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The Borderlands between Punitive and Non-punitive Transitional Justice: Distinct Elites and Diverging Patterns of Import/export

Mikkel Jarle Christensen *

ABSTRACT[∞]

Transitional justice consists of different ideals and practices that both coexist and conflict. This article investigates the socio-professional borderlands between punitive and non-punitive transitional justice initiatives by analyzing elites working in either international criminal courts, or truth and reconciliation commissions. While they were marginally linked, the professional practices of these elites were structured by their distinct positions in the larger market of transitional justice. Professionals of international criminal law were tied to international institutions from where they were often on the exporting side of particular internationalized, punitive norms and practices. In contrast, professionals involved with truth and reconciliation were closely connected to states that structured their import/export of internationalized, non-punitive initiatives. Punitive and non-punitive transitional justice was characterized not only by competing ideals and practices, but was embedded in distinct elites whose proximity to or distance from the state structured the circulation of transitional justice ideas and practices.

KEYWORDS: Transitional justice, international criminal law, truth and reconciliation, sociology of law

INTRODUCTION

Originally coined as a scholarly concept, transitional justice¹ refers to a range of activities and goals seen as relevant for societies in passage from conflict to more stable or democratic forms of governance. The concept of transitional justice covers criminal prosecutions, truth and reconciliation commissions (TRCs), reparations programs, security and justice reforms, memorialization efforts,² amnesties, and

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1 Neil J Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. 2 (Washington D.C.: U.S. Institute of Peace Press, 1995).

2 International Center for Transitional Justice, *What Is Transitional Justice Factsheet*, (New York: International Center for Transitional Justice, 2009).

lustration policies.³ However, in theory and in practice, the different ideals and activities grouped under the broad heading of transitional justice both coexist and conflict.⁴ Conflicts are visible, perhaps most controversially, in the tension between punitive and non-punitive responses to crimes committed prior to transition; between ideals and practices of prosecuting and punishing individuals for their crimes, and ideals and practices related to truth and reconciliation efforts. Such conflicts also link to wider questions about who has the power to define what initiatives are given preference in specific transitional settings, how these choices are structured by Global North/Global South power dynamics (as reflected for instance in the meeting between internationalized institutions and local stakeholders), and the role that specific elites play in processes where internationalized transitional justice norms meet national and local power dynamics.

The article contributes a sociological and empirically informed analysis of the relations between specific punitive and non-punitive initiatives. Focusing on elite staff of international criminal courts and tribunals, and TRCs, the article investigates the social boundaries between the groups that drive these efforts and, through this work, affect the larger field of transitional justice. These elite are important partly because their choices give direction to international criminal justice and truth and reconciliation initiatives, and partly because the balance between them is emblematic for the social and professional boundaries that structure the wider field of transitional justice in which they serve as the main bearers and drivers of the circulation of knowledge.

The article proceeds in four sections. The first section discusses how the state-of-the-art in the field of transitional justice reflects both linkages and differentiation between scholarship on international criminal justice and truth and reconciliation. Furthermore, this section presents the theoretical framework, methods and data of the article itself. The second section analyzes the career patterns of elite international criminal court agents and the professional power balances within this internationalized field. Furthermore, this section investigates agents from these courts that also have expertise from non-punitive transitional justice initiatives. The third section analyzes the social and professional dynamics of TRCs. This section then discusses elites of truth and reconciliation that also have expertise from the international criminal justice. Finally, the conclusion highlights the linkages and differences between international criminal justice and truth and reconciliation elites and discusses how the findings contribute to understanding the relations between punitive and non-punitive initiatives, and how these relations affect the larger market of transitional justice.

3 Tricia D Olsen, Leigh A Payne, and Andrew G Reiter, 'Transitional Justice in the World, 1970-2007: Insights from a New Dataset,' *Journal of Peace Research* 47(6) (2010): 803-809.

4 Jakob Holtermann, 'The End of "The End of Impunity?" The International Criminal Court and the Challenge from Truth Commissions,' *Res Publica* 16(2) (2010): 209-225; Martha Minow, 'Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court,' *Harvard International Law Journal* 60 (2019): 1-45; Nigel Eltringham, '"We Are Not a Truth Commission": Fragmented Narratives and the Historical Record at the International Criminal Tribunal for Rwanda,' *Journal of Genocide Research* 11(1) (2009): 55-79; Peter J. Dixon, 'Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo,' *International Journal of Transitional Justice* 10(1) (2016): 88-107.

STATE-OF-THE-ART AND APPROACH OF THE ARTICLE

In reviewing the relevant state-of-the-art, this section focuses on how scholarship itself is, to a certain extent, characterized by a differentiation between perspectives that focus on international criminal justice specifically or on transitional justice initiatives more broadly. International criminal justice is both part of the transitional justice scholarship and has a distinct position within it.

In contrast to transitional justice, international criminal law has a long history as a scholarly endeavor. Scholars played a crucial role in the conception and development of this discipline as early as in the interwar period,⁵ and helped maintain the discipline during the Cold War,⁶ some becoming practitioners (often judges) in the new international criminal courts that were created in the mid-1990s.⁷ Transitional justice research, in contrast, has a shorter trajectory⁸ although some scholars have traced elements back to the interwar period and beyond.⁹ Linked and differentiated, scholarship on international criminal justice (as the essential punitive form of transitional justice) and on other forms of transitional justice has, to a certain extent, been organized around the creation of specialized journals such as the *International Criminal Law Review* (founded in 2001) and the *International Journal of Transitional Justice* (founded in 2007). This differentiation does not mean there were no overlaps between the two literatures. Scholars of international criminal justice, for instance, publish in transitional justice journals when their analyses are seen as relevant for broader audiences. Such overlaps can be seen in scholarly profiles that publish both on international criminal justice and on broader transitional justice problems. Kathryn Sikkink's work, for instance, paved the way for studies on the turn to criminal prosecution¹⁰ as well as on developments in transitional justice as a broader phenomenon.¹¹ Other names cited in both scholarships include Phil Clarke and Nicola Palmer who have both published on international criminal justice¹² as well as transitional justice.¹³

The differentiation between the two literatures is also visible in the balance between various disciplines within them. Whereas both literatures maintain a legalist

5 Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919-1950* (Oxford: Oxford University Press, 2014).

6 M. Cherif Bassiouni and Ved P. Nanda, *A Treatise on International Criminal Law*, 2 vols. (Springfield, IL.: Thomas, 1973).

7 Antonio Cassese et al., *International Criminal Law: Cases and Commentary* (Oxford: Oxford University Press, 2011).

8 Ruti G Teitel, 'Transitional Justice in a New Era,' *Fordham International Law Journal* 26 (2002): 893-906.

9 'Transitional Justice Genealogy,' *Harvard Human Rights Journal* 16 (2003): 69-94; Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge University Press, 2004).

10 Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*, Norton Series of World Politics (New York: W. W. Norton & Co., 2011).

11 Geoff Dancy et al., 'Behind Bars and Bargains: New Findings on Transitional Justice in Emerging Democracies,' *International Studies Quarterly* 63(1) (2019): 99-110.

12 Phil Clark, *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge: Cambridge University Press, 2018); Nicola Palmer, *Courts in Conflict: Interpreting the Layers of Justice in Post-Genocide Rwanda* (Oxford: Oxford University Press, 2015).

13 Phil Clark and Nicola Palmer, *Critical Perspectives in Transitional Justice* (Portland, OR: Intersentia 2012).

current¹⁴ (which has also been the subject of criticism),¹⁵ transitional justice as a research endeavor has a strong multidisciplinary character that is not as visible in the more narrow scholarship of international criminal justice, focused as it is on legal technologies, and often produced by scholars who also have a practical legal profile.¹⁶ Within the broader transitional justice literature, political scientists were the most active in terms of articles published, closely followed by law and sociology (in the years 2003-2008),¹⁷ leading to processes of colonization and counter-colonization between disciplines.¹⁸ In contrast, despite a recent turn towards more multidisciplinary research, international criminal justice scholarship has been dominated by legal perspectives.¹⁹ Another difference between the literatures is visible in attempts at building new theory. In the case of transitional justice broadly conceived, theories have attempted to conceptualize precisely what binds this space and its multidirectional activities together,²⁰ an effort sometimes related to particular normative perceptions of what transitional justice ought to be and do. Specifically with regard to TRCs, theory building has been developed around notions of restorative justice,²¹ partly to assess the practical accomplishments of these institutions on the basis of such theories. Theory-building in international criminal justice has been less concerned with defining the parameters of this space, and often relates to specific legal or proscriptive doctrines, for instance with respect to developing effective modes of

- 14 Leslie Vinjamuri and Jack Snyder, 'Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice,' *Annual Review of Political Science* 7 (2004): 345-362.
- 15 Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,' *Journal of Law and Society* 34(4) (2007): 411-440.
- 16 Mikkel Jarle Christensen, 'Preaching, Practicing and Publishing International Criminal Justice: Academic Expertise and the Development of an International Field of Law,' *International Criminal Law Review* (2016): 239-258; 'The Judiciary of International Criminal Law: Double Decline and Practical Turn,' *Journal of International Criminal Justice* 17 (2019): 537-555.
- 17 Laurel E Fletcher and Harvey M Weinstein, 'Writing Transitional Justice: An Empirical Evaluation of Transitional Justice Scholarship in Academic Journals,' *Journal of Human Rights Practice* 7(2) (2015): 177-198.
- 18 Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field',' *International Journal of Transitional Justice* 3(1) (2009): 5-27.
- 19 Sergey Vasiliev, 'On Trajectories and Destinations of International Criminal Law Scholarship,' *Leiden Journal of International Law* 28 (2015): 701-716.
- 20 Teresa Koloma Beck et al., eds., *Transitional Justice Theories* (London: Routledge, 2013); Claudio Corradetti, Nir Eisikovits, and Jack Volpe Rotondi, *Theorizing Transitional Justice* (Farnham: Ashgate Publishing, Ltd., 2015); Stephen Winter, 'Towards a Unified Theory of Transitional Justice,' *International Journal of Transitional Justice* 7(2) (2013): 224-244; Thomas Obel Hansen, 'Transitional Justice: Toward a Differentiated Theory,' *Oregon Review of International Law* 13 (2011): 1-46.
- 21 Jakob Holtermann, 'Outlining the Shadow of the Axe—on Restorative Justice and the Use of Trial and Punishment,' *An International Journal for Philosophy of Crime, Criminal Law and Punishment* 3(2) (2009): 187-207; Jonathan Allen, 'Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission,' *The University of Toronto Law Journal* 49 (1999): 315-353; John Braithwaite et al., *Anomie and Violence: Non-Truth and Reconciliation in Indonesian Peacebuilding* (Canberra: ANU Press, 2010); John Braithwaite, 'Setting Standards for Restorative Justice,' *British Journal of Criminology* 42(3) (2002): 563-577; Jennifer J Llewellyn and Robert Howse, 'Institutions for Restorative Justice: The South African Truth and Reconciliation Commission,' *The University of Toronto Law Journal* 49(3) (1999): 355-388.

liability,²² or legitimizing this field or its different institutions.²³ Despite the dominance of legal scholarship, however, a number of critical approaches have been developed in international criminal justice.²⁴ This research often frames its arguments in opposition to the legal orthodoxy by showing how alternative approaches can yield insights into the ideological frameworks of this field,²⁵ pointing, for instance, to criminal prosecutions also having strategic,²⁶ expressive,²⁷ or historical²⁸ functions, or to the role of emotions in this field more generally.²⁹

Sociological research has focused on both international criminal justice and transitional justice more broadly, including TRCs. In particular, and linked to a wider literature on transnational power elites,³⁰ sociological scholarship has studied professionals engaged in transitional justice. In international criminal justice specifically, sociological research has investigated social balances in and around the courts,³¹

- 22 Jens David Ohlin, 'Three Conceptual Problems with the Doctrine of Joint Criminal Enterprise,' *Journal of International Criminal Justice* 5(1) (2007): 69-90; Antonio Cassese, 'The Proper Limits of Individual Responsibility under the Doctrine of Joint Criminal Enterprise,' *ibid.*: 109-133; Kerstin Bree Carlson, 'Joint Criminal Enterprise: The ICTY's Contentious Addition to International Law,' in *ICTY: Towards a Fair Trial?*, ed. Thomas Krussmann (Morstel: Intersentia, 2008); Kai Ambos, 'Joint Criminal Enterprise and Command Responsibility,' *Journal of International Criminal Justice* 5(1) (2007): 159-183.
- 23 Kirsten J. Fisher, 'The Distinct Character of International Crime: Theorizing the Domain,' *Contemporary Political Theory* 8(1) (2009): 44-67; Ryan Liss, 'Crimes against the Sovereign Order: Rethinking International Criminal Justice,' *American Journal of International Law* 113(4) (2019): 727-771; Frederic Megret, 'In Defense of Hybridity: Towards a Representational Theory of International Criminal Justice,' *Cornell International Law Journal* 38(3) (2005): 725-751; Mark Osiel, 'The Banality of Good: Aligning Incentives against Mass Atrocity,' *Columbia Law Review* 105 (2005): 1751-1862.
- 24 Christine Schwöbel, ed. *Critical Approaches to International Criminal Law: An Introduction* (London: Routledge, 2014).
- 25 Darryl Robinson, 'Inescapable Dyads: Why the International Criminal Court Cannot Win,' 28(2) (2015): 323-347; Frédéric Mégret, 'The Anxieties of International Criminal Justice,' *Leiden Journal of International Law* 29(01) (2016): 197-221; Martti Koskeniemi, 'Between Impunity and Show Trials,' *Max Planck Yearbook of United Nations Law Online* 6(1) (2002): 1-35.
- 26 Ron Levi, Sara Dezalay, and Michael Amiraslani, 'Prosecutorial Strategies and Opening Statements: Justifying International Prosecutions from the International Military Tribunal at Nuremberg through to the International Criminal Court,' in *International Practices of Criminal Justice* eds. Mikkel Jarle Christensen and Ron Levi (London: Routledge, 2017): 58-73.
- 27 Barrie Sander, 'The Expressive Turn of International Criminal Justice: A Field in Search of Meaning,' *Leiden Journal of International Law* (2019): 851-872.
- 28 Richard Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge: Cambridge University Press, 2011); Barrie Sander, 'History on Trial: Historical Narrative Pluralism within and Beyond International Criminal Courts,' *International and Comparative Law Quarterly* 67(3) (2018): 547-576.
- 29 Kamari Maxine Clarke, *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback* (London: Duke University Press, 2019).
- 30 Niilo Kauppi and Mikael Rask Madsen, eds., *Transnational Power Elites, the New Professionals of Governance, Law and Security* (London: Routledge, 2013).
- 31 John Hagan, Ron Levi, and Gabrielle Ferrales, 'Swaying the Hand of Justice: The Internal and External Dynamics of Regime Change at the International Criminal Tribunal for the Former Yugoslavia,' *Law & Social Inquiry* 31(3) (2006): 585-616; John Hagan, *Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal* (Chicago: University of Chicago Press, 2003); Nigel Eltringham, 'Illuminating the Broader Context': Anthropological and Historical Knowledge at the International Criminal Tribunal for Rwanda,' *Journal of the Royal Anthropological Institute* 19(2) (2013): 338-355; Gerhard Anders, 'Contesting Expertise: Anthropologists at the Special Court for Sierra Leone,' *Journal of the Royal Anthropological Institute* 20(3) (2014): 426-444.

also analyzing the role of human rights NGOs in this field.³² Focusing on transitional justice professionals more broadly, sociological perspectives have highlighted (and problematized) the role of professional entrepreneurs and how their victim-producing practices were linked to patterns of colonization.³³ Related perspectives have pointed out how transnational professional networks (tied, for instance, to the International Center for Transitional Justice; ICTJ) operating across Global North/Global South divides helped structure work patterns, forms of organization and outcomes in this social space.³⁴ While these studies have contributed important findings on the social structure of transitional justice, elites of this space remain understudied³⁵ and previous studies have not investigated the professional boundaries that characterize relations between punitive and non-punitive initiatives. These relations are important because they reflect wider socio-professional power dynamics that they themselves reproduce and/or restructure. As such, these relations help shape decision-making and developments in the market of transitional justice.

To contribute an empirically informed analysis of the professional boundary between international criminal courts and to truth and reconciliation efforts, this article is inspired by the sociology of Pierre Bourdieu.³⁶ His structural sociology, in particular the concept of a field, has previously been deployed by sociological approaches to international criminal justice³⁷ as well as to transitional justice more broadly.³⁸ The present article deploys the concept of the *field* as a distinct social space characterized by the objective relations between social positions within it.³⁹ In addition, the article uses the concept of *capital* to investigate the embodied experience and expertise of social agents.⁴⁰ Partly reproduced from the social standing of family and parents, capital is accumulated through schooling, education and professional trajectory. In the present article the focus is on the accumulation of professional capital, typically built in proximity to a state field of power and its educational and bureaucratic system. Structured by such systems and national fields, the capital of individual agents structures access to dominant positions (including in the international) and, through this access, the ability to make decisions that affect others, including defining and redefining, importing and exporting ideas and practices. In this context, international fields often have characteristics that are different from national fields, and have been

32 Kjersti Lohne, *Advocates of Humanity: Human Rights Ngos and International Criminal Justice* (Oxford: Oxford University Press, 2019).

33 Tshepo Madlingozi, 'On Transitional Justice Entrepreneurs and the Production of Victims,' *Journal of Human Rights Practice* 2(2) (2010): 208–228.

34 Sandrine Lefranc and Frédéric Vairel, 'The Emergence of Transitional Justice as a Professional International Practice,' in *Dealing with Wars and Dictatorships* (Location: Springer, 2014): 235–252.

35 Pádraig McAuliffe, 'The Problem of Elites,' in *Transitional and Transformative Justice* (Location: Routledge, 2019): 77–99.

36 Pierre Bourdieu and Loïc Wacquant, *An Invitation to Reflexive Sociology* (Chicago, IL: University of Chicago Press, 1992).

37 John Hagan and Ron Levi, 'Crimes of War and the Force of Law,' *Social Forces* 83(4) (2005): 1499–1534; Peter Dixon and Chris Tenove, 'International Criminal Justice as a Transnational Field: Rules, Authority and Victims,' *International Journal of Transitional Justice* 7(3) (2013): 393–412; Frédéric Mégret, 'International Criminal Justice as a Juridical Field,' *Champ pénal/ Penal field* 13 (2016).

38 Bell, 'Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'.'

39 Bourdieu and Wacquant, *supra* n 37 at 94–101.

40 *Ibid.*, 98–100.

conceptualized as ‘weak fields’ due to their interstitial character, low degrees of autonomy and reliance on states.⁴¹ The uneven division of power between national and international fields, and between different international fields as such, invites reflection on how to study the relation between them.

With regard to relations between fields, Bourdieu focused mainly on what he called structural homologies⁴² and less on the boundaries between them, something that has been further developed by later scholars.⁴³ Bourdieu did, however, test concepts that can be used to study such border regions. His general sociology makes reference to the borders between fields being characterized by forests of declining (and, presumably, increasing) density.⁴⁴ Following this spatial metaphor, the relations between fields can be studied by analyzing particular groups or types of professional agents as their density declines or increases at the borderlands between fields. At this socio-professional line of demarcation, it also becomes clear what distinguishes different fields in terms of professional capital invested in them and the power dynamics that set them apart. In addition to the concept of the field, the article will use the broader concept of social space to draw attention to more loosely organized patterns of practice and relations that do not themselves compose a field of practice (even though they may represent a subsection of a larger field). Following this logic (and previous literature), international criminal justice is referred to as a field, while truth and reconciliation commissions are seen as specific types of sites or social spaces tied to particular national fields of power. Both the field of international criminal law and the national fields of power in which truth and reconciliation mechanisms were built, however, are linked to the larger space of transitional justice that operates as a market of coexisting and competing initiatives that have their own dynamics of import and export. Import and export refers here to the patterns of circulation of transitional justice initiatives formatted by the positionality of the elites studied in the article. Previous scholarship has highlighted how transitional justice norms and technologies were developed around NGOs and professional networks based in the Global North and were then exported to transitional countries,⁴⁵ something scholars have also noted in the context of rule of law initiatives.⁴⁶ Related analyses have shown how a divide exists between norms of justice crafted in internationalized criminal courts and how they are perceived and received by local constituents.⁴⁷ Whereas export and import are often intertwined, depending on the positionality of the agents involved,

41 Antoine Vauchez, ‘Interstitial Power in Fields of Limited Statehood: Introducing a ‘Weak Field’ Approach to the Study of Transnational Settings,’ *International Political Sociology* 5(3) (2011): 340–345; Sara Dezalay, ‘Weakness as Routine in the Operations of the International Criminal Court,’ *International Criminal Law Review* 17(2) (2017): 281–301.

42 Pierre Bourdieu, *La Noblesse D’état, Le Sens Commun* (Paris, France: Éditions de Minuit, 1989), 384–85.

43 Gil Eyal, ‘Spaces between Fields,’ *Bourdieu and historical analysis* (2013); Sida Liu, ‘Between Social Spaces,’ *European Journal of Social Theory* (2020): 158–182.

44 Pierre Bourdieu, *Sociologie Générale*, ed. Patrick Champagne, et al., (Paris: Raisons d’agir : Seuil, 2015), 487.

45 Lefranc and Vairel, ‘The Emergence of Transitional Justice as a Professional International Practice.’; Madlingozi, ‘On Transitional Justice Entrepreneurs and the Production of Victims.’

46 Yves Dezalay and Bryant Garth, ‘Law, Lawyers and Social Capital: ‘Rule of Law’ Versus Relational Capitalism,’ *Social & Legal Studies* 6(1) (1997): 109–141.

47 Alexander Hinton, *The Justice Facade: Trials of Transition in Cambodia* (Oxford: Oxford University Press, 2018).

the two elite groups studied here were generally (although not exclusively) on different sides of the circulation of ideas and practices. Elites of the international criminal courts often attempted to export ideas generated in these institutions, whereas the elite of truth and reconciliation generally imported ideas of restorative justice, but adapted it to local conditions shaped by the proximity to the state.

The framework built by Bourdieu has been criticized for not being able to capture important gender dynamics, despite part of his work being devoted to male domination.⁴⁸ Other scholars have built on the insights of Bourdieu to produce reflexive perspectives on gender⁴⁹ as well as on the role of race as a form of domination.⁵⁰ Both gender and race have been critically analyzed in the space of transitional justice,⁵¹ although not necessarily building on Bourdieu. Whereas not directly the object of study of this article, the primary development of the studied elites takes place at the national level where class, gender and race are, to varying degrees, bound to be important for who makes it into specific positions (and also likely to affect who makes it into international positions). The deeper national power dynamics that structure the accumulation of professional capital, and ultimately of elite status, will not be studied in detail in the present article that takes as its object the larger space of transitional justice that takes as its object the larger space of transitional justice. The article does provide numbers on the gender balance of the studied elites, but concentrates its analysis on Global North/Global South dynamics. While not particularly elegant, the North/South concept is used to tease out differently situated elites whose position in the market of transitional justice is structured by global power dynamics and linked to old patterns of imperialism and hegemony.⁵²

To study the social boundaries between the field of international criminal justice and differently situated social spaces of truth and reconciliation, the article builds on biographical data of two groups of elite professionals involved in either international criminal courts or TRCs. The biographies of the international criminal law elite were created by collecting the names that appeared on all final judgments and appeals judgments in these institutions. The truth and reconciliation elite were sampled from lists of commissioners in these institutions. The product of this exercise was the creation of 579 similarly organized career biographies, 476 from the international

48 Pierre Bourdieu, *La Domination Masculine*, Collection Liber (Paris, France: Seuil, 1998).

49 Leslie McCall, 'Does Genderfit? Bourdieu, Feminism, and Conceptions of Social Order,' *Theory and society* 21(6) (1992): 837-867; Julie McLeod, 'Feminists Re-Reading Bourdieu: Old Debates and New Questions About Gender Habitus and Gender Change,' *Theory and research in education* 3(1) (2005): 11-30; Lois McNay, 'Gender, Habitus and the Field: Pierre Bourdieu and the Limits of Reflexivity,' *Theory, culture & society* 16(1) (1999): 95-117.

50 Derron Wallace, 'Reading 'Race'in Bourdieu? Examining Black Cultural Capital among Black Caribbean Youth in South London,' *Sociology* 51(5) (2017): 907-923; Mustafa Emirbayer and Matthew Desmond, 'Race and Reflexivity,' *Ethnic and Racial Studies* 35(4) (2012): 574-599.

51 Catherine O'Rourke, *Gender Politics in Transitional Justice* (London: Routledge, 2013); Susanne Buckley-Zistel and Magdalena Zolkos, 'Introduction: Gender in Transitional Justice,' in *Gender in Transitional Justice* (New York City: Springer, 2012): 1-33; Carola Lingaas, *The Concept of Race in International Criminal Law* (London: Routledge, 2019); Andrew Valls, 'Racial Justice as Transitional Justice,' *Polity* 36(1) (2003): 53-71.

52 Yves Dezalay and Bryant G. Garth, 'Hegemonic Battles, Professional Rivalries, and the International Division of Labor in the Market for the Import and Export of State-Governing Expertise,' *International Political Sociology* 5(3) (2011): 276-293.

criminal courts and 103 from TRCs. Individual biographies include data on the education and professional experience of these individuals (detailing their professional positions and time in these different positions). The biographical data on these two groups was built using publically available CVs and biographical notes accessed in February and March of 2020. The sampling strategy for the international criminal courts was a bit broader than that of TRCs and featured judges, prosecutors and defense counsel. All registrations of biographical data was cross-checked by at least two individuals (the researcher and a scientific assistant and/or a student assistant) and was validated using different sources. On the basis of this data, the article analyzes the patterns of expertise that structure the relations between professionals in the international criminal courts and TRCs, focusing on professionals with expertise from both punitive and non-punitive initiatives. Transitional justice expertise is defined here as experience with the core activities of this space (criminal prosecutions, truth commissions, reparations programs, security and justice reforms, memorialization efforts, amnesties and lustration policies).

From a larger set of 476 career biographies from the international criminal courts, 26 profiles with non-punitive expertise were identified based on their reported activity in other transitional justice processes. The sampling strategy was to select profiles who had held full-time employment or other clearly defined activities focused on non-punitive transitional justice activities commonly included under this term. Rule-of-law missions were included because a large part of the sample had experience from initiatives such as EULEX in Kosovo in which they worked, for instance, with justice and security sector reform. This points to a relation between the market of transitional justice and that of rule-of-law, the latter becoming naturalized as a global good in the 1990s.⁵³ The sampling from truth and reconciliation commissions deployed a double strategy. First of all, career profiles of commissioners from 18 TRCs (Chile, Ecuador, El Salvador, The Democratic Republic of Congo, Gambia, Ghana, Kenya, Liberia, Mauritius, Morocco, Nigeria, Panama, Paraguay, Peru, Rwanda, Sierra Leone, South Africa and Togo) were investigated. The total of 103 agents were investigated for international criminal justice expertise. This yielded only 5 elite professionals with direct expertise from punitive transitional justice. As a result of this small number, and to be able to dive deeper into the professional balances of TRCs, 52 career biographies from six such committees set up in African countries (South Africa, Rwanda, Sierra Leone, Nigeria, Kenya, and the Gambia) were investigated in more detail. This part of the investigation was limited to African commissions to enable analysis of the regional dynamics on a continent that was one of the innovators with regard to this particular form of non-punitive transitional justice initiatives. The material was analyzed to identify both overlaps and differences between the two samples, visible at the socio-professional border between them. As such, the focus of the analysis is how these two groups are structurally linked through their accumulated capital and expertise, and to which extent they are differentiated in terms of their professional makeup.

53 Martin Krygier, 'The Rule of Law: Pasts, Presents, and Two Possible Futures,' *Annual Review of Law and Social Science* 12 (2016): 199-229.

The two samples exhibit temporal developments. Developments in the samples are likely linked to the concept of transitional justice having had practical and political impact since the mid-1990s. In 2004, for instance, transitional justice was included in the institutional vernacular of the United Nations (UN).⁵⁴ About a decade later, the European Union (EU) and African Union (AU) adopted policies with regard to transitional justice.⁵⁵ The expansion and institutionalization of transitional justice initiatives has produced new professional opportunities, something also seen in the two samples in which expertise accumulated across both the international criminal courts and TRCs became more prevalent over time. In addition to these developments, and possibly linked to increased criticism of their activities, internationalized criminal courts have increasingly retooled to also focus on activities outside of their largely punitive mandate. This has led to some of the broader goals of transitional justice being folded into the practices of these institutions. For instance, the International Criminal Court (ICC) and other courts have built reparations regimes⁵⁶ and co-constructed memorialization through their legacy projects.⁵⁷ These practices were integrated into the functioning of the courts, but were often developed by legal practitioners whose careers were tied to these institutions. The social composition of international criminal courts does not seem, at least not yet, to have been structurally affected by such developments. The professional balance that formats the international criminal courts is still linked to the groups analyzed below.

THE ELITE OF INTERNATIONAL CRIMINAL COURTS

The development of the field of international criminal justice was closely tied to the creation of international criminal courts.⁵⁸ This development began the creation of the *ad hoc* tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR) and the creation of the permanent ICC. In addition, a range of different internationalized and hybrid criminal tribunals have been established, including the Extraordinary Chambers in the Courts of Cambodia (ECCC), The Special Court for Sierra Leone (SCSL) and the Special Tribunal for Lebanon (STL). These institutions were staffed with (originally nationally trained) professionals. The main types of professional capital embedded in this staff, and the sampled elite, came from experience in legal

54 United Nations Secretary General UN, *Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*, (New York City: 2004).

55 The European External Action Service (EEAS), *The EU's Policy Framework on Support to Transitional Justice*, (Location: Publisher, 2015); African Union, *Transitional Justice Policy*, (Brussels: 2019).

56 Luke Moffett, 'Reparative Complementarity: Ensuring an Effective Remedy for Victims in the Reparation Regime of the International Criminal Court,' *The International Journal of Human Rights* 17(3) (2013): 368-390; Dixon, 'Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo,'; Sperfeldt Christoph, 'Collective Reparations at the Extraordinary Chambers in the Courts of Cambodia,' *International Criminal Law Review* 12(3) (2012): 457-490.

57 Sara Kendall and Sarah Nouwen, 'Speaking of Legacy: Toward an Ethos of Modesty at the International Criminal Tribunal for Rwanda,' *American Journal of International Law* 110(2) (2016): 212-232; Charles Chernor Jalloh, *The Sierra Leone Special Court and Its Legacy, the Impact for Africa and International Criminal Law* (Cambridge: Cambridge University Press, 2013); Frédéric Mégret, 'The Legacy of the ICTY as Seen through Some of Its Actors and Observers,' *Goettingen Journal of International Law* 3 (2011): 1011-1052; Viviane E Dittrich, 'The Legacy of the ECCC,' in *The Extraordinary Chambers in the Courts of Cambodia* (The Hague: T.M.C. Asser Press, (2016): 123-156.

58 Hagan and Levi, *supra* 38.

practice, legal academia, diplomacy or activism (typically from NGOs).⁵⁹ From legal practice, many professionals came from the national system where they had often worked with complex forms of crime. From legal academia, agents were likely to have worked either with criminal law, with international forms of criminal law or public international law, or human rights and humanitarian law. From diplomacy, professionals had typically been engaged in negotiations, for instance around the Rome Statute, or in other international or regional contexts relating to criminal law frameworks. The final group, advocacy, was fairly small, at least in the early years of tribunal building, and linked to large international NGOs who reoriented their practices toward supporting prosecutions.⁶⁰ Individual agents, in particular the elites studied for this article, often had expertise from more than one of these typical career paths, having for instance, worked as university professors also engaged in diplomacy around international criminal law. These types of background can still be found in the field of international criminal justice and have been entrenched as the field was able to reproduce itself, for instance as hybrid criminal courts have made a comeback,⁶¹ creating new professional positions.

The socio-professional composition of international criminal court elites format what knowledge is in play in these institutions as well as the power relations between the groups that compete to define its concepts and practices, including their borders to other initiatives. Importantly for understanding their position in the larger space of transitional justice, elite agents working in international criminal courts often become internationals in the sense that their careers become oriented primarily towards positions in these or similar institutions.⁶² This characteristic was structured partly by the perceived prestige of some of these positions and partly by the difficulty of returning to national jurisdictions after having invested years in the international. Some of these internationalized elite agents working in the courts, most of whom were legally trained, also worked with other, non-punitive types of transitional justice initiatives. In total, 26 career profiles sampled from elite staff of the international criminal court had expertise from such transitional justice activities. Since the total sampling pool included 476 professionals, the final sample of 26 agents points to a relatively high degree of separation between the punitively oriented field of international criminal justice and other non-punitive social spaces of transitional justice. Among the international criminal court profiles that had transitional justice expertise, 18 were male and 8 were female. Further, 15 were from the Global North and 11 were from the Global South.

59 Mikkel Jarle Christensen, 'From Symbolic Surge to Closing Courts: The Transformation of International Criminal Justice and Its Professional Practices,' *International Journal of Law, Crime and Justice* 43(4) (2015): 609-625.

60 Karen Engle, 'Anti-Impunity and the Turn to Criminal Law in Human Rights,' *Cornell L. Rev.* 100 (2014): 1069-1128.

61 Mark Kersten, 'As the Pendulum Swings: The Revival of the Hybrid Tribunal,' in *International Practices of Criminal Justice: Social and Legal Perspectives*, eds. Mikkel Jarle Christensen and Ron Levi (London: Routledge, 2018): 251-273.

62 Mikkel Jarle Christensen, 'The Creation of an Ad Hoc Elite: And the Value of International Criminal Law Expertise on a Global Market,' in *The Oxford Handbook of International Criminal Law*, ed. Kevin Jon Heller, et al. (Oxford: Oxford University Press, 2020): 89-105.

Generally, the non-criminal law expertise of this sample was diverse, a result also of the article including rule of law missions to investigate the borderlands between punitive and non-punitive initiatives. Examples of career elite trajectories in the international criminal courts with transitional justice expertise include Fatouma Dembele Diarra, who was appointed to the ICC bench in 2003. Receiving her legal training in Mali, Senegal and France, Diarra had a long career in her native Mali where she had also worked as legal adviser to the Transitional Committee for the Salvation of the People in the early 1990s. A number of judges in the international criminal courts had experience from the large rule-of-law missions in Kosovo, where they often worked both with punitive and non-punitive initiatives. This was the case for Claudia Fenz, Catherine Marchi-Uhel, and Olivier Beauvallet in the ECCC, Renate Winter in the SCSL, Vagn Joensen at the ICTR, and Anna Bednarek at the STL. In these positions, professionals typically worked, for instance, on mentoring and supporting local judges and prosecutors. Examples of broader non-punitive expertise include Claude Jorda, judge at the ICTY since 1994, who had trained judiciaries in a range of countries in Latin America and Africa in transitional periods. Examples of agents who worked on law reform as their home countries were going through transitions include Emmanuel Ayoola, who served as Chairman of the Working Committee on Law Revision of the Laws of the Federation of Nigeria 2000-2003.

The non-punitive transitional justice expertise of legal practitioners in the courts demonstrates some of the relations between the field of international criminal justice and the larger social space of transitional justice. Relations between the two were clustered mainly around large international rule-of-law missions, another group having worked with training or as advisors of criminal law professionals in countries in transition. Working in transitional contexts on justice and security issues, these elites were the bearers of internationalized norms and vocabularies of state-building that were, typically, exported from states in the North to states in the South. International criminal justice professionals who had worked with transitional justice typically had expertise from positions where they served as exporters of internationalized norms and practices into countries transitioning from conflict. The sample also includes a smaller number of legal professionals on the importing end of such circulations, working in the Global South, typically in their native country. Here, agents worked with transitions that were subject to international attention and sometimes funding linked to the circulation of transitional and rule-of-law initiatives. Their position on the importing side of such initiatives, adapting them to the national field of power, was very different than that of their colleagues from the North.

The double directional investments in transitional justice from exporters and importers, internationals working in transitioning countries and agents from these countries, enabled both groups to internationalize their professional profiles. For importers of rule-of-law, typically from economies trying to integrate into the world economy,⁶³ investing in transitional justice as a pattern of best practices allowed local elites to relate their goals to larger internationalized ideals. At times, this also allowed them to internationalize their profiles and move on to positions outside of the country in transition (or formerly in transition). For exporters, such investments allowed

63 Dezalay and Garth, *supra* n 47; Dezalay and Garth, *supra* n 53.

for the diversification of professional capital and the building of expertise linked to the promotion of particular ideas and practices on the market of transitional justice and state-building. The convergence between these groups helped shape the contours of this market in which differently situated elites had distinct material interests in the import and export of transitional justice norms and practices.

Besides particular professional balances between different types of elite professionals, and a difference between the positionality of exporters and importers of transitional justice activities, there are signs of temporal development in the sample of career profiles from the international criminal courts. Professionals in the older international criminal courts have less transitional justice expertise than those employed in institutions that were created later. These dynamics are likely related to the concurrent emergence and expansion of the field of international criminal justice and the larger space of transitional justice in which professional opportunities have increased. For instance, only one judge from the International Criminal Tribunal for the former Yugoslavia (ICTY) is represented in the sample. The 8 professionals with transitional justice in its sister tribunal for Rwanda (ICTR) does seem to contradict this trend, but the expertise of these professionals had a very particular regional dimension. All but one of these professionals were from African countries and had the bulk of their transitional justice expertise from the continent. Outside of these regional dynamics, newer courts had a higher proportion of agents with transitional justice expertise, especially considering their smaller size and shorter timeframe of existence when compared to the *ad hoc* tribunals. The ICC itself had 7 such professionals, the ECCC 6, the Special Court for Sierra Leone 3, and the Special Tribunal for Lebanon 1. In the ICC, most expertise with transitional justice was developed in the 2000s and later.

The transitional justice expertise embodied in elite professionals working in the international criminal courts helps situate this field of practice vis-à-vis other social spaces and fields of practice. As a collective, the trajectory of this group exhibits an increasing accumulation of transitional justice expertise, although this was still embedded in a relatively small group, and was developed in concert with other types of capital. The relations between the field of international criminal justice and other transitional justice initiatives remain, as a sociological phenomenon, marginal. As a result, the ideas and practices developed in this field (and attributed with value and supported by resources in it) are linked to a very particular and insular, at least in relation to transitional justice more broadly, social structure dominated by international lawyers and criminal law ideas about the value of punitive justice outside of the state.⁶⁴ For most of these elite agents, the accumulation of broader transitional justice expertise was tied to positions as exporters of internationalized norms and practices, both punitive and non-punitive. Working with such legal exports (including non-punitive ideas and practices) allowed this elite to accumulate capital that was attuned to the market dynamics of international criminal justice as developed around the international criminal courts as the primary interpreters and suppliers of criminal justice following mass atrocities.

64 Kjersti Lohne, 'Penal Humanitarianism Beyond the Nation State: An Analysis of International Criminal Justice,' *Theoretical Criminology* (2018): 145-162.

ELITES FROM TRUTH AND RECONCILIATION COMMISSIONS

Behind the creation of TRCs is the idea that their non-punitive practices are important in processes towards sustainable peace.⁶⁵ The TRCs were distinct from the international criminal courts, and focused their institutional set-up and competencies on restorative justice activities rather than prosecutions. These commissions were typically set up as temporary institutions with mandates designed particularly for the situation in question. As such, they were situated in the national field of power that created them. In addition, since TRCs work with a non-punitive mandate, the professionals working with such initiatives generally came from a wider array of professional positions, with legal capital playing a smaller but still significant role. The close relation to the state is also reflected in the balance between Global North and Global South professionals in TRCs. In the sample of 103 (excluding agents where nationality could not be obtained, $n=22$), 78 were from the South and 3 were from the North, and 63 were male and 31 female. Many of the professionals working in the commissions had accumulated wide expertise, both before and after serving in the TRCs. These commissions often brought together clerics, legal professionals, politicians, academics and activists. For instance, the Sierra Leone TRC included Bishop Joseph Christian Humper (chair) and human rights activist Yasmin Jusu Sheriff (vice chair). Internationals included Louise Sooka, who had also served on the South African TRC, and international academic William Schabas. The selection coordinator was former diplomat and government minister, Oluyemi Adeniji.

Some TRCs featured only national citizens as commissioners. The Gambian TRC, for instance, only accepted national citizens 'of high moral character and integrity who have distinguished themselves in their respective fields of vocation or communities'.⁶⁶ In contrast, the mandate of the Kenyan TRC designated that three of the nine members should be non-nationals (one of which should be of opposite gender) and that these members should be selected by the AU Panel of Eminent African Personalities.⁶⁷ Despite their differences in terms of mandate and the context in which they were set up, the professional structures written into many TRCs had similar characteristics. Agents included in these institutions had often built relevant professional, political or religious expertise in the country of the commission, as well as, very often, in more transnational settings. The South African TRC was emblematic for the types of capital activated in the efforts to establish truth and reconciliation. The commission was chaired by Desmond Tutu, archbishop of Cape Town, and included other members with religious backgrounds such as Bongani Finca and Khoza Elliot Mbuyisa Mgojo. In addition to these clerics, politicians from different parties were represented, as were members of the judiciary such as Sisi Khampepe, who is currently on the Constitutional Court of South Africa. The profiles of some agents cut across these different types of expertise. Alex Boraine, for instance, had served as a Methodist minister, as a politician for the Progressive Party, and had been active in the resistance against Apartheid from the NGO sector. Boraine would

65 Geoff Dancy, 'Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace,' *International Organization* 72(2) (2018): 387-421.

66 Republic of the Gambia, 'Truth, Reconciliation and Reparations Commissions Act,' National Assembly (2017), section 4(1).

67 Parliament of Kenya *The Truth, Justice and Reconciliation Commission Bill* 2008, para 6.10.

later co-found the ICTJ, which was previously mentioned as an important NGO in the field of transitional justice. The appetite for expertise generated in the TRCs relates to the expansion of this market, also visible in other profiles. Several commission members were able to invest the expertise and prestige related to specific TRC experience towards new professional paths in transitional justice. Yasmin Louise Sooka, also on the South African TRC, for instance, would help pen the African Union's policy on transitional justice, in addition to serving in the Sierra Leone TRC and with similar initiatives in Sri Lanka, the Central African Republic, Afghanistan, Burundi, Kenya, Nepal, and Uganda. Based on this work, Sooka built an international profile. In 2015, Sooka was appointed inaugural Soros Chair at the School of Public Policy in Budapest.

Commissioners had often accumulated a mix of nationally recognized professional and political capital as well as transnational expertise reflecting elite status in national fields. Returning to South Africa, Kempepe, for instance, had a degree from Harvard, and Boraine was a Rhodes Scholar and had a degree from Oxford. Similar patterns of parallel national and transnational capital accumulation can be seen in other TRCs, including in countries that limited selection to national citizens. The Chairperson for the Gambian TRC, Lamin J. Sise, for instance, had an LL.B from Cambridge and several degrees, including a PhD, from Johns Hopkins in the United States. As evidenced in such trajectories, TRC elites built on transnational accumulations of professional expertise as part of their creation of a high moral character, and had distinguished themselves in their communities or fields of vocation, including through elite schooling in the Global North. This schooling tied them to wider elites active in the country of the TRCs as well as in the international institutions and organizations. Such transnational links were clear in educational backgrounds for legally trained professionals as well as for members of the clergy that also often had schooling or professional expertise from other countries than the one of the TRC. Through their schooling and professional trajectory, elite agents involved in truth and reconciliation initiatives had speculated in transnational capital accumulation before being appointed to these commissions and often continued to invest in the growing field of transitional justice as it developed to offer new professional opportunities, some of which were co-produced by these agents themselves.

In this space, and whereas international NGOs such as the ICTJ undoubtedly play an important role in the international circulation of ideas and practices in the larger market of transitional justice, and with regard to truth and reconciliation efforts specifically, the local setting around the TRCs were important for the adaptation of internationalized ideals to local power dynamics. The very composition of the TRCs reflected the national field of power and, to a large extent, reproduced its balances between different social and political forces. Driven by these professionals, TRCs in individual countries often built on the transnational diffusions of ideas and professionals,⁶⁸ the import of which was closely attuned to the national field of power. The close relation to the state, and to the government that oversaw transition, was evident, for instance, in criticism of the South African TRC for being

68 Lefranc and Vairel *supra* n 46; Hun Joon Kim, 'Why Do States Adopt Truth Commissions after Transition?', *Social Science Quarterly* 100(5) (2019): 1485-1502.

counter-productive due to its weak institutional position. In the eyes of critics, this TRC helped symbolically legitimize new governance structures that did not necessarily implement its recommendations,⁶⁹ something that has been a more general point of criticism levied against such institutions. This dependence on the state was written into the elites appointed to the TRCs.

As a parallel to international criminal justice agents' expertise in transitional justice, but coming from the other side of the socio-professional border, the elite of truth and reconciliation had weak links to international criminal justice and to international criminal courts in particular. These links, evidenced in 5 career profiles, two of which were internationals, were infrequent. This corroborates the pattern, found among international criminal lawyers, that these two spaces are differentiated, with the border between them being sparsely populated. In the TRC sample, the most clear linkages to international criminal justice were tied to academic professionals from the Global North who were called in to serve as foreign experts. For instance, a prominent scholar and practicing lawyer in the field of international criminal law, William Schabas, served on the Sierra Leone commission, on which he had also published.⁷⁰ Another academic, Ronald Slye, exemplifies the mix of capital accumulated by some academics. He has been active in the field of international criminal law and transitional justice as an academic as well as a practitioner. Slye served in the Kenyan Truth, Justice and Reconciliation Commission established in 2008 and has since consulted for the Documentation Centre of Cambodia (DC-CAM).

As academics with considerable practical expertise, these scholars helped link the commissions to the larger field of transitional justice, also offering expertise on international criminal justice, by trading on a particular double role as an academic and practitioner that was reinforced by each move between such positions. For the Global South members of TRCs, international criminal law expertise was generally accumulated after having served on these commissions. Hlengiwe Mkhize, who served on the South African TRC, was elected as vice-president of the Assembly of State Parties (ASP) in 2005⁷¹ and Margaret Shava, formerly of the Kenyan TRC, has served on the Committee on Budget and Finance of the ICC since 2017. The links from non-punitive to punitive transitional justice were weak and characterized by reliance on Global North professionals, even in a space dominated by Global South professionals.

The political context of TRCs was written into their mandates and the selection of commissioners, often reflecting peace negotiations and their attempt at balancing different political and societal fractions. It was also visible in the actual accumulated expertise of TRC elites. The core capital of these elites was related to their educational background and professional proximity to the state and other societal

69 Richard A Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001).

70 William Schabas, 'A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone,' *Criminal Law Forum* 15(1-2) (2004): 3-54; William A Schabas, 'The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone,' *Human Rights Quarterly* (2003): 1035-1066.

71 ICC-ASP-20051128-118 The International Criminal Court Assembly of State Parties, 'Opening of the Fourth Session of the Assembly of States Parties to the Rome Statute of the ICC,' news release, 2005.

institutions, including the church, supplemented with more transnational capital, whether accumulated by national citizens or professionals brought into the national context. As sites in which the import of ideas and practices of transitional justice were negotiated, the TRCs were focused inward on national truth and reconciliation, as well as outward to demonstrate successful transitional justice to international stakeholders. This bi-directional strategy, balancing internal and external demands, was mirrored into the elite status of TRC agents. This status was built precisely around transnational constellations of expertise that catered to both national and international stakeholders, something that allowed these professionals to further accumulate capital related to the creation and development of non-punitive transitional justice mechanisms. This accumulation was related to the ability of this elite to carefully manage and balance national power dynamics and international expectations, making sure that the latter were acknowledged but did not threaten the former. Truth and reconciliation, at least seen from the commissions, was an importers market. Operating in this space between international norms, reproduced for instance by international NGOs, and translating them into the context of national power dynamics, these agents were often able to draw professional dividends from their TRC experience in national and international settings, moving in some cases into the export of such norms and practices. For most members of this elite, accumulated TRC expertise did coexist with activities and professional power built in relation to punitive initiatives. On the non-punitive side of the border to international criminal law, there was a low density of professionals that had expertise with both TRCs and international prosecution and adjudication.

CONCLUSION

The borderlands between international criminal courts and TRCs constitutes as a social line of demarcation where the social topographies of two spaces discreetly meet. This blurry, yet clearly identifiable, line enables an analysis of the similarities and differences between these punitive and non-punitive professionals, in this case elites. Overlaps between the two elites were marginal, and professionals in the international criminal courts and TRCs had accumulated distinct balances of professional capital, with few having substantial, direct expertise from both types of transitional justice. The two elites did, however, share the fact that their transitional justice expertise was formatted by a Global North/Global South divides that positioned them on different sides of the import and export of punitive and non-punitive ideas. With regard to international criminal law elites, the sample of this group that had worked with non-punitive initiatives had mainly done so by exporting knowledge and technologies from the North to the South. Only a smaller group was part of importing systems. In the case of TRC elites, importers were dominant. The role as importers was tied to the proximity of this elite to the state that was transitioning from conflict. Whereas national fields of power formatted the construction of this elite, expertise from TRCs did allow some importing elites to accumulate international expertise and invest it on the market of transitional justice, although rarely in the international criminal courts. Over time, despite an increased density of international criminal court professionals with transitional justice expertise and the expansion of both punitive and non-punitive initiatives, the border between international criminal law and TRC

elites has been reproduced, and the borderlands between them has remained sparsely populated. The socio-professional constitution and power dynamics of international criminal justice were distinct from those of truth and reconciliation.

With regard to international criminal justice, the creation and solidification of a field of practice and a bureaucracy in and around the international criminal courts, coexisted with a strong international normative current built around the export of ideas and practices. This field was developed around and legitimized itself through the idea of internationalizing criminal justice to ensure punitive justice and putting an end to impunity. This normative endeavour was written into the trajectory of its elite, including agents who also worked with transitional justice (including rule-of-law) either as exporters or, in fewer cases, as importers. The dominance of this punitive elite working primarily as exporters in the market led to a quasi-monopoly that also affected the development and staffing of new initiatives. Movements from the other side of the border, from non-punitive to punitive expertise, were also rare and only relevant when coupled with other capital, despite the recalibration of the international courts to work also with initiatives outside their core mandates. In the TRCs, subject to national political power structures, a professional balance between religion, politics and law was reproduced across different social and political contexts. In these importing spaces, the selection of best-practices and the development of new initiatives were tied to elites close to the state, as well as to transnational expertise and networks. By bringing in, in certain cases, internationalized professionals, the transnational expertise of TRC elites helped legitimize truth and reconciliation as an endeavor linked to international ideals, but in a way that mirrored and did not disturb the national field of power written into the social fabric of this elite.

Theoretically, international criminal justice and truth and reconciliation are often conceptualized as subspecies of transitional justice, as part of the same toolbox. The fact that the social and professional relations between these initiatives are so sparse opens new questions as to what defines transitional justice and the different initiatives that are part of this market. The social forces behind the deployment and development of international criminal law and truth and reconciliation as distinct transitional justice practices pulled them in different directions. Not only were they organized around competing punitive and non-punitive goals, these goals were embodied in elites that had distinct positions on the transitional justice market where they were either (primarily) exporters of international norms and practices or selective importers working in close proximity to the state in which they helped mediate and adapt international ideals to the local context. These import/export dynamics are crucial for understanding the characteristics of professional elites working in these spaces and for understanding the reproduction of the social line of demarcation between punitive and non-punitive transitional justice. Like mirror images of each other, punitive efforts were tied to exporting internationalized elites, whereas non-punitive initiatives, tied to an importer's market, were defined by their proximity to the state. This result invites further reflections on the balance between the international and the state in transitional justice. With regard to punitive initiatives, the exporting role of international criminal courts may appear to give them a strong position, but it also pits their elites against those of the state. With regard to non-punitive initiatives, the strong position of the state allows for the targeted import of

ideas and practices, but also maintains a division between national and international ideals and forms of expertise. Such patterns of differentiation are likely to structure convergences and conflicts between transitional justice goals outside of international criminal justice and truth and reconciliation as they unfold in relation to distinct professional practices. Understanding the social fabric that drives the import/export of punitive/non-punitive ideas and practices and the borderlines between them can help lay bare how the wider market of transitional justice is structured and develops.