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Ruti Teitel Responds to Shana Tabak

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by NYU Journal Of International Law And Politics

[[Ruti G. Teitel](#) is the Ernst C. Stiefel Professor of Comparative Law at New York Law School.]

I am happy to join the conversation on Shana Tabak's "[False dichotomies of Transitional Justice Gender, Conflict and Combatants in Colombia](#)," forthcoming in the next issue of the NYU Journal of International Law & Politics. Tabak's article is a thoughtful meditation on the difficult issues surrounding gender conflict and justice with specific reference to the ongoing situation in Columbia. Her article is an example of recent scholarship e.g., *On the Frontlines* (OUP 2011) that draws attention to the place of gender in considerations of transitional justice in conflict and post-conflict.

The contribution of the article is in its critical challenge to any simplistic approach to the question of what role gender ought to play. Indeed as Tabak notes the scholarship in this area all too often suffers from false dichotomies of war/peace: conflict/postconflict; male/female; ordinary /transitional. Indeed, one might add the core dichotomies that relate to the problem of reconciling law and change. Prior to publishing *Transitional Justice* (2000) I coined the term in order to evoke the dual nature of the challenge of promoting rule of law and justice in political transition—both forward-looking and backward-looking at the same time.

But once these false dichotomies are conceded, where does gender belong in the project of transitional justice? The question in Tabak's words is "What might a genuinely feminist version of transitional justice look like?" She anchors her critique on the specifics of the Colombian conflict and the significant participation of women in that conflict as combatants. Women find themselves on all sides of conflict—gender cuts across the victim-perpetrator divide. This crucial reality in Tabak's view was not sufficiently recognized in Colombia's Justice and Peace Law providing for demobilization but which lacked gender specificity and therefore failed to adequately account for and support former female guerrilla forces in the post conflict period. Instead, Tabak argues for a continuum of possibilities including more "holistic" solutions that may well venture beyond the confines of the law and its modalities, to get beyond the categories of victim-perpetrator, and consider impact more broadly on the community.

Still, one cannot help but wonder if the importance of this question of what role gender ought to play in situations of conflict and post/conflict couldn't itself generate alternative perspectives on what counts in this context. Indeed, noted feminist Catherine Mackinnon argues in recent work that women ought to turn to the law of war, and related international legal space that might enable getting beyond the usual dichotomies that plague "domestic" law. For, after all, it is the law of war that explicitly addresses gendered violence (consider the International Criminal Court's Rome Statute criminalizing sexual violence as both a "war crime" and a "crime against humanity."). Beyond, that the law of war contemplates enforcement mechanisms, as well as for recognition of change in status and treatment in violent conflict's aftermath. Here, one might think of East Timor where post conflict status contemplated a move from combatants to "veterans" thus laying the basis for shared status and recognition with men as well as offering a basis for pensions and other added support. As I argue in my new book [Humanity's Law](#) (OUP 2011), the turn to international humanitarian law may well reframe the ordinary gender-related dichotomies so to draw attention to women's humanity under the law—such a move rendering them human juridically speaking and in this way the international legal regimes and fora though they may seem to involve distant conflicts may also lay the basis for changed status and recognition that might have spillover transformative effects at home.

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