**Archiving Justice, Dr Henry Redwood, DRAFT – 26/09/2020.**

# Introduction

Archives are sites of governance and power. The word ‘archive’ first appeared in relation to the *archons* (the magistrates) of ancient Greece: the archon’s house (the archive, or *arkeion*) was the place where records were kept, separated (and guarded) from the rest of society. The magistrate was given the responsibility and authority to protect and interpret the records and therefore create law (Derrida 1995, 9-10). The archive, as Derrida notes, functioned as a site of commencement; as an ontology and history were created as real; and commandment, as the law was created and then declared so (Velody 1998, 1-2). On the surface, then, there is a close link between archives and the practices and normative values of transitional justice. The archive is a site which both enacts law (and enables law to be ‘decided’ and made real), produces particular accounts of the community it is situated in (bringing that community to life), and in so doing assists (and makes possible) the governance of that community.

This chapter interrogates this link between archives and transitional justice, and idea of justice more generally, in three parts. First I examine the ways in which the archive reinforces core aspects of transitional justice as practice and a set of normative values. This does so by both focusing on the support role that archives play in rendering justice a possibility (and in many cases beckoning a ‘justice to come’)(Derrida 1992; and 2001), and second viewing the archive as itself a site of justice in and of itself. The second section turns to a more critical assessment of the relationship between archives and justice, as I explore the archive’s logics, and drive. Ultimately, this points to the role that archives play in the governance – and disciplining – of community, and shows a concerning synergy between archival practice and the very violence that transitional justice (claims to) confront. The final section looks at practices that might offer a way in which a more transformative vision of archive and community can emerge. This both focuses on what Stewart Motha and Honni van Rijswijk (2016) have called the ‘counter-archive’ and explicitly points to the possibility of alternative archival practices that drawn on an aesthetic approach to the production of knowledge, and community.

Overall, this chapter argues that the archive is not a passive facilitator of transitional justice, nor an innocent site where the past is recorded as was. It is, rather, a site of governance where particular notions of community are generated. Paying attention to this, and the rules which produce, restrict and constrain community in particular ways, encourages a deeper reflection on what type of community is desired as a result of ‘transition’.

# Archives and Transitional Justice

Transitional justice scholars, and social scientists, are relatively late to find interest in the archive as a site of empirical interest in and of themselves, with other neighbouring disciplines experiencing what some called an ‘archival turn’ in the 80s and 90s (Brown 1998; Foucault 1975; Derrida 1995; Farage 2013). Recently, however, this has started to change, as a number of the leading international transitional justice organisations that constitute transitional justice as a meaningful – and still powerful - field of activity have turned their attention to archives. These include the International Centre for Transitional Justice, SWISSPEACE, and the UN.[[1]](#endnote-1) From these, along with other recent scholarly interventions (e.g. Redwood *forthcoming*; el-Malik and Kamola 2017; Campbell, 2013; Caswell 2014; Baumgartner *et al* 2016), it becomes clear that archives play an important, if not contentious, role in transitional justice. Anne Gilliland goes as far to claim that ‘*[a]ll archives are human rights archives’*(Caswell 2014, 209 – emphasis added)suggesting a close relationship between archival practices and the quest for justice. The archive plays two clear roles in this search for justice. The first is a, perhaps less glamorous, role of facilitating a justice to come. The second is acting as a site of justice, in and of itself (Aboueldahab 2018, 3-5).

## Archives and Justice to Come

The documentation of violence, and a faith in the power of this documentation to realise a new state of peace after war, atrocity or democratic transition, remains central to the practice and discourse of transitional justice (Naftali 2016; UNHCR 2006; Accatino and Collins 2016, 85). From this perspective, it is perhaps unsurprising that archives are often seen as central to the very possibility of transitional justice. Indeed, in numerous contexts around the world, long before any possibility of justice has emerged, and often in the midst of violence, archives have been constructed in the hope that one day they will be able to facilitate the realisation of some form of justice – whether this maybe courts, truth commissions, or other official enquiries.

In Chile, for example, throughout the 70s and 80s Vicaría de la Solidarida, a human rights organisation working through a network of Catholic churches, documented the ongoing violence of the military dictatorship, recording 10s of 1000s of human rights violations (Accatino and Collins 2016, 90; Lira 2017, 189-194). At this point, any hope of justice was almost non-existence, and yet a faith that these could one-day facilitate a reckoning meant that they were kept, even at great risk to those in control of the archive (Lira 2017). And, indeed, these meticulously kept records werelater central to the work of both Chile’s truth commissions: Rettig Commission (Comisión Nacional de Verdad y Reconciliación - 1991) and Valech commission (Comisión Nacional sobre Prisión Política y Tortura - 2004 and 2011) (Accatino and Collins 2016, 89-91). In turn these records latter fed into criminal proceedings and so can be seen as supporting, and making possible, the work of numerous transitional justice mechanisms (Ibid 91-3). Similar examples can be found from societies across the globe (See Bickford et al, 5-7; and Caswel 2010).

Whilst the Chilean archives resemble a more traditional form of human rights archive, the work of Marta Giraldo and Daniel Tobón (2020) on Colombia’s transition shows that other types of archive, such as personal archives, can, and indeed are, also central to the transitional justice process. Focusing on the personal records of Fabiola Lalinde (the mother of a disappeared activist and activist in her own right) and Mario Agudelo (a former leftist militant who participated in the demobilisation of the Popular Liberation Army), they show how what started out as personal collections of experiences of conflict and transition were subsequently utilised in other transitional justice mechanisms and also other, often larger, memorial and archival projects. As Giraldo and Tobón argue, this, led to a ‘virtuous circle’ as,

archives can pave the way for implementing transitional justice – for example, the

documentary activism of Fabiola Lalinde and those who accompanied her contributed to the intervention of international human rights organisations. Also, archives are instrumental to several of the central objectives of transitional justice – reparation, historical memory and reconfiguration of social values. In turn, transitional justice encourages the creation of archives, gives them visibility and recognition, and can open them up to public use through transitional institutions. (Giraldo and Tobón 2020, 12-13).

The link between archives and a future state of justice is such that even archives belonging to the perpetrators contain this possible reckoning within them. A commonality that cuts across different totalitarian and violent regimes is that so often it is the state’s own obsessive collection of records that forms the basis of future prosecutions. It is perhaps within the totalitarian state, or the state at war, that archival power is at its optimum, as it zealously classifies and records the lives of citizens to facilitate the state’s total control of population. This was the case at the *Nuremberg* trials, for instance, where the international military tribunal relied almost exclusively on the Nazi’s extensive archives to establish the defendant’s guilt.[[2]](#endnote-2) Another example comes from the International Criminal Tribunal for the Former Yugoslavia (ICTY). In 2010, whilst searching the home of General Mladic’s wife, investigators found a series of war time diaries that detailed Mladic’s war time activities, in what was, at the time an example of good military practice. These diaries were later used in the prosecution of five defendants across four trials, including Mladić himself.[[3]](#endnote-3)

The archive is a site that awaits, and in many respects makes possible, a future state of justice. But it is possible to see an even more immediate link between archives and justice as they come to represent, and in some case stand in form, transitional justice in their own right.

## Monumental Justice

As the above suggests, the acquisition of truth remains at the centre of what many transitional justice practitioners and scholars consider to be a just response to past violence. The importance of truth is such that there is now even an ‘International Day for the Right to the Truth Concerning Gross Human Rights Violations and for the Dignity of Victims’ which takes place on the 24 March each year (see also UNHCR 2009). As UN Secretary General António Guterres stated at the 2020 celebration:

Truth opens the path to justice, reparation and healing. It helps us overcome prejudice, divisive narratives and extreme polarization. It also helps address the root causes of conflict and prevent its recurrence. This also why “The Highest Aspiration” -- my Call to Action for Human Rights – features efforts to promote justice and accountability for all (UN 2020)

Here truth both ‘opens the path’ for justice, but directly helps ‘overcome prejudice, divisive narratives and extreme polarisation’ (see also Baumgartner *et al* 2016, 1). This closely aligns a faith that archives are sites where a pure depiction of the past is recorded for posterity, and a vision of the archive as a site of monumental history:[[4]](#endnote-4) where shedding light on the past, opens up the possibility of a just form of community in the present and future (Jenkins 2014). There is, then, a sense that archives resemble a form of justice.

This relationship becomes more heighted with archives produced by transitional justice mechanisms given the overt truth finding role that underpins these. As, Fabian Salvioli, the Special Rapporteur on the promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, stated, to realise the ‘right to truth’:

…. States must establish institutions, mechanisms and procedures that enable them to search and reveal the truth, such as the establishment of truth commissions, the collection of victims' testimonies, the development of genetic banks and specialized forensic laboratories, and the development of related technical capacities.

This is perhaps particularly true, as Guterres’ statement suggests, of legal archives, which remain seen by many as sites of unparalleled truth (Accatino and Collins 2016, 85). The archives produced by transitional justice measures are both symbolic of the realisation of justice – a monument to that achievement (Stoler 2010, 90)– contain the truthful records of past violence and, arguably, as such form one of the central legacies of these interventions.

A number of transitional justice mechanisms have emphasised the importance of archives in this respect. For instance, as the International Criminal Tribunal for Rwanda (ICTR) moved towards (slowly) closing down, the archive was increasingly seen as one of its most important legacies. Such was the archives significance, that one of the reasons that the UN decided to build a new facility to house the follow on mechanisms that took over the ICTR’s residual functions, was because of a need for a revamped archive capable of storing the tribunals records *in perpetuity* (UNSG 2009). Yet this was not only a memorial to a justice past. Rather, the archive was seen as a way in which the work of the tribunal could continue long into the future. On the archives website it claims:

The records related to the investigations and prosecutions provide insight into the motivations and causes that led to these atrocities, thereby having the potential to educate and inform in the interest of preventing the occurrence of future violations of international humanitarian law (MICT 2020).

As such, the archive, is in many respects, a continuation of the tribunal’s work; seeking to prevent future acts of violence and maintain international peace and security.

In some instances where the possibility of more official transitional justice mechanisms appears remote, if not impossible, the archive can take on an even more immediate relationship with justice. In this context the archive can *become* a transitional justice mechanism in its own right. This is perhaps most pertinent in ongoing and intractable conflicts, such as those presently taking place in Syria.

In Syria a complex array of international and civil society organisations have been judiciously collecting evidence of crimes committed throughout the devastating war (Aboueldahab 2018, 11). As Noha Aboueldahab (2018) notes, these archives are, as discussed above, very much aimed at ensuring justice, in the traditional sense, is secured at some point in the future – and some of the records are in fact currently supporting criminal justice proceedings in other states (see also Roca 2017).[[5]](#endnote-5) Yet, for those colleting these records they are also in and of themselves an act of peaceful resistance to the war, and an act of justice (Aboueldahab 2018, 3). More than this, in recording the experiences of victims they ensure that this is, much like claims about truth commissions, a victim centred justice (Ibid).

Another example is the role of the Stasi archives in East Germany’s democratic transition (Bruce 2009, 15-37). As the German Democratic Republic (GDR) collapsed in 1990, the opening of the archives of the East German state, and especially the Stasi’s archives, became symbolic of an other wise absent justice. Indeed, one of the protestors first moves as it became apparent that the GDR was at an end, was to occupy government buildings to prevent the destruction of the archive. As Derrida notes, the physicality of the archive is key to its power, and so the occupation of the archive was important in the dismantling of the Stasi state and signified the beginning of a new form of community. In 1991, the German Bundestag passed the Stasi records act, allowing every citizen to access their own records (Knigge 2011) . The opening of the formerly hidden archives of the secret totalitarian state marked a rupture in the relationship between citizen and state. Interestingly, however, the archive also evolved as it became representative of this new state. Now part of the new democratic German state, files are redacted to protect the anonymity of those it names (Ibid), marking a limit to the state’s power to survey and intervene in citizens’ lives.

The archive claims – and indeed relies – on its totalising account of the past and its ability to guide community to a just state. This allure, this promise, of the truth is possibly one why, as the previous section argued, there remains such an affinity between archives and the processes and normative ideas of transitional justice. However, as historians and archivists have long been aware, this image of the archive conceals the politics of archiving and the archival drive whichis, first and foremost, to *exclude*, categorise, and discipline. It is to this ‘darker-side’ that the chapter now turns.

# Archives as Community and Governance

As this section demonstrates, archives have always played a role in the formation of community, and have maintained a close relationship with the state and practices of governance. This should perhaps bring a degree of caution about any assumed link between the archive and justice. Indeed, historians, archivists and post-colonial scholars have long been aware that there is a darker side to the archive, or as Derrida calls it, a *sickness.* This section examines these ideas as a way both of emphasising the importance of the archive as site in which community is produced and governed (and so potentially an ally to transition), but also to bring caution to notion that archives are sites of justice. It does so in three parts. The first considers the archival drive as a tool of nationalist governance. The second considers the exclusionary nature of the archive and the effect this has on the transitional process and the third considers the question of voice in the archive, and asks *whose voice* is recorded.

## Nationalism and the Archive.

As the emergence of the archive with the magistrates of ancient Greece suggests, the archive has always been intimately connected to the governance of populations and the constitution of the state. Turning to the institutional history of archives demonstrates this link further as, especially from the eighteenth century onwards, archives across Europe played a role in rendering populations governable and producing identities and norms – of the individual, collective and nation (Steedman 2001, 1159-63). One of the problems for the modern European state throughout this time was how to control an ever-growing population that was increasingly both more inter-connected and secular, which meant that the sovereign’s divinity no longer meant automatic loyalty to the state. Nationalism was an important technique in this respect, and archives played a crucial role in constructing a shared identity through the collection and consignation of objects that produced a sense of the nation’s past - its identity (Brown and Davis Brown 1998, 18-20; Kaplan 2000). Nineteenth century historians, such as Jules Michelet in France, played a vital role here as they, using these records, wrote in the nationalist state by constructing a sense of a shared (monolithic) past (Steedman 2001, 11-71-2; and 2011, 333-7).

The archive was also central to colonial expansion and helped produce the colonial state as a particular reality (Stoler 2010, 28-9), and render those that the colonisers ‘encountered’ as knowable and governable subjects (Ibid, 97-8; Osborne 1999, 51-64; Bastian 2006, 267-284)*.*  Rwanda offers a good, if not extreme, example of the potential consequence of this form of archiving. In Rwanda, prior to colonisation Hutus, Tutsis and Twas (the three main groups in Rwanda) reflected relative socio-economic standing, and so remained fluid identity categories. However, German and then Belgian colonisers viewed the Hutu, Tutsis and Twas as racially distinct groups (Eltringham 2006: 425-46). Drawing on the Hamitic myth, the colonisers determined that the Tutsis – the minority socio-economic group that wielded considerable power – originated from Ethiopia and were, as such, racially closer to white Europeans than Rwanda’s ‘natives’, the Hutus (the majority group) and Twas (the smallest group)(Des Forges 1999, 34-5). These artificial demarcations became lived realities through the production of records, such as ID cards, used to determine which pathways through life would be available for the different groups. The arbitrary determination that these catagories constituted distinct races became key during the genocide. For example, the genocidal discourse urged perpetrators to send the Tutsis back to Ethiopia via the Nyabarongo river (a code that Tutsis should be killed and thrown in the water), and victims were killed at roadblocks for ‘looking like a Tutsis’ – even when their ID cards said otherwise. The production of records, as such, can carry severe, and sometimes violent, consequences within the communities that they help to constitute. As was stated at the 1936 Congress of German Archivists:

There is no practice of racial politics without the mobilisation of source documents informing us on the origin and development of race and people… There is no racial politics without archives, without archivists (Velody 1998, 5).

The archive is not, then, ‘outside’ violence but is epistemologically and ontologically at the centre of the exclusionary violent practices such as colonialism and, indeed, genocide.[[6]](#endnote-6)

The archive is about categorising, dividing and fixing accounts of the social world and its subjects, and in doing so, making them ‘real’ and subject to governance. It is possible to see how these logics are also mirrored within those archives associated with transitional justice. Indeed, one of the long running critiques of transitional justice is it, like the archive, becomes obsessed with dividing society, the case of transitional justice archives, into victims and perpetrators, and in doing so, often reproduces and reifies the very divisions that it claims to look to overcome (Harris 2014, 226-228). This can be seen in relation, for example, to the ICTY’s archive where its contents have become a site through which the divisions so central to the wars in the 1990s are reproduced (Campbell 2011, 257 – 8).

This account of the archive raises questions, then, about the the archive as a nostalgic space where the past it recorded as was (Steedman 2001, 1162-3). Rather, if the archive is viewed as a site of governance, and the logics of the archive are considered then, as Derrida warned, it is possible to see a synergy between the archive and nationalism – as a technique of governance. This goes beyond is practical utility in managing populations. The archival drive as a process of producing, ordering, fixing, records for the archive, and reifying the existence of particular subjects and objects mirrors the very logics of nationalism. Underneath the clamours of this ‘total history’, lies a need to categorise, to name, and therefore also to exclude. At its extreme, these logics – an obsessiveness for categorising, ordering and excluding - also unpin acts of violence such as genocide. It is for this reason that Derrida (1995) sees that there is a sort of sickness within the heart of the archive.

## Silence in the Archive

As the above suggests, the archive’s claim to a totalising depiction of the past conceals the way in which the archive structures and ultimately excludes records. Indeed, the *bounded* nature of the archive is one it’s key features, and this means that it cannot – as is perhaps obvious – ever achieve this total history (although it is perhaps more the aspiration towards this that is what leads to the sickness Derrida points to). Indeed, within the archive, as Foucault reminds us, is a set of rules which determine what can be allowed in and in what form (1975). If, as the above argues, the archive is also at the heart of the formation of community then what is allow in, and what is kept out, is crucial to understanding *what* community is formed.

Foucault (1975, 127) describes the archive’s rules as the ‘rules of formation’, which offer a way in which to interrogate how are archive produces, and excludes, records in particular ways. Whilst each transitional justice archive will have its own set of rules (though likely anchored by the global discourse of transitional justice), it is possible even from a cursory glance to see how this affects transitional justice archives. To return to Chile, whilst the Vicaría de la Solidarida’s archives were of great importance for the transitional process, they also excluded certain aspects of the violence. Records: were limited by a lack of information of victims’ political affiliation (which made them appear as passive apolitical actors); failed to record evidence of the wide spread sexual violence that occurred; and were geographically limited in scope to the area around the capital, Santiago (Lira 2017, 193-5). This is notto criticise this work. But, rather, to suggest that the archive will always be limited, and so the rules that determine what is allowed in/ kept out need to be understood in order to understand what types are being brought into existence through them (see also Moon 2006; Kolia 2018).

Another example of this could be the ICTR’s archive. Here, the tribunal’s consistent failure to adequately incorporate gender based violence into the investigation and trial strategies has left a hole in the archive when it comes to violence committed against women. Research has showed that this is not because evidence wasn’t there, but rather because patriarchal understandings of violence and community meant that this evidence simply wasn’t valued in the same way as others (Redwood *forthcoming*; Walsh 2009; MacKinnon 2007; Nowrojee 2007). What is more, paying attention to this absence – and the patriarchal and gendered rules that produce this – helps critique the tribunal’s claims that one of its great achievements came in its handling of sexual violence cases and is revealing of the type of community the archive was ushering into existence.[[7]](#endnote-7) As Michel-Rolph Trouillot argues, archives are filled with silences produced by the limits of the archivist’s epistemology (Trouillot 1995, 72-82), and the (im)materiality of archival records play an important role in defining *which* histories can be told (Ibid, 28-9 and 95-107; Arondekar 2005, 27).

Whilst, then, no archive can ever hope to contain a *complete* account of society, what stories are recorded matter. As the following section, a consideration of *whose* voices are recorded is equally important for understanding the politics of the archive and the way in which it imagines community.

## Voices within the Archive

Finally, when thinking about the politics of the archive, and the archive as a site of governance and transitional justice, it is important to understand *whose* voice shapes the archive. Again, the work of post-colonial schools on the effects of the colonial archive is important. Benedict Anderson has shown, for instance, how colonisers through the production of records invented sub-sections of colonial societies with specific ‘objectively’ identifiable identities through record keeping. Here the coloniser’s sentimentalities and lived experiences shaped these categories, whilst the local populations’ lived experiences were ignored. For example, whereas the Philippine’s census records fixated on class (e.g. noblemen) which the Spanish conquistadors mobilised wherever they landed, in the Indonesian archipelago the Dutch coloniser’s Asian trading networks led to seemingly more regionally specific, yet highly racialized, categories, such as ‘Chinees’ (Anderson 2006, 168-70). Indeed, as Anne Stoler argues, colonial archives are sites where the *coloniser’s* fantasies and anxieties are lived out. Analysing the archive is about:

the force of writing and the feel of documents, about lettered governance and written traces of colonial lives. It is about the commitment to paper, and the political and personal work that such inscriptions perform. Not least about the colonial archive as sites of the expectant and conjured – about dreams of comforting futures and foreboding future failures. (Stoler 2010, 1 and 97).

Gayatri Spivak (1985, 271) argues that the archival force was such that attempting to find the agency of the subaltern within the colonial archive was futile. The consequence of this, for Stoler, is that colonial archives (and arguably any archive) need to be read *along the grain*; analysed from an ethnographic perspective that examines the processes and politics through which ‘credible’ knowledge is produced and the effects that this has within particular societies (Stoler 2002, 87-109).

The archive is, then, epistemologically limited in what it can claim to know, and the ways in which it can know. Again, a cursory glimpse at transitional justice archives suggests that this has an important baring on how transitional justice archives are produced, and the types of community that are realised as a result. Returning to the case of Syria, and the claim that these archives are *victim* centred. Here, I would argue, this potentially confuses a focus on victims with these spaces privileging *their voice*. It becomes clear that, as with all transitional justice settings, these testimonies remain shaped, and therefore limited, by the discourse of transitional justice, which continues to determine the ways in which violence is understood by privileging, first and foremost, narratives that focus on ‘who did what to whom’ (Accatino and Collins 2016, 84). Moreover, in the Syrian case it is also clear that it is still largely international organisations that are dictating how information is being collected – whether not it is by encouraging the use of particular human rights frames, or by only funding organisations which align with what the ‘international community’ sees as its priorities (Aboueldahab 2017, 17-20). As Harris (2014, 216) argues, this epistemological constraint means that the way practitioners, scholars and ‘beneficiaries’ think about transitional justice, and construct transitional archives, remains essentially straitjacketed. This also continues to constitute a particular, and problematic, relationship between the ‘international’ and ‘local’ within the archive.

There is, however, a need to question if the archive has to be seen as a site that *either* captures victims voice in their purity, or remains a site of silence. Transitional justice mechanisms are not static in how they seek to realise a particular set of goals (or indeed what their goals are), but are subject to the regular and ongoing contestation by those that interact with them (Redwood *forthcoming*; Jones and Bernath 2018). This much has been well examined in the ever growing literature on ‘hybridity’ in transitional justice and peacebuilding (e.g. Mac Ginty 2010). Indeed, it is worth remembering, returning to Foucault and one of his interlocutors, Arlette Farage (2013), that whilst the archive strives for total control over a particular sea of objects and subjects, this is only ever, as Stoler suggests, *a fantasy*. As such, and despite the archive’s force, within the archive there will be fragments which sit beyond and push back against the archival rules, that capture the subaltern’s voice.

Whilst this section has examined the archive as a site of order, categorisation and exclusion, which can have potentially negative repercussion for those communities it addresses – and brings into existence – as this final point shows, it is also possible that these rules and imaginings of community can be disrupted. The final section of this chapter examines this idea more closely through the idea of the ‘counter-archive’.

# Archives as Resistance

Several studies have begun to question if the archival drive *must* work in this way and how, in contrast, the archive can become a site of resistance and place where a more transformative and radical notion of community is imagined (Caswell 2014, 208-210). This final section considers this idea of the ‘counter-archive’ before looking at one example of this more imaginative and creative engagement with the archive, transitional justice and community.

## The Counter-Archive.

In recent years, international relations (IR), post-colonial and archival science scholars have begun to consider how the archive might be reimagined so that it becomes less a tool of coercive governance and more an site, or perhaps process, of emancipation (Moth 2018; Caswell 2014; Harris 2014; Flinn 2009; Wallace *et al* 2014). Shiera el-Malik and Isaac Kamola’s recent volume, for example, demonstrated that whilst the ability to rescue the subaltern’s voice from colonial archives might be in question, it is possible to find ‘anti-colonial’ archives, which challenge colonialism (and the archival drive’s) orderings of society. Importantly, however, doing so requires reconceptualizing the archive, away from the bounded material site of state and colonial administrative centers, and towards a more amorphous, dynamic notion of the archive (el-Malik and Kamola 2017).

In a similar guise, Caswell (2014), Harris (2014) and Motha (2017) have called for a rejection of traditional archival practice and urged activists, practitioners and scholars to find alternative ways in which to imagine the archive and engage with archival practice. Whilst the emphasis in each of these accounts shifts slightly, what unites them is that to resist the archive is it not simply about collecting or producing new and different records, but it means, more fundamentally, altering the very process through which an archive is formed. The counter-archive must reject a sense of the archive’s permeance, and so also the archives quest for closure and the clear demarcation of an inside/ outside. It must cease to be conceived of as a fixed bounded material site, but must instead remain open and constantly looking to expand. The counter-archive should not look to fix, and rather should constantly interrogate itself and its rules for how it might exclude and cause violence, and so must search for records that unsettle the archives rules and assumptions.[[8]](#endnote-8) The counter-archive must not prioritise one vision of community, but must look to accommodate a multiplicity of voices and perspectives. The counter-archive needs to reject any claims of neutrality and impartiality, and, rather, embrace the power that it holds to form communities of being and to do so without violence. As becomes clear, there can be no *end point* to this process. It is in this guise that the archive becomes more closely related to a Derridean understanding of justice as a future state to come, as a promise to offer hospitality to that which threatens, and to embrace the new forms of community that can emerge in its place (Derrida 1992; and 2001).

To examine this possibility of a counter-archive I will now briefly explore the work of an artist, Vladimir Miladinović, who uses the ICTY’s archive as a base to imagine a new vision of transitional justice and community in the Western Balkans.

## Vladimir Miladinović and the ICTY’s Archive

Miladinović’s artistic practice revolves around the question of archival power and can be interpreted as producing a ‘counter-archive’. His work meticulously reproduces archival records of silenced or contested aspects of the former Yugoslavia’s past in ink wash. His work has drawn on numerous archives, including newspaper archives and museums archives, and within these he has focused on different types of documents, such as lists, maps, posters, pamphlets and photographs. However, a reoccurring archive in Miladinović’s work is the ICTY’s archive. This has formed the basis of numerous exhibitions including *//Undiscernible//.,* (2019) (figure 1). which draws on a series of intercepted cables documenting communications between leading Serbs, and most recently *The Notebook* (Miladinović 2020)which reproduces 400 pages from one of General Mladic’s war time diaries (figure 2). Both are important artefact’s in the ICTY’s archive which have also been used in the tribunal’s prosecutions.

[insert figure 1.]

A number of points can be made about Miladinović’s work, which points to the disruptive potential of the ‘counter-archive’. First, in Miladinović’s practice, process is as central to the work as outcome; in many respects, the process *is* the outcome. Miladinović’s work first and foremost represents his personal process of interrogating how he, as someone that grew up in Serbia during the 1990s wars, personally came to know (or not know) about various aspects of the conflict and to disturb that assumed knowledge. It is also, more generally, about exploring how the process of writing back in fragments of an archive concealed from view can draw attention to the processes, structures and ideologies that excluded these narratives in the first place. In this way, Miladinović is disruptive of both his self-identity and the identity of the collective he finds himself. This, as such, looks to, following Ranciere, disrupt the ‘distribution of the sensible’ (Ranciere 2004), which renders some forms of knowledge common sense, whilst excluding others as ‘illegitimate.’

Second, the archive's rules are not concealed in this work but they are placed front and centre. That is, in addition to questioning what it is he and society remembers from the past, Miladinović also critiques *how* we know that past. In doing so, Miladinović under-cuts and challenges key aspects of the transitional justice discourse that underpins post-conflict politics in the Western Balkans, and also underpins the very archives that he draws inspiration from, such as those of the ICTY.

Two aspects are notable here. The first is undermining the archives claims to totality. In *//Undiscernible//.* (figure 1.) Miladinović draws attention to the frequency with which the intercepted cables read as ‘undiscernible’, which highlights the question of what is excluded from the archive. In a similar way, *The Notebook* (figure 2.) draws attention to the politics of translation at the ICTY as Miladinović returns the English-translated, digitalised and in many respects sanitised version of Mladic’s handwritten diary (originally handwritten in Serbian Cyrillic) that was used as evidence in court, back into it ‘original state’ as hand-drawn, personal artefact. Both of these interventions draw attention to the logics of the ICTY’s archive to question what the tribunal understood as proof, and also the tribunal’s obsession (an archival obsession) with producing a verifiable account of the past – something ultimately unobtainable.

[insert figure 2.].

But in reproducing these records a further, and arguably more fundamental, reinterpretation of the ICTY’s archive takes place. Like most transitional justice mechanisms, the ICTY was concerned with finding *the* truth about the past, a determining guilty perpetrator from innocent victim, in order to draw a line under the past. Miladinović’s work, however, fundamentally rejects such a vision of justice. It does this by opening up a space between the original image *as proof* and the reproduction of the image in his artwork. That is, whilst on first look Miladinović’s work appears to be an *exact* replica of the archive, on closer examination it becomes clear that this is, rather, an aesthetic reinterpretation of this record. This is not, and cannot, be an exact replica and when the viewer becomes aware of this a space of imaginative contemplation is opened up - the production of a ‘third image’ (Mitchell, 1994).Whilst, then, the word ‘undiscernible’ draws attention to an absence, it is, down to the viewer to ‘fill this is’. The image then encourages the viewer to embark on their *own process* of self-examination and continued exploration. There is, as such, a celebrated sense of indeterminacy in Miladinović’s work. No one person will gain the same thing from the work, as they traverse the work in different ways, and fill in this ‘third image’ differently. This work contains not one, but many narratives of the past; there is no truth to be found in this work. In this, *The Notebook* constitutes a counter archive that works to undermine both the ICTY’s archive and archival power per se.

In disrupting the terms on which justice and community are imagined in the archive, and, importantly, disrupting the self, Miladinović’s aesthetic engagement with the archive opens up the potential for a more radical form of community. One based on imagination, self-reflexive questioning and, in jettisoning the search for *the* truth and blame, the constitution of a more inclusive form of community.

# Conclusion

This chapter has interrogated the relationship between the archive and justice in transitional justice settings. This has shown that the is archive not distinct to the practice of transitional justice, or removed from the formation of a post-conflict/ authoritarian community. Nor is it simply a stepping stone towards a future state of justice. Rather, it is something that is at the *very heart* of the pursuit of justice and the formation and governance of community. This latter point raises questions for the assumed affinity between the archive and transitional justice. In this respect, in exploring the archive as a site of governance, the chapter revealed the darker side of the archival drive, with its drive to categorise, order, fix and exclude.

Turning to the archive highlights the need to consider what type of community is desired in as a result of transition. Still, and despite decades of astute critique, when confronting violent legacies, practitioners continue to turn to the established tool kit of transitional justice without, I would contend, due consideration for how these produce a particular, and essentially limited, vision of community. In drawing attention to the interrelationship between law, knowledge and community, the archive offers a prism through the relationship between transitional justice and community can be better understood, and, contested.

Indeed, the archive need not, necessarily, function in this way – reproducing what might be considered a ‘hegemonic’ conception of transition and community. The final section of this chapter argued that it is possible to produce a counter-archive which undercuts the archival drive. This dismisses the archive as a fixed and bounded site, to allow for a pluralistic vision of history and community to emerge. It deliberately seeks to integrate records that disrupt its understanding of self, recognising, that difference is an essential part of both self and community( Arendt 1990, 80-4). Within this vision, the archive (just like justice and community) is always in a state of becoming. The counter-archive is more than an idea, however. As the discussion of Miladinović’s work, and the work of Harris and Caswell, amongst others, shows, counter-archives can be produced that support a more radical reimagining of community in the search for durable peace. The task for scholars and practitioners alike is to fight for the inclusion of these ‘counter-archive’ within transitional justice practice, and indeed as a means to challenge what is imagined as transitional justice.

1. See ‘Documenting Truth’, <https://www.ictj.org/gallery-items/documentation>; ‘Dealing with the past’ <http://archivesproject.swisspeace.ch/>; ‘Right to Truth’, <https://www.ohchr.org/en/issues/truth/pages/truthIndex.aspx>. [↑](#endnote-ref-1)
2. The same can be said of Chile (Accatino and Collins 2016, 89. [↑](#endnote-ref-2)
3. The notebook has been used in: *Prosecutor* vs. *Karadžić* (IT-95-5/18); *Prosecutor* vs*. Ratko Mladić* (IT-09-92); *Prosecutor* vs*. Jovica Stanišić and Franko Simatović* (IT-03-69-T); and *Prosecutor* vs. *Vojislav Šešelj* (IT-03-67). It is also the archive’s ability to hold the state to account that produces a paradoxical relationship between state and archive, where the state both needs, but also wants to destroy the archive (Mbembe 2002). [↑](#endnote-ref-3)
4. This way of thinking about the archive is, perhaps, more distinctly a Western phenomenon (Ní Shúilleabháin 2017; Mignolo 2007) [↑](#endnote-ref-4)
5. This evidence has been used in the (albeit unsuccessful) prosecution of Syrians for war crimes in Sweden and Germany (Aboueldahab 2018, 21-22). [↑](#endnote-ref-5)
6. Roisin Read (2016, 105-7) has, similarly, shown how the production of the archive can be implicated in violence, showing the contradiction that exists with peacekeeping forces in Sudan’s dual mandate to protect civilians and collect evidence of human rights abuse. [↑](#endnote-ref-6)
7. Read (2016, 106) points to a similar exclusion of gender based violence in the formation peacekeeping archives in Sudan. [↑](#endnote-ref-7)
8. The archive of Fabiola Lalinde can also be seen in this way. She calls for: ‘Young people, doubt, think, make the archive speak, do not let it remain silent (…) The archive of a ‘cirirí’ has to continue to be uncomfortable in an unjust and violent country like ours, I leave it to you as an opportunity for communion, solidarity and creation, not as a dead object of the past. (Giraldo and Tobón 2020, 9)

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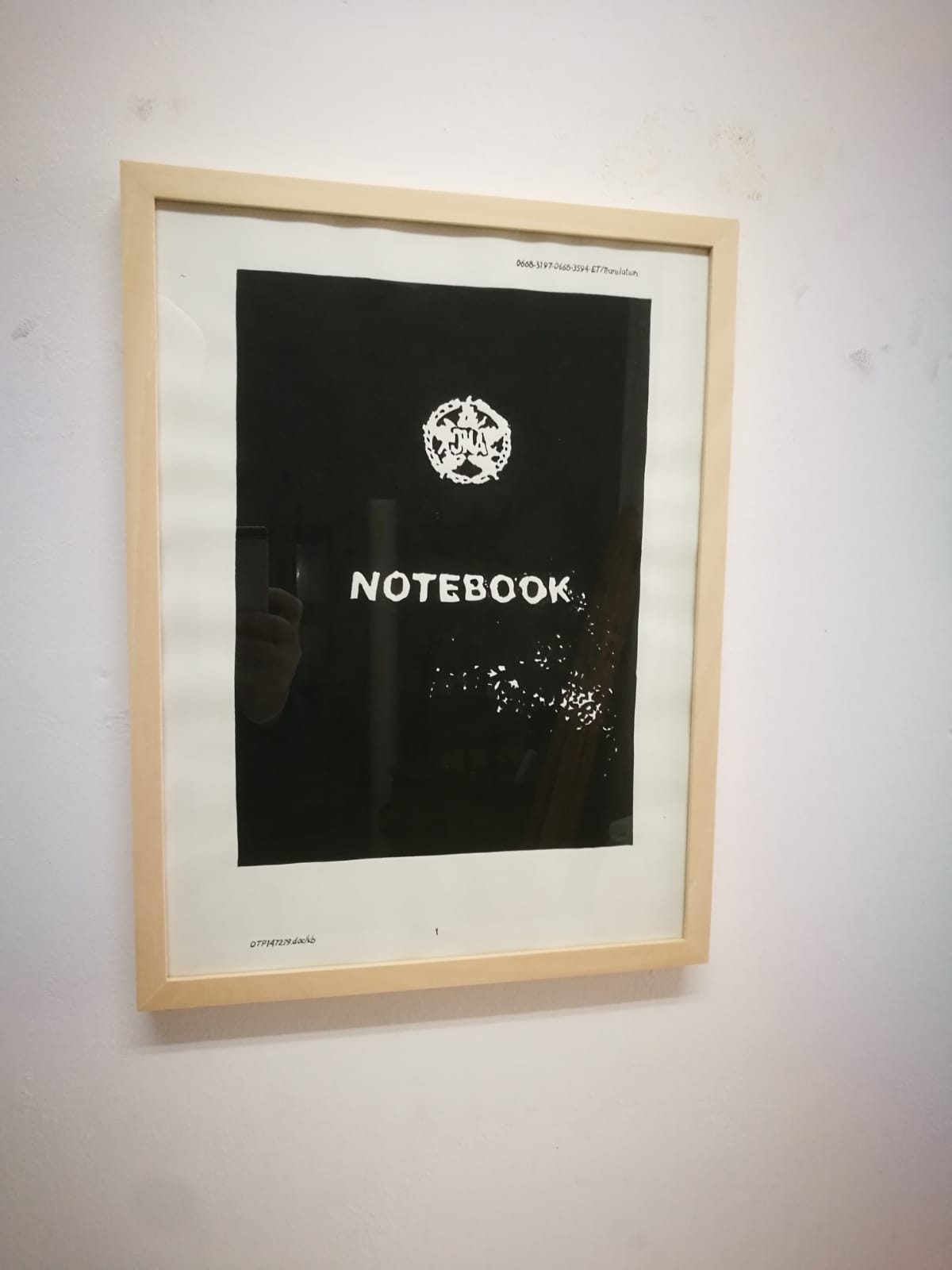
   # Figures/ Illustrations

   Figure 1. Vladimir Miladinović *//Undiscernible//.*

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   Figure 2. Vladimir Miladinović *The notebook.*

   ** [↑](#endnote-ref-8)