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The Justice Archive:

Transitional Justice and Digital Memory

Iavor Rangelov and Ruti Teitel[*]

Abstract

This article introduces the *justice archive* as a concept and set of practices emerging from recent developments in transitional justice, memory, and digital technology. Drawing on evidence from the Americas and the Balkans, it examines digital archiving and memory activism and considers the role of international law and regulation.

Introduction

The role of archives in transitional justice is attracting growing attention from scholars and practitioners. Recent studies investigate the creation and use of archives in a host of transitional justice processes and contexts.[1] Scholars have explored the potential of archival materials resulting from specific processes, such as truth commissions, to uncover and highlight

[*] Dr Iavor Rangelov is Research Fellow at LSE IDEAS, London School of Economics and Political Science, and Co-Founder of the Civic Ecosystems Initiative. Ruti Teitel is the Ernst C Stiefel Professor of Comparative Law at NY Law School and affiliated scholar at NYU International Relations. An article of this kind involves extensive comparative and interdisciplinary research and analysis. We are truly grateful for their support to NYLS research librarian Carolyn Hasselmann and research assistants Alix Hirsh and Candace Riggs. For extensive conversations regarding the Americas and the Balkans, our enormous gratitude to Alejandro Awad, Jelena Đurenović, Orly Friedman, Rob Howse, Leonardo Garcia Jaramillo, Nataša Kandić, Fabian Salvioli, Veronica Torras, Valeria Vegh Weis and Ivana Žanić. We are grateful to the editors of LRIL and two anonymous reviewers for their thoughtful and most helpful comments.

[1] J Viebach, D Hovestädt, & U Lühe (eds), 'Beyond Evidence: The Use of Archives in Transitional Justice' Special Issue, 23 *International Journal of Human Rights* (2021) 381- 402.

marginalised experiences of violence,[2] or to serve as physical spaces of citizen engagement and participation.[3] However, the question of how diverse social actors use the records and archives produced in transitional justice processes is largely neglected.

We address this gap in the literature by examining new phenomena that sit at the interstices of human rights, transitional justice, memory, and digital technology. This article explores critical developments in the latest phase of transitional justice in order to highlight the difficulty of consolidating gains made in prior decades. We examine how the next phase of transitional justice should be approached and what to do with the extensive documentation and evidence gathered in trials, truth commissions and other accountability mechanisms in the last decades of justice-seeking in many regions. These new developments give rise to a set of dilemmas regarding the relationship of justice, memory, and digital technology. We explore the nature and manifestations of these dilemmas, as well as efforts to negotiate and manage them, and the role of international law in that respect.

The end of the Cold War in many countries was associated with political transition along with a reckoning with past human rights violations. Political transitions initiated after the collapse of authoritarian regimes or the end of civil wars went hand in hand with transitional justice processes in the late 1980s and early 1990s in the Americas, Eastern Europe, South Africa and elsewhere. These events gave rise, in turn, to an array of records. Similarly, the end of armed conflicts in the Balkans, Africa and other conflict-affected regions in the following decade were often accompanied by the adoption of measures also characterised in terms of transitional justice, and that generated their own archives and records.

At present, in some cases three or four decades after the end of armed conflict or repressive rule and the ensuing political transitions, we observe significant contestation and revisionism in more than one region. To be sure, there is significant variation in the trajectories and cycles of democratisation and peacebuilding in different countries; nevertheless, even where transition

[2] M Leiby, 'Digging in the Archive: The Promise and Perils of Primary Documents' 37 *Politics & Society* (2009) 75-99.
[3] B Jones, & I Oliveira, 'Truth Commission Archives as 'New Democratic Spaces' 8 *Journal of Human Rights Practice* (2016) 6-24.

seems farther along, anxieties remain about the stability of national narratives and what can be done to assure the protection of national histories following these foundational political moments.

This challenge is our point of departure: we enquire into the current activism linked to past transitional justice processes reflecting an impetus to preserve their records on the one hand, and to repurpose and redeploy them, on the other. Relatedly, there is a turn to digital technology animated by the aim to protect documentation and evidence and to use them as a basis for new forms of memory activism. What we term the 'justice archive' comprises the tensions and dilemmas occasioned by the actors, goals and methods involved in the ongoing pursuit of political transition in different post-conflict regions.

The aim of consolidating and entrenching a collective or shared narrative is challenged by the passage of time, by the participation of a range of actors with diverse goals, both state and non-state (with civil society playing a leading role), and by technology itself insofar as digitisation implies fragmentation. Analysis of these processes illuminates a layered complex engaging the themes of justice and memory, shaped by the logics of digital media systems and technology. Our investigation of the justice archive highlights a set of dilemmas leading us to reconceptualise current understandings of the relationship of justice to memory.

Part I of the article investigates the contemporary problem of transitional justice confronting states today, providing the context for the turn to the justice archive. Here we identify the general phenomenon and the political and technological developments driving its emergence and spread. In Part II, we define and interpret the justice archive as a partial but critical response to the regression or stalling of democracy in the contemporary moment in different counties and regions. In Part III**,** we carry out comparative analysis of two regions where the justice archive reflects these concerns and gives rise to new kinds of digital memory practices with distinctive goals and methods: digital archiving in the Americas and digital memory activism in the Balkans. Part IV explores a set of dilemmas and tensions occasioned by the rise of the justice archive. Lastly, Part V turns to an examination of the role of international law and regulation in

addressing and managing some of these tensions.

Part I How to Consolidate Justice and Memory?

The phenomena that give rise to what we term here the 'justice archive' emerge from the de-centring of transitional justice in its current millennial phase—beyond the transition and beyond the state.[4] The disaggregation of justice from political transitions constitutes a development that has an impact on the relationship of justice to memory, which in turn helps to explain the move to prioritize the creation of the justice archive. What we see today is a shift away from prevailing views of truth- and justice-seeking in the practices and actors regarding transitional justice, a shift that impacts memory-related practices. For decades, the project of transitional justice in Latin America was largely state-driven and controlled through the pursuit of truth via investigation and documentation—typically via official truth commissions and reports and related trials and records. These justice processes were generally justified in terms of truth-seeking and closure, whether for the victims or the broader society.[5] In the international context, war crimes tribunals have long been justified in terms of the normative goals of truth, peace and reconciliation.[6]

In the 1990s, regional conflicts and related abuses prompted the establishment of the *ad hoc* tribunals for the former Yugoslavia and Rwanda. These tribunals were explicitly justified not only in terms of peacemaking, but also for the establishment of a collective truth as a basis for reconciliation and democratization. There are, of course, inherent tensions in using trials for these purposes.[7] Transitional justice-related claims yielded significant developments that engaged rights creation around truth and the preservation of historical memory. Significant jurisprudential developments in the regional human rights tribunals, chiefly in the Americas but also in Europe, appeared to consolidate claims by victims and next of kin, resulting in the

[4] R Teitel, *Globalizing Transitional Justice* (Oxford University Press 2014).
[5] C Nino, *Radical Evil on Trial* (Yale University Press 1996).
[6] See Teitel (n 4). For a discussion of the didactic role of war crime trials see G Simpson, *Law, War and Crime: War Crimes, Trials and the Reinvention of International Law* (Polity 2007). See also R Teitel, 'The Global Jurist as Pedagogue? Ronald Dworkin in post-Junta Argentina' *London Review of International Law* (2017).
[7] R Teitel, 'Bringing the Messiah Through the Law', in C Hesse & R Post (eds), *Human Rights in Political Transitions: Gettysburg to Bosnia* (Zone Books 1999) 189. I Rangelov, *Nationalism and the Rule of Law: Lessons from the Balkans and Beyond* (Cambridge University Press 2014).

affirmation of a 'human right to truth'. In some instances this also led to reparations, as in the landmark case of *Velasquez-Rodriguez*.[8] Over several decades, these precedents have consolidated in the jurisprudence of the Inter-American Court of Human Rights, where litigation arising out of disappearances helped to define a 'right to truth' established through case law.[9] Indeed, this jurisprudence appears to imply rights to the preservation of records and to memorialisation.[10] Beyond the Americas, the understanding that there are human rights to remedies in transitional justice processes has influenced both international and domestic norms regarding human rights violations and related questions of justice.[11]

In addition to international and domestic judiciaries, other multilateral actors are increasingly involved in shifting the core project of transitional justice. This change in focus from investigation and documentation to the work of memory preservation and education has been recognized and actively promoted by leading international actors. For example, the UN Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-recurrence, Fabian Salvioli, has called for changing the mandate and linking work on transitional justice with other policy interventions. He not only speaks of the significance of memory to transitional justice in what has come to be known as the fourth pillar of 'prevention' (alongside truth, justice, and reparation) but also suggests that memory may well merit its own 'fifth pillar'.[12] Whereas transitional justice previously focused on identifying state responsibility for past wrongdoing associated with repressive periods and related injury to victims, it has since developed to include memory practices that focus on societal preservation of archival records and on nurturing a culture for safeguarding democracy and preventing future abuses.

In this regard, we see the new significance of memory constructed by and grounded in the prior truth- and justice-seeking practices. No longer are memory practices simply aimed at reckoning with past wrongs; rather, they are justified and shaped in terms of forward-looking purposes

[8] *Case of Velasquez Rodriguez v Honduras*, 28 July 1988, Inter-American Court of Human Rights.
[9] R Teitel, 'Transitional Justice and Judicial Activism: A Right to Accountability' 48 *Cornell International Law Journal* (2015) 385-422.
[10] *In re Case of Goiburú et al. v. Paraguay*, 22 September 2006 (Merits, Reparations and Costs).
[11] See Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence A/HRC/45/45.
[12] ibid.

aimed at societal and political development. This kind of rethinking of transitional justice and memory in the light of growing anxieties about democracy serves as a catalyst for the project of the justice archive.

Part II The Justice Archive

The passage of time and the political realities in those parts of the world where concerns for the present state and future of democracy are growing provide the context and impetus for the rise of the *justice archive*. We use the term here in its most capacious sense. The notion of the justice archive can be literal in some contexts, referring to the role of criminal or civil cases which aim to draw a line under or otherwise account for the past. In other contexts, the justice archive relates to memorialisation and memory activism aimed at changing the dominant narrative about the past or creating shared narratives. Still other uses of the term refer to digital archiving of ongoing transitional justice efforts that address past human rights violations.[13]

Some studies of archival and memorial practices in the aftermath of mass violence draw on Jacques Derrida's foundational work on the archive as a site of law's origins and source of its authority, going back to the *arkheion*, the place where official documents were deposited, and the powers of the *archons* to make, interpret and represent the law.[14] In transitional justice settings, critical legal scholars argue that what they call, following Derrida, 'law's archive' serves as a repository of what needs to be gathered and recognised in order to delimit a violent past and inaugurate the future. For Motha and van Rijswisk, 'Legal decisions performatively produce the archive of sovereign violence when they distinguish a legal order from an unjust past… Archival and memorial practices are thus central to contexts where transitional justice, the redress of historical wrongs, or reparations are at stake.'[15] In such contexts, the notion of 'law's archive' embodies what Derrida calls 'archive fever', an intense longing for certainty and

[13] See, for example, the report of the Colombian Truth Commission which also archives past violations 'Resistir no es aguantar', *Comisión De La Verdad*, July 2022, available at https://www.comisiondelaverdad.co/resistir-no-es-aguantar (last visited 4 May 2022).
[14] J Derrida, *Archive Fever: A Freudian Impression* (University of Chicago Press 1995).
[15] S Motha & H van Rijswijk, 'Introduction: A Counter-Archival Sense' in: S Motha and H van Rijswijk (eds), *Law, Memory, Violence: Uncovering the Counter-Archive* (Routledge 2016) 2.

closure, for an elusive and ultimately unattainable return to the origin, 'the most archaic place of absolute commencement'.[16]

Law's 'counter-archive', on the other hand, exposes the futility of such pursuits and calls into question their claims to authenticity and authority. Critical legal scholars have drawn attention to a range of practices that reflect what Jennifer Culbert calls a 'counter-archival sensibility': '[i]nstead of turning to artefacts and history to render final otherwise contestable claims, counter-archivists tell stories that realise the significance of random facts and chance events.'[17] Indeed, such counter-archival practices in art and culture, museums, memorials and other domains have been interpreted as subversive interventions that pose a challenge to the established forms of representing and responding to violence typically associated with transitional justice.[18]

In some cases, however, counter-archivists seek to reassemble and redeploy law's archive for their own projects and purposes. They do so by combining material from law's archive with material from other sources in ways that enable them to tell different stories and create possibilities for the emergence of new narratives or interpretations of the past. For example, Miranda Johnson analyses the 'treaty archive' created by the Dene people to assert aboriginal title rights in Canada, which combines documents related to treaties made in the early 20th century with the Dene leaders' oral history.[19] That archive played an important role in a legal case for asserting Dene land rights and, in turn, it was enriched by the testimonies given in that case. Johnson interprets the treaty archive both as a historical artefact and as a repository from which new historical narratives can be constructed. She argues that it has transformed law's archive by countering the official story about treaties with indigenous peoples told by the Canadian state.[20]

[16] Derrida (1995) 91.
[17] J Culbert, 'A Counter-Archival Sensibility: Picking up Hannah Arendt's 'Reflections on Little Rock' in: S. Motha & H. van Rijswijk (eds.), *Law, Memory, Violence: Uncovering the Counter-Archive* (Routledge 2016) 16.
[18] Motha & van Rijswijk (2016).
[19] M Johnson, 'Making a Treaty Archive: Indigenous Rights on the Canadian Development Frontier' in: S Motha & H van Rijswijk (ed.), *Law, Memory, Violence: Uncovering the Counter-Archive* (Routledge 2016).
[20] ibid 195-196.

A similar attempt by social actors to reassemble and redeploy law's existing archive in new ways is at the heart of the digital memory practices involved in the construction of what we call, by contrast, the *justice archive*. Here the records and evidence produced by transitional justice processes such as criminal prosecutions or truth commissions are mined and combined with documentation and testimony collected by other actors for the purpose of creating a digital memory of past human rights abuses. The 'justice archive' that emerges from this process is activist in character, forward-looking in orientation, and embedded in a changing set of social relations associated with digitisation.

Those driving the creation of the justice archive tend to be civil society activists and affected social groups—human rights organisations, social movements, women's groups, survivors and relatives of the killed or disappeared—who were often involved in previous efforts to document human rights abuses and to advocate for transitional justice processes. For example, many of the civil society groups that have supported the investigation and prosecution of atrocity crimes at a variety of jurisdictions in recent decades are now using the records produced by these judicial processes in new digital memory projects. In some cases, non-state actors pursue collaboration with state actors in the government or the judiciary, but their interactions with the state are often marked by contestation: the justice archive represents a societal response to the memory cultures and politics driven by the state, a counter-archive that challenges state-centric ways of remembering and representing the past. These efforts are consistent with the 'activist turn' in contemporary transitional justice, whereby civil society actors are playing a greater role in justice-seeking and experimenting with 'bottom-up transitional justice',[21] and with a similar activist turn in related fields and sites such as museums, memorials and other loci of commemoration.[22]

The goals of the justice archive are tied to the anxieties of the present political moment and oriented towards the future. The immediate objective is to preserve and consolidate the gains

[21] I Rangelov & R Teitel, 'Transitional Justice' in I Rangelov & M. Kaldor (ed.), *The Handbook of Global Security Policy* (Wiley-Blackwell 2014). See also I Rangelov & R Teitel, 'Global Civil Society and Transitional Justice' in M Albrow & H Seckinelgin (ed.), *Global Civil Society 2011: Globality and the Absence of Justice* (Palgrave Macmillan 2011).
[22] See, for example, R Janes & R Sandell (ed.), *Museum Activism* (Routledge 2019); K Hite, *Politics and the Art of Commemoration* (Routledge 2012).

made in democracy and human rights struggles in previous decades, at a time when many of these gains are seen as being either threatened or reversed. While specific objectives differ from case to case, broader aims are self-consciously futural, oriented toward atrocity prevention and the protection of democracy and maintenance of peace.

Indeed, the justice archive can be understood as a response to the 'regressive turn' in the politics of many transitional countries, whereby the consolidation of democracy and/or peace appears to have stalled or been rolled back. Scholars have maintained that transitional countries may tend to get stuck in a 'grey zone' between authoritarianism and democracy or war and peace, as the direction of democratisation processes becomes more unpredictable and armed conflicts are more likely to persist or recur.[23] What is new at the current moment is a heightened sense of anxiety about a 'democratic recession'[24] affecting most global regions, including some consolidated democracies, which is often accompanied by a surge in populist agitation and mobilisation that relies, in part, on historical revisionism.[25]

Accordingly, the methods of justice archivists in the contemporary moment often make use of digital platforms and technology to reassemble and redeploy the records produced in prior transitional justice practices by combining them with documentation and testimony gathered by civil society groups, survivors, or the kin of victims. Here digital technology interacts with what Julia Viebach calls 'the open-ended nature, the "in-becoming"' of transitional archives created in top-down or bottom-up justice processes, which makes possible the reuse, repurposing and recontextualization of the records'.[26] The result is a set of digital memory practices that can take

[23] T Carothers, 'The End of the Transition Paradigm'13 *Journal of Democracy* (2002) 5-21; I Rangelov & M Kaldor, 'Introduction: Persistent Conflict' 12 *Conflict, Security & Development* (2012) 193-199.
[24] L Diamond, 'Facing Up to the Democratic Recession' 26 *Journal of Democracy* (2015) 141-155; D Zovatto, 'The Rapidly Deteriorating Quality of Democracy in Latin America', 28 February 2020, available at https://www.brookings.edu/blog/order-from-chaos/2020/02/28/the-rapidly-deteriorating-quality-of-democracy-in-latin-america/ (last visited 30 May 2022).
[25] L Diamond, M F Plattner, & R Youngs, 'Democracy in Decline? The Puzzle of Non-Western Democracy', May/June 2016, available at https://www.foreignaffairs.com/reviews/capsule-review/2016-04-14/democracy-decline-puzzle-non-western-democracy (last visited 7 June 2022); GA Res. A/HRC/39/53, 25 July 2018. https://freedomhouse.org/article/new-report-global-decline-democracy-has-accelerated (last visited 18 Sept 2022) On Latin America https://www.brookings.edu/blog/order-from-chaos/2020/02/28/the-rapidly-deteriorating-quality-of-democracy-in-latin-america/ (last visited 18 Sept 2022).
[26] J Viebach, 'Transitional Archives: Towards a Conceptualisation of Archives in Transitional Justice' Special Issue, 25 *International Journal of Human Rights* (2021) 403-439.

a variety of forms and whose deployment presents diverse issues (which we discuss in the next section). They involve both knowledge production and social mobilisation; in fact, they often seem to connect the memory of past abuses to current struggles for democracy and human rights.

These practices are embedded in a changing set of social relations associated with digitisation. They are shaped by digital media and technology in complex and sometimes contradictory ways. On the one hand, the justice archive is bound up with what Andrew Hoskins calls a 'connective turn' in media and communications, affording opportunities to exploit 'the sudden abundance, pervasiveness, and immediacy of digital media, communication networks and archives.'[27] On the other, digital technology and hyperconnectivity imply fragmentation. The very idea of 'collective memory', with its narrative logic on which the goals and methods of the justice archive are premised, is increasingly called into question.[28] We explore these tensions and dilemmas as well as emerging efforts to address them in the last two sections of the article.

Part III Digital Memory Practices

This section discusses a range of digital memory practices that give rise to the justice archive in two global regions, the Americas and the Balkans. Important distinctions exist between these two regions, particularly in the actors, goals and methods involved in transitional justice practices. In the Balkans, the digital memory project is relatively developed, in great part due to the fact that the foundational records were created and digitised by the international community—the rationale for the International Criminal Tribunal for the Former Yugoslavia (ICTY),[29] in particular, was partly premised on these purposes—and could be harnessed by local justice-activists in civil society fairly quickly. In Latin America, by comparison, the digital project is at an earlier stage than the archival project. It is only now, several decades after the dirty wars and

[27] A Hoskins, 'The Restless Past: An Introduction to Digital Memory and Media', in A. Hoskins (ed.), *Digital Media Studies: Media Pasts in Transition* (Routledge 2018) 1.
[28] A Hoskins, 'Memory of the Multitude: The End of Collective Memory' in A. Hoskins (ed.), *Digital Media Studies: Media Pasts in Transition* (Routledge 2018).
[29] See United Nations, 'International Residual Mechanism for Criminal Tribunals', available at https://www.irmct.org/en (last visited 27 May 2021).

junta rule, that the records of trials and truth commissions are digitised—in some cases by civil society, in others by the state.[30]

The turn to digital memory is also driven by distinctive priorities. In the Balkans, the project is largely about using judicially established facts—especially the records and video archive of the Yugoslav tribunal—for memory activism that pushes back on the rise of historical revisionism and democratic backsliding.[31] In the Americas, the main concern is to protect trial records and other archives in order to preserve the memory of the past with a view to safeguarding a democratic future. This, as one study of Chile notes,[32] often involves 'a political struggle to gain access to these archives as means of advancing democratisation and expanding the public's ability to confront the past.'[33]

Whereas in the Balkans the project of the justice archive is a response to concerns about a crisis of democracy and the rise of authoritarian populism, in the Americas the impetus relates to risks of reversals of democratic gains and human rights struggles in previous decades. In practical terms, one project concerns civil society contesting or contending with the memory culture and politics of the state, whereas in the other a more complex relationship emerges between civil society and the state that may involve collaboration and even co-creation.

The specific types of memory practices discussed in this section—digital archiving in the Americas and digital memory activism in the Balkans—are also shaped by the distinctive character and outcomes of prior transitional justice processes. A significant factor is the relevant

[30] See infra text at Part V regarding the work of National Film Institute (INCAA), available at https://www.cultura.gob.ar/la-tv-publica-proyecta-el-nuremberg-argentino-de-miguel-rodriguez-aria-10431/ http://www.incaa.gov.ar/el-incaa-sigue-documentando-los-juicios-por-crimenes-de-lesa-humanidad. (last visited 20 July 2022).

[31] See, eg, Humanitarian Law Center, *Memory Politics of the 1990s Wars in Serbia: Historical Revisionism and Challenges of Memory Activism*, (Belgrade, October 2021), available at https://www.hlc-rdc.org/wp-content/uploads/2021/10/Politika_secanja_en.pdf (last visited 15 Sept 2022); On democratic backsliding in the Balkans, see D Kapidžić, 'The Rise of Illiberal Politics in South East Europe', 20(1) *South East European and Black Sea Studies* (2020) 1-17.

[32] Regarding Chile, see 'Guía de Archivos de memoria y Derechos Humanos en Chile', 26 September 2017, available at https://issuu.com/villagrimaldi/docs/gu__a_de_archivos_de_memoria_y_dere (last visited 29 April 2022).

[33] A Ferrara, 'Archives and Transitional Justice in Chile: A Crucial Relationship' (2021) 22 *Human Rights Review* 253, 255.

span of time or the relevant archival scope—with implications for both the preservation and digitisation of digital memory—and, ultimately, for its meaning.

Digital Memory Activism: The Balkans

The ongoing process of constructing the justice archive in the Balkans reflects the assimilated experience of the past three decades of war, transition and justice-seeking. Documenting human rights violations has been a priority for civil society since the start of the Yugoslav wars of disintegration. The emphasis on establishing 'facts and figures' of past abuses emerged from seeing how the contested legacy of mass atrocities from the Second World War was politicised and used for nationalist mobilisation in the late 1980s and early 1990s, a sort of 'verbal civil war' that paved the way for the actual war.[34] The efforts of civil society in the past three decades to investigate and document atrocity crimes have provided a crucial foundation on which to build the justice archive.

The documentation and evidence gathered by civil society played an important role in the trials at the ICTY in The Hague, hybrid courts in Bosnia and Kosovo, and domestic courts in Croatia and Serbia, which gained momentum in the early 2000s. These trials played out in a regional environment dominated by the politics of resistance to dealing with the past.[35] Nevertheless, they produced a large body of records and, in the case of the ICTY, an extensive video archive of the proceedings, including testimony of survivors, that today provides another foundation for the justice archive. Gaining access to the ICTY archive by copying and transferring it to the region has been a priority for civil society; while most records and video footage from completed trials have already been obtained, civil society actors now seek access to the archive of the Office of the Prosecutor, which is yet to be made public.

[34] R Hayden, 'Recounting the Dead: The Rediscovery and Redefinition of Wartime Massacres in Late- and Post-Communist Yugoslavia', in R Watson (ed.), *Memory, History and Opposition under State Socialism* (School of American Research Press 1994).
[35] I Rangelov, *Nationalism and the Rule of Law: Lessons from the Balkans and Beyond* (Cambridge University Press 2014).

Digital memory activism in the Balkans builds upon prior transitional justice processes, but it is also a reckoning with the latter's limitations. Criminal trials at the ICTY and courts in the region largely failed to displace the nationalist narratives that were constructed in the wars of the 1990s and further entrenched in the post-war period. Indeed, in recent years, post-Yugoslav states have been engaged in creating new 'national truths' and promoting ethno-nationalist narratives about the wars and atrocities (and also about the Second World War).[36] That process is driven in part by war criminals convicted by the ICTY, who are now returning to the region in greater numbers having served their sentences. Celebrated as heroes and often given state honours and functions, convicted war criminals are producing memoirs that seek to revise and reinterpret for the public the history and memory of the wars in Bosnia, Croatia and Kosovo.[37]

The digital memory practices employed by justice-archivists in the Balkans are part of a continuum of knowledge production and social mobilisation. In fact, many of the actors and projects are connected to a regional civil society initiative that advocates the creation of a regional truth commission ('RECOM') to establish the facts of war crimes and human rights violations committed on the territory of the former Yugoslavia between 1991 and 2001. With political support for the establishment of a regional commission declining in recent years, the civil society coalition for RECOM has taken upon itself to establish the identities and circumstances of death or disappearance of war victims across the region. At the heart of these efforts is the creation of a war crimes database. That involves assembling records from trials at the ICTY and national courts, along with documentation gathered by civil society, such as witness statements, photographs, identity documents, media reports, and reports by international organisations and NGOs. Digitised and coded, the records in the database can be searched by name of victim, type and location of crime, etc. War crimes databases of this sort are currently being built by civil society groups in Croatia and Bosnia.[38]

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[36] J Đurenović, *The Politics of Memory of the Second World War in Contemporary Serbia: Collaboration, Resistance and Retribution* (Routledge, 2019).
[37] These include books by Biljana Plavšić, Nebojsa Pavković, Veselin Šlivančanin, Vinko Pandurević and Vojislav Šešelj.
[38] See, for example, 'Documenting Human Losses in Croatia during the War 1991-1995', available at https://documenta.hr/en/documenting-human-losses-in-croatia-during-the-war-1991-1995/ (last visited 10 April 2022).

The most established example is the database known as the Kosovo Memory Book (KMB), a joint project of the Humanitarian Law Center (HLC) in Belgrade and its twin organisation in Pristina, HLC-Kosovo. The KMB database is the backbone of a long-standing effort to establish the identity and circumstances of death or disappearance of every casualty of the Kosovo war between 1998 and 2000—civilians and combatants, of any ethnicity—including the NATO bombing of Yugoslavia and the period after the arrival of NATO forces in Kosovo. It is a formidable task: around 13,500 casualties have been registered in the database. So far, the identities and circumstances of death or disappearance of more than 8,000 of them have been established and verified.[39] The KMB project includes a short narrative about the life and death/disappearance of every casualty in an attempt to humanise victims and restore their dignity, and to prevent the manipulation of facts and figures.[40]

According to Hoskins, the logic of digital memory is the logic of the database: inherently open to change, and akin to a collection rather than a story.[41] The HLC's war crimes database has expanded beyond Kosovo and the KMB project. It now holds more than 130,000 records relating to 38,000 victims and 2,800 perpetrators of war crimes and human rights abuses, including 26,000 statements of witnesses and victims transcribed by HLC researchers. It supports diverse memory practices such as the creation of digital dossiers and interactive digital narratives.

The main HLC output is the dossier—a lengthy, meticulously assembled account of judicially established facts intended to put pressure on the authorities to investigate alleged perpetrators, which is published online and often accompanied by the filing of criminal complaints. These dossiers expose the responsibility of military commanders and senior government officials for atrocity crimes committed during the 1990s.[42] They include evidence from ICTY trials, records

[39] An independent evaluation of the KMB database in 2014 concluded that it documented "all or nearly all the human losses" connected to the conflict in Kosovo during 1998-2000. See J Kruger & P Ball, 'Evaluation of the Database of the Kosovo Memory Book'10 December 2014, available at https://hrdag.org/wp-content/uploads/2015/04/Evaluation_of_the_Database_KMB-2014.pdf (last visited 10 April 2022).
[40] According to its online portal, '[t]he Kosovo Memory Book is a monument to the victims of war crimes (civilians, the wounded and prisoners of war), persons killed in battle (soldiers) and those who were forcibly disappeared in Kosovo… For the first time in the history of the Balkans, figures are replaced with names. This will prevent manipulation, minimization or exaggeration.' See The Kosovo Memory Book 1998-2000, available at http://kosovskaknjigapamcenja.org/ (last visited 10 April 2022).
[41] Hoskins (2018b) 94-95.
[42] See HLC Dossiers, available at http://www.hlc-rdc.org/?cat=290&lang=de (last visited 23 April 2022).

of domestic courts, testimonies of victims and witnesses collected by human rights organisations, and various other sources.

The dossiers provide the basis for a range of other outputs such as videos and short documentaries. Together, these supply new kinds of digital narratives that embed documentary sources, images, and video directly in the narrative. The digital narratives are interactive by design, targeted at the general public and especially the younger generation, and tailored for social media dissemination. They rely on the robust research and analysis in the dossiers and access to sources and records provided by the war crimes database.[43] They give rise to a range of potential accounts, and they exploit the logic of a digital media system driven by hyperconnectivity, contagion, and virality.

These are novel and experimental practices, and it is still early to assess their impact on the memory cultures and politics in the region. Nevertheless, their potential might be glimpsed from the case of Ljubiša Diković, which has attracted a lot of attention and repeatedly stirred controversy in the public domain in Serbia. Diković served as commander of the 37th Brigade of the Yugoslav Army in Kosovo in 1999. He is the subject of two dossiers that detail the killing of 1,400 civilians in areas controlled by his forces. At the time when the dossiers were released, Diković was the Chief of General Staff of the Serbian Armed Forces. As expected, the government and the War Crimes Prosecutor in Belgrade rallied behind him, effectively shielding him from investigation and prosecution and allowing him to keep his position until retirement. A short documentary based on the dossiers and the ensuing public controversy, *Ljubiša Diković and the 37th Brigade in Kosovo*, was rejected by Serbian broadcasters but attracted a large audience on YouTube, and a digital narrative about the Diković case will follow.

[43] Other actors use the ICTY archive to create different kinds of digital narratives. The interactive narratives created by the SENSE Transitional Justice Center in Croatia, for example, emphasise the visual elements of storytelling and are accompanied by exhibitions and public events. Available at https://sensecentar.org/production/interactive-narratives (last visited 20 April 2022).

Digital Archiving: The Americas

The rise of the justice archive in Latin America derives from the arch-crime of the region: the policy of disappearance and denial that comprised a pattern throughout the continent. These forms of repression spurred the response of justice-archivists, both state and non-state, and oriented the goals they set for themselves, complemented by methods for harnessing the records of prior transitional justice processes. The dominant form that digital memory practices takes in this region is digital archiving. The central aim of this form is to preserve the memory of the repressive past in order to safeguard a democratic future.

Persecutory policy in the Americas was characterized by the practice of disappearance. Throughout the region, societies were terrorised by abductions and related government cover-up efforts in the continent-wide policy known as Operation Condor. [44] This distinctive form of persecution shaped the demand for justice following the period of repression, because successor responses were predicated on demonstrating past wrongdoing with little available evidence. It was critical to establish the truth about those who seemingly vanished through documenting abduction practices and pursuing forensic investigations, such as retrieving remains and establishing the identity of victims.[45] These patterns gave rise to distinctive responses in the region that informed regional human rights jurisprudence, with normative implications such as the juridical recognition of a right to truth. [46] Normative developments in accountability informed current efforts to preserve and protect the information and evidence generated in justice processes through digital archiving. The justice archive project in the Americas offers a typology of the main digital memory initiatives found in the region. Digital archives, aimed at the protection and preservation of the records, are distinct from digital collections, which involve curation and selection, such as assembling the records to construct particular narratives and tell particular stories, rather than serving merely as a repository.

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[44] See Teitel, *Transitional Justice* (OUP 2000) 77-88.
[45] R Teitel, Transitional Justice and Judicial Activism: A Right to Accountability? 48 *Cornell International Law Journal* at 385 (2015); C Jerez-Farrán and S Amago, *Unearthing Franco's Legacy: Mass Graves and the Recovery of Historical Memory in Spain* (Duke University Press 2010).
[46] *Velasquez Rodriguez v. Honduras* (IACHR 1988, 1989), see also). R Teitel, 'Transitional Justice and Judicial Activism: A Right to Accountability' 48 *Cornell International Law Journal* (2015) 385.

In the two countries discussed here, Argentina and Chile, there are only a few instances of centralised state-organised recordkeeping of transitional justice processes. Early documentation storage, which may be archival in nature, is distinct from the more contemporary project of digitisation. With time, some of the relevant documentation practices have taken the form of online archiving. By the turn of the new millennium, Argentina had completed the first stage in its archival project, with the aim of preserving documentation as well as the names and histories of those detained and disappeared during the military period as well as their relatives and others affected by the dictatorship. This gave rise to the creation of the *Projecto Memoria Abierta*—the 'open memory project'[47]—which has served as the overarching repository, with donations by civil society actors as well as state actors such as judges or prosecutors who have sought to preserve relevant case records. For example, the former Deputy Prosecutor of the Junta Trials, later ICC Chief Prosecutor, Luis Moreno Ocampo, donated his case materials to *Memoria Abierta*.

The *Memoria Abierta* archive includes interviews with key actors as well as digitised materials obtained from most human rights organisations in Argentina, including *Projecto de Digitalizacion del Archivo Historico de Familiares de Desaparecidos y Detenidos por Razones Politicas* (Project to Digitalise the Historical Archive of Those Disappeared and Detained for Political Reasons).[48] The purpose of the project is to enable the conservation and identification of 25 years of institutional archives, including 276,208 digital images and 30,644 documents—aimed at what is called, in a telling expression, *conservacion preventive* ('preventive conservation'). A further aspect of the project involves the dissemination of some materials through social media.[49]

[47] Regarding Argentina see Memoria Abierta (Open Memory), available at http://memoriaabierta.org.ar/wp/en/inicio/ (last visited 3 June 2022); Ruti Teitel, Personal Communications with Veronica Tores, Director, Memoria Abierta, 26 March 2021.
[48] Project in Digitalization of Historic Archive of the Disappeared and Detained for Political Reasons (Projecto de Digitalizacion del Archivo Historico de Familiaries de Desaparecidos y Detenidos por Razones Politicas), available at https://defensoria.org.ar/noticias/finalizo-la-primera-etapa-del-proyecto-de-digitalizacion-del-archivo-historico-de-familiares-de-desaparecidos-y-detenidos-por-razones-politicas/ (last visited 10 Sept 2022).
[49] Digitalización del Archivo Histórico de Familiares de Desaparecidos, 15 July 2019, available at https://youtu.be/N_L71tn2MKQ (last visited 29 April 2022).

Memoria Abierta has been designated an official UNESCO memory site. This non-governmental organisation promotes two important archival goals—preservation and access—but its efforts have been stymied by lack of capacity, and in particular the scarcity of resources and centralization of records. The latter is particularly problematic, first because it depends on *a priori* preservation but also because Argentina lacks an adequate framework for managing its historical, judicial and other justice-related records. At present, access to the files is on a case-by-case basis and depends on permission specifically granted by the donors or sources of the records.[50] We return to these issues in the last section of the article. Specific concerns include the commissions' archives as well as the military and police archives, which are still sealed.[51]

Beyond the civil society initiatives driven by *Memoria Abierta*, digital archiving projects also exist at the state level, such as the Provinces of Buenos Aires and Cordoba. These archival projects are partly state-driven with an eye to promoting public access, but they are generated by state actors such as, for example, Attorney Generals in provinces such as the Consejo de la Caba. At the local level, the City of Buenos Aires leads an initiative with the national film institute that promotes the digitisation of film relating to the justice archive, such as the pioneering films of the Trials of the Junta Commanders. With funding from the state, the initiative has made possible the preservation of exceptionally valuable trial records.[52]

Elsewhere in the Americas, there are similar initiatives led by civil society. In the case of Chile, civil society organisations initially focused on compiling documentary evidence of human rights abuses by the state during the period of dictatorship, but there are also efforts to harness the records of the country's truth commission in the subsequent transitional period. Archival evidence compiled to support criminal prosecutions also nurtures collective memory in cultural representations with an eye to the future, for educational and other purposes.[53] An example is the archive of the Museum of Memory and Human Rights in Santiago, which strives to tell the story

[50] ibid.
[51] Londres (2019) 38.
[52] 'INCAA Continues Documenting Trials for Crimes Against Humanity', available at http://www.incaa.gov.ar/el-incaa-sigue-documentando-los-juicios-por-crimenes-de-lesa-humanidad, (last visited 21 Jan 2022).
[53] 'Guía de Archivos de memoria y Derechos Humanos en Chile', 26 September 2017, available at https://issuu.com/villagrimaldi/docs/gu__a_de_archivos_de_memoria_y_dere (last visited 29 April 2021); Violaciones Masivas y Sistemáticas a los DDHH en Chile, available at https://bibliotecadigital.indh.cl/handle/123456789/20 (last visited 29 April 2021).

of the repressive period by linking up with ongoing human rights campaigns.[54] The Museum is Chile's key archival memory project, managed by Hurtado, its leading university.[55] Unlike Argentina, at the time of its democratic transition Chile pursued a wholly conciliatory approach to transitional justice. From the very beginning, the process of archive creation and curation in Chile depended on civil society. The central Chilean archive draws on records collected by those working with victims during the dictatorship and memory sites established in the transition period, such as the *Fondos y colecciones del Museo de la Memoria y los Derechos Humanos*. Despite the passage of time, debates persist in Chile about access to junta-related archival material—whether it should be opened up to the public,[56] including access to the truth commission archive and the military and police archives.[57] Indeed, a dimension of the recent wave of interest in reckoning with the past is the 2022 constitutional convention to replace the Pinochet era constitution. The new constitution's rejection may well reflect ongoing struggles over control of the past.[58]

Civil society coalitions are nevertheless central to the justice archive project in Latin America. They are often led by established NGOs, such as the Center for Legal and Social Studies in Buenos Aires (CELS), Argentina's leading human rights organisation, which is engaged in preserving years of justice-related documentation via an online archive and expanding access through digitalization.[59] CELS is collaborating with *Memoria Abierta* and other human rights NGOs to ensure that their records are digitized and integrated in the Open Memory archives.

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[54] Archivo Museo de la Memoria y los Derechos Humanos, available at http://archivomuseodelamemoria.cl/ (last visited 29 April 2022); Ramdh Red de Archivos de Memoria y Derechos Humanos, available at https://ramdh.cl/ (last visited 29 April 2022).

[55] The University of Hurtado archive draws from a variety of sources including preeminently those whose access to archives and documentation centers were significant in working during the dictatorship with victims as well as memory sites established at the end of the dictatorship, as well as digital archives relating to Fondos y colecciones del Museo de la Memoria y los Derechos Humanos. See 'Guía de Archivos de memoria y Derechos Humanos en Chile', 26 September 2017, available at https://issuu.com/villagrimaldi/docs/gu__a_de_archivos_de_memoria_y_dere (last visited 29 April 2022).

[56] See Ferrara (2021).

[57] Londres (2019) 38.

[58] J Nicas, Chile Says 'No' to Left-Leaning Constitution After 3 Years of Debate', 4 Sept 2022, available at https://www.nytimes.com/2022/09/04/world/americas/chile-constitution-no.html (last visited 19 Sept 2022); P Marin, 'Richard Albert, constitucionalista: "Si pueden cumplirse las aspiraciones de la gente sin una nueva constitución, eso debe ser considerado"', 25 Sept 2022, available at https://www.latercera.com/la-tercera-domingo/noticia/richard-albert-constitucionalista-si-pueden-cumplirse-las-aspiraciones-de-la-gente-sin-una-nueva-constitucion-eso-debe-ser-considerado/74ASTTMMY5BCJCZVT2BP2K74W4/ (last visited 1 Oct 2022).

[59] 'CELS Archive' available at https://www.cels.org.ar/web/archivo/ (last visited 29 April 2022).

The Colombia/FARC archive reflects a pattern in the Americas, a layered archive-making process driven first by civil society, prior to and paving the path to the peace deal,[60] and thereby laying the basis of the follow-on transitional archive and memorialization.[61] The Truth Commission assembled an unprecedented archive of primary sources on the Colombian conflict that will continue to inform investigations of the conflict. It has gone beyond the classical report form to establish a 'Human Rights Archive' as well as technological tools for dissemination and outreach.[62] Here we see a temporized understanding of historical justice aiming to illuminate the country's past conflict.

As the number of groups and initiatives involved in digital memory practices in the Americas is burgeoning, regional institutions are taking interest in these developments. The Inter-American Commission on Human Rights, through its Rapporteurship on Memory, Truth and Justice, has taken the initiative for drafting Principles on Public Policies on Memory in the Americas.[63] We take up this ambitious and innovative effort to develop a rule of law regarding the justice archive in the article's conclusion.

Part IV Dilemmas of the Justice Archive

In light of the regional experiences detailed above, we turn to a set of dilemmas raised by the digital memory practices involved in the creation of the justice archive. These dilemmas primarily concern tensions regarding the processes of archive creation, as well as archival control, access, and use. Relationships between civil society and state involvement is central to

[60] 'Historical Commission Report on the Conflict and its Victims', 10 Feb 2015, available at https://www.justiciaypazcolombia.com/informe-comision-historica-del-conflicto-y-sus-victimas/ (last visited 20 Sept 2022).
[61] La Comision de la Verdad de Colombia, 'Hay Futuro si hay verdad: Comisión para el Esclarecimieto de la Verdad, la Convivencia y la No Repetición', 28 June 2022, available at https://www.usip.org/events/final-report-truth-commission-colombias-2016-farc-peace-accord#:~:text=Colombia's%20Truth%20Commission%20was%20established,than%20nine%20million%20registered%20victims (last visited 19 Sept 2022).
[62] La Comision de la Verdad de Colombia available at https://www.comisiondelaverdad.co/etiquetas/informe-final-de-la-comision (last visited 1 Sept 2022).
[63] 'Principles on Public Policies on Memory in the Americas', 17 May 2017, available at http://www.oas.org/en/iachr/decisions/pdf/Resolution-3-19-en.pdf (last visited 29 April 2022).

some of these tensions. The digital memory practices underway in these regions also highlight tensions regarding the goals of the justice archive, such as preserving and protecting the records versus using them to promote forward-looking social and political goals, thereby blurring the distinction between archive and narrative. Other tensions relate to the means employed by justice archivists—the logic of digital media and technology implies a degree of fragmentation and informality that sits uneasily with the notion of 'collective memory'. We address these tensions in turn.

Dynamics among actors

Whether and how archival projects and memory initiatives engage state action shapes the contours of the rule of law in this area. In the Americas, it is primarily civil society which has taken upon itself the responsibility of building the justice archive in the absence of consistent state action, whereas in the Balkans, civil society employs the justice archive to challenge the revisionist memory cultures and politics actively promoted by the state. In the Balkans, that relationship has been largely one of *contestation*, whereas in the Americas, although much of the impetus has come from civil society, the relationship between civil society and the state has been largely one of *collaboration*. These stances or positions give rise to distinctive dilemmas that could even be seen as mirror images of one another i.e., the potential for *marginalisation* in the case of the former, and a risk of *co-optation* in the case of the latter.

In the case of the Balkans, the emergence of the justice archive can be understood as a deliberate strategy by civil society to challenge the officially sanctioned narratives about the wars of the 1990s and their legacies of abuse and injustice, an attempt to counter the state's increasing reliance on actors such as convicted war criminals for representing, remembering and responding to the past. As post-Yugoslav states are employing a broader range of strategies to promote revisionist narratives through control of the media, education systems and the field of public commemoration, there is a risk that the digital memory practices promoted by civil society activists are increasingly pushed to the margins. The danger here is that digital memory may be reduced to a kind of 'shadow archive', with diminishing traction and power to counter the memory cultures and politics of the state. Here the justice archive may run in parallel to the

dominant revisionist narratives instead of engaging and challenging them directly and effectively. In other words, in places like the Balkans, the logic of heightened contestation implies a greater risk of marginalization.

There is a related but distinctive dilemma concerning the actors and provenance of the justice archive in Latin America. In the Americas, given the nature of the political context during the military period and immediately thereafter, civil society led the archival project from the start, with the initiative coming from victim groups, human rights organizations and other activists. Subsequently, in places like Chile, one could see opportunities for some collaboration with the state in the incipient justice archive project. In some respects, such collaboration would seem preferable to the sort of contestation that can be observed in places like Serbia, where memory activists are struggling to push back on a formidable state-run 'memory industry'.[64]

Nevertheless, one can see that this kind of cooperation could create other risks; in particular, the potential for co-optation of civil society efforts, projects and practices. This could be consequential, particularly where archival materials concern human rights or other forms of litigation where there may be marked differences in state and non-state accounts. The risk is that rather than reassembling and redeploying 'law's archive' for their purposes, justice archivists may end up legitimating and further entrenching state-driven ways of remembering and representing the past. Another concern is that close cooperation of the state with civil society actors also risks politicizing the human rights movement and its agenda. This has already started to happen in Argentina, where some commentators point out that the memory work of the Mothers of the Plaza de Mayo, the oldest civil society actor in this area, may be instrumentalised by the Peronist government mission.[65] Competing normative visions among actors driving the justice archive project has implications for goals of the justice archive, which raises its own tensions that we turn to in the following section.

[64] Humanitarian Law Center, *Memory Politics of the 1990s Wars in Serbia: Historical Revisionism and Challenges of Memory Activism*, (Belgrade, October 2021), 26-27.
[65] See Beate Goldschmidt-Gjerlow and Merel Remkes, 'Frontstage and Backstage in Argentina's Transitional Justice Drama: The Nietas Reconstruction of Identity on Social Media', *International Journal of Transitional Justice* 13, 349-367 (2019).

Multiple objectives

There are at least two distinctive goals of the justice archive: preservation and protection of the records, contrasted with a more forward-looking vision of memory for the future. with aims such as atrocity prevention and, more broadly, the protection of democracy and human rights. These goals inform the practices employed by justice archivists in particular contexts, as illustrated above with the examples of digital archiving in the Americas, where the emphasis is on preserving and organizing the records. For example, the documentation of human rights abuses by civil society organisations in Chile was first used as evidence to prove the abuses by the state during the period of dictatorship, then as evidence for the country's truth commissions and trials, and lastly, as a basis for collective memory in cultural representations with an eye to the future.[66] This contrasts with digital memory activism in the Balkans, which involves contestation between different narratives and counter-narratives. The political objectives of justice archivists also vary, from protecting the gains of democracy and human rights struggles from previous decades, to pushing back on democratic backsliding and authoritarian populism in the present. The justice archive is a dynamic project; with the passage of time and political change, other goals emerge alongside new tensions.

As a concept and set of practices, there is an inherent tension in the justice archive. On the one hand it functions as a repository of records from which new narratives can be constructed, and on the other it constructs such narratives by reassembling, repurposing, and redeploying the records. These functions are closely related, but they require different kinds of capabilities and resources, raising practical dilemmas for activists. In the Balkans, for example, very few civil society actors have the capacity, knowledge and tools required to build digital databases or collections to use for digital memory activism. In Chile, ongoing issues of scarce resources have meant that only

[66] 'Guía de Archivos de memoria y Derechos Humanos en Chile', 26 September 2017, available at https://issuu.com/villagrimaldi/docs/gu__a_de_archivos_de_memoria_y_dere (last visited 20 April 2022); Violaciones Masivas y Sistemáticas a los DDHH en Chile, available at https://bibliotecadigital.indh.cl/handle/123456789/20 (last visited 22 April 2022); Archivo Museo de la Memoria y los Derechos Humanos, available at http://archivomuseodelamemoria.cl/ (last visited 2 April 2022); Ramdh Red de Archivos de Memoria y Derechos Humanos, available at https://ramdh.cl/ (last visited 22 April 2022). The leading guide to archival memory distinguishes these forms of documentation, which in turn raises distinctive issues relating to preservation and access.

one of the non-state archives assembled by family members and civil society actors has been recognised and given state protection as a Monumento Nacional /National monument.[67]

These tensions can also be productive, leading to new networks of actors, initiatives, and approaches. The regional justice archive emerging in the Balkans resembles an ecosystem of interdependent justice and memory activists and initiatives, loosely held together by the RECOM Reconciliation Network. For example, a disaggregated regional depository is emerging that includes established projects, such as the KMB database of the HLC/HLC-Kosovo, alongside new initiatives at the regional level, such as the interactive Map of War Victims and database of human losses in the former Yugoslavia 1991-2001.[68] In the Americas, the project of narration and engagement in, or contending with, competing narratives is playing out in social media. In the post-junta period in the late 1980s in places like Argentina, the question of justice had revolved around the tens of thousands of disappeared and how to reckon with their losses. Now this question is being actively reconceptualised by civil society actors, including victims, their kin, and representatives. In Argentina, for example, the grandchildren of the disappeared—the *nietos*—are using social media to produce transitional justice narratives.[69]

These tensions blur distinctions between 'archive' and 'narrative' and highlight the changing role of the archivist. Terry Cook has drawn attention to a shift in the archival mindset by the end of the 20th century that re-positions the archivist from a curator to a co-creator of the archive, and in that process, recasts the archive itself as narrative: '[t]he focus of archivists shifted from being centred around archives as "truth", evidence, authority, defending the integrity of the record, to archives as story, as narrative, as part of a societal process of remembering and forgetting.'[70] To what extent is this kind of shift and the resulting ambiguity even more pronounced in the digital memory practices of justice archivists?

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[67] Viebach (2021); Guía de Archivos de memoria y Derechos Humanos en Chile', 26 September 2017, available at https://issuu.com/villagrimaldi/docs/gu__a_de_archivos_de_memoria_y_dere (last visited 22 April 2022)at 41-49.
[68] Map of War Victims in the SFRJ 1991-2001, available at http://zrtveratovasfrj.info/site/map/en-US (last visited 12 September 2022).
[69] B Goldschmidt-Gjerløw & M Remkes, 'Frontstage and Backstage in Argentina's Transitional Justice Drama, 13 *International Journal of Transitional Justice* (2019) 349-367.
[70] T Cook, '"We Are What We Keep; We Keep What We Are", Archival Appraisal Past, Present and Future' 32 *Journal of the Society of Archivists* (2011) 179.

What our investigation makes clear is that the archive "is not a stable entity to be tapped for facts but, rather, a constantly shifting process of re-contextualization."[71] Where there is a blurring of archive and narrative—in part deriving from the subject of the actors driving the justice archive project, in part stemming from its distinctive goals—dilemmas emerge about how to reinforce their distinctive authority and power.[72] These developments indicate a dynamic relationship between transitional justice, memory, and digital technology. Indeed, one could conceive of these archives as living entities reflecting different phases and changing priorities, and this archival process may well inform dynamic understandings of justice.

Digital Media and Memory

The uses of justice archives that are increasingly digitised and engaged through social media prompts reflection on the ways the concepts of truth, memory and justice are rapidly undergoing transformation. Here we consider the way the turn to the digital impacts upon the relationships between truth, memory and justice. To what extent does digitalisation of state and civil society archives threaten or challenge the official story and related historical accounts? Memory work currently engaged in by diverse civil society actors offers opportunities for broad participation in a range of potentially contesting narratives. Here one can see the enormous potential for greater societal understanding and the construction of solidarity communities. On the other hand, there are risks of potential co-optation and relativism.

Some dilemmas concern the *means* of the justice archive in its current iteration—that is, its reliance on digital platforms and technology—which in turn implies fragmentation and informality. This turn to digital technology poses a challenge to the very notion of 'collective memory' when the logic of digital memory associated with new media systems and technology is closer to what Hoskins calls 'memory of the multitude'.[73] This raises questions around the purposes of the archive and its relationship to official stories and efforts to control the master narrative. We previously discussed issues of archival creation and control, where tensions

[71] Viebach (2021).
[72] 'CIDH adopta resolución "Principios sobre Políticas Públicas de Memoria en las Américas'**,** 23 December 2019, available at https://www.oas.org/es/cidh/prensa/comunicados/2019/333.asp (last visited 22 April 2022).
[73] Hoskins (2018b).

become apparent in the various goals of the justice archive beyond preserving records. We see added purposes such as the potential goal of constructing or reconstructing shared narratives as a basis for collective memory for the future. The oft reiterated pursuit of the 'official story', which seemed so important for truth commissions and their reports in the Americas,[74] raises the question of whether the shared official story still a viable goal today. The methods of the justice archive, which rely on digital technology and media systems, imply individual mastery and therefore fragmentation.

One can see the fragmentary dimension very clearly in Argentina today, where the current state of the archives reflects the individual footprint and where access depends on the nature of the archival creation and related rules regarding privacy. In most instances, access would be case by case.[75] In the Balkans, fragmentation raises the risk that the work of digital memory activists may end up producing a sort of 'shadow archive' rather than challenging the dominant narratives about the wars and abuses of the 1990s. The development of digital memory could be seen as marking the end of 'collective memory' and, by contrast, the rise of 'memory of the multitude' associated with fragmentation, an inevitable dimension of the digital archive.

The implications of digital technology for remembering and forgetting are transformative, according to Hoskins, yet the changes have yet to be fully acknowledged and assimilated by memory studies. One might well conclude the same regarding scholarship in transitional justice, as these changes have not been assimilated in the literature. This would call for reconceptualizing memory practices as well as the overarching aims of memory studies. Accordingly, Hoskins argues for a new terminology: in his view the phrase 'collective memory', inherited from the era of broadcast media, continues to dominate thinking about memory beyond the self. He proposes replacing this phrase with 'memory of the multitude' as the defining organisational form of memory in an age of digital media and hyperconnectivity.[76] At stake is the rise of a different logic of digital memory, one that is database-driven and breaks with the

[74] For analysis of this development in the Americas during political transition see R Teitel, *Transitional Justice* at 77-83 (Oxford University Press 2000)
[75] R Teitel, Personal Communications with Dra Veronica Torres, of Memoria Abierta and Valeria Vegh Weis (26 March 2021).
[76] Hoskins (2018b).

narrative logic of the era of broadcast media: 'if part of the value of narrative is ending in closure, the value of the memory of the multitude is found in its perpetual becoming. Databases in this way invite repetition, remediation, renewal.'[77] Indeed, one might say that digitisation interrogates and problematises the very concept of foundational memory.

There are implications as well for the direction of current scholarship in transitional justice insofar as it tends to emphasise shared narratives and memory. As we have seen, more and more with the passage of time since transitional justice processes unfolded in a number of regions, the concern has been with the preservation of accounts with an eye to the future, often characterised as memory for education or non-repetition.[78]

Part V International Law and Regulation: Towards Guiding Principles?

Awareness of the dilemmas raised by the archival project is fairly recent, yet there are a handful of regulatory developments underway along with the promotion and drafting of guiding principles. These emerging normative principles concern some of the tensions and dilemmas identified in the previous section. The United Nations issued a set of principles against impunity which explicitly provide for 'the duty to preserve memory'.[79] Meanwhile, a UN report arguing for memorialisation as a fifth pillar of transitional justice calls on states to remove obstacles to accessing archives and advocates the use of memory practices as an educational tool to combat historical denial and revisionism.[80]

In the Americas there are already regulative projects of a technical and normative character that aim to address some of these tensions. Recognition of the transformative changes can be seen in both multilateral and Inter-American regional human rights regime principles regarding memory-

[77] Ibid 95.
[78] GA Res. A/HRC/39/53, 25 July 2018; F Salvioli, 'Gender Dimensions in Transitional Justice', 4 June 2019, available at https://www.youtube.com/watch?v=PXYAFDhf5yE (last visited 19 April 2022); Report of the UN Special Rapporteur, A/HRC/45/45.

[79] 'Promotion and Protection of Human Rights' 8 Feb 2005, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement (last visited 20 Sept 2022); F Haldemann & T Unger (eds), *The United Nations Principles to Combat Impunity: A Commentary* (Oxford UP, 2018).

[80] Report of the UN Rapporteur, A/HRC/45/45 at paras 113-114.

related practices in the Americas. These policy principles derive from the prevailing international approach to practices of transitional justice, but also from more recent recognition of the threats to consolidation of democracy in the current moment as well as potential slippage in some countries on the continent. Emergent principles on the regulation of the politics of memory in the Americas are aimed at sensitizing new generations to the demands of democratic consolidation as well as to the conditions for protecting liberal democracy. The Inter-American Commission of Human Rights identifies a range of archival and memory-related norms across both public and private sectors. They contemplate a number of duties for states, such as the establishment of rights related documentation and the protection of archives. They oblige states to create archives where they do not yet exist, as well as to preserve them, including archives established by civil society.[81]

In Europe there is emerging caselaw on accountability and notions of rights to truth and memorialisation. It derives in part from developments in international law regarding transitional justice emerging from post conflict settings as well as related multilateral agreements regarding disappearances.[82] Indeed, it was the ambition during the wars in the former Yugoslavia for the International Criminal Tribunal to advance a shared understanding of truth and to provide a record of the conflict—an explicit *telos* of the justice project as articulated by its then Chief Prosecutor Richard Goldstone; nevertheless, a number of tensions arise regarding the uses of trials for these purposes.[83] Other rights and obligations address ensuring the participation of victims and of civil society. New principles advocate the creation and protection of sites of memory, ensuring victim protection, and fostering regional integration and civil society involvement alongside providing funding for memorialisation.

A collaborative approach appears to be emerging between the state and civil society, and substantively, between a single-minded focus on the past to a layered one looking to the future to protect rights and freedoms and advance the consolidation of democracy. This approach, perhaps

[81] 'CIDH adopta resolución "Principios sobre Políticas Públicas de Memoria en las Américas', 23 December 2019, available at https://www.oas.org/es/cidh/prensa/comunicados/2019/333.asp (last visited 23 June 2022).
[82] R Teitel, 'Transitional Justice and Judicial Activism - A Right to Accountability' 48 *Cornell International Law Journal* (2015) 385
[83] See supra n 7, R Teitel, 'Bringing the Messiah through the Law' in Globalizing Transitional Justice (OUP 2014).

more particular to the Americas, may be compared to and distinguished from the more confrontational approach emerging in the Balkans. While the collaborative approach emerges out of felt necessities in particular political contexts, it also raises significant risks of co-optation of civil society and its array of practices. At present, particularly in the Americas, there is an attempt through the Inter-American Human Rights System to systematise the justice archive project, and yet the issues may run deeper.[84] Threats to liberal democracy across multiple global regions raise questions regarding how the political aims of the justice archive project can be carried out.

These developments illuminate the dynamic nature of the relationship between justice and memory today, the ways in which that engagement is giving rise to contestations, and the emergence of normative principles for managing them. The multiple and sometimes competing aims implicit in the justice archive may well require regulation through fragmented regimes relating to the management of the archive and the advancement of transitional justice.

Conclusion

At a time of growing concern for the future of democracy around the world, this article draws attention to a distinctive response: the rise of the justice archive. It makes visible a globalising trend of digital memory in more than one continent alongside the spread of digital technology and the increasing density of certain justice discourses. The emergence and growth of justice-based digital archiving and digital memory activism brings out the complexities of the contemporary relationship between justice and memory, shaped by logics of digital media and technology. They point to the potential of digital memory practices to rework the outputs of transitional justice processes and to bring them more tangibly into the present.

[84] See 'La CIDH publica 'Compendio sobre verdad, memoria, justiciar y reparación en contextos transicionales', 20 July 212, available at http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/184.asp (last visited 8 June 2022).

At the same time, the project of the justice archive raises questions about potential gains and risks, promises and limitations. In light of the political context and aspirations driving these practices, how can we characterise their aims and means? To what extent is the fusion of archive and narrative likely to reinforce or dilute their distinctive authority and power? How can these developments avoid reducing digital memory of past human rights abuses to a mere 'shadow archive'? And how can we think about the relationship between justice and memory as a continuum, or a cycle, without losing sight of what is distinctive and important about each?

We have identified ways that the turn to memory discourse and digital practices relativises prior approaches to transitional justice. They reflect a side of a radically different subject of justice processes, which may carry fundamental changes to transitional justice projects. Might the practices discussed—in and of themselves—imply a reconceptualization of that relationship with the risk of co-optation or displacement of one or the other project?

The developments analysed here are ongoing and dynamic, both individual and collective in nature, personal and political, private and public. The new types of digital memory practices associated with the rise of the justice archive open up new possibilities, as they are more porous and participatory than earlier justice projects. However, they also raise potential ethical issues, some of which relate to digital media and technology. Other tensions concern the law and politics of memory, producing anxieties around the potential co-optation of societal memory and related narratives and identity politics, on the one side, and the risk of marginalisation, on the other. This raises questions and concerns about the role of the state vis-à-vis non state actors, especially where memory is highly contested.

The contemporary justice archive inevitably reflects cross-purposes. There is the potential collaboration between state and civil society in shaping the memory landscape, often with the view of producing a shared collective narrative as a goal of transitional justice. At the same time, participation of diverse constituencies and a related array of memory practices may produce tensions with collective narratives. The normative choices implied by the justice archive are complex and contested, and responses through legal and other regulatory frameworks will confront a variety of actors, interests, and narratives within this emerging landscape.