International Studies Review (2023), viad022

ANALYTICAL ESSAY

Escaping or Reinforcing Hierarchies? Norm Relations in Transitional Justice

Jinú Carvajalino
Royal Holloway, University of London, UK

AND

Maja Davidović
Cardiff University, UK

The global project of transitional justice (TJ) traditionally has been packaged in a multi-pillar model with criminal justice, truth recovery, reparations, institutional reform, and memorialization, and the norms they enshrine, seemingly presented as interventions of equivalent status at the level of policy. This article aims to enhance the theorizing on TJ as a "norm cluster" by comparatively examining the relations between the norms found in the cluster in transitional practices in Colombia and Bosnia and Herzegovina. We claim that the relations between the norms of TJ are hierarchically organized, with the anti-impunity norm being positioned as normatively superior. Through an analysis of TJ processes in the two countries in the past three decades, we discuss how such a hierarchy was established, secured, and challenged. Our findings show that hierarchical relations arise primarily due to legitimacy concerns and are manifested as changes in the internal structure of the anti-impunity norm whereby its prescribed behaviors or measures, i.e., criminal trials, seek to fulfill a range of new values. We argue that, in search for ownership and legitimacy, political actors have overemphasized the role of criminal trials by increasing their "social weight" and positioned them as indispensable for achieving the values of truth, reconciliation, and non-recurrence, disturbing the internal structures and co-opting the spaces of other measures in the TJ norm cluster. Such normative superiority of anti-impunity is significant and detrimental for the TJ global project. It has resulted in other TJ mechanisms being weakened by or dependent on judicial procedures, and it has enhanced competing and revisionist truth-making while promoting a narrow understanding of accountability. Ultimately, we establish that the normative superiority of criminal justice continues to challenge the prospects of complex and comprehensive TJ and that the place of anti-impunity in the norm cluster should be rethought.

El proyecto global en materia de justicia transicional (JT) se ha agrupado, tradicionalmente, dentro de un modelo formado por múltiples pilares como la justicia penal, la recuperación de la verdad, las compensaciones, la reforma institucional y la conmemoración, así como las normas que consagran estos pilares, presentadas en apariencia como intervenciones

Carvajalino, Jinú, and Maja Davidović. (2023) Escaping or Reinforcing Hierarchies? Norm Relations in Transitional Justice. *International Studies Review*, https://doi.org/10.1093/isr/viad022
© The Author(s) (2023). Published by Oxford University Press on behalf of the International Studies Association. This is an Open Access article distributed under the terms of the Creative Commons Attribution License (https://creativecommons.org/licenses/by/4.0/), which permits unrestricted reuse, distribution, and reproduction in any medium, provided the original work is properly cited.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

con un estatus equivalente a nivel político. Este artículo tiene como objetivo mejorar la teorización existente sobre la justicia transicional como un ≪grupo de normas≫ mediante el uso de un examen comparativo de las relaciones entre las normas que se encontraron en el grupo dentro de las prácticas transicionales que tuvieron lugar en Colombia y Bosnia y Herzegovina. Afirmamos que las relaciones entre las normas relativas a la JT están organizadas de manera jerárquica, siendo la norma antimpunidad la que aparece posicionada como la superior en materia normativa. Debatimos, a través de un análisis de los procesos de JT que tuvieron lugar en estos dos países durante las últimas tres décadas, cómo se estableció, aseguró y desafió dicha jerarquía. Nuestras conclusiones demuestran que las relaciones jerárquicas surgen principalmente debido a las preocupaciones relacionadas con la legitimidad y se manifiestan en forma de cambios en la estructura interna de la norma contra la impunidad por la cual los comportamientos o las medidas prescritas por ella, es decir, los juicios penales, buscan cumplir una serie de valores nuevos. Argumentamos que los agentes políticos, en su búsqueda de la titularidad y la legitimidad, han exagerado el papel que tienen los juicios penales aumentando su ≪peso social≫ y los han posicionado de manera que resultan indispensables para lograr los valores de verdad, reconciliación y no recurrencia, perturbando así las estructuras internas y cooptando los espacios de otras medidas en el grupo de normas de la JT. Esta superioridad normativa de la antimpunidad es significativa y perjudicial para el proyecto global de la JT ya que ha provocado que otros mecanismos de la JT se debiliten por culpa de los procedimientos judiciales o dependan de ellos, y ha reforzado la creación de la verdad competitiva y revisionista al mismo tiempo que promueve una comprensión estrecha de la responsabilidad. En última instancia, establecemos que la superioridad normativa de la justicia penal continúa desafiando las perspectivas de una JT compleja y completa y que debe repensarse el lugar de la antimpunidad dentro del grupo de normas.

Traditionnellement, le projet mondial de justice transitionnelle (JT) s'inscrit dans un modèle à plusieurs piliers, qui inclut la justice criminelle, la recherche de vérité, les réparations, la réforme institutionnelle et la commémoration. Celles-ci s'accompagnent de normes apparemment présentées telles des interventions de statut équivalent au niveau politique. Cet article vise à enrichir la théorisation de la justice transitionnelle comme ≪ pôle de normes ≫ grâce à une analyse comparative des relations entre les normes des pôles des pratiques transitionnelles en Colombie et Bosnie-Herzégovine. Nous affirmons que les relations entre les normes de JT s'organisent d'après une hiérarchie, la lutte contre l'impunité occupant un rang supérieur sur le plan normatif. Grâce à une analyse des processus de JT dans les deux pays au cours des trois dernières décennies, nous nous intéressons à l'instauration d'une telle hiérarchie, sa sécurisation et sa remise en question. D'après nos résultats, les relations hiérarchiques apparaissent d'abord pour des raisons de légitimité et se manifestent comme des changements dans la structure interne de la norme de lutte contre l'impunité. Les comportements ou mesures prescrits, c'est-à-dire les procès criminels, doivent ainsi répondre à un éventail de nouvelles valeurs. Nous affirmons que, dans leur quête de propriété et de légitimité, les acteurs politiques ont accordé une importance démesurée au rôle des procès criminels en augmentant leur ≪ poids social ≫. Ils les ont présentés comme indispensables aux valeurs de vérité, de réconciliation et de non-récurrence. Ils ont ainsi ébranlé les structures internes et récupéré les espaces consacrés à d'autres mesures dans le pôle de normes de JT. Significative, cette supériorité normative de la lutte contre l'impunité nuit au projet mondial de JT. Les autres mécanismes de JT sont affaiblis par les procédures judiciaires dont ils peuvent dépendre. Cette supériorité normative a aussi intensifié les productions de vérité alternatives et révisionnistes, tout en encourageant une compréhension

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

étroite de la responsabilité. En définitive, nous établissons que la supériorité normative de la justice criminelle remet encore en question les perspectives d'une JT complexe et exhaustive et que la place de la lutte contre l'impunité au sein du pôle de normes doit être repensée.

Keywords: transitional justice, normative hierarchies, norm clusters
Palabras clave: Justicia transicional, jerarquías normativas, grupos de normas
Mots clés: la justice transitionnelle, hiérarchies normatives, groupes de normes

Introduction

While emphasizing norm embeddedness in larger normative structures, much of the international relations (IR) norm literature has focused on single norms in investigations of norm diffusion, robustness, and contestation. Inspired by recent calls to reexamine the constructivist IR focus on single norms "to better capture the complexities" of norm change (Percy and Sandholtz 2022, 950), we investigate norm relations and interactions in transitional justice (TJ) as a norm cluster, or collection "of aligned, but distinct norms and principles" (Lantis and Wunderlich 2018, 571). TJ is one of the best-known global projects of the early twenty-first century. Rapidly developed, this field of research, practice, and policy has been characterized as a "global project" due to its ability to be applied seemingly universally as a set of normative standards. It is characteristic of a norm cluster for its apparent inevitability as it is presumed that a society emerging from a mass-scale violent episode will resort to some kind of TJ "package" of measures, while it might retain choice in determining the combination of such measures, or appropriate behaviors, suitable for the context (Nagy 2008; De Greiff 2013; Winston 2018). As a global project, TJ has certain progressive goals, primarily, truth recovery, justice, non-recurrence, accountability, and reconciliation that both its mechanisms (trials, truth commissions, reparation schemes, etc.) and more transformative processes (such as land redistribution, political reforms, public testimonies, or victim-perpetrator dialogues) are said to be capable of achieving.

In this article, we examine how the relationships between the norms found in the TJ norm cluster have developed, changed, and been challenged in two contexts to which the TJ project has traveled: Colombia and Bosnia and Herzegovina (BiH). Our analytical focus on norm clusters, as opposed to single norms, introduces new forms of norm contestation and points to potential disputes around not only the meaning of individual norms but also their "relative weight" within a cluster (Lantis and Wunderlich 2018, 572–3). Looking into TJ as a five-pillar project that involves, broadly defined, criminal justice, truth recovery, reparations, institutional reform, and memorialization, we argue that TJ, while a norm cluster, creates and maintains normative hierarchies. The five "pillars" are therefore not of equal weight. It is the criminal justice pillar, the operational aspect of the anti-impunity norm, that has operated with the highest authority and therefore normative superiority in Colombia and BiH.

The contributions of the article to TJ literature lie not in uncovering the hierarchy (Fletcher 2020), but in providing insights into how the hierarchy has been created and sustained in the two cases and drawing some lessons about the consequences of this hierarchy for the self-proclaimed goals of TJ. The article builds upon the existing scholarship that problematizes the heightened position of the anti-impunity norm and its institutions vis-à-vis other TJ norms, whether that is by way of "a high degree of authority" (Fletcher 2020, 699), seduction (McEvoy 2007,

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

416), or dominance in research and practice (Zunino 2019, 43). We add to this expansive body of literature by demonstrating that it is not merely that the anti-impunity norm is awarded superior status because criminal accountability, as its corresponding "value," is construed as a priority over other values such as truth, reconciliation, reparations, and non-recurrence. It is rather by undertaking additional social qualities needed to fulfill these other values of TJ that the anti-impunity norm and its institutions have increased their *social weight* and, therefore, become overemphasized and treated as superior in Colombia and BiH. To put it simply, in these two contexts, criminal trials, as corresponding behavior stemming from the value of "accountability" have been positioned by political actors as indispensable for achieving other TJ values, including truth, reconciliation, and non-recurrence. Normative superiority is hence identified when criminal tribunals, as institutionalized manifestations of anti-impunity, disturb the internal structures of and co-opt values otherwise constituent to other norms in the TJ cluster, primarily out of legitimacy concerns. We reflect on how these norm relations could play out in other cases where the global project has traveled, ultimately arguing that the norm cluster has a tendency to be organized as a hierarchy, although the privileged behaviors might differ. In doing so, our article identifies a major disconnect between the promises of comprehensive and compatible TJ interventions and the delivery, symbolized by a pull toward hierarchically organized practices, and enhances scholarly understanding of the norm cluster in contexts beyond Colombia and BiH.

Throughout the article, we are in conversation with recent calls in constructivist IR to divert focus from single norms and compliance to norm clusters and norm interconnectedness to produce better insights into norm decay, obsolescence, and death (e.g., Percy and Sandholtz 2022, 935). We demonstrate that the relationship of hierarchy in the TJ norm cluster, which privileges the anti-impunity norm, comes at the expense of weakening other norms and their constitutive behaviors, most prominently truth recovery and reparations. In doing so we demonstrate how norm content and robustness should be analytically considered in relation to other interacting norms. Moreover, paying attention to both the internal elements of a norm and its position within a norm cluster adds to the ongoing discussions in IR about what norms are and how they change (Winston 2018; Jurkovich 2020; Percy and Sandholtz 2022). It complicates the popular proposal in norm research that norms are "shared understandings of standards of appropriate behavior" for actors in certain circumstances (Finnemore and Sikkink 1998, 891) and the alternative proposal that norms are "contested by default" (Wiener quoted in Niemann and Schillinger 2017, 39). We show that, while the understanding that accountability is a corresponding value of the anti-impunity norm is shared among all actors, the expanded role of criminal trials in truth recovery, reconciliation, and reparation is accepted by some actors and contested by others, harming the progressive goals of TJ. The article's emphasis on deconstructing the internal structure of norms thus improves our knowledge of how both shared understandings and contestations of meaning-in-use are altered over time, even after internalization, and for what reasons (Niemann and Schillinger 2017, 30–1; Lantis and Wunderlich 2018, 571).

This article proceeds in the following manner. The "On Norm Clusters and Normative Hierarchies" Section serves to set a theoretical framework and offers an illustrative review of the literature upon which our article builds and to which it contributes. The "Established and Emerging Normative Hierarchies in BiH and Colombia" Section introduces the established and emerging normative hierarchies in TJ norm clusters in BiH and Colombia. It discusses three main points: firstly, it explains how the internal structure of the anti-impunity norm was altered in the two cases by way of expanding the value of criminal prosecutions; next, it explains how such hierarchies were developed and secured in response to legitimacy and ownership concerns; and finally, it proposes that the most recent peace processes in Colombia are an attempt to break away from such hierarchy and adopt a more

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

holistic TJ approach while still reproducing some of the normative superiority of the anti-impunity norm. The "Consequences of the Normative Superiority of the Anti-Impunity Norm" Section considers the significance of such normative hierarchy and the inevitable judicialization of TJ for BiH and Colombia, as well as the overall global project. The "Conclusion" Section concludes on the significance of these normative hierarchies for TJ and broader norm scholarship in IR.

On Norm Clusters and Normative Hierarchies

To explore norm relations in TJ spaces, we adhere to Winston's conceptualization, whereby norms have a tripartite structure (Winston 2018). They are composed of a set of elements that can be described as *problem* > *value* > *behavior* (Winston 2018; Fehl and Rosert 2020). Namely, the content of a norm includes the problem the norm is set to solve, the value that drives the recognition of the problem and the need to address it or solve it, and finally, the behavior that the norm prescribes or proscribes in order to solve the said problem (Winston 2018). The specificities of these features are subject to interpretation by different political agents, and while the perception of a problem may be seemingly shared among different actors, the value and/or prescribed or proscribed behavior may not. Scholars such as Jurkovich, for example, place norm actors more prominently in the equation, whereby the three essential parts of a norm are a moral sense of oughtness, a defined actor, and a behavior expected from the actor (2020, 694). While different scholars have taken divergent approaches to who the actors of TJ are (governments, organizations, communities, and individuals), the "identifiable violator" (Jurkovich 2020, 697) of TJ norms would generally be the state. For instance, while it might be desirable for individuals to reveal any unknown facts about past violations, it is the state that has an obligation to uncover the truth about these violations, an obligation that is both legal and social in character.[1]

TJ operates as a collection of norms or a norm cluster. Winston defines "norm clusters" as norms that form a family group that allows for "multiple combinations of conceptually interlinked but distinct values and behaviors, offering multiple acceptable solutions to similar and interlocking problems" (2018, 638). The norms found within a cluster tend to go together in a "package," although some variations may exist without weakening the coherence of the cluster. Such clusters are assembled around *problems* > *values* > *behaviors,* forming a nested or layered structure of multiple problems, values, and behaviors. We see both norms and norm clusters as flexible and supported by "permanent negotiation processes through which normative meaning is produced and modified" (Engelkamp, Glaab, and Renner 2014, 36). While actors are not a part of this internal structure of the norm, they are an intrinsic element of the norm cluster, whose boundaries are "somewhat malleable" in relation to "innovation, discourse and learning conducted by and between relevant actors" (Winston 2018, 647). Given the diversity of actors and stakeholders, their understanding of the problem, their values, and their policy preferences differ (Skaar and Wiebelhaus-Brahm 2013, 127). Because TJ is a seemingly inevitable global "project," actors may retain choice in shaping the boundaries of TJ to suit their specific domestic contexts while at the same time being pressured or even conditioned to adopt all or a set combination of measures (Nagy 2008, 276). Thus, the norm cluster is always contested and evolving in a constant search for ownership and legitimacy (Skaar and Wiebelhaus-Brahm 2013, 130). As we will explore in the following sections, both norm construction and norm relations are subject to permanent contestation highly influenced by international pressures as well as domestic politics and social movements.

[1]That said, the limitations of our article are drawn along the lines of whose agency we explore; our inquiries into the factors shaping norm relations are focused on the state agencies, political parties, and international governmental and non-governmental actors, and less so on social movements and civil societies.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

The institutionalization and globalization of TJ brought with itself the notion that TJ is a unit consisting of "pillars" of equal standing. In 2004, the United Nations Secretary-General published a report on the rule of law and TJ, inclusive of the UN's working definition of TJ. The report denoted TJ's set of tools as inclusive of "judicial and non-judicial mechanisms," more precisely, "individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof" (UN Secretary General 2004, para 8). The burgeoning literature on TJ embraced this definition as authoritative and started conceptualizing TJ as a multi-pillar structure comprised of a cluster of norms that have different, although sometimes overlapping or shared values, and most notably proscribe or prescribe different behaviors. What the norms share is "the problem," this problem being mass scale violence and abuse that need to be addressed and redressed, although there are variations in context (e.g., abuse by authoritarian regime vs. civil conflict) (Boraine 2006; De Greiff 2012). TJ's path to becoming a global project can be observed through the widespread application of a "package of measures" (De Greiff 2013, 550–1) inclusive of criminal trials, truth commissions, reparations, institutional reform, and, later, memorialization (or a combination thereof), praised as flexible and effective for achieving the progressive goals attached to these norms. Akhavan argues that the normalization of TJ could have happened so abruptly because TJ "has finite goals, and it can be reduced to some sort of technocratic equation: here is the cost, here is what they will achieve" (2013, 92). Notwithstanding being presented as matters of a technocratic equation, what the mechanisms of TJ are said to achieve are by no means quantifiable, measurable outcomes but ambiguous and often contested social values such as justice and reconciliation. We acknowledge that this "package of measures" might look different in some new or upcoming contexts of TJ. More recent TJ scholarship has called for an integration of a range of socioeconomic rights into the TJ project (e.g., Lai 2020); however, in our model, these are currently outside the norm cluster because the primary violators and therefore norm actors are not easily identifiable and there do not seem to be shared, internalized understandings of such norms in Colombia and BiH (Jurkovich 2020, 707).

Despite TJ operating as a norm cluster, limited literature has explored the interactions between these norms. Norm relations can be understood as "positions of norms in relation to each other," distinguishable in different forms such as "compatibilities, contradictions, coevals, hierarchies, and complexes" (Fehl and Rosert 2020, 2). As the above UN definition of TJ implies that not all possible mechanisms of TJ may be applied at the same time, practice also shows that the parties negotiating the transition (to peace and/or democracy) may trade off some of the TJ measures against one another as different mechanisms of TJ might clash in practice (De Greiff 2012). Initially at least, the core TJ mechanisms of truth commissions and criminal trials were seen as detrimental to reconciliation as they re-open the wounds of the past and produce political instability (Leebaw 2008, 96).

On that note, critical scholars have argued that the norms found with the norm cluster of TJ are characterized by the relationship of *contradictions*. In their attempt to address one or several TJ goals, each mechanism has weaknesses due to which it cannot fulfill all the progressive goals of TJ on its own, meaning that the shared problem of TJ would not be adequately addressed. In other words, neither criminal trials nor truth commissions alone are sufficient. The truth vs. justice binary reflects the prevalent dilemma of the 1990s and early 2000s about the combination and sequencing of key TJ mechanisms. Debates were had on whether truth commissions should be preferred over criminal prosecutions and if amnesties should be offered in exchange for "the truth" like it was the case in South Africa, or whether such actions were acts of impunity and injustice that consequently weaken truth commissions' role in preventing future abuses (Greenawalt 2000; Rotberg 2000). When it comes to trials, various authors have questioned the positioning of criminal trials as

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

the most effective response to violations and argued that the preference for criminal justice might preclude other structural concerns in a transitional society (Engle, Miller, and Davis 2017).

Yet, over time, both truth commissions and trials were branded as having complementary values and purposes (Leebaw 2008, 96), and therefore, the norm relations within the norm cluster can be characterized as *compatibilities*. Some scholars have argued that the multiple TJ mechanisms should be applied at the same time and in coherence so that the relationships among them form "a thick web" (De Greiff 2012, 37). This leads to a theory of holistic TJ, which advocates for complementarity of TJ measures and mechanisms (Friedman and Jillions 2015, 147). Different international instruments and norms of customary law prescribe a wide range of obligations to address TJ, including a duty to provide "effective remedy" for human rights violations, obligations to prosecute or extradite persons responsible of genocide and torture, and commitments to offer reparations for state abuses. Notwithstanding the fragmentation in the international legal system, these obligations have been interpreted coherently by human rights courts and UN bodies. For instance, the Inter-American Commission on Human Rights (2014, 57–8) has advanced on the compatibilities and harmonization of the TJ pillars by arguing that justice mechanisms, truth recovery, and non-recurrence measures are all part of the victims' rights to an effective remedy and reparations.

Despite this emerging consensus around the internal compatibility of TJ norm cluster, we argue that, while seemingly compatible, the relations between the norms of TJ are *hierarchically* organized. Coming back to the tripartite structure, *problem* > *value* > *behavior* of the TJ cluster norm, we identify a dynamic that reflects a hierarchical relationship. Although the *problem* elements of norms seemingly continued to be shared, the discrepancy leading to the hierarchy is created at the levels of *values* and *behaviors*. In particular, it is the expansion of values attached to criminal prosecutions (as behavior) the anti-impunity norm requires where the clash in normative ranking has been noted in the two cases.[2]

Adapting Winston's example of the TJ cluster norm in which multiple problems, values, and behaviors interact in a complex way, we argue that, in light of the anti-impunity turn in human rights and TJ, different political actors tend to explicitly or implicitly claim the primacy of criminal trials. Other mechanisms of TJ, conceptualized here as behaviors, gravitate around the necessity of criminal prosecutions (see figure 1).

In making this claim, we build on the existing literature, which argues that the dominance of criminal trials and the anti-impunity norm in TJ is based on the power and persuasion of legalism, of which courts and criminal trials are the most representative institutions, and which highlights the political and social dimensions of legal discourses (McEvoy 2007; Zunino 2019). We enhance the argument by showing that hierarchical relations are created and reinforced due to an expanding "social weight" (Fehl and Rosert 2020, 6) ascribed to the anti-impunity norm, which in BiH and Colombia triggered a sense of priority and dominance of the criminal justice pillar over others. Consequently, domestic courts and international tribunals, as institutions of law, potent in their perceived neutrality, are strategically considered by different actors to be more legitimate to carry out the ever-expanding social weight to achieve accountability as well as other values. In Bosnia and Herzegovina, this added social weight concerns the International Criminal Tribunal for the Former Yugoslavia's (ICTY) not only ability but also necessity to provide and shape a historical record of the conflict and educate the public about it as a seemingly objective arbiter of "truth." In Colombia, the added social weight concerns the expanding

[2]See recent research that suggests that the internal structure of the anti-impunity norm enshrines three different value claims, pointing to the fluctuations in the value aspect of the norm when examined in isolation, Han and Rosenburg (2021).

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

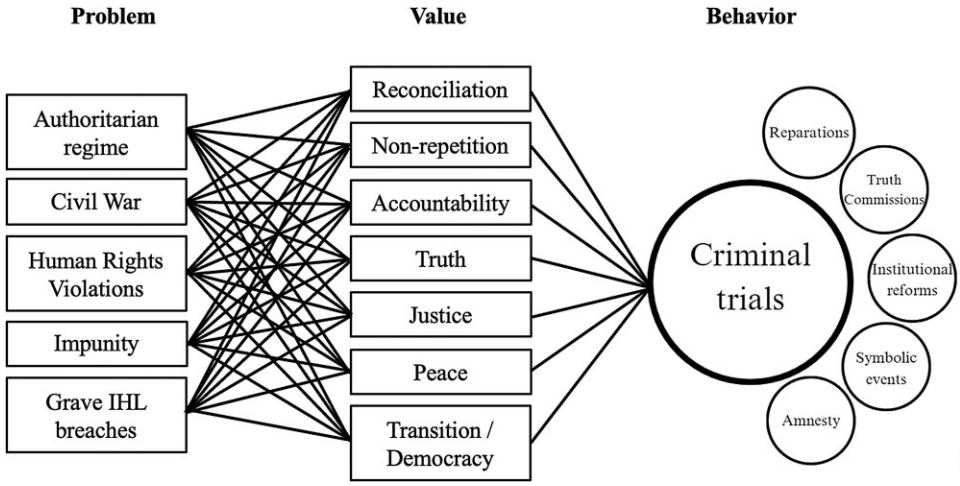

Figure 1. The impact of the anti-impunity norm on the interactions between the elements of the TJ cluster norm. *Adapted from Winston's (2018) graphic on a TJ norm cluster.

mission of the Justice and Peace Tribunals that were assigned with the role of guaranteeing the victims' rights to justice, truth, and reparations, as a way to incorporate the TJ language into the demobilization of the paramilitary groups and give legitimacy to a process that was being highly questioned as an impunity agreement.

Although the TJ projects in Colombia and BiH had a strong emphasis on criminal trials from the beginning, the argument here is that the normative hierarchies in the TJ norm cluster have emerged and been reinforced over time in response to political and social demands of legitimacy. Thus, rather than simply by design, the normative hierarchies that we identify in relation to the prevalence of the anti-impunity norm have also responded to the political context in which the TJ projects have been implemented. We present our findings next.

Established and Emerging Normative Hierarchies in BiH and Colombia

Supported by these theoretical underpinnings, we investigate TJ practices in BiH and Colombia to identify how normative hierarchies arise, are secured and, in the case of Colombia, are challenged. Interpretative process tracing was utilized to analyze how ideational processes and meanings shape the dynamics of TJ and to uncover the previously scarcely theorized relations between different TJ norms over a set period of time (Della Porta and Keating 2008; Robinson 2017). We identified key *events* of the transitional history in these two countries, highlighted the main international and domestic actors and, to trace a hierarchy of norms, employed document analysis of institutional reports, court judgments, official statements, legislation, and news articles. We then analyzed them for how they position different values and behaviors of TJ as well as the intersubjective context in which they are embedded. This has enabled us to determine *why, how,* and *when* the anti-impunity norm is pushed toward a position of superiority and develop an analytical explanation for the specific structure of the norm cluster, as per our theoretical framework.

We use TJ projects and processes in Colombia and BiH as exemplary cases where the global project of TJ has fully developed, although at different times. In both countries, TJ is entrenched in their constitutional foundations.[3] However, each

[3]Colombia has a long history of incomplete TJ projects. This article focuses on Peace and Justice Law enacted in 2005 for the demobilization of paramilitary groups, and draws some parallels with the most recent peace agreement

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

country has adopted—or been pressured to adopt—different TJ models, BiH with a more punitive transition with the ICTY and, later, domestic courts at the center; Colombia with a more balanced approach that tried to navigate the justice vs. peace dilemma, with a specialized jurisdiction in charge of prosecuting and punishing perpetrators with reduced sentences in exchange for full disclosure of the crimes committed during the civil conflict. Despite the differences in the TJ approaches, we identify similarities in the way the normative superiority of anti-impunity is reinforced. In both cases, we see a process of judicialization of other TJ values and the weakening of other TJ initiatives, policies, or programs due to the expanding role of criminal institutions. In BiH, the expansion occurred from within, as the ICTY took the initiative to adopt roles usually not assigned to courts, such as truth recovery and education to respond to a crisis of legitimacy. In Colombia, the Justice and Peace Jurisdiction was enacted in 2005 with the mission to provide justice while also upholding other TJ values, like truth and reparations, as a way to legitimize and incorporate the TJ discourse into the process of demobilization of paramilitary groups (Congress of the Republic of Colombia 2005). More recently, the TJ model adopted by the Colombian Government in the negotiations of the "Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace" (Final Agreement 2016) framed criminal institutions into wider institutional arrangements following a more comprehensive model of TJ. However, we question whether this approach effectively breaks away from the normative hierarchies identified in previous processes.

Tracing the Influence of the Anti-Impunity Norm in the TJ Models in Colombia and BiH

Following the tripartite structure of norms mentioned above, norm-building takes the shape of the following statement: "Given this problem, my values dictate this behavior" (Hurrell and McDonald 2012, quoted in Winston 2018, 641). In the context of the anti-impunity norm, a representative statement would read "Given the problem of impunity for international crimes, my values of accountability and justice dictate that the individuals accused of committing these crimes ought to be criminally prosecuted." This was the formula the UN Security Council used to establish the ICTY in 1993. The wars in the former Yugoslavia, still ongoing at that time, provided an opportune moment for the international community to act on human rights violations through criminal accountability in the broader political environment of advancing the rule of law liberalism to ensure peace and stability for states transitioning from authoritarianism and/or conflict (Pinto 2020). The foundational UN Security Council Resolution 827 (1993, para 2) stated that the ICTY was established "for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law" and in belief that the violations would be "halted and effectively redressed" through such a tribunal.

Yet, norms are simultaneously fixed and flexible, so different constitutive elements of a norm can be re-constituted and contested at different times, while the overall recognition of the norm remains unchallenged or less challenged in the international system. Fast forward to 2022, the ICTY's official website (2022) states that the Tribunal's judgments have contributed "to creating a historical record, combatting denial and preventing attempts at revisionism and provided the basis for future TJ initiatives in the region." The reconstitution of the anti-impunity norm meant changing the element of "values" in the norm's internal structure, and expanding the values from accountability to truth recovery, history-making, and education while prescribing a single unique behavior: criminal trial. By the end of its

signed in 2016 between the Government and the FARC-EP. The starting point of TJ in Bosnia and Herzegovina can be traced back to the establishment of the ICTY in 1993, with more intensified projects and reforms taking place after the Dayton Peace Agreement was signed in 1995.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

mandate, the Tribunal clearly saw its work as not only being necessary for combatting impunity and restoring and maintaining peace as it did in 1994, but also for "truth-seeking and reconciliation" (ICTY 2016, para 47). This discourse suggests that the Tribunal had expanded its operations into the social values of concern to other pillars of TJ such as truth recovery and memorialization. The Tribunal and its fellow domestic courts could therefore almost do it all.

That courts can write and teach history was not an entirely new idea, and scholars identified didactic and history-making claims in post-WWII trials at the Nuremberg as well as the subsequent trials of Adolf Eichmann and Klaus Barbie, for example (Arendt 2006; Rangelov 2013). However, the idea was largely untested in relation to an institution's entire body of work and regarding an essentially national or, in the case of the ICTY, regional history (Osiel 1997). Since then, the values of truth recovery and dissemination and history-making have been discussed in relation to a number of international criminal tribunals, including the International Criminal Court. In that sense, the ICTY has been a game changer, an experiment[4] testing a previously largely untested yet prominent idea that courts adjudicating on international crimes can exercise values beyond accountability (Pinto 2020).

Colombia, in turn, was explicit from the beginning about the importance of criminal tribunals in achieving other TJ values. With more than 50 years of conflict, Colombia has a long history of incomplete TJ projects. It was not until 2005, with the demobilization of paramilitary groups and the enactment of the Law 975 (Congress of the Republic of Colombia 2005) or Justice and Peace Law (JPL), that the language of TJ with all the corresponding values, was incorporated into the legal framework (Suárez López and Jaramillo Ruiz 2014, 74). The JPL prescribed a system of reduced sentences (5–8 years in prison) in exchange for demobilization and full disclosure of truth before judicial authorities (Garcia-Godos and Lid 2010, 497; Andreu-Guzmán 2012, 12). Colombia's normative formula in the JPL process could be synthesized in the following terms: "Given the need to demobilize the paramilitary groups while upholding the TJ values of justice, accountability, truth, and reconciliation, individuals responsible of serious crimes must be leniently punished in exchange of disclosing what they know."

The goal of the JPL was to facilitate peace and the reincorporation of armed groups to society, guaranteeing victims' rights not only to justice but also to truth and reparation. With a strong emphasis on judicial procedures, the lawmakers put the right to justice at the core of the process (Laplante and Theidon 2006, 80). For this, the law created a new institutional arrangement incorporating into the judiciary system the Justice and Peace Special Unit at the Prosecution Office and Special Tribunals of Justice and Peace (known as the Justice and Peace Jurisdiction) (Andreu-Guzmán 2012, 12). Their main mandate was to carry out criminal investigations and ensure that the demobilized paramilitaries fulfill their obligations to confess their crimes (Garcia-Godos and Lid 2010, 499). With this formula, as Laplante and Theidon (2006, 88) argue, Colombia embraced a middle path: "the law does not offer a South African style amnesty, but it also does not promise full criminal trials as in Peru."

Similarly to the ICTY, the Justice and Peace System linked the right to truth and the reparation of victims to the criminal procedures. While the ICTY gradually expanded its role in the materialization of other TJ values, the JPL did so from the beginning, assigning the criminal institutions the mission to guarantee justice while also contributing to the fulfillment of victims' rights to truth and reparations. In relation to truth-reconstruction, Justice and Peace Tribunals had the obligation to "organize, systematize, and conserve the files on the facts and circumstances related to the conduct (. . .), in order to guarantee the rights of the victims to the truth and

[4] See Tzouvala (2019) for a historical review that identifies the Balkans as "a site of experimentation for international legal techniques."

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

to preserve the collective memory" (Arvelo 2006, 439). At least at the beginning, the JPL privileged a judicial path to truth that relied heavily on the voluntary confessions or "free accounts" of the combatants in exchange for reduced sentences (García-Godos and Lid 2010, 507). In relation to reparations, in article 23, the JPL assigned to the judicial authorities the responsibility of setting the individual, collective, or symbolic reparations as appropriate through the "[i]nterlocutory proceeding for comprehensive reparation." In the initial design of the norm, reparations were dependent on the culmination of the judicial procedure before the criminal tribunals that would initiate a specific reparation proceeding (García-Godos and Lid 2010, 509). By that time, the norm relations in the TJ cluster in BiH had already started to take a shape of hierarchy through the ICTY's expansion of values. The JPL built upon an analogous "duty of memory" primarily grounded on "using judicial proceedings to establish the facts of individual [macro]cases and individual criminal responsibility," neglecting the broader historical and political context of the war (Laplante and Theidon 2006, 91).

Promoting and Securing Normative Hierarchies: Between Ownership and Legitimacy

The expansion of the role of criminal trials in the achievement of other TJ values resulted mainly in response to legitimacy concerns and a quest for ownership of the TJ process by different, competing actors. However, while the ICTY expanded its role as a way of improving its image and gaining legitimacy locally, in Colombia, the Government used the TJ language in the legal framework of the JPL to legitimize the demobilization process of paramilitary groups and respond to both domestic and international concerns about the lack of accountability. In both cases, these processes (re)produced and secured normative hierarchies and maintained the impression of courts as neutral arbiters of truth and reparations, a perhaps single stable, seemingly non-politicized component in otherwise volatile political processes.

For the ICTY, the question of truth recovery became a "civilizational" issue soon after its establishment. The foundations for the value expansion lie in the Tribunal's willingness and capacity to undertake additional qualities, at the cost of co-opting them from other actors, and be the arbiter of the line between "good" and "evil" (Schwöbel-Patel 2021, 3). Already in 1994, while the war in BiH was still ongoing, the ICTY presented itself as a "civilized" approach to justice, and an "alternative to. . . desire for revenge" that was somehow seen as characteristic of "the region" (1994, paras 15–6). It was stated that "[t]he history of the region clearly shows that clinging to feelings of 'collective responsibility' easily degenerates into resentment, hatred, and frustration and inevitably leads to further violence and new crimes" (ICTY 1994, para 16). From the start, the Tribunal adopted a rather colonial rhetoric and outlook toward the region, positioning itself as a necessary condition for TJ without which the region would succumb to seemingly "ancient" and inescapable interethnic hatred.

From the early stages of the post-war transition, political elites of the former Yugoslavia saw the ICTY as an imposed political tool for justice, and any prospects of meaningful and systematic cooperation with the ICTY were slim. More concrete alteration of the values found in the anti-impunity norm began when the ICTY started concerning itself with "world public opinion" and its global image (ICTY 1995, paras 162–3). Because the former Yugoslav republics were not eager to cooperate, the majority of those indicted remained free and out of the Tribunal's reach in these early years. According to the Tribunal, for this reason, "embitterment" grew in the former Yugoslavia, leading to the increased "calls for revenge," the very situation the ICTY was established to prevent (ICTY 1997, para 175). With increased visibility came increased questions of credibility and legitimacy, both potentially hampered by such growing embitterment. The Tribunal was well aware of the criticism directed toward

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

its work, even calling itself "a partial failure," although attributing "no fault" to the Tribunal itself for this situation (ICTY 1997, para 175).

Starting in 1998, we detect clear attempts of the ICTY to improve its global image by taking onto itself the task of writing the alternative, "civilized" history of the region and therefore even further elevate itself above the "messy" domestic political wranglings. The ICTY held that the record established through judicial proceedings "provides the basis for the long-term reconciliation and reconstruction of the region" (ICTY 1998, para 202). The establishment of such a historical record was to be followed by educating local populations about it. It was stated, "it is not enough simply to create a record. Its power lies in its dissemination, most crucially within the former Yugoslavia," where people "have been denied access to objective information regarding the conflict" and being exposed to images of the ICTY "as a tool of division rather than of healing" (ICTY 1998, para 296).

To establish stronger contacts with the people of the former Yugoslavia, regain ownership of the TJ process and, ultimately, have its "civilized" historical record reach the local populations, the ICTY established the Outreach Office in 1998, first of its kind (International Residual Mechanism for Criminal Tribunals 2021). In the Tribunal's own words, the Outreach program was created with the purpose of promoting the Tribunal's role "as an agency of reconciliation" in the region (ICTY 2002, para 265). Through the efforts of the Outreach program, both "the legal and social impact of the Tribunal's work" would be strengthened (ICTY 2003, para 286). Essentially, the Outreach Office has functioned as a public relations agency that, as they usually do, manages the reputation and shapes the legacy of the Tribunal (Schwöbel-Patel 2021, 37).

Part of the job of the Outreach Office was to convince local populations of the ICTY's expanded social values and restored legitimacy. In 2003 and 2004, the Outreach Office, by the virtue of its mandate, started organizing numerous conferences and community events across the former Yugoslavia, to provide insights into the operations and decision-making of the Tribunal. The aim was to enable the local populations to "better understand" how the Tribunal serves justice, prevents revisionism, and fosters reconciliation (ICTY 2004, para 320). Additionally, representatives of the Outreach Office appeared in a range of other events organized by the likes of the OSCE, the European Commission, and local NGOs, explaining the judicial process and the legal values of the ICTY, but also weighing in on their view of a range of other TJ values, primarily truth, and reconciliation (ICTY 2002). The peak of the Tribunal's outreach activities was reached when the Outreach Office entered the education system with the "Youth Outreach" program between 2012 and 2015 in BiH, Serbia, and Croatia. While the ICTY continued to be presented as a tool of injustice in public speech, particularly in Serbia, governments were incentivized to fully cooperate with the Tribunal as one of the conditions for advancing on their respective accession paths to the European Union.

Through its Outreach Program, the Tribunal built an image of itself as a source and educator of history, maybe not a complete history, but a historical record that was promoted as a condition for other core values interacting in TJ norm cluster, such as justice, peace, and reconciliation. This branding move promoted a relationship of dependency of the local populations on the ICTY and the domestic courts whereby people in BiH were persistently told that "their" past histories were essentially wrong as they led to violence and that for this reason, these people needed the Tribunal as a neutral and perhaps only legitimate arbiter of "civilized" history. To illustrate, in its final annual report of 2017, the Tribunal asserted that "[n]ational and communal identities founded on false histories are inherently sources of regional tension and distrust" (ICTY 2017, para 51). For this reason, the Tribunal took the task of facilitating a "shared agreement on the recent past" without which, it was said, peaceful future could not be secured (ICTY 2017, para 51). Through interactions with the public and novel didactic roles, the ICTY and to some extent,

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

domestic courts, sought to improve its image as a legitimate institution. In doing so, the ICTY separated itself from the other bodies and actors in the TJ landscape as a neutral or as neutral as one can be with much more expansive reach than originally envisaged, leading to the sustainment of a normative hierarchy in the TJ cluster in BiH.

The Justice and Peace process in Colombia in 2005 encountered a different legitimacy challenge. Facing heavy criticism about the lenient punishment for paramilitary members, the TJ model of the JPL law was challenged by different actors demanding a stronger anti-impunity stance. Prior to the JPL, the government of the then President Alvaro Uribe embarked on an effort to collectively demobilize the paramilitary groups (mainly the United Self-Defense Forces of Colombia or *Autodefensas Unidas de Colombia*—AUC). The initial project was strongly condemned by national and international human rights organizations, including Amnesty International (2005) and the Inter-American Commission on Human Rights (2007). Because paramilitary groups were formed to fight the communist guerrillas in collusion with state agents, this initiative was widely seen as a veiled self-amnesty (Laplante and Theidon 2006, 81; Bell 2009, 117). Human rights advocates, victims' organizations, and international actors denounced this framework as "a collection of legal tools guaranteeing impunity instead of punishment for AUC members, while granting them a series of benefits that neither the victims nor Colombian society at large enjoyed" (García-Godos and Lid 2010, 497; Arvelo 2006, 445). The pressure from domestic and international actors led to changes in the Legislative Bill No. 98, known as the Alternative Penalties Law, which effectively proposed an amnesty for all demobilized armed actors. As Kerr (2005, 54) noted, punishment became the "sticking point" in the peace negotiations between the Government and the paramilitaries. The legislative initiative failed, so the JPL was drafted with the premise of reduced or "alternative" punishment as compromise between justice and peace.

Initially structured as a disarmament, demobilization, and reinsertion, the JPL was turned into a TJ project, expanding its concerns with issues of memory, truth, justice, reparations, and reconciliation (Laplante and Theidon 2006). As García-Godos and Lid argued the law adhered "to a discourse of TJ, introducing the requirement of retributive justice in terms of imprisonment and recognizing the role of the victims and their rights in the peace process" (2010, 497). The TJ discourse was incorporated into the law and used to wrap the legal arrangement for the paramilitary demobilization into a wider process of transition (Díaz 2009). However, the language of TJ was used without the idea of putting an end to the conflict, the measures were negotiated and tailored for only one armed group, and the hostilities persisted (Saffon and Uprimny 2010, 354; Andreu-Guzmán 2012, 11). For many, this was not even a peace process but rather a negotiation between allies, considering the historic links between paramilitary groups, state agents, and politicians (Nussio 2011, 88).

The law was challenged before the Constitutional Court of Colombia, which declared the constitutionality of the overall law but ruled that some dispositions were unconstitutional and gave some guidelines on how to make them compatible with international and constitutional standards (Saffron and Uprimny 2010, 367). The Court used the TJ framework to examine the JPL; however, most of its analysis was focused on the permissibility of reduced sentences as a way to balance between the political need for peace and the obligation to provide criminal accountability for human rights abuses. The general premise of the law according to which a reduced criminal punishment could be justified in order to achieve peace was accepted (Saffron and Uprimny 2010, 367). A similar approach was adopted by the Inter-American Court of Human Rights (2005, paras 301–304), who accepted the Justice and Peace model of reduced sentences, making clear that they were legal as long as they did not constitute amnesties.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

With the history of impunity and self-amnesties in the Latin American region, the attention of international organizations in the Colombian process, and the criticism from domestic organizations to the favorable treatment that paramilitary groups were receiving, the JPL faced a legitimacy challenge from the beginning. The language of TJ was used to legitimize the process. However, the concerns regarding impunity put criminal procedures at the center of the process, firstly, by making punishment (or at least a reduced sentence) an essential element to evaluate the process and, secondly, by linking the realization of other victims' rights to truth and reparations to the judicial procedure.

Breaking Away from Hierarchies?

As stated previously, norms, as well as norm relations are fluid and changeable. With the most recent peace agreements in Colombia in 2016, we identify attempts to shift the relations within the TJ norm cluster toward compatibility or, at least, reciprocal dependence. Much critique suggests that, by the nature of criminal procedure, judicial institutions are ill-placed to serve as definite sources of truth. The historical record produced through court judgments is "always the product of the situated choices" of the actors involved in the process (Sander 2021, 6). Due to procedural, temporal, and jurisdictional limits, criminal institutions fail to capture wider contexts of, e.g., structural violence, colonialism, and involvement of international actors or third parties to the conflict that envelop violence (Sander 2021, 22; Simpson 1997, 67). Hence, there is resistance to the normative hierarchy in which criminal trials undertake fulfillment of multiple wide-ranging values.

In recent years, Colombia has taken this direction and has developed a more creative and robust approach to TJ. Highly influenced by international law and the most recent discussions in TJ policy, the Colombian Government made a conscious effort to build a comprehensive set of mechanisms to break away from a model focused on criminal accountability. This effort has had two landmark moments: the enactment of the Law 1448 or Victims' Law in 2011 and the signing of the peace agreement between the Government of Juan Manuel Santos and the *Fuerzas Armadas Revolucionarias de Colombia* (FARC–EP) in 2016.

With the implementation of the JPL, in 2007, former President Uribe proclaimed that the paramilitaries no longer existed (Santos 2007) and later insisted that in Colombia there was not an armed conflict but a terrorist threat by guerrilla groups (Álvarez Uribe 2011). However, under President Santos, the TJ institutional arrangement in Colombia was expanded. The Law 1448 or Victims' Law (Congress of the Republic of Colombia 2011) developed upon the institutional framework initially created by the JPL to expand the assistance and reparation to the victims of the internal armed conflict. Recognizing the existence of the conflict and adopting a more comprehensive definition of TJ, the Victims' Law expanded the public services and created new institutions. This included two Special Administrative Units for Comprehensive Care and Reparation for Victims, and for the Management of Restitution of Stripped Land; a specialized jurisdiction in land restitution; and the Center of the Historical Memory that, despite not being conceived as a truth commission, assumed the role of contributing to the reconstruction of the truth from a non-judicial perspective. As Bakiner (2019, 233) notes, the Victims' Law "aimed to rectify the shortcomings of the JPL when it came to upholding victims" rights' by expanding the TJ design and adopting a victims-centered approach.

Later in 2016, after almost 4 years of negotiations, the Colombian government and the FARC–EP signed one of the longest and most detailed peace accords (Bell 2016, 166). As part of the fifth component (Point 5: Victims of the Conflict), the Final Agreement created a Comprehensive System of Truth, Justice, Reparation, and Non-Repetition. The system was based on a holistic strategy for TJ involving a

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

judicial institution, the Special Jurisdiction for Peace (SJP), two non-judicial organizations, the Truth, Coexistence, and Non-Repetition Commission (Truth Commission) and the Unit for the Search for Persons Presumed Disappeared in the context and by reason of the armed conflict (Search Unit), and mechanisms for reparations and guarantees of non-repetition that have no specific institutional arrangements, but are linked to the aforementioned institutions and rely on the strengthening of existing policies developed under the JPL and the Victims' Law.

These arrangements reflect a comprehensive approach with multiple components that has been widely prized by international actors (Herbolzheimer 2016, 7). The SJP is in charge of the justice component of the TJ system, with the specific tasks of investigating, elucidating, judging, and punishing serious human rights violations, war crimes, and crimes against humanity committed in the context of the armed conflict. However, the SJP diverts from the JPL model in two main ways. Firstly, the SJP is framed in a wider institutional structure of TJ in which different institutions interact. Secondly, the SJP was not conceived as a traditional criminal tribunal but has a hybrid nature that combines elements of retributive and restorative justice, highly influenced by international standards of accountability (Hillebrecht and Huneeus 2018, 329; Sánchez León 2016, 174).

Again, during the peace negotiations different actors took inspiration from the South African experience, putting a strong emphasis on truth-telling (Herbolzheimer 2016, 4). Nevertheless, different to South Africa, where past violations were primarily addressed through the Truth and Reconciliation Commission (TRC), in Colombia this task has been assigned to the judicial institutions in charge of investigating, prosecuting, and sentencing. Like in the JPL, the mission assigned to the SPJ is not limited to providing justice, but overreaches to fulfill other TJ values. The paradigm that guides the SJP is an idea of justice that restores the harm and repairs the victims affected by the conflict to put an end to situations of social exclusion caused by the crimes (Congress of the Republic of Colombia 2017). Therefore, the mission of the SJP also includes providing truth to the Colombian society (Congress of the Republic of Colombia 2017, Article 5), guaranteeing non-repetition of further violations of human rights, and contributing to the effective reparation of the victims (Congress of the Republic of Colombia 2019, Articles 20 and 28).

Of course, TJ institutions interact, and following the complex structure of norm clusters, respond to and aim to fulfill multiple values. The hierarchies that we uncover here become problematic when criminal trials expand their mission while reducing the space or the role of other TJ institutions or initiatives. Even though it is difficult to fully evaluate the ongoing process in Colombia, after only 6 years since the peace agreement was signed, we see tinges of the hierarchies that accompany the anti-impunity norm. Despite Colombia's innovative approach and the vision of a "maximalist peace" grounded on robust socioeconomic transformations, the implementation risks turning into a "minimalist peace" focused on judicial procedures (Rodríguez Garavito 2017). The normative superiority of the anti-impunity norm seems to be percolating the current peace process, focusing on criminal accountability, and displacing at points concerns for the structural causes of violence (Alviar and Engle 2017, 233).

Currently, there are at least three forces bringing the country closer to reproducing the normative hierarchies of the anti-impunity norm by strengthening the role of judicial institutions in reconstructing truth, bringing reconciliation, and guaranteeing non-repetition. First, even though they are different processes, JPL's judicial approach has had a direct impact on the legal framework of the Final Agreement developed after 2016. The JPL constituted a point of comparison for negotiators and the public, creating expectations of similar treatment and punishment for all violent actors (Sandoval 2015). The links between the two processes are evident. Despite focusing on different actors, both TJ processes are dealing with the same conflict.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

They are like two sides of the same coin. For instance, cases against paramilitary members investigated by the JPL tribunals are now being investigated by the SJP examining the relationship between State armed forces and paramilitary groups.[5] Therefore, the JPL procedures have become an important source for the investigations of the SJP.

Second, since early stages, international courts and (I)NGOs sent signals to the negotiators and the general public in Colombia about their expectations regarding punishment for perpetrators, bringing criminal accountability to the center of the TJ debates in Colombia once again (Uprimny 2015).[6] With a domestic legal system that incorporates human rights treaties into the domestic system with constitutional rank (Colombian Constitution 1991, Article 93), the Inter-American Court of Human Rights and its clear position against amnesties loomed in the background shaping the discussion of the TJ design (Alviar and Engle 2017, 236; Borda and Morales 2017, 246). Besides, under preliminary investigation by the Office of the Prosecutor, the International Criminal Court was also a strong voice during the peace dialogues, manifesting their initial concern about the selection faculty of the SJP to prosecute international crimes and the possibility of the total suspension of sentences (Sánchez León 2016, 175). The signaling from international courts created what Hillebrecht and Huneeus have called a "shadow effect" making state and non-state actors to use international law to legitimate their policy preferences (2018, 294). While Colombia made a conscious effort to depart from a TJ model focus on criminal accountability, the language of international law was constantly used to assert the necessity of criminal punishment (Weiner 2016, 240).

Finally, the politization of the peace process has also deepened the normative hierarchies in TJ in Colombia, reinforcing the centrality of criminal investigations. Time in prison for the guerrilla members was one of the key demands from political groups opposing the peace agreement (Sánchez León 2016, 176). Those requests of greater criminal accountability were central in the campaign, led by former President Alvaro Uribe (2002–2010), that disapproved the signature of the initial agreement through the plebiscite in October 2016 (Sánchez León 2016, 173). In 2018, President Iván Duque won the elections on a platform that advocated for strong changes to the peace agreement and greater criminal accountability (Maher and Thomson 2018, 2143). President Duque's program announced the implementation of a "Peace with legality" that, in practical terms, not only strengthened the anti-impunity discourse, but also has led to unequal levels of execution of the different elements of the peace accords. A stronger commitment to comply with the justice component of the agreement rather than advancing with the implementation of other parts of the agreement targeting more structural socio-economic transformations is reflecting adherence to the traditional hierarchies identified in previous processes (Rodríguez Llach and Martínez Carrillo 2022, 56; Alviar and Engle 2017, 233). As a result, in the last 4 years during the implementation phase, Colombia has struggled to completely divert from the normative hierarchies reproduced by the anti-impunity norm that have contributed to the expansion of criminal prosecutions and their role in the materialization of other TJ values.

Consequences of the Normative Superiority of the Anti-Impunity Norm

Having explained how the normative superiority of the anti-impunity norm has been created, secured, and challenged in BiH and Colombia, we now elaborate on the significance of such hierarchical norm relations for the global project of TJ itself. Our proposal is not one of displacing the anti-impunity norm from the

[5] In February 2022, the SJP announced publicly that it was opening a case focused on the crimes committed by the official armed forces in alliance with paramilitary groups (Special Jurisdiction for Peace 2022).

[6] Human Rights Watch was a powerful voice opposing the peace accord based on its interpretation of international human rights law and calling the agreement at some point a "pact or piñata of impunity."

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

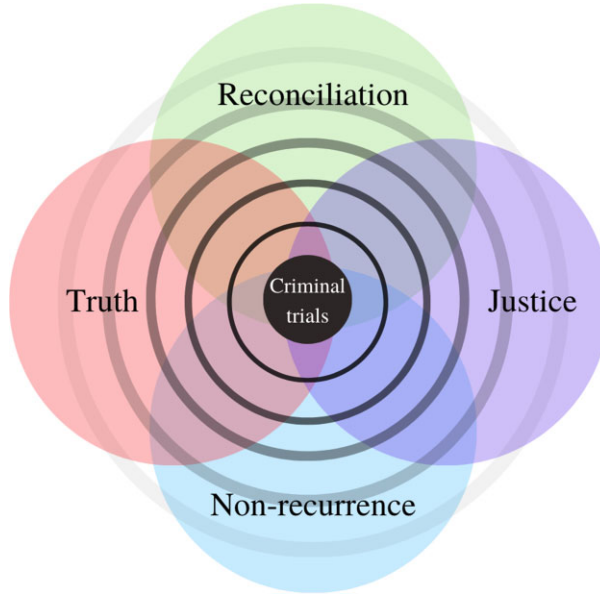

Figure 2. The expanding role of criminal institutions in the materialization of different TJ values.

norm cluster but rather repositioning it. Approaching the role of criminal justice processes in TJ with a critical eye does not intend to diminish the achievements of the ICTY and domestic courts in BiH or the work of the Justice and Peace Tribunals and the SJP in Colombia. Looking into both TJ processes in BiH and Colombia, we identify how the emergence of normative hierarchies that put criminal trials at the core of other TJ values reinforces a system of judicialization of TJ while weakening other TJ policies or initiatives.

Understanding how normative superiority of the anti-impunity norm is created and sustained demonstrates that criminal trials are assigned with several functions to uphold multiple values. In doing so, we argue, they can and have weakened other behaviors that have sought to uphold these same values without the limitations of criminal justice. The expansion of values attached to the anti-impunity norm positions its core proscribed behaviors as constitutive of other norms active in the TJ norm cluster. In different ways, judicial institutions are not only key actors for achieving justice and guaranteeing criminal accountability but have also become central components for the realization of other TJ values like truth, reconciliation, non-repetition, and non-recurrence (see figure 2).

Although the cases of Colombia and BiH seem paradigmatic, this framework to uncover the formation and (re)production of hierarchies in the TJ norm cluster could also be applied to other contexts. An obvious comparable case would be the International Criminal Tribunal for Rwanda (ICTR). Although Rwanda, like BiH, kickstarted its TJ process with an ad hoc international tribunal and did not establish a statewide TRC, it is often seen as departing from an anti-impunity heavy model due to the community-based Gacaca courts. These were devised to assert local ownership over TJ processes beyond—but in complementarity with—the ICTR. Yet, while scholars have argued that Gacaca courts enshrined a number of values in addition to justice, such as peace, truth, reconciliation, healing, and forgiveness (Clark 2010), as a proscribed behavior, Gacaca courts first and foremost enshrined the value of anti-impunity. When the Rwandan government called an international conference to advise on its TJ strategy in 1995, complementary paths to "full doc-

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

umentation of the Rwandan genocide," such as a TRC or a documentation center, were advocated for by experts (Office of the President 1995, 24). However, the Rwandan government resorted to domestic trials and, subsequently, Gacaca courts to fulfill its objective of eradicating "the culture of impunity" and stabilizing the society, to which the value of truth was additionally attached (Organic Law No. 40/2000, 2001). While community-based, the Gacaca courts still displayed forms of punitive justice resembling formal trials, raising a question about the limited truth-recovery capacities outside the boundaries of individual cases (Burnet 2012, 198–9; Clark 2010, 214). Much like the recent case of Colombia with the SJP, a critical examination of the Gacaca courts presents a good case study to examine attempts to break away from normative hierarchies that end up reproducing an anti-impunity heavy form of TJ.

South Africa is the most obvious outlier, having opted out for a model led by the TRC instead of criminal trials. The organizing telos of TJ in transitioning South Africa was reconciliation (Renner 2017, 68), which different authors argued turned into a global norm (Engelkamp, Glaab, and Renner 2014, 45–6). The influence of the anti-impunity norm at an international level has led different UN bodies to question the legitimacy of the South African model under current standards. The Office of the United Nations High Commissioner for Human Rights, for instance, argued that "South Africa's amnesty was not tested before an international human rights body, it is doubtful whether it would survive scrutiny under the legal standards developed" by the Human Rights Committee and other regional human rights bodies (2009, 33). Nevertheless, in the South African example, we still see the TJ norm cluster's tendency to reproduce hierarchical norm relations at the cost of exclusion or marginalization of certain values and behaviors over others. Calls for punitive justice in the early years of transition were marginalized and reframed as "bad" values of revenge and violence to promote the reconciliation discourse (Renner 2017). The TRC was in turn presented as inherently "good" and necessary for achieving not only the constitutive values of truth and reconciliation but also individual and social [restorative] justice, which demanded "accountability of perpetrators" (Truth and Reconciliation Commission of South Africa 1998, Volume 1). Therefore, even in an outlier case study as South Africa, our framework could contribute to uncovering how normative hierarchies are reproduced when a single behavior (in this case, the TRC) co-opts the values constituent to other norms (i.e., accountability) through a frame of necessity, inevitability, and "inherent" goodness.

As for Colombia and BiH, we identify three interlinked consequences of the normative superiority of anti-impunity for the global project of TJ.

Blocking Other TJ Initiatives

Normative hierarchy presupposes not only superiority of certain norms but also inferiority of others. In both cases, this has meant that the behaviors constitutive of other norms found in the cluster have been weakened or entirely blocked due to the strong influence of criminal tribunals. In BiH, in the same year the Outreach Office was founded, the ICTY entered into a conflict with a prospective TRC out of concerns that it would undermine its decision-making and investigations and further hamper its feeble history-making capabilities, therein, weakening the restoration of its legitimacy. The commission advocates, members of different international NGOs, claimed that, unlike criminal trials that emphasize "on the specific crimes of individual perpetrators," the prospective TRC would explore "the experience of the victims" and "the structural elements . . . which made . . . patterns of violations possible," producing knowledge of the conflict by way of "painful self-examination" (Kritz and Finci 2001, 52).

Nevertheless, this initiative was heavily contested by the ICTY. The ICTY expressed "a number of concerns about the potential effectiveness of the Commission" con-

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

sidering its "proposed mandate" and "the nature of truth commissions relative to criminal prosecutions" (ICTY 1998, para 225). At the civil society conference that started off the TRC process in 2000, the ICTY representative informed the public that the Court's President and the chief Prosecutor would not be supporting the initiative (Dragovic-Soso 2016, 302). They expressed skepticism toward the possibility of obtaining "one definite truth" through the commission and an overwhelming concern that the TRC would undermine the ICTY's investigations and decision-making (Dragovic-Soso 2016, 302).

As it was becoming increasingly obvious that the Tribunal itself could adjudicate on only a handful of cases, therein, weakening the observance of the anti-impunity norm, toward the end of 2000, the ICTY began outsourcing its cases to domestic courts. The Tribunal therefore began to slowly shift its resistance to local processes and projects, claiming that it could not "analyse all the historical, political, sociological and economic causes of the war . . . or perform . . . all the work of memory" alone (ICTY 2001, para 285). This change also allowed for a shift in attitudes toward the prospective TRC. In 2001, the ICTY (2001, para 286) officially endorsed the creation of a TRC "insofar as its mission complements that of the Tribunal." The TRC could not and should not aspire to be vested with "real investigative powers," over which the Prosecutor has primacy, or to demand access to "all information useful for its mission," which would, vaguely put, allegedly infringe upon the activities of the Prosecutor (ICTY President 2001). In other words, while the Tribunal could embrace and "borrow" the claimed values of the TRC, the opposite was unacceptable.

This language of complementarity must be examined together with the fact that the ICTY still saw it fit for itself to establish a historical record that is authoritative. With the conditions put in place onto the mandate and scope of the prospective TRC, it is doubtful that the TRC would have been able to provide a comprehensive, inclusive account of the past atrocities as originally wanted by its architects. In the end, due to the concerns raised by the ICTY as well as some local victims' organizations in BiH, the plan to establish the TRC was never materialized. It was also becoming more obvious that the prospective TRC would directly be competing for foreign funding against the local courts now adjudicating war crimes (Dragovic-Soso 2016, 303). With no competition in sight, the ICTY and local courts adjudicating international crimes could more easily position themselves as truth-recovery authorities in BiH.

Making Other TJ Initiatives Dependent on Judicial Procedures

Contrary to the BiH case, in Colombia, the normative superiority of the anti-impunity norm has not completely blocked other TJ initiatives. While giving the mission to the criminal jurisdiction to contribute to truth reconstruction, the JPL clarified that this "shall not preclude the future application of other non-judicial mechanisms for reconstructing the truth" (Congress of the Republic of Colombia 2005, Article 9). With time, the institutional arrangement of truth recovery in Colombia has expanded. First, the National Commission on Reparation and Reconciliation created the Historical Memory Group with the task of "[s]ubmitting a public report on the reasons for the rise and development of the illegal armed groups" (Congress of the Republic of Colombia 2005, Article 50). Later, the Group was transformed into the National Center for Historical Memory (NCHM) by the Victims' Law, expanding its mandate to gathering and analyzing all information related to the internal armed conflict in order to identify and clarify the causes of the conflict, find truth, and contribute to its non-repetition (President of the Republic of Colombia 2011, Article 2). Without the status of a truth commission, the work of the NCHM has been primarily academic, with a prolific production of research on emblematic cases and one of the most comprehensive accounts of the conflict in Colombia (National Center for Historical Memory 2013). More recently, the Final

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

Agreement of 2016 formally created the Truth Commission, which recently presented its final report (2022).

However, the centrality of the criminal trials made other TJ initiatives dependent on the judicial procedures. The clearest example of this was the extradition of twenty-nine paramilitary commanders to the United States between 2008 and 2009 (Orozco Abad et al. 2012, 526). In 2007, it was reported that some commanders were confessing their links with political figures that included the then President Uribe (Semana Judicial 2007). In a highly controversial decision, Uribe signed the extradition of the main paramilitary commanders arguing that they were not meeting their obligations under the JPL (Bakiner 2019, 233).

As, the Justice and Peace process was built upon the voluntary confessions or "free accounts" of the combatants, these extraditions not only impacted the work of Justice and Peace tribunals, but also affected the reconstruction of truth and other reparation initiatives. Despite promises of an agreement between the Colombian Government and the United States authorities to guarantee that the paramilitary commanders would continue contributing with the JPL, this never materialized, and the extradited commanders were prevented from continuing with their voluntary confessions (Zuleta 2015). The truth-reconstruction capacity of the JPL rested on those confessions; therefore, the extraditions not only stopped the criminal investigations but also halted the participation of the commanders in process of truth-telling and reparations (Correa et al. 2020).

Meanwhile, in the current process, the Colombian government has not determined what would happen with people responsible of crimes that are not under the jurisdiction of the SJP (De la Torre 2022). There is a question mark about the contribution to peace, truth, and reconciliation of people considered third parties to the conflict because their participation in the TJ process is voluntary. Third parties to the conflict are those civilians who, without being part of an armed group, contributed directly or indirectly to the commission of crimes related to the armed conflict. The SJP has no preferential jurisdiction over these cases, so they are investigated by the ordinary criminal justice unless the perpetrators request to be under the jurisdiction of the SJP (Michalowski et al. 2020). This shows the dependence of the TJ mechanisms on the judicial procedures to get people responsible for human rights abuses to participate in the wider processes of truth recovery and reconciliation.

Judicialization of Other TJ Values and the Rise of Revisionist Discourses

Finally, a direct consequence of these norm relations is the growing judicialization of TJ values by privileging, for instance, a truth grounded on judicial evidence or confessions made as part of judicial procedures. When there are competing narratives about the origins and responsibility of the conflict, BiH and Colombia have privileged judicial truth and memory vis-à-vis other potential mechanisms and forms of TJ, such as truth commissions.

For instance, in response to the widespread denial, trivialization and minimization of atrocity crimes by different political actors in BiH, in 2021, the then High-Representative Valentin Inzko issued a decision enacting the Law on Amendment to the Criminal Code of BiH.[7] The Law, among others, criminalizes public condonement, denial, gross trivialization, or attempts at justification of genocide, crimes against humanity, or war crimes, therefore, attempting to regulate public speech as well as public memory. It is referential to the anti-impunity norm and its institutionalization in BiH as it restricts the conceptualization—and therefore denial, glorifi-

[7]The Office of the High Representative was created by Annex 10 of the Dayton Peace Agreement (1995) as an ad hoc international institution that would oversee the implementation of civilian aspects of the Agreement until the country "is able to take full responsibility for its own affairs." As of 2022, the OHR is still present in BiH and maintains its law-making powers.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

cation, and such—as per the judgments of a handful of tribunals: the Nuremberg Tribunal, the ICTY, the ICC, and courts of BiH (Office of the High Representative 2021). As such, this act of prohibition of atrocity crimes denial does not restrict glorification of individuals who committed atrocities in WWII or the later conflicts and were never prosecuted or otherwise acquitted but whose criminal activities are otherwise known through oral history and non-governmental fact-finding inquiries. The Law, therefore, maintains the central and superior positions of the ICTY and local courts as authoritative sources of truth as well as memory vis-à-vis other potential mechanisms and forms of TJ.

Yet, the judicialization of the "truth" value in TJ practice itself is accompanied by and strategically utilized for blatant denial and historical revisionism from certain political groups. In 2018, the Republika Srpska (RS) entity of BiH set up a revisionist independent international commission on Srebrenica to uncover the truth (Independent International Commission of Inquiry 2021) and "override" the report published by the 2003 Srebrenica Commission that was established by the RS authorities under external pressures. The new commission on Srebrenica goes in length to discredit the ICTY Prosecutor's investigations and, among others, proclaim that as a consequence, the ICTY had wrongly qualified the crimes committed in Srebrenica as "genocide." It does not, however, shy away from enforcing the value of "accountability" (Independent International Commission of Inquiry 2021, 1037) but challenges the ICTY primarily on the values of "truth- and history-making," stating that, while the findings of the ICTY have political legitimacy, they do not necessarily constitute "factual history" (Independent International Commission of Inquiry 2021, 1029).

In Colombia, the politization of the peace processes and competing narratives about the conflict are also percolating the work of TJ institutions. Even the existence of an armed conflict has been strongly disputed. Because different institutions are in charge of truth recovery, some of them created during the previous TJ process, different political groups have tried to influence the discussion by developing their own narratives. Around six months after becoming president, in February 2019, President Duque appointed Dario Acevedo as director of the National Center for Historic Memory. This sparked controversy because Acevedo had maintained an ambivalent position on the existence of the armed conflict in Colombia,[8] and has defended the armed forces from the accusations of extra-judicial executions of civilians also known as *falsos positivos* (false positives) (Torrado 2020). One of the main tasks of the National Center for Historic Memory is to build the Museum of the Memory, and as a result of this, the script of the museum was changed to reflect a history that gives a stronger voice to the version of events of the official armed forces (Infobae 2022).

New competing narratives about the two conflicts have been established partly as a reaction to the expanded values of criminal justice institutions and have been used to delegitimate and criticize them, weakening the original values of accountability and justice, and provoking further tensions. However, at the same time, the politization of the TJ discussions and the penetration of revisionist discourses in different TJ institutions reinforce the idea that judicial procedures are the only neutral space for truth-recovery. As a hegemonic structural element, the anti-impunity norm and its institutions cause severe reactions from various actors involved in and important for TJ processes who challenge and/or distort the actions of both tribunals on the accounts of accountability and truth-recovery.

[8]In a recent interview, Acevedo acknowledges that in the past, in his individual capacity, he questioned the existence of the armed conflict. As Director of the National Center for Historic Memory, he claims, however, that it is his obligation to follow the law that has acknowledged the existence of the conflict. See full interview: https://www.eltiempo.com/justicia/paz-y-derechos-humanos/dario-acevedo-director-del-cnmh-existencia-del-conflicto-es-controversial-658435 accessed April 19, 2022.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

Conclusion

In this article, we have shown that the norm relations in the global project of TJ reflect the inclination to operate, develop, and be organized on the basis of hierarchies in international politics (Zarakol 2017). Drawing on examples from Colombia and BiH, we have argued that the claimed superiority of the anti-impunity norm and its institutions developed by way of expansions of the claimed values of the norm beyond justice and accountability. Even though we have focused on two specific cases, we have shown how hierarchies appear to be intrinsic to the project of TJ while they might look different in other contexts. Our findings bear implications for future constructivist IR research interested in norm clusters beyond TJ. In particular, our methodology points to the usefulness of studying norm clusters over time, contextually and comparatively, to uncover how norm relations are organized and understand the forces—or facilitating conditions—that might shift a norm and its constitutive values and behaviors to a position of comparative strength or weakness vis-à-vis others. We suggest that future research might focus on tracing the historical development of norm clusters to determine their cohesiveness and therefore operational strength in a given context.

For the field of TJ more specifically, in addition to identifying the emergence, affirmation, and potential disintegration of the hierarchy within the norm cluster of TJ, we have also discussed the significance of such hierarchy in the two countries whereby the influence of the anti-impunity norm has expanded the role of criminal trials as corrective behavior. The tri-partite internal structure of the anti-impunity norm is therefore entirely changed in light of the developments we have reviewed. The norm re-construction can be exemplified through the following statement: "Given the series of complex *problems* of human rights violations, violence, impunity and denial of international crimes, *my values* of accountability, responsibility, justice, reconciliation and truth dictate that *criminal trials take place so* the individuals accused of committing these crimes are punished and restricted from public discourse and public spaces, judicial institutions contribute to the historical reconstruction of the conflict, and criminal trials provide spaces for reconciliation."

By analyzing the expanding role of criminal trials, this comparative analysis has allowed us to better understand the links and interactions between and among TJ norms at the level of practice, which is essential for further theorization of TJ as a norm cluster. We suggest that our work has the potential to influence future policymaking within TJ as a global project since this hierarchy among the norms of TJ has an impact on which policies, mechanisms, and laws are promoted and how new transitional contexts become designated as "in need" of TJ (and which TJ?) (Towns 2012). Particularly, this article contributes to the development of a more diverse, holistic approach to TJ as a norm cluster characterized by *complex* rather than hierarchical relationships. This means, for instance, reinforcing that those institutions working on the anti-impunity norm are only one of, but definitely not the most heavily invested in mechanism, while also increasing on the role of other TJ institutions in promoting a wider understanding of accountability.

Acknowledgments

We would like to thank Annika Jones and the members of the Transformative Justice Network for their insightful feedback on earlier versions of this article. We are also grateful to the editors and the three anonymous reviewers for their helpful comments. All errors and omissions are entirely our own.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

References

Akhavan, Payam. 2013. "Remarks by Payam Akhavan." *Proceedings of the Annual Meeting (American Society of International Law)* 99: 285–9.

Álvarez Uribe, Adriana. 2011. "Expresidente Uribe Reitera que no Hay Conflicto Armado." *WRadio*, 9 May. Accessed July 20, 2022. https://www.wradio.com.co/noticias/actualidad/expresidente-uribe-reitera-que-no-hay-conflicto-armado/20110509/nota/1468908.aspx.

Alviar, Helena, and Karen Engle. 2017. "The Distributive Politics of Impunity and Anti-Impunity: Lessons from Four Decades of Colombian Peace Negotiations." In *Anti-Impunity and Human Rights Agenda*, edited by Karen Engle, Zinaida Miller and D.M. Davis, 216–54. Cambridge: Cambridge University Press.

Amnesty International. 2005. "Colombia: the Paramilitaries in Medellín: Demobilization or Legalization?" Accessed July 20, 2022. https://www.amnesty.org/en/wp-content/uploads/2021/08/amr230192005en.pdf.

Andreu-Guzmán, Federico. 2012. *Criminal Justice and Forced Displacement in Colombia*. New York: International Center for Transitional Justice/Brookings.

Arendt, Hannah. 2006. *Eichmann in Jerusalem: A Report on the Banality of Evil*. London: Penguin Classics.

Arvelo, Jose E. 2006. "International Law and Conflict Resolution in Colombia: Balancing Peace and Justice in the Paramilitary Demobilization Process." *Georgetown Journal of International Law* 37(2): 411–76.

Bakiner, Onur. 2019. "The Comprehensive System of Truth, Justice, Reparation, and Non-Repetition: Precedents and Prospects." In *As War Ends What Colombia Can Tell Us about the Sustainability of Peace and Transitional Justice*, edited by James Meernik, Jacqueline H. R. DeMeritt and Mauricio Uribe-López, 230–48. Cambridge: Cambridge University Press.

Bell, Christine. 2009. "The 'New Law' of Transitional Justice." In *Building a Future on Peace and Justice*, edited by Kai Ambos, Judith Large and Marieke Wierda, 105–26. Berlin: Springer.

———. 2016. "Lex Pacificatoria Colombiana: Colombia's Peace Accord in Comparative Perspective." *AJIL Unbound* 110: 165–71.

Boraine, Alexander L. 2006. "Transitional Justice: A Holistic Interpretation." *Journal of International Affairs* 60(1): 17–27.

Borda, Sandra, and Mateo Morales. 2017. "Colombia: La internacionalización de la paz." *AnuarioInternacional CIDOB 2016-2017: 239-247*.

Burnet, Jennie E. 2012. *Genocide Lives in Us: Women, Memory, and Silence in Rwanda*. Madison, WI: University of Wisconsin Press.

Clark, Phil. 2010. *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*. Cambridge: Cambridge University Press.

Congress of the Republic of Colombia. 2005. "Law 975." 25 July. Accessed April 19, 2022. https://reparations.qub.ac.uk/assets/uploads/law-975-ingls-1.pdf.

———. 2011. "Law 1448." 10 June. Accessed July 20, 2011. https://reparations.qub.ac.uk/assets/uploads/Victims-Law-1448-2011.pdf.

———. 2017. "Legislative Act 01." 4 April. Accessed April 14, 2022. https://jepvisible.com/observatorio/que-es-observatorio/73-normatividad/127-acto-legislativo-01-del-4-de-abril-de-2017.

———. 2019. "Law 1957." 6 June. Accessed April 14, 2022. https://www.jep.gov.co/Especiales/estatutaria/index.html.

Correa, María Camila, Enrique Prieto-Ríos, and Juan Pablo Coy. 2020. "La Extradición de Mancuso: Una Cadena de Errores." *Razón Pública*, 14 September. Accessed July 27, 2022. https://razonpublica.com/la-extradicion-mancuso-una-cadena-errores/.

De Greiff, Pablo. 2012. "Theorizing Transitional Justice." *Nomos* 51: 31–77.

———. 2013. "Transitional Justice Gets Its Own Encyclopedia: Vitamins or Steroids for a Developing Field?" *International Journal of Transitional Justice* 7(3): 547–53.

De la Torre, Cristina. 2022. "¿Y la Verdad de los Empresarios?" *El Espectador*, 19 July. Accessed July 27, 2022. https://www.elespectador.com/opinion/columnistas/cristina-de-la-torre/y-la-verdad-de-los-empresarios/.

Della Porta, Donatella, and Michael Keating. 2008. *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective*. Cambridge: Cambridge University Press.

Díaz, Catalina. 2009. "Colombia's Bid for Justice and Peace." In *Building a Future on Peace and Justice*, edited by Kai Ambos, Judith Large and Marieke Weirda, 469–501. Berlin: Springer.

Dragovic-Soso, Jasna. 2016. "History of a Failure: Attempts to Create a National Truth and Reconciliation Commission in Bosnia and Herzegovina, 1997–2006." *International Journal of Transitional Justice* 10(2): 292–310.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

Engelkamp, Stephan, Katharina Glaab, and Judith Renner, 2014. "Office Hours: How (Critical) Norm Research Can Regain Its Voice." *World Political Science Review* 10(1): 33–61.

Engle, Karen, Zinaida Miller, and D.M Davis. 2017. *Anti-Impunity and the Human Rights Agenda*. Cambridge: Cambridge University Press.

Fehl, Caroline, and Elvira Rosert. 2020. "It's Complicated: A Conceptual Framework for Studying Relations and Interactions between International Norms." PRIF Working Paper No. 49.

Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace. 2016. Signed on the 12th of November. Accessed April 19, 2022. https://www.peaceagreements.org/viewmasterdocument/1845.

Finnemore, Martha, and Kathryn Sikkink. 1998. "International Norm Dynamics and Political Change." *International Organization* 52(4): 887–917.

Fletcher, Laurel E. 2020. "International Criminal Law and the Subordination of Emancipation: the Question of Legal Hierarchy in Transitional Justice." In *The Oxford Handbook of International Criminal Law*, edited by Kevin Jon Hellerand others, 699–718. Oxford: Oxford University Press.

Friedman, Rebekka, and Andrew Jillions. 2015. "The Pitfalls and Politics of Holistic Justice." *Global Policy* 6(2): 141–50.

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

Greenawalt, Kent. 2000. "Amnesty's Justice." In *Truth v. Justice: The Morality of Truth Commissions*, edited by Robert I Rotberg and Dennis F Thompson, 189–210. Princeton, NJ: Princeton University Press.

Han, Yuna, and Sophie T Rosenburg. 2021. "Claiming Equality: The African Union's Contestation of the Anti-Impunity Norm." *International Studies Review* 23: 726–51.

Herbolzheimer, Kristian. 2016. "Innovations in the Colombian Peace Process." *Norwegian Peace Building Resource Centre*. Accessed April 14, 2022. https://www.c-r.org/resource/innovations-colombian-peace-process.

Hillebrecht, Courtney, and Alexandra Huneeus, with, and Sandra Borda. 2018. "The Judicialization of Peace." *Harvard International Law Journal* 59(2): 279–330.

Hurrell, Andrew, and Terry Macdonald. 2012. "Norms and ethics in international relations". In *Handbook of International Relations*, edited by Walter Carlsnaes, Thomas Risse and Beth A. Simmons, 57–84. London: Sage Publications.

ICTY President. 2001. "The ICTY and the Truth and Reconciliation Commission in Bosnia and Herzegovina." *Press Release*, 17 May. Accessed August 8, 2022. https://www.icty.org/en/press/icty-and-truth-and-reconciliation-commission-bosnia-and-herzegovina.

ICTY. 1994. "Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/49/342, S/1994/1007, August 29.

———. 1995. "Second Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/50/365, S/1995/728, August 23.

———. 1997. "Fourth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/52/375, S/1997/729, September 18.

———. 1998. "Fifth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/53/219, S/1998/737, August 10.

———. 2001. "Eighth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/56/352, S/2001/865, September 17.

———. 2002. "Ninth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/57/379, S/2002/985, September 4,

———. 2003. "Tenth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/58/297, S/2003/829, August 20.

———. 2004. "Eleventh Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/59/215, S/2004/627, August 16.

———. 2016. "Twenty-third Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/71/263, S/2016/679, August 1.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

———. 2017. "Twenty-fourth and Final Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991." A/72/266, S/2017/662, August 1.

Independent International Commission of Inquiry on the Sufferings of all Peoples in the Srebrenica region Between 1992 and 1995. 2021. "General Conclusions." Accessed May 10, 2022. https://incomfis-srebrenica.org/conclusions/.

Infobae. 2022. "Darío Acevedo es Cuestionado por las Víctimas del Conflicto." 11 July. Accessed July 19, 2022. https://www.infobae.com/america/colombia/2022/07/11/en-audiencia-ante-la-jep-dario-acevedo-es-cuestionado-por-las-victimas-del-conflicto-por-su-papel-en-el-centro-nacional-de-memoria-historica/.

Inter-American Court of Human Rights. 2005. "Mapiripan Massacre v. Colombia." *Merits, Reparations and Costs.* Series C No. 134, September 15.

Inter-American Commission on Human Rights. 2007. "Informe sobre la Implementación de la Ley de Justicia y Paz." OEA, /Ser.L/V/II. Doc. 3. Accessed July 20, 2022. https://biblioteca.iidh-jurisprudencia.ac.cr/index.php/documentos-en-espanol/prevencion-de-la-tortura/1266-informe-sobre-la-implementacion-de-la-ley-de-justicia-y-paz-etapas-iniciales-del-proceso-de/file.

———. 2014. "Derecho a la Verdad en las Américas." OEA, /Ser.L/V/II.152, 57. Accessed July 20, 2022. https://www.oas.org/es/cidh/prensa/comunicados/2014/143.asp.

International Residual Mechanism for Criminal Tribunals. 2021"Read More on the Outreach Programme." Accessed December 6, 2021. https://www.icty.org/en/content/read-more-outreach-programme.

Judicial, Semana. 2007. "El ventilador de Mancuso." *Semana*, 18 May. Accessed July 27, 2022. https://www.semana.com/nacion/articulo/el-ventilador-mancuso/85975-3/.

Jurkovich, Michelle. 2020. "What Isn't a Norm? Redefining the Conceptual Boundaries of 'Norms' in the Human Rights Literature." *International Studies Review* 22(3): 693–711.

Kerr, Katie. 2005. "Making Peace with Criminals: An Economic Approach to Assessing Punishment Options in the Colombian Peace Process." *University of Miami Inter-American Law Review* 37(1): 53–117.

Kritz, Neil J., and Jakob Finci. 2001. "A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea whose Time Has Come." *International Law FORUM du droit international* 3: 50–58.

Lai, Daniela. 2020. *Socioeconomic Justice. International Intervention and Transition in Post-war Bosnia and Herzegovina.* Cambridge: Cambridge University Press.

Lantis, Jeffrey S., and Carmen Wunderlich. 2018. "Resiliency Dynamics of Norm Clusters: Norm Contestation and International Cooperation." *Review of International Studies* 44(3): 570–93.

Laplante, Lisa J., and Kimberly Theidon. 2006. "Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz." *Michigan Journal of International Law* 28(1): 49–108.

Leebaw, Bronwyn Anne. 2008. "The Irreconcilable Goals of Transitional Justice." *Human Rights Quarterly* 30(1): 95–118.

León, Sánchez, and Nelson Camilo. 2016. "Could the Colombian Peace Accord Trigger an ICC Investigation on Colombia?" *AJIL Unbound* 110: 172–7.

López, Suárez, Beatriz Eugenia, and Felipe Jaramillo Ruiz. 2014. "La Satisfacción del Derecho a la Justicia en el marco del Proceso de Paz colombiano." *Estudios Socio-Jurídicos* 16: 61–88.

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

Maher, David, and Andrew Thomson. 2018. "A Precarious Peace? The Threat of Paramilitary Violence to the Peace Process in Colombia." *Third World Quarterly* 39(11): 2142–72.

Michalowski, Sabine, Michael Cruz Rodríguez, Astrid Orjuela Ruiz, and Luisa Gómez Betancur. 2020. *Terceros Civiles ante la Jurisdicción Especial para la Paz (JEP).* Bogotá: DeJusticia.

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

National Center for Historical Memory. 2013. "BASTA YA! Colombia: Memories of War and Dignity." Accessed July 27, 2022. https://centrodememoriahistorica.gov.co/descargas/informes2016/basta-ya-ingles/BASTA-YA-ingles.pdf.

Niemann, Holger, and Henrik Schillinger. 2017. "Contestation 'all the Way Down'? The Grammar of Contestation in Norm Research." *Review of International Studies* 43(1): 29–49.

Nussio, Enzo. 2011. "Learning from Shortcomings: The Demobilization of Paramilitaries in Colombia." *Journal of Peacebuilding & Development* 6(2): 88–92.

Office of the High Representative. 2021. "HR's Decision on Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina." 23 July. Accessed August 9, 2021. http://www.ohr.int/hrs-decision-on-enacting-the-law-on-amendment-to-the-criminal-code-of-bosnia-and-herzegovina/.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

Office of the President of the Republic of Rwanda. 1995. "Genocide, Impunity and Accountability." *Recommendations of the Conference Held in Kigali from November 1st to 5th, 1995*. Organic Law No. 40/2000 of 26/01/2001 Setting up Gacaca Jurisdictions and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed between October 1, 1990 and December 31, 1994, Official Gazette of the Republic of Rwanda.

Orozco Abad, Iván, María Victoria Uribe, Gina Cabarcas, and Luis Carlos Sánchez Díaz. 2012. *Justicia y Paz ¿Verdad Judicial o Verdad Histórica?*. Bogotá: Centro Nacional de Memoria Histórica.

Osiel, Mark. 1997. *Mass Atrocity, Collective Memory, and the Law*. Abingdon: Routledge.

Percy, Sarah V., and Wayne Sandholtz, 2022. "Why Norms Rarely Die." *European Journal of International Relations* 28(4): 934–54.

Pinto, Mattia. 2020. "Historical Trends of Human Rights Gone Criminal." *Human Rights Quarterly* 42(3): 729–61.

President of the Republic of Colombia. 2011. "Decree 4803." 20 December. Accessed April 20, 2022. https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=45078.

Rangelov, Iavor. 2013. *Nationalism and the Rule of Law: Lessons from the Balkans and Beyond*. Cambridge: Cambridge University Press.

Renner, Judith. 2017. *Discourse, Normative Change and the Quest for Reconciliation in Global Politics*. Manchester: Manchester University Press.

Robinson, Corey. 2017. "Tracing and Explaining Securitization." *Security Dialogue* 48(6): 505–23.

Rodríguez Garavito, César. 2017. "Paz Minimalista y Paz Robusta." *Dejusticia*, Accessed April 29, 2022. https://www.dejusticia.org/en/column/paz-minimalista-y-paz-robusta/.

Rodríguez Llach, Alejandro, and Hobeth Martínez Carrillo. 2022. *¿La paz al menor costo? Análisis presupuestal de la implementación de la paz Territorial y el Sistema Integral*. Bogotá: Editorial DeJusticia.

Rotberg, Robert I. 2000. "Truth Commissions and the Provision of Truth, Justice, and Reconciliation." In *Truth v. Justice: The Morality of Truth Commissions*, edited by Robert I. Rotberg and Dennis F. Thompson, 1–21. Princeton, NJ: Princeton University Press.

Saffon, Maria Paula, and Rodrigo Uprimny. 2010. "Uses and Abuses of Transitional Justice in Colombia"." In *Law in Peace Negotiations*, edited by 354: Morten Bergsmo and Pablo Kalmanovitz, 400. Oslo: Torkel Opsahl Academic EPublisher.

Sander, Barrie. 2021. *Doing Justice to History: Confronting the Past in International Criminal Courts*. Oxford: Oxford University Press.

Sandoval, Clara. 2015. "Facing the Justice Dilemma in Colombia." *JusticeInfo*, 5 June. Accessed April 4, 2022. https://www.justiceinfo.net/en/524-facing-the-justice-dilemma.html.

Santos, Diego A. 2007. "Uribe Dice ante la Asamblea General de las Naciones Unidas Que en 'Colombia no Hay Paramilitarismo'." *Semana*, 26 September. Accessed July 20, 2022. https://www.semana.com/on-line/articulo/uribe-dice-ante-asamblea-general-naciones-unidas-colombia-no-paramilitarismo/88446-3/.

Schwöbel-Patel, Christine. 2021. *Marketing Global Justice: The Political Economy of International Criminal Law*. Cambridge: Cambridge University Press.

Simpson, Gerry J. 1997. "Didactic and Dissident Histories in War Crimes Trials." *Albany Law School Review* 60(3): 801–40.

Skaar, Elin, and Eric Wiebelhaus-Brahm. 2013. "The Drivers of Transitional Justice: An Analytical Framework for Assessing the Role of Actors." *Nordic Journal of Human Rights* 31(2): 127–48.

Special Jurisdiction for Peace. 2022. "Comunicado 012 a la Opinión Pública." 26 January. Accessed April 4, 2022. https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-reitera-su-decisi%C3%B3n-indeclinable-de-abrir-tres-nuevos-casos.aspx.

Torrado, Santiago. 2020. "El Encargado de Memoria Histórica Que Enfrenta a Colombia con Sus Fantasmas." *El País*, 6 February. Accessed April 19, 2022. https://elpais.com/internacional/2020/02/05/colombia/1580937120_937970.html.

Towns, Ann E. 2012. "Norms and Social Hierarchies: Understanding International Policy Diffusion 'from below'." *International Organization* 66(2): 179–209.

Truth Commission of Colombia. 2022. "Hay Futuro si Hay Verdad." Accessed 7 December 2022. https://www.comisiondelaverdad.co/hay-futuro-si-hay-verdad.

Truth and Reconciliation Commission of South Africa. 1998. "The TRC Report." Accessed February 14, 2022. https://www.justice.gov.za/trc/report/.

Tzouvala, Ntina. 2019. "'These Ancient Arenas of Racial Struggles': International Law and the Balkans, 1878–1949." *European Journal of International Law* 29(4): 1149–71.

UN High Commissioner for Human Rights. 2009. "Rule-of-Law Tools for Post-Conflict States: Amnesties." UN Doc HR/PUB/09/1.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

UN Secretary General. 2004. "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies." UN Doc. S/2004/616, August 23.
UNSC. 1993. "Resolution 827." S/RES/827, May 25.
Uprimny, Rodrigo. 2015. "¿Piñata de Impunidad?." *El Espectador*, 27 December. Accessed April 20, 2022. https://www.elespectador.com/opinion/columnistas/rodrigo-uprimny/pinata-de-impunidad-column-607746/.
Weiner, Allen S. 2016. "Ending Wars, Doing Justice: Colombia, Transitional Justice, and the International Criminal Court." *Stanford Journal of International Law* 52(2): 211–42.
Winston, Carla. 2018. "Norm Structure, Diffusion, and Evolution: A Conceptual Approach." *European Journal of International Relations* 24(3): 638–61.
Zarakol, Ayşe, ed. 2017. *Hierarchies in World Politics*. Cambridge: Cambridge University Press.
Zuleta, Sebastián. 2015. "La Condena De Mancuso." *Razón Pública*, 13 July. Accessed July 27, 2022. https://razonpublica.com/la-condena-de-mancuso/.
Zunino, Marcos. 2019. *Justice Framed: A Genealogy of Transitional Justice*. Cambridge: Cambridge University Press.

Downloaded from https://academic.oup.com/isr/article/25/3/viad022/7219756 by guest on 06 July 2023

Carvajalino, Jinú, and Maja Davidović. (2023) Escaping or Reinforcing Hierarchies? Norm Relations in Transitional Justice. *International Studies Review*, https://doi.org/10.1093/isr/viad022
© The Author(s) (2023). Published by Oxford University Press on behalf of the International Studies Association. This is an Open Access article distributed under the terms of the Creative Commons Attribution License (https://creativecommons.org/licenses/by/4.0/), which permits unrestricted reuse, distribution, and reproduction in any medium, provided the original work is properly cited.