically about the nature of resistance and ask 'what counts as resistance?' from the vantage points of different actors. To clarify it is helpful to draw on theoretical work on resistance from the discipline of geography. In the edited collection *Geographies of Resistance* (1997) both Pile and Keith's contributions argue that resistance should not be assumed to arise from innate political subjectivities, but can only be understood in relation to local power relations, and intended and received meanings. Resistance itself as a label of action is defined through the creation of these subjectivities. Where the term resistance departs from other words we may use, such as

contestation or negotiation, is in the social context in which the motivation and legitimacy of the action is judged. Actions which resist are understood, by those who label them as such, as deviant by their very nature, either in terms of norms or material projects of organising society. They are ‘against’ that which is being resisted, either through a direct attack or through attempts to alter the intended outcomes of the avowed target of resistance. What is vital to highlight here is that the process by which an act comes to be labelled as ‘resistance’ is a subjective one.

As MacGinty elaborates “All individuals and communities experience constant and formative framing that signifies what is valuable, intelligible and deviant. The self-narratives that individuals attempt to construct and maintain for themselves are in fact the result of a complex process of negotiation and renegotiation that is bounded within socio-political and economic circumstance” (2012: 168). Here the distinction between oppressor and oppressed which is so important in many studies of resistance becomes less clear. Writing on resistance and international law Rajagopal asserts that resistance must always work, to some extent, within the parameters set by that which is being resisted, thereby risking cooption. This work rejects an absolute wall of separation between resistance and forms of hegemony and views “forms of resistance as various valid ways of conceiving the world” (2003: 11).

Building on this literature we can go further than the models of hybridity do, by looking at how certain acts come to be defined as resistance, a process which can provide a fruitful avenue for exploring the nature of the relationships between different actors at times of transition. Moreover, drawing on the theoretical work of scholars such as Rajagopal, this paper argues that if we treat resistance as a valid object of enquiry, rather than dismiss it as a form of deviance problematic for policy goals, it can reveal the alternative visions of peace and justice which may be present in any given society, that is to say the “various valid ways of conceiving the world” (Ibid). This will tell us about power relations between actors, how certain visions of

peace and justice come to be seen as more legitimate than others and what alternative visions might look like. In the following section this approach will be applied to transitional justice as part of liberal peacebuilding in order to suggest some ways in which it can be analytically helpful.

4 Resistance to Transitional Justice: An Application of the Relational Approach

4.1 Resisting Transitional Justice?

Campbell and Turner (2008) suggest that the formation of formal transitional justice agreements may lead to those who question them being accused of being harmful to the transition. In transitional justice literature which addresses resistance a variety of types of resisting actors are identified. Subotić's (2009) work focuses on the strategic and subversive choices of states in the Former Yugoslavia, shaped by domestic demands, normative resistance, political backlash and political instability. In contrast, Thomson (2011) analyses three types of resistance by ordinary Rwandans to Gacaca: staying on the sidelines; irreverent compliance; and withdrawn muteness. Taking another approach Jacobs highlights how reconciliatory gestures towards the Aboriginal peoples in Australia "far from settling the nation down into a state of calm co-habitation, can activate a range of unexpected refusals and resistances" (1997: 205), resistance which does not necessarily come from those who have been historically oppressed but from those in positions of power.

In each case the construction and labelling of the act as 'resistance' is an action undertaken from a particular positionality. For example, state actors who 'resist' cooperation with international courts may not view themselves as 'resistors' but instead politicians who are negotiating political stability, and the support of constituencies. Little writes of the case of

Northern Ireland that practices of democracy may in fact be more ‘normal’ the further they move away from the liberal ideal-type of the Belfast Agreement, despite criticisms of local politicians for obstructing the democratic process (2009). If we take the case of Colombia, Diaz (2008) has highlighted how particular non-governmental organisations oppose certain transitional justice measures, such as paramilitary demobilisation, not because they are opposed to transitional justice, but because they conceive of it in a more radical way, as “real political transformation”, rather than an instrument of the most powerful. These are the kinds of debates which represent the working out of political questions in a contested space. In Diaz’s work we see not only differences in the types of transitional justice policies being supported, but how these are representative of deeper conflicts between different conceptions of justice, some of which become more dominant and are seen as more legitimate in a given context.

If we apply a relational approach to resistance, drawing on the geographies of resistance outlined in section 3 in particular, we are better able to avoid categorising actors in ways which reproduce simplistic and homogenising dichotomies. The work of Kent (2011) demonstrates that an international imposition/local resistance dichotomy cannot adequately explain the various ways in which East Timorese survivors are reproducing, resisting and transforming official discourses of justice and nation-building. We should also be wary of assuming that certain actors are more likely to resist, or that resistance itself is targeted against domination by the marginalised or oppressed. In Jacobs’ work (1997) on Australia those who resist may not be the most marginalised seeking a more progressive politics. Sriram also cautions against assuming a positive role for resistance against activities of international actors, even if the critiques against such actors may stand. For Sriram “this resistance and the hybridity that results are not unproblematic” (2012: 59). Finally, one cannot assume or take at face value that certain acts are indeed resistance. Katz has warned that contemporary understandings of resistance have become sloppy and too easily use the label ‘resistance’ (2003: 262). We can see in work

on transitional justice and silence that the act of muteness, which stands in opposition to an obsession with confession, spoken memories and public forms of catharsis, may not always indicate resistance. Instead it may be itself a form of peacebuilding (Eastmond and Selimović 2012).

4.2 *Implications of a Relational Approach*

Brudholm, in work on both South Africa's transitional justice process and the Nazi regime in Germany, argues that the refusal to forgive and reconcile "can be the reflex expression of a moral protest and ambition that might be as permissible and admirable as the posture of forgiveness" (2008: 4). He goes on to assert that "when advocates or scholars arguing the case for forgiveness and healing lose sight of the contestability of the values they promote, they also lose sight of the possible moral legitimacy of some victims' preservation of resentment" (Ibid). Thus "although the refusal to forgive can be testimony of self-righteous rigor, vengeance, or a reduction of wrongdoers to what they have done, it is essential that the discussion of forgiveness and its alternatives take more seriously the possibilities and sources of various kinds of more or less legitimate resistance" (Brudholm and Rosoux 2009: 48).

Researching actors' perceptions of what counts as resistance might elaborate an international/local actor divide which is so common in recent scholarship on legitimacy issues in transitional justice and on hybrid peace. However, it is more likely to elaborate the multiple positions of any given actor in terms of identity formation, level of analysis and insider/outsider boundaries. This allows us to move away from dichotomies which to some extent constrain debate and analysis in this area. It also allows us to think beyond the confines of the formal transitional justice process which may well be composed of identified/self-identified 'international' and 'local' actors to learn more about the broader context in which actors'

different interests inform their perspectives on truth, justice and peace (Androff 2012: 314 and 316).

Perceptions of what counts as resistance are also informed by perceptions of the legitimacy of that which is being resisted. Sriram writes, in reference to Sudan's state response to the International Criminal Court's indictment of President Omar al-Bashir, that "He and his government have also engaged in what might be termed acts of resistance, albeit quite cynical ones, through the creation of special criminal courts for Darfur, which have to date not handled any high-level cases involving serious crimes" (2012: 63). Two points can be made here. Firstly, that the use of the words "what might be termed acts of resistance" is exactly the pertinent point. We need to know how such an act comes to be understood as resistance, from which vantage point and with what effect. This will then tell us about the relations between different actors, their mutual perceptions of legitimacy, and the differences in their normative positions and visions for peace and justice. The positionality of the actor who names resistance is key. Secondly, if we reflect again on MacGinty's typology of hybrid peace in which there is a distinction made between local actors engaging with liberal peace or, in contrast, ignoring, resisting or subverting liberal peace we can see that perhaps such a neat distinction does not always hold. In Sriram's case, and in others such as victim participation in the Extraordinary Chambers of the Courts of Cambodia³, we can see that it is possible for local actors to engage fully in the liberal peace, on the liberal peace's terms, but in ways not envisaged, predicted or desired by liberal peace advocates.

The approach to resistance outlined here can also perhaps help to re-contextualise and historicise hybridity. Laffey and Nadarajah criticise "shallow"

³ Thanks go to Julie Bernath for this raising this valuable point and illustrating it with informal examples from her field stays in Cambodia.

understandings of resistance where it is conceptualised as “a domestic phenomenon referring to external relations with local communities deploying non-liberal forms of decisionmaking or conflict resolution” and as a “newly positive engagement between liberal and non-liberal worlds” (2012: 406). However, if we understand resistance as constructed in a social context in which legitimacy and deviancy are constantly negotiated between different positionalities, rather than instrumentally, we can bring back in the importance of struggle. McEvoy and McGregor remind us of the importance, as researchers, of understanding the politicised nature of transitional justice and of bearing in mind the political and social struggles which place dealing with the past on the political agenda in the first place (2008: 4-6). With this in mind it is vital to see resistance not only as a response to liberal peacebuilding and thus a pre-condition of hybridity, but as something which is part of a longer history of struggle over the terms of social and political life. This in turn helps us to understand the broader context in which transitional justice processes are embedded and the limits of the contributions which a formal transitional justice process can make to dealing with the past and creating a sustainable and just peace.

Connected to this issue is the nature of the resistor as deviant. The explicit and implicit desire for consensus in formal transitional justice processes casts those who are perceived to be resisting as problematic for the eventual realisation of the goals of the process. This is a particularly sensitive issue in the context of transitional justice where the normative goals – peace and justice – are often put on a pedestal as ‘untouchable’. The nature of the human rights violations with which transitional justice mechanisms concern themselves means that debates over the nature of the response are emotionally charged and ethically sensitive. The developing and therefore incomplete nature of transitional justice, both in terms of best practice and international law precedent, might explain the tension between power that is wielded for the ‘good’ of transitional justice and resistance coming from unsatisfied victims or concerned spoilers. In the case of the former we might judge resistance as part of a messy development of

a complicated field of law and practice which will be imperfect but which seeks laudable goals. Resistance means something very different in such a context, when compared to other cases of resistance against oppressive political power, the more common empirical contexts on which studies of resistance focus. In the latter case the spoilers are less credible as actors by the nature of their intention to disrupt justice and again this type of resistance is quite different to other forms which are studied. This leaves us with a dilemma: should resistance to transitional be subject to a different moral evaluation?

There has been some interesting debate on the nature of transitional justice as either ‘exceptional’ or ‘ordinary’ and thus to ask whether there are specific conditions of transitional societies which render the kind of justice being implemented as necessarily different from settled or established democracies. As Ohlin describes it, justice is meant to evoke a universal, normative goal whereas transitional defines an exceptional and limited moment (2007). Addressing this dilemma Eisikovits raises the “possibility that consolidating a democracy cannot be subject to the same moral standards we would use to evaluate the regime it hopes to produce” with the warning that more theoretical work needs to be done on the extent to which moral complacency can be allowed during transitions and for how long a state can be viewed as transitional (2013: 236).

This debate has clear ramifications for how resistance to transitional justice is understood, analysed and judged. Like the ‘exceptional’ versus ‘ordinary’ debate much more work needs to be done on resistance in transitional contexts and connecting these different discussions together. The purpose of this paper was to highlight the importance of such work on resistance to transitional justice, to explore the use and limits of resistance as understood in theories of hybrid peace, and to argue for an approach to resistance in transitional contexts which is grounded in geographies of resistance which emphasise its relational nature. It is hoped

that the intellectual exploration begun here has gone far enough to illustrate that if we can listen to the voices which are dismissed as ‘deviant’ and engage with them as legitimate subjects of analysis then we may be able to hear the articulations of alternative visions of peace and justice. The open articulation of such difference and disagreement, I would argue, is at the foundation of a sustainable and just peace.

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