Two faces of transitional justice: Theorizing the incommensurability of transitional justice and decolonization in Canada

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Abstract

Transitional justice is a complex form of political and legal intervention used by state governments to redress state-sanctioned and large-scale harms (Balint, Evans, & McMillan, 2014). The typical aims of this model include maintaining peace during times of political flux, installing rule-of law, creating new historical narratives, and reconciliation (Teitel, 2003). In both theory and practice, transitional justice usually concerns 'fragile states' or post-conflict states. Governments, academics and practitioners, however, are broadening transitional justice theory and practice to include harms to Indigenous peoples in settler states such as Canada. Notably, recent efforts seek to integrate 'decolonization' into transitional justice as a desired process or goal. This paper is a critical intervention into this trend. I demonstrate that Canada has two faces of transitional justice – one, internally focused on 'reconciliation' with Indigenous peoples and the other, externally focused on providing peace and security expertise to fragile states. I bring land-centered understandings of decolonization and Indigenous resurgence into conversation with this duality to argue that efforts to incorporate decolonization into transitional justice, without taking seriously its roots and the international transitional justice work with which Canada is engaged, does more to obscure and de-legitimize Indigenous nationhood and settler colonialism entirely.

Introduction

In the wake of WWII and the subsequent Nuremburg war crimes trials (Teitel, 2003), state governments around the globe have developed and mobilized transitional justice to redress injustices of the past and to reconcile relationships between states, institutions, citizens, and communities. Transitional justice is model that encompasses a set of goals, fields of knowledge and political instruments that have become widely used in times of political and social flux to address state wrongdoing (Teitel, 2000, 2003). The goals of this model include accountability, maintaining peace, establishing rule of law, democratization, liberalization, nation-building, truth-telling and societal reconciliation (Teitel, 2003, pp. 70–72). The use of the term "transitional justice" is proliferating. Transitional justice can refer to all or any of: a particular conception of justice, a field of policy expertise; a branch of research and law; a unique form of human rights advocacy and activism; and, an emerging academic discipline (International Centre for Transitional Justice, 2009). Each of these veins contributes to further theorizing, implementing and/or assessing transitional justice instruments such as the truth commission and their applicability to a diverse range of contexts. Transitional justice has grown internationally as a political project over the last two decades (Thoms, Ron, & Paris, 2008).

During this time, governments have expanded transitional justice outside of customary transitional contexts to include settler states such as Canada, the United States, Australia and New Zealand (Winter, 2014). Each of these countries has modified and made use of transitional instruments to address harms to Indigenous peoples. Academics and practitioners have responded to this development through efforts to understand the implications and possibilities of transitional justice for Indigenous peoples (Jung, 2009; Nagy, 2012; Yashar, 2012). They question how transitional justice can be developed to better suit the particularities of harms experienced by Indigenous peoples (Balint, Evans, & McMillan, 2014).

In the Canadian context, these efforts engage mainly with Canada's response to the Indian residential schools system. For over a century, the Canadian government's residential school policy took some 150,000 First Nations, Inuit and Métis children from their families, communities, culture, land, sense of self and security and put them in schools jointly run by the government and religious orders (Legacy of Hope Foundation, 2014). Some efforts to understand the use of transitional justice instruments in Canada focus on the establishment of institutions such as the truth and reconciliation commission (James, 2012; Llewellyn, 2008; Nagy, 2014). Others examine and critique the principles and goals of transitional justice when applied in Canada. Such critiques include the limits of truth (Nagy, 2012), cultural and critical perspectives on reconciliation (Scott & Fletcher, 2014; Wakeham, 2012), the role of education (Czyzewski, 2011), and ways of incorporating decolonization (Green, 2012; Nagy & Sehdev, 2012; Park, 2015).

The complexity of historical injustice and settler colonial contexts demands that justice and solidarity be sought from a variety of positions such as these. However, this paper cautions against the latter trend of incorporating "decolonization" into the transitional justice model. Currently, the field of transitional justice, despite a focus on settler states, does not engage directly with Indigenous resurgence and decolonization. Therefore, the paper is a call for the expression of decolonization within transitional justice to be diverted towards developing new justice possibilities that engage centrally with assertions that decolonization is about the return of and connections to land (Alfred, 2005; Corntassel & Holder, 2008; L. Simpson, 2008, 2011; Tuck & Yang, 2012) – rather than focusing on how decolonization can be incorporated into the

field of transitional justice. In this paper, I spotlight Indigenous studies' work on decolonization and resurgence which contains a strong critique of 'truth-telling' and the effects of 'reconciliation discourse'.

Led by this work, I underscore that the foundations, goals, and discourses of transitional justice are major impeding factors that block decolonization. Transitional justice consolidates state power and allows for so-called established democracies to hold positions as states whose governing systems are always just. It channels attention toward narrow understandings of truth (Corntassel, Chaw-win-is, & T'Lakwadzi, 2013; Nagy, 2013). It muffles those Indigenous land-centred and resurgent voices that express anger or rage at colonial rule – past and present – by reducing these expressions to the effects of the residential schools legacy (Coulthard, 2014).

At the same time, I must acknowledge that the restorative model, which informs the principles of truth commissions and other transitional processes, involves survivors and communities, facilitates connections among diverse peoples, generates new historical accounts, and creates public fora for victims and survivors (Teitel, 2003, p. 78). These 'positive' elements that are experienced by some survivors cannot be flattened under the weight of critique or ignored. To rush towards conclusions that transitional justice, whether applied in so-called transitional or non-transitional states, is *only* "bad" disrespects and invalidates the survivors who often fought long years for justice. I agree with Somani's (2011) assertion that to deny the positive feelings experienced by some survivors "smacks of academic condescension" (p. 6)[1]. The goal of this paper is not to minimize the agonizing justice-seeking work of survivors who fought for and/or participate in truth and reconciliation processes. Nor is it my intention to single-out the efforts of settler activist-scholars who grapple with how to work in solidarity and support. Rather, my intent is to focus on and draw attention to the power and politics that animate past and present international transitional justice practice. I aim to make the differences between these and decolonization explicit and to warn of the implications of not carefully attending to the meaning of these differences.

I demonstrate that Canada has two faces of transitional justice. One face is internally focused on 'truth and reconciliation' with Indigenous peoples. The government of Canada makes no explicit connection between this face and transitional justice despite its reliance on international transitional justice expertise to set-up truth and reconciliation processes for residential schools.[2] The other face is externally focused on providing peace, security, and human rights expertise to fragile states. Foreign policy is the only place where the Canadian government explicitly states its claims in transitional justice. To date, the relationship between these two faces of transitional justice have not been articulated. I bring these two faces into conversation with Indigenous studies conceptions of decolonization and resurgence (Corntassel, 2012; Snelgrove, Dhamoon, & Corntassel, 2014) to show that transitional justice and decolonization are incommensurable. I argue that efforts to incorporate decolonization into transitional justice, without taking seriously its roots and the international transitional justice work with which Canada is engaged, does more to obscure and de-legitimize Indigenous nationhood and settler colonialism entirely.

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[1] Somani does not write on transitional justice. Rather this article is about formal apologies. The paper references several apologies but focuses on former Prime Minister Stephen Harper's apology to South Asian Canadians for what has been called the *Komagata Maru* incident. In 1914, 352 British subjects aboard a Japanese ship named the *Komagata Maru* were refused entry into Canada under its exclusionary laws to keep Asians out of the country and forced to return to India. For more information: http://komagatamarujourney.ca/incident

[2] See for example, https://www.ictj.org/our-work/regions-and-countries/canada

The importance of understanding the implications and effects of transitional justice, as it is dually applied to Indigenous harms in settler colonial contexts and also as an area of foreign policy expertise developed by settler governments, cannot be overstated. In an "age of apology" (Gibney, Howard-Hassmann, & Coicaud, 2009) that is marked by the rise of reconciliation as a prominent social paradigm (Henderson & Wakeham, 2013) and the normalization of reconciliation politics (Coulthard, 2014), these instruments are becoming a one-size-fits-all solution applied on an international scale to address a diverse range of so-called historical injustices.

The paper begins broadly by articulating, "What is transitional justice?" I define transitional justice and trace some of its international field of practice. I then articulate "Canada's internal face of transitional justice" through a discussion of the subfield that examines the application of transitional justice in Canada. I highlight Canadian critiques of transitional justice that incorporate decolonization as a desired goal or process within the model, noting their strengths and weaknesses. In the following section, entitled "Untangling transitional justice and decolonization," I ground the paper in Indigenous studies' work on resurgence and decolonization. I discuss Tuck and Yang's (2012) assertion that 'decolonization is not a metaphor' and engage with their "settler moves to innocence" framework. Here, I use *conscientization* as a conceptual tool to critique current efforts to involve conceptions of decolonization in transitional justice. Next, I contrast conceptions of decolonization within transitional justice with various Indigenous studies critiques of truth-telling and reconciliation. The final section of the paper is a discussion of Canada's international involvement in transitional justice – its external face. Here, I emphasize the importance of breaking down the siloes within which Canada's internal and external faces are maintained. A thorough examination of Canada's transitional justice policy is beyond the scope of this work and not its central point. Rather, I use this section of the paper to point to the dissonance between Canada's two transitional justice faces and to inspire further work in this area.

Ultimately, I engage with this debate so as to contribute to "making room for more meaningful potential alliances" (Tuck & Yang, 2012, p. 1) between those who take up the goals of decolonization, those who engage in transitional and other justice work and those who theorize about these different justice pursuits.

What is transitional justice?

> No region of the world has escaped the reach of transitional justice. (Olsen, Payne, & Reiter, 2010, p. 2)

> Transitions are rare periods of rupture which offer a choice among contested narratives. The paradoxical goal in transition is to undo history. The aim is to reconceive the social meaning of past conflicts, particularly defeats, in an attempt to reconstruct their present and future effects. (Teitel, 2003, p. 87)

Defining transitional justice first requires an acknowledgment that there is no easy or actual consensus on its meaning, when it began, its efficacy, and most salient to the purposes of this paper – "where it is possible and where it is not" (Olsen et al., 2010, p. 3). Transitional justice

theory commonly defines transitional justice as a particular conception of justice that is used in times of political flux to address state wrongdoing (Teitel, 2000). Transitional justice emerged from the creation of new justice instruments to respond to state-sanctioned atrocities associated with WWII and the Cold War (Teitel, 2003). Traced to these historical and geo-political conditions, transitional justice theory and practice continue to engage in nation-building (Teitel, 2003, pp. 70–72) and rely on and establish rule-of-law and liberal democracy in countries dealing with the aftermath of former authoritarian regimes.

Transitional justice theory, institutions, and practice attend to the complexity of transitional contexts by engaging and combining retributive and restorative justice principles. Retributive and restorative justice goals deployed in transitional contexts range from accountability to reconciliation, respectively (Teitel, 2003, pp. 70–72). Institutions to achieve retributive and restorative goals include the International Criminal Court (ICC) and truth commissions (Leebaw, 2008, p. 96). Further, a number of institutions for the study and advancement of transitional justice have emerged such as the International Centre for Transitional Justice (ICTJ) in New York city (Leebaw, 2008). Retributive and restorative principles also inform the development of transitional justice instruments to reveal and repair past violence. The range of transitional justice instruments includes trials, truth commissions, lustration policies, financial/symbolic reparation (Olsen et al., 2010, p. 2), apologies and commemorative/remembrance initiatives. While its individual instruments incorporate victim-centred approaches, transitional justice is itself inherently nation-state-centred. Indeed, this bleeds into its instruments, such as the truth commission, which experts urge should be based on the core principle "that each is nationally-rooted, unique to each place, and reflects a process of national ownership" (Hayner, 2010, p. 211).

As the name suggests, transitional justice theory revolves heavily around the notion of transition. The quotation at the beginning of this section associates transition with isolated events that are "rare", about stability after conflict, and where historical 'truth' is in question. Transition implies a state's progress from an "evil" and "illiberal" state (Teitel, 2000, p. 3) to a liberal democracy that is good and follows the rule-of-law. Transitional countries garner substantial input from the United Nations and countries such as Canada to mobilize transitional justice (Bonner & James, 2011). This delineation between what is transitional and what is non-transitional form a hierarchy (even if in effect) that revolves around the degree to which a state has achieved democracy and upholds human rights.

Transition is not characteristic of long-established democracies, as transitional justice theory calls them, or of settler colonial states, as this will paper refer to them. Yet, the Canadian government participates in the use of transitional justice instruments 'at home'.

Transitional justice in Canada? The internal face of transitional justice

> …in settler-colonial contexts—where there is no period marking a clear or formal
> transition from an authoritarian past to a democratic present—state-sanctioned

approaches to reconciliation must ideologically manufacture such a transition by allocating the abuses of settler colonization to the dustbins of history, and/or purposely disentangle processes of reconciliation from questions of settler-coloniality as such. (Coulthard, 2014, p. 108)

In Canada, there has been no transition from one regime to another – no transition to which the international community can bring this mode of justice. Rather, Canada is a country that sends expertise and aid to 'others'. With no political transition, reparations in settler colonial contexts are theorized in other frames such as symbolic justice (Wolfe, 2014), state redress (Winter, 2014), and the 'politics of amends' (Braun, 2014)[3]. Notably, the Government of Canada treats the Truth and Reconciliation Commission of Canada as unique (Walker, 2009). The Canadian government considers neither the TRC nor any of the court-imposed measures laid out in the *Indian Residential Schools Settlement Agreement* as transitional justice[4] (Transitional justice expert, personal communication, 2015).

Normative transitional justice theory refers to Canada as an "established democracy" or as an "advanced liberal democracy." Referring to Canada as an established or advanced state precludes discussion of harm, persecution, injustice, and ongoing genocide within transitional justice frameworks by treating Canadian democracy as a finished project and a state that is inherently and always just. To critique the power-laden non-transitional versus transitional divide, some have compared the Canadian TRC to other cases such as South Africa (Nagy, 2012) and Argentina (Bonner & James, 2011) in attempts to theorize and blur the boundaries set between them. James (2010) asserts that despite the differences between Canada and post-conflict states, which include Canada's status as a G8 country, legal and constitutional history, and economic structure, Canada should *not* be excluded from transitional scrutiny. He argues that, "Canada surely deserves its place among the ranks of truth commission-hosting countries: transitional liberal democracies emerging – precariously, controversially, and, above all, always only potentially - from experiences of gross and systematic violations of human rights" (James, 2010, p. 24). James' position holds that Canada cannot be placed above and outside transitional contexts and discourses. Doing so, he argues, contributes to the failure of these measures to bring justice to those wronged and to state/institutional accountability. Canadian democracy, in this view, should not be treated as a non-transitional finished product.

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[3] Settler states such as Canada, Australia, and the United States fall into this category. Canada's response to the Indian Residential Schools system, Australia's apology to Aboriginal and Torres Strait Islanders for the 'Stolen Generations', and the United States' and Canada's settlement agreements to address the internment of Japanese Americans and Canadians are a few cases that have been examined within these non-transitional frames.

[4] This inference is drawn from a combination of interview statements, analysis of the government's documentation, and informed by the divisions between transitional and established democracies found in the theoretical background just described. Most critically, nowhere does the Canadian government refer to a 'domestic' transitional justice policy or relationship.

Rosemary Nagy (2008) warns that failure to critically examine truth commissions in 'non-transitional' settings allows Western liberal values, which are imposed through transitional justice, to be glossed over. This imposition is a point of conflict not only in the context of transitional states, but also in settler colonial states where Indigenous rights and governance models are at odds with the prevailing order (Nagy, 2012; Yashar, 2012). Nagy (2008) also points out that transitional justice risks "appear[ing] from on high as 'saviour' to the 'savagery' of ethnic…conflict" (p. 275). This saviour/savage dynamic is salient in settler societies where it maps easily on to persistent colonial preoccupations with spreading and assessing civility against savagery (Smith, 1999; Stoler, 2002).

In the quote at the opening of this section, Coulthard concludes that the use of transitional instruments in Canada creates an artificial moment of transition to allow the present to break from the past. Since there is no transition from a fragile to a secure state, since democracy is the mainstay of Canadian politics, transitional justice severs questions of how settler colonialism continues to cause harm in the present.

Untangling transitional justice and decolonization

As transitional justice advances globally, Indigenous peoples' critiques, activism, and calls for self-determination and decolonization have made themselves 'heard' within transitional justice circles. Transitional justice proponents generally recognize the 'ill-fit' of this model to address harms to Indigenous peoples, emphasizing two key issues. First, the mono-national approach, which is at the heart of transitional justice, and fueled by a political need to unify, does not lend itself to the different realities of Indigenous nationhood and the need for a nation-to-nation approach (International Centre for Transitional Justice, 2012). Second, they find that the truth commission model is itself insufficient and alien to most Indigenous worldviews and ways of living on a number of levels. The model focuses on measures that are limited to concern with the violence against and experiences of *individuals*, the *recent past* and/or *isolated* violations, the testimony of survivors and direct witnesses, and reliance on the ultimate use of *archival and written sources* to report on injustices and inform policy (International Centre for Transitional Justice, 2012).

Proponents theorize that these two key issues are in direct contrast with generally-stated Indigenous values and experiences such as the foundational importance of community - the fact that violence and injustice have been experienced over generations to whole communities, not just to individuals - and, that experience is often handed down orally rather than explicitly maintained in written record (International Centre for Transitional Justice, 2012). These differences are seen as opportunities to develop better transitional justice measures, to retool or to fine-tune its instruments, and to expand the scope and reach of transitional justice to address the effects of colonialism on Indigenous peoples around the world (Balint et al., 2014; Henry, 2015; International Centre for Transitional Justice, 2012; Jung, 2009). Differences are not treated as indicators that other justice models and/or instruments should be pursued.

In the Canadian context, efforts to understand the use of transitional justice instruments in settler states are strongest in their problematization of the different but limited ways that both the Canadian government and the TRC frame the residential schools system and its effects on Indigenous peoples (see Czyzewski, 2011; Green, 2012; Henderson, 2015; James, 2012; Nagy, 2014; Park, 2015; Wakeham, 2012). They challenge the government's position that the system is an "unfortunate" isolated incident in an otherwise well-functioning liberal democracy. They call for colonialism to be explicitly addressed. This literature articulates the possible dangers of the TRC's focus on trauma and healing. These works also generally attend carefully to the balance that must be maintained when engaging with presently unfolding social and political dynamics where survivors and their experiences must be handled and addressed with respect.

The field is weakest, however, in its engagement with the concept of decolonization itself. Although the possible ways that transitional justice may or may not contribute to decolonization are unknown (Park, 2015), this literature concludes that decolonization can, should or must be incorporated within transitional justice. Like the international transitional justice efforts to incorporate Indigenous claims into transitional justice described above, these efforts do not adequately question or engage with the possibility that transitional justice *should not, does not,* or *cannot* contribute to decolonization; nor do they engage strongly with a definition of the term.

Rather, the field largely treats decolonization as a critical element missing from an otherwise workable model. Scholars engaged in critique of transitional justice incorporate decolonization to highlight that the reconciliation process (Green, 2012), the minds of settlers (Park, 2015) and our thinking, which involves racism, stereotypes and a failure to recognize the "direct, historical relationship between settler privilege and Indigenous relative deprivation" (Nagy, 2013), must be decolonized. While these efforts clearly engage with knowledge emanating from Indigenous theorizing and praxis, they do not engage explicitly with the conflicts that emerge from integrating decolonization into transitional justice theory and practice when we consider land-centred decolonization and Indigenous resurgence. In the section below, I engage with this knowledge to argue that efforts to incorporate harms to Indigenous peoples and decolonization into transitional justice models activate a particular "settler move to innocence" known as *conscientization* (Tuck & Yang, 2012) both internationally and within Canada.

Centering decolonization and Indigenous resurgence

Tuck and Yang (2012) assert that decolonization is a different project and has different goals than civil and human-rights based social justice (2012, p. 2). I engage here with their definition of decolonization and extend it to the field of transitional justice. Decolonization in the settler colonial context involves action that disrupts settler colonialism (2012, p. 19), works towards the repatriation of land, and recognizes how land has multiple layers of meaning and enactment. It is "accountable to Indigenous sovereignty and futurity", not settler futurity (2012, p. 35). Tuck and

Yang emphasize, in contrast, that the aims of reconciliation "motivate settler moves to innocence" (2012, p. 4).

The notion of settler moves to innocence builds on the work of feminist and critical race activist-scholars who theorize that 'innocence' acts as a block and defense to addressing one's complicity in the oppression of others. These blocks include the discussion of women's denial of complicity in the subordination of other women known as 'the race to innocence' (Fellows & Razack, 1998); white peoples' denial of their complicity in the (re)production of white privilege known as 'moves to innocence' (Mawhinney, 1998 cited in Tuck and Yang, 2012), and white feminist and anti-racist's use of emotion (tears, rage and expressions of guilt) to "recuperate the vision of the just, nonracist feminist" (Srivastava, 2005) when their complicity is called out. The assertion of innocence, whether overt or subtle, establishes hierarchies of innocence and 'promotes competing marginalities' (Fellows & Razack, 1998).

Tuck and Yang (2012) extend and shift these race- and gender-based assertions of innocence in justice work to reflect what is particular about settler colonial relations with Indigenous peoples. They advance the term *conscientization* as a conceptual tool that one can use to assess and understand a particular kind of settler move to innocence that stands in the way of decolonization. This concept involves settlers treating decolonization mainly as a process of changing one's thinking – of educating oneself and others or of becoming more conscientious. *Conscientization* problematizes the saying: "Free your mind and the rest will follow." This settler move to innocence involves primarily or only engaging with decolonization at the level of addressing "mental colonialism" (2012, p. 20). In this, settlers engage with decolonization through formal and informal learning and engagement with Indigenous histories, peoples and teachings in order to change our mode of thinking and systems/institutions of knowledge production. *Conscientization* points to moments where settlers channel energy into thought projects and goals - such as indigenizing institutions, our minds, and relationships - as acts of decolonization.

While Tuck and Yang (2012) attest to the importance of rethinking curriculum, of learning to see settler colonialism, and of critiquing settler epistemologies, they assert that critical consciousness can itself prevent or interrupt decolonization. To this effect they state that "[e]ven though the experience of teaching and learning to be critical of settler colonialism can be so powerful it can feel like it is indeed making change, critical consciousness does not translate into action that disrupts settler colonialism" – until stolen land is relinquished (2012, p. 19).

Efforts to incorporate decolonization into transitional justice, both internationally and in Canada, foreground *conscientization* rather than decolonization. As seen in the previous section, these efforts do so by treating transitional justice as a workable model that is in need of tailoring to Indigenous cultures, worldviews and experiences. Transitional justice theory has begun to cement an understanding of decolonization that is primarily an act of becoming 'conscientious' about attitudes, beliefs, epistemologies and about learning lessons from the past. Engaging in conscientization work but calling it decolonizing work in transitional justice obscures and distances land and our differing relations to it from its central place of importance.

In contrast to the critiques raised by transitional justice proponents, several Indigenous scholars tie critique of transitional justice processes to self-determination that is rooted in the meaning of, connection with, and return of land. Reconciliation and truth-telling are two processes under significant critique. Truth-telling is a core process in transitional justice theory. Here, it is considered a formal process, which is facilitated by truth commissions, that seeks to publicly reveal the truth about historical injustices. Truth is revealed through a process of systematically culling documents, records, photographs, and recording survivors' recollections about the injustice.

Simpson (2016) critiques the public use of pain and suffering as expressed through stories about residential schools. She argues that this use of affect works to relegate Indigenous peoples as incapacitated sufferers rather than viable and vibrant polities. Corntassel, Chaw-win-is and T'lakwadzi (2013) also emphasize that state-infused truth and reconciliation processes are focused on psychological trauma and healing. In response, they emphasize the importance of community approaches to Indigenous storytelling that focus on building strength and resilience.

Coulthard (2014) notes that formalized truth-telling processes exclude, evade or dismiss "negative emotions" like anger and resentment from the possible range of emotions felt and expressed by survivors. Those who "refuse to forgive and/or reconcile… are typically cast as being saddled by the damaging psychological residue of [the] legacy [of residential schools], of which anger and resentment are frequently highlighted (p. 109). Anger and resentment, he argues, should not be dismissed and invalidated but be regarded as a signal of critical consciousness. For Coulthard, anger and resentment are reasonable and expected responses to dispossession that should be seen as a potentially transformative political resource for Indigenous peoples.

Simpson (2011) explains that the Nishnaabeg word for truth is directly tied to land and the sound of one's heart. Land and heart emphasize the deep personal connections to truth and the 'plurality of truth', as Murray Sinclair has called it (2011, p. 59). This orientation to truth, Simpson emphasizes, is consistent with Nishnaabeg treatment of difference; here, difference is understood, not as something that stands in tension or opposition to another thing but as "necessary parts of a larger whole" (p. 60).

Indigenous scholars such as these above critique transitional justice's conceptions of truth-telling reconciliation by emphasizing the vibrancy and strength of their communities and through elaborating on the importance of land and the resurgence of Indigenous peoples. A principle that underpins these alternatives to transitional justice is a turn away from the proliferation and production of damage-centred knowledge, which documents the harms and sufferings of Indigenous peoples and communities. They contribute instead towards what Eve Tuck (2009) refers to as desire-centred approaches. Such approaches engage "wisdom and hope" (2009, p. 416). Indigenous resurgence speaks to Indigenous lives and reasserts the connection between land-centred decolonization rather than decolonizing settler's minds and institutions. Each of these turns away from the state-inflected practices within transitional justice discourse.

Despite settlers'/our[5] critical approaches and commitments to allyship, emerging transitional justice practice and theory engages with decolonization as an add-on, an after thought, or a loosely defined concept. To be clear, I think it is important for settlers to engage in thoughtful and rigorous commitments to learning and changing our practices and perceptions that have long and tangled racist and colonial roots. Part of this work does involve developing critical awareness of our own genealogies, perceptions and beliefs, how they are mirrored back to us in our institutions and politics, and how this enacts violence on others. Critically engaging with the perceptions and beliefs we hold of ourselves and our lifeworlds is especially important when we are engaged in justice work and allyship. Engaging in efforts such as decolonizing anti-racism (Lawrence & Dua, 2005), decolonizing settler myths and truths (Regan, 2011), and being vigilant against settler/White denial (Nagy, 2012) are indeed crucial steps.

However, continuing down this path of integrating decolonization into broad transitional justice theory and practice, without keeping in view its international currents, historical-political rooting, and absence of focus on land, perpetuates thinking about settler "responsibility to giv[e] up land [and] power" without having to change much at all (Tuck & Yang, 2012, p. 10). As Indigenous scholars such as Glen Coulthard, Leanne Simpson, Taiaiake Alfred, Audra Simpson, and Eve Tuck work to counteract the limitations of institutionalized truth-telling and the effects of reconciliation discourse, transitional justice continues to gain prominence globally and to integrate Indigenous "demands, knowledge and cultural perspectives" into its framework (Global Affairs Canada, 2010). As seen earlier in the paper, in this broad setting, transitional justice certainly seeks to uncover the truth and repair the atrocities of the past, but, it does so within a framework that seeks to manage public understanding of it, to unify state governance and institutions, to enhance liberal democracy and install rule of law internationally. These complex geo-political power motivations must be kept closely in view for their effects on Indigenous peoples, nations and justice movements in Canada.

Canada's external face of transitional justice

> …*it is taken for granted* that what the international community is doing on behalf of the 'community in transition' is necessarily consistent with the local community's own sense of self-determination and conceptions of justice. (An-Na'im, 2013, my emphasis)

> …the goal of any traditionally rooted self-determination struggle ought to be to protect that which constitutes the 'heart and soul of [I]ndigenous nations: a set of

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[5] Tuck and Yang identify their 'discrepant positionings' as an Indigenous scholar and a settler/trespasser/scholar by using a forward slash between pronouns (e.g. our/their and we/they) in their paper. Taking this lead, I observed that always referring abstractly to 'settlers' in this paper omits or distances myself from this category and my critique. I therefore use the forward slash here (settler/our) to include myself explicitly within the dynamic described above and within this paper. The distractions and diversions from decolonization, or settler moves to innocence, are part of my own learning and unlearning, confusions, struggles, frustrations, desires for 'better', and experiences as a settler-scholar-activist and racialized person-of-colour.

values that challenge the homogenizing force of Western liberalism and free-market capitalism. (Alfred, 2008, p. 60)

It is well known fact to Indigenous Peoples that Indigenous Knowledge systems are poorly understood, or entirely misunderstood, by settler governments and the Western academy… while settler governments have expressed an interest in learning [Indigenous Knowledge] to suit their agendas (climate change, for instance), and have sought to do so on their terms, they fund projects that meet their needs and not necessarily those of Indigenous Peoples. (L. Simpson, 2008, p. 75)

The quotations that open this section emphasize some of the tensions that come to light when juxtaposing the transitional justice model with Indigenous thought on government. By articulating some aspects of Canada's transitional justice involvement internationally, as well as critiques of it, this section seeks to illuminate the fundamental contradictions between transitional justice and decolonization. I stated earlier in the paper that reparations in settler states are not treated as transitional justice cases. Instead, they are most often discussed in other frames such as symbolic justice (Wolfe, 2014), state redress (Winter, 2014), and the 'politics of amends' (Braun, 2014). In fact, Canada refers to its own reparations cases simply as "sad chapters" in our history (Government of Canada, 2010). For the Canadian government, transitional justice is externally focused and for 'others'.

The only place where Canada explicitly names and acknowledges involvement with transitional justice is in its foreign peace and security policy. The Government of Canada clearly establishes that it is a country that assists other states in transition through its foreign commitments to "help lay the foundation required for long term peace and stability in areas that have experienced violent conflict and authoritarianism" (Government of Canada, 2012b). In its support of international transitional justice, Canada affirms that its principles and practice "are consistent with the priority Canada attaches to the promotion of democracy, human rights and the rule of law, as well as Canada's strong commitment to the protection of civilians in fragile and conflict-affected situations" (Government of Canada, 2012b).

Indeed, with respect to the rule of law, Canada's transitional justice contribution revolves strongly around criminality as evidenced by its assistance in the creation of the International Criminal Court and in establishing trials for war crimes and crimes against humanity. These instruments link up with Canada's international peace and security interests through the government's "Stabilization and Reconstruction Task Force" (START) (Government of Canada, 2014b) and through support by Justice Rapid Response, which Canada describes as a "multilateral facility of active duty criminal justice and related professionals" that "can be deployed rapidly at the request of the international community to investigate, analyze and report on situations where human rights and international criminal law violations have been reported" (Government of Canada, 2012a).

Rule of law and the deployment of professionals/experts by established democracies to fragile states have been the targets of colonial critique. Through analysis of various countries in

Africa, legal, security, and human rights expertise deployed by established democracies carry with them an "invasion" of liberal democratic expectations around "good governance', 'democracy', 'empowerment', 'civil society', and 'transitional justice'" (Neocosmos, 2011, p. 360). Elsewhere, the legalist paradigm that informs transitional justice has been critiqued as an "epistemic violence of commensurability" that contributes to transitional justice as a "colonizing field" (Vieille, 2012, p. 67). In the Canadian settler context, transitional justice contributes to ongoing settler colonial violence by denying certain expressions of emotion and manifestations of resistance as legitimate and by relegating colonial harm to the past (Coulthard, 2014, p. 22).

Keeping in-view the colonialist lines that run through transitional justice theory and practice is crucial as the field expands in scope. Over the past two decades, transitional justice institutions such as the International Criminal Court (ICC) and the International Centre for Transitional Justice (ICTJ) have proliferated. Among other things, these special institutions engage in comparative research and the development of global transitional justice theory and practice (Leebaw, 2008, p. 97). In 2008, the government of Canada funded $1,500,000 to the ICTJ for "strengthening transitional justice" (Global Affairs Canada, 2012). The Strengthening Transitional Justice project profile indicates that the project focuses on Democratic Governance and Peace and Security sectors[6] (Global Affairs Canada, 2008). These monies tie not only the Canadian government's interest in the proliferation of transitional justice globally, but also its interest in being at the forefront of the production of certain knowledges within it. As Leebaw (2008) notes, state governments' support of transitional justice is "puzzling given that transitional justice institutions were historically seen as a threat to national reconciliation" (p. 96) and "given that scholars have always had somewhat mixed views on the political and social roles of these institutions" (p. 97).

Canada's transitional commitments to stabilizing 'fragile states' with a focus on rule of law investment are argued to do with international state-crafting and establishing effective penal systems (Brisson-Boivin & O'Connor, 2013). These commitments also contribute to Canada's international role in shaping security regimes and discourses. While Canada boasts that its Global Peace and Security Program supports "timely, coherent, and effective programming in priority fragile states" such as Afghanistan and Haiti (Government of Canada, 2014a), in practice they are known to contribute to jail overcrowding and conditions that violate rather than ameliorate human rights (Walby & Monaghan, 2011). There is moreover a fundamental incommensurability between the conceptually "western" international legal system and its ability to guarantee justice for distant others (Boyle & Kobayashi, 2015).

The juridical, humanitarian and disciplinary language of transitional justice, seen through the Canadian government's international peace and security portfolio, stands in stark contrast to the messages conveyed through transitional justice instruments used to address the Indian

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[6] The profile indicates that the project's focus on Democratic Governance will involve 'democratic participation and civil society: 20%', 'human rights: 20%', 'legal and judicial development: 20%', 'public sector policy and administrative management: 20%'. The Peace and Security portion will focus on 'civilian peace-building, conflict prevention and resolution: 20%'. The ICTJ also focuses 30% of these efforts on Africa (multiple countries), 25% on the Americas (multiple countries), 25% on Europe (multiple countries), and 20% on Asia (multiple countries).

residential schools system domestically. The Victim-, 'Aboriginal-' and healing- centred, 'culturally appropriate', and reconciliation discourses found in the formal apology issued by former Prime Minister Stephen Harper and the truth and reconciliation processes analysed and critiqued in this paper bear little resemblance. How might the internal focus on Indigenous peoples inform or relate to the external practice of transitional justice internationally?

In 2010, the government contributed $49,210 to the ICTJ for a project to "[lay] the foundation for one primary goal: the incorporation of the demands, knowledge, and cultural perspectives of indigenous peoples into transitional justice mechanisms and truth-seeking" (Global Affairs Canada, 2010). While domestically, Canadian reparations discourse severs or blurs the links between the measures set out in the *Indian Residential Schools Settlement Agreement* and its ties to and roots in transitional justice, the Canadian government actively pursues/supports transitional justice as a model within which Indigenous 'demands, knowledge, and cultural perspectives' be integrated internationally. On the one hand, Canada contributes to shaping transitional justice internationally by funding its institutions and deploying a range of experts, especially to African countries (see footnote above). On the other, Canada borrows back the transitional justice tools it funds and provides expertise for application in fragile states. It instrumentally applies these tools 'at home' in consultation with Indigenous leaders, communities and organization.

Canada serves as a voluntary test case for incorporating the justice-pursuits of Indigenous peoples into the liberalizing and state-crafting transitional justice model it funds and provides expertise to internationally. In settler states, reparations for historical injustices make use of transitional justice theory and practice instrumentally and without ties or regard to its proliferation and roots in the international community and economic interests. The sharp dissonance between these two faces of transitional justice demands sustained and critical scrutiny.

Conclusion

Tuck and Yang (2012) call for us to keep in view the "tightly wound set of conditions and racialized, globalized relations [that] exponentially complicate what is meant by decolonization, and by solidarity, against settler colonial forces" (p. 7). This paper sought to articulate some of the globalized relations and complications associated with transitional justice as applied in the settler colonial context of Canada. The paper began by defining transitional justice and historicizing its meaning and use. I emphasized that transitional justice emerged as a particular conception of justice in response to the specific atrocities and needs associated with WWII and later with the Cold War. Normative transitional justice goals were developed during this time to include accountability, the maintenance of peace, establishing rule of law, nation-building and truth and reconciliation processes in order to give voice to victims of persecution and establish ground upon which states could 'move on' from the atrocities of the past. I demonstrated that

transitional justice is typically used in countries undergoing regime change. Transitional justice regards these countries as transitional states.

Within the last ten years, transitional justice has expanded, however, to include so-called non-transitional societies. The paper focused on settler colonial states and on Canada in particular. In these contexts, I noted that settler governments have used transitional justice instruments such as the truth commission to address harms to Indigenous peoples. I discussed some of the efforts both to incorporate Indigenous worldviews and struggles into the transitional justice framework and critiques of transitional justice in this context. In the Canadian context, there is a strong focus on the Truth and Reconciliation Commission of Canada's work. This focus on truth and reconciliation with Indigenous peoples forms what I have referred to as the internally-focused face of transitional justice. Though not acknowledged by the Canadian government as such, this internal face circulates concerns having to do primarily with traumas and healing.

I then engaged with critiques of Canadian transitional justice that incorporate decolonization within its concerns yet leave it loosely defined at best. I noted how transitional justice generally remains silent on land-centred decolonization and Indigenous resurgence knowledge. Therefore, I foregrounded some of this knowledge and alternatives developed by and for Indigenous peoples and within nation- and community specific knowledge systems. I emphasized that transitional justice proponents and current transitional justice critique contribute to 'settler moves to innocence' both internationally and within Canada by focusing energies on change at the level of thoughts, beliefs, and perceptions; that is, these efforts engage in *conscientizing* transitional justice rather than on decolonizing land as justice. Bringing decolonization and Indigenous resurgence knowledge explicitly into conversation with transitional justice theory makes apparent the contradictions, tensions, and antagonisms between transitional justice and decolonizing/self-determination pursuits.

I then discussed what I consider to be the second face of transitional justice in Canada. Externally-focused on providing peace, security, and human rights expertise to fragile states, this face of transitional justice promotes Western liberal democratic values and systems of government to nations/states deemed in need of intervention. I pointed to international transitional justice critiques that trace colonialist lines running through democratisation, rule of law interventions and the mobilization of professionals/experts by established democracies and settler states. The paper underscored the need for these colonial critiques to be kept closely in view when examining the use of transitional justice in settler colonial contexts and as transitional justice expands in scope. To accept that transitional justice instruments and institutions can be well-intentioned colonialist forms of justice internationally, yet shed these roots when applied in Canada, is a dangerous assumption.

This paper conceptualized two faces of transitional justice in Canada and forced them into conversation with decolonization, understood as the return and protection of land and Indigenous resurgence. In doing so, I sought to demonstrate that transitional justice becomes a dead end and one that reinforces harm at that. The very foundation and values of transitional

justice create a framework that simultaneously contributes to colonisation at home and abroad. The framework strictly demarcates the globe according to strong and fragile/weak states or the human and investment security of the West versus the "political instabilities from the 'postcolonial most of the world' (Chatterjee, 2004 in Crosby & Monaghan, 2012). From this perspective, transitional justice does more to obscure and de-legitimate Indigenous nationhood and settler colonialism entirely. The paper calls for those currently engaged in transitional justice theory and practice to closely examine the implications of the two faces of transitional justice and turn energies towards developing justice alternatives.

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