Post-Conflict Progress:
Embedding Transitional Justice within the Liberal Framework

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The field of transitional justice has overcome major theoretical and practical questions that once dominated much of the literature, including the debates of 'peace versus justice' and 'truth versus justice'. Now, it is clear that the majority of writers in the field, as well as those in the broader field of democratization believe that, as Nagy states in *Transitional Justice as Global Project*, "the question today is not *whether* something should be done after atrocity but *how* it should be done."[1] Indeed, the international community has largely accepted the notion that we must respond to mass human rights violations. As a result of the early dominance of legal scholars, emphasis has been on moral-philosophical questions or issues pertaining to institutional design.[2] However, as books like *Assessing the Impact of Transitional Justice* and *Truth Commissions and Transitional Justice* show, the field has expanded to include a stronger focus on primary empirical research within structured studies.[3] Clark notes the field is moving away from examining institutions and processes to focus, instead, on questions of outcome and impact.[4] However, while this progression in the field is important, it is clear that we still do not have a sound understanding of the institutions and processes that spread the ideals of transitional justice. We have not considered transitional justice within the wider forces of globalization. Indeed, this paper responds to Miller's observation that, "the role of international actors in the process of spreading the ideas and ideals of the 'movement' of transitional justice has not yet been fully explored in the literature."[5] In order to do this, we need to problematize some of the basic tenets of transitional justice to fully comprehend these processes and, only then can we fully understand the outcomes and impact of transitional justice mechanisms in post-conflict societies.

Recently, academics have started to explicitly recognize transitional justice as embedded in a liberal framework. This is evident in Shaw and Waldorf's book, *Localizing Transitional Justice*, in which they suggest that transitional justice "embodies a liberal vision of history as progress, a redemptive model in which the harms of the past may be repaired in order to produce a future characterized by the nonrecurrence of violence, the rule of law, and a culture of human rights."[6] In response to this, I suggest that we need a deeper understanding of liberalism and the global forces that promote its tenets. I argue that the liberalizing forces which have impacted transitional justice are also driven by its neoliberal economic dimensions, which has supplanted older liberal ideas regarding social welfare systems. Some academics, including Jeong, suggest that a better label for the current phase of democratization is that of neoliberal peacebuilding.[7] Regardless of labels, it is clear that we cannot separate our examination of transitional justice from the broader forces of political liberalism and neoliberal economics. While perhaps not an entirely novel observation, I believe that both writers producing literature on the field of

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[1] Rosemary Nagy, "Transitional Justice as Global Project: Critical Reflections," *Third World Quarterly* 29, no. 2 (2008): 276.
[2] David Backer, "Cross-National Comparative Analysis," in *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, edited by Hugo van der Merwe, Victoria Baxter, Audrey R. Chapman (Washington: United States Institute of Peace, 2009), 60.
[3] Backer, *Cross-National*, 60.
[4] Phil Clark, "Book Review: Reconciliation(s): Transitional Justice in Post-conflict Societies, edited by Joanna R. Quinn. Traditional Justice and Reconciliation, edited by Luc Huyse and Mark Salter" *International Journal of Transitional Justice* 4, no. 1 (2010): 138.
[5] Zinaida Miller, "Effects of Invisibility: In Search of the 'Economic' in Transitional Justice," *International Journal of Transitional Justice* 2, no. 3 (2008): 287.
[6] Rosalind Shaw and Lars Waldorf, "Introduction: Localizing Transitional Justice," in *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, edited by Rosalind Shaw and Lars Waldorf with Pierre Hazan (Stanford: Stanford University Press, 2010), 3.
[7] Ho-Won Jeong, *Peacebuilding in Postconflict Societies* (Boulder: Lynne Rienner Publishers, 2005).

transitional justice, as well as those engaged in the application of these mechanisms, require further examination to fully understand this movement of ideas. This paper is part of a larger project examining the relationship between global capitalism driven by a neoliberal discourse on transitional justice. Thus, the intent of this paper is to establish a foundation for this research, that is, to survey what has been said about this topic and to suggest further research into this area. In the end, I suggest that the work of Bourdieu provides a more nuanced understanding of the global transmission of ideas and can provide a framework for studying agents engaged in this field.

While it is clear that transitional justice is not a project of the neoliberal elites to expand capitalist relations, it is clear that mechanisms to secure peace and order in post-conflict states have been significantly impacted by neoliberal theory.[8] In suggesting this, it is implied, then, that our understanding of the movement of neoliberal ideas throughout the world (including through transitional justice mechanisms) cannot be understood as a purposive set of actions designed to infiltrate state/society relations like a Trojan horse. I believe that this does not provide a complete explanation of the transmission of ideas. In the case of transitional justice, it is clear that the mechanisms are designed to pursue justice (however defined) following mass atrocities and not neoliberal ideas. Given the few studies it is important that more research be done to examine whether transitional justice has assisted with the reproduction of these neoliberal ideas in post-conflict societies. At a minimum, it is clear that there is some type of relationship between transitional justice and neoliberalism. Before moving into the transitional justice literature, I will briefly examine the characteristics of these global forces.

Globalization and the Consolidation of Liberalism

I suggest that we cannot understand transitional justice without situating it within the broader forces of globalization. Badie provides a useful definition of globalization in his study of the importation and exportation of state structures throughout the world. He identifies globalization as the "unification of the international system [which] is based on solid technical means that promote mobility, communication, interpenetration; it aims at the effective reduction of particularities as well as membership in a common juridical, political, economic, and even ethical order."[9] Badie suggest that globalization must be understood as going "hand in hand with the glorification of singularity."[10] While it is clear that the rationale embedded in these globalizing forces is derived from this liberal framework, the following section will briefly examine how liberalism gained such a universal appeal, especially in post-conflict societies.

While the end of the Cold War symbolically signaled a new period in international relations, in which democracy promotion gained significant momentum, Carothers suggests that there were seven events that significantly transformed the political landscape, allowing for the emergence of this new democratizing trend: (1) the collapse of right-wing authoritarian regimes in Southern Europe during the 1970s; (2) the emergence of elected civilian governments across Latin America during the 1970s and 1980s; (3) segments of East and South Asia experiencing a decline in authoritarian rule during the mid-1980s; (4) the collapse of communist regimes in Eastern Europe; (5) the dissolution of the Soviet Union; (6) portions of sub-Saharan Africa experiencing a decline in one-party regimes in the 1990s; and (7) some form of weak liberalizing trends experienced in Middle Eastern countries during the 1990s.[11] While these trends were not driven by a single causal variable, Carothers suggests that, "they shared a dominant characteristic

[8] See David Hoogenboom and Stephanie Vieille, "A Preliminary Examination of the Relationship between Transitional Justice and the Neoliberal Discourse," paper presented at the Canadian Political Science Association, Ottawa, ON: May 29, 2009.
[9] Bertrand Badie, *The Imported State: The Westernization of the Political Order,* (Stanford: Stanford University Press, 2000), 3.
[10] Badie, *The Imported State,* 3.
[11] Tomas Carothers, "The End of the Transition Paradigm," *Journal of Democracy* 13, no. 1 (2002): 5.

– simultaneous movement in at least several countries in each region away from dictatorial rule toward more liberal and often more democratic governance."[12]

In response to this, there was a theoretical consensus regarding democracy as *best available solution.*[13] Among others, Diamond argues that this trend established democracy as the typical form of government. The elimination of the iron curtain and the disintegration of the Soviet Union meant that the largely cohesive system of international governance could set a new agenda to promote liberal democracy. The normative perspective underlying this agenda was that Western-style liberal democracy was generally good, and that peace in the world would be secured through democratization. Indeed, Russett clearly articulated this vision for a new world suggesting that, "[t]he new century presents more than just the passing of a particular adversarial relationship; it offers a chance for fundamentally-changed relations among nations."[14] As a critical response to the unchallenged position of liberalism in the international system, Newman, Paris and Richmond point out, "the tenets of liberal peacebuilding including liberal democracy, liberal human rights, market values, the integration of societies into globalization and the centralized secular state are not necessarily universal."[15] Despite this, the belief in the value of this model as a means for achieving international peace has relegated any competing models of social organization.

However, it was not simply liberalism that gained momentum from the end of the Cold War, but a unique variant known as neoliberalism. The ideology of neoliberalism was first dominant in the United States and Great Britain during the governments of Reagan and Thatcher, respectively.[16] In time, these ideas came to be proliferated through channels like the International Monetary Fund (IMF) and the World Bank (WB). Embedded in the neoliberal discourse is the belief that the political ideals of human dignity and individual freedom were universally central to human civilization.[17] Such ideals, according to Harvey, are compelling and seductive. For neoliberals, these ideals lead to the normative theory that human well-being is best advanced by "liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade."[18] The state, in such a view, exists to guarantee the integrity of money and private property through the establishment of a military, police force and, legal structures.[19]

The development of neoliberalism is based on a specific premise regarding the nature of society: "the notion that, however complex social relations might be, there exists an imminent market-like essence to each individual, regardless of a society's culture or history.[20] A basic assumption of neoliberalism, then, is the institutional separation of society into an economic and political sphere as neoliberals believe that the economic sphere functions according to a basic

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[12] Carothers, "The End of the Transition Paradigm," 5.
[13] Larry Diamond, "Introduction: In Search of Consolidation," in *Consolidating the Third Wave Democracies,* edited by Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore: The John Hopkins University Press, 1997), xiv. See also, Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1986).
[14] Bruce Russett, "How Democracy, Interdependence, and International Organizations Create a System of Peace," in *The Democracy Sourcebook*, edited by Robert A, Dahl, Ian Shapiro, and Jose Antonio Cheibub, (Cambridge: The MIT Press, 2003), 492.
[15] Edward Newman, Roland Paris and Oliver P. Richmond, "Introduction," in *New Perspectives on Liberal Peacebuilding*, edited by Edward Newman, Roland Paris, and Oliver P. Richmond (New York: United Nations University Press, 2009), 12.
[16] For a good summary of the neoliberal theory see: David Harvey, *A Brief History of Neoliberailsm*, (Oxford: Oxford University Press, 2005).
[17] Harvey, *A Brief History*, 5.
[18] Harvey, *A Brief History, 2.*
[19] Ibid.
[20] Graham Harrison, "Economic Faith, Social Project and a Misreading of African Society: the travails of neoliberalism in Africa." *Third World Quarterly* 26, no. 8 (2005): 1311.

rationality whereas the political sphere is assumed to be inherently irrational. Consequently, liberals claim that all problems of the economy can be resolved by socially-neutral experts using technical rationality. Derived from this belief, neoliberal policy prescriptions will emphasize market solutions over political solutions to relieve the problems of (re)distribution.[21] Such a universal viewpoint, is, according to Harvey, "threatened not only by fascism, dictatorship, and communism [the old political battles], but by all forms of state intervention that substituted collective judgments for those of individuals free to choose."[22]

The faith in the removing of the state, ever present in the structural adjustment policies of the 1980s, has given way to a realization that "reducing the state's unproductive involvement in society was not a sufficient condition to ensure the development of properly functioning markets."[23] For example, in many countries, a strong state is needed to establish a private property in rural areas in order to enable agricultural development as this "allows land to be used more efficiently, productively and as collateral for loans."[24] The state's expansion into society did not fit nicely into the neoliberal framework. However, according Harrison, it "represents the fuller ambition of neoliberalism and its champions – social engineering to create a market society that involves the state (under the auspices of external agencies) as the principal engineer."[25] Indeed, this is evidenced by international community's promotion of the term 'good governance'. As Richmond suggests, the modern liberal peacebuilding approach "emphasizes governance and top-down thinking about peace, rather than bottom-up approaches. This accentuates reform processes associated with liberal-democratic free market frameworks, human rights and the rule of law, and development models."[26]

However, neoliberalism has received sharp criticism since its inception into the global realm of ideas and, its application throughout the world. As a hegemonic project that stresses liberalization, privatization and internationalization, neoliberalism produces negative effects including unemployment and falling real incomes. As a result, as a concept of control, neoliberalism is the "formulation of an identifiable fractional interest (the capitalist/business interests) in terms of the 'national' or 'general' interest. Neoliberalism is the *fundamental expression of the outlook of transnational circulating capital*."[27] Given the acceptance of this view by the most influential international institutions working in Africa today (IMF and WB), understanding its impact is an essential for understanding both the developing and developed world.

In summary, the international community's promotion of liberal peacebuilding, which promotes free markets economics via neoliberalism is, in practice, connected to notions of good governance which stress respect for human rights and the establishment of the rule of law. The following section will consequently examine transitional justice as it relates to this overall liberal framework.

Transitional Justice as a Liberal Response to Mass Atrocities

In cases of post-conflict transition, both the international community and successor governments struggle with a set of moral, legal and political challenges. Increasing attention has been focused on how societies respond to the need for social reconstruction. Foremost among these is the questions of "what to do about the past." Indeed, after mass atrocities have occurred, the concept

[21] Williams and Taylor, *Neoliberalism*, 23.
[22] Havey, *A Brief History*, 5.
[23] Harrison, *Economic Faith*, 1306.
[24] Ibid. 1306.
[25] Ibid.
[26] Oliver P. Richmond, "A Genealogy of Peace and Conflict Theory," in *Palgrave advances in peacebuilding: Critical developments and approaches* edited by Oliver P. Richmond (Hampshire: Palgrave Macmillan, 2010), 23.
[27] Henk Overbeek and Kees van der Pijl, "Restructuring Capital and Restructuring Hegemony: Neoliberalism and the Unmaking of the Post-war Order," in *Restructuring Hegemony in the Global Political Economy*, edited by Henk Overbeek (London: Routledge, 1993), 15.

of "justice" needs to be promoted as a goal for emerging democracies.[28] In states transitioning from war to peace, justice can involve a series of actions and processes which seek to recognize past crimes and attempt to move beyond their legacies.[29] Transitional justice, "includes that set or practices, mechanisms, and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law."[30] For a new government, transitional justice is a process of recognizing the irrationality of the previous regime thus de-legitimizing its actions. Transitional justice can include such measures as truth commissions, vetting, reparations and prosecutions and criminal investigations. In terms of legal prosecutions, a favoured mechanism of the international community, Teitel asserts that "legal measures during such periods follow a distinctive paradigm, guided by rule-of-law principles tailored to the goal of political transformation."[31] For Teitel, as well as much of the international community, the goal of political transformation is the construction of a liberal democratic state.[32]

From its origins, transitional justice was intimately tied to the notion of upholding universal human rights as the protection of human dignity, and the equal and inalienable rights of all human beings.[33] Most academics point to the post-World War II era as the foundation of modern transitional justice. In response to the atrocities committed by the Nazi regime, the international community established the International Declaration of Human Rights as well as the Nuremberg Trials to prosecute leaders for genocide and crimes against humanity. Consequently, Nuremberg is the first significant incarnation of the *thing* we call transitional justice. While, for some, the Nuremberg Trials resembled a sort of victor's justice, Teitel asserts that, "the weight of the precedent is not in the proceedings but, rather, in the way it has shaped the pervasive understanding of transitional criminal justice."[34] Indeed, the Nuremberg Trials "shaped the dominant scholarly understanding of successor justice with the shift in approach, from national to international processes, as well as from the collective to the individuals."[35] Such a shift, according to Teitel, "implied a wholly novel and international judicial forum, multinational criminal procedure, as well as offenses such as the 'crime against humanity.'[36]

However, Chandler warns that we should not conflate the UDHR (as well as the International Covenant of Economic, Social, and Cultural Rights, and the International Covenant of Civil and Political Rights) and the Nuremberg Trials as a desire to build an enforceable framework for the protection of universal rights in the international sphere. It is clear that, throughout the Cold War, states remained the central and only actor and individuals were not recognized as legal subjects in international law. The growth of universal human rights as a moral signpost in the international system is a relatively recent development following the

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[28] See Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick: Transaction Publishers, 2000).
[29] Joanna R. Quinn, "Transitional Justice," *Globalization and Autonomy On-Line Compendium*, edited by William Coleman, Nancy Johnson, Geoffrey Rockwell and Andrew Mactavish. (Globalization and Autonomy Research Project, Sep. 2005); and Neil J. Kritz, "The Dilemmas of Transitional Justice," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume I General Considerations,* edited by Neil J. Kritz (Washington, D.C.: United States Institute of Peace).
[30] Naomi Roht-Arriaza, "The New Landscape of Transitional Justice," in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* edited by Naomi Roht-Arriaza and Javier Mariexcurrena (Cambridge: Cambridge University Press, 2006), 2.
[31] Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), 213.
[32] Teitel, *Transitional Justice.*
[33] Human rights is best understood as defined by The Universal Declaration of Human Rights, which states that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.
[34] Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), 31.
[35] Teitel, *Transitional Justice,* 31.
[36] Teitel, *Transitional Justice*, 31-32.

dissolution of the Soviet Union and, especially, the atrocities committed in Bosnia and Rwanda.[37] In response to this, the international community has rejected the impunity of the past, and has started to build upon the basic principles of Nuremberg. As Teitel points out, "worldwide, accountability occurs primarily through the exposure and public censure of state persecution…the greatest legacy of the Nuremberg precedent is that the question of state accountability would never again be confined within national borders but instead, would be a matter of international import."[38] I believe this internationalization of transitional justice cannot be separated from the global forces of liberalization. Further, justice for atrocities has become increasingly internationalized through the establishment of the International Criminal Court as a means to both solidify and streamline the justice process.

In summary, it is important to situate transitional justice within the wider global forces as this *international* prescription for peace made its way into the state-building literature as a means to secure the Democratic Peace Thesis. As briefly mentioned above, as a response to the significant transformation in the international system following the fall of the Soviet Union, the international community came to a consensus about liberal democracy concluding that creating a liberal democracy was the best political solution for states emerging from war (as well as from communism) as the mechanisms present in a liberal democratic state can effectively mitigate the social cleavages in a post-conflict society.[39] As Mani and Krause note, "[liberal] democracy is traditionally seen as a panacea to many ills, providing security and civil liberties to citizens and avoiding armed strife provoked by un-redressed grievances."[40] Hazan notes that, "this optimism was found at the heart of the new system of thought about the idea of political and moral progress of societies."[41] It is within this context, then, that we see the re-emergence of transitional justice as a mechanism to combat human rights violations and consolidate liberal democracy-building. Indeed, Donnelly suggests that the two are intimately tied together and have become the twin principles for legitimating a regime in this international system dominated by the ideals of liberalism.[42] Thus, in conjunction with the establishment of democracy as the best solution to conflict, it has become widely accepted that some form of justice must be pursued.

Emerging Criticism

It is clear that there seems to be a tacit acceptance of these global forces in transitional justice. In fact, not only does the field accept these forces without question, it is perhaps, more useful to suggest that transitional justice receives considerable legitimacy as a field *because* of these forces. This is no clearer than in the writing of Teitel. She asserts that, "for there to be meaningful change in societies driven by racial, ethnic, and religious conflict, identity politics should be exposed for what it is – political construction. Ethnic politics has no place in the liberal state. What needs construction is the liberal response to injustice."[43] Despite the general acceptance of these liberal ideals, we have seen a limited number of articles attempting to problematize this relationship between neoliberal peacebuilding and transitional justice.

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[37] David Chandler, "(Mis) Use of Human Rights," in *Human Rights: Politics and Practice,* edited by Michael Goodhart (New York: Oxford University Press, 2009).
[38] Teitel, *Transitional Justice, 38-39.*
[39] See: T. David Mason and Jason Quinn, "Sustaining the Peace: Stopping the recurrence of civil wars," in *Conflict Prevention and Peacebuiling in Post-War Societies: Sustaining the Peace,* edited by T. David Mason and James D. Meernik, (New York: Routledge, 2006): 24 and; Roland Paris, *At War's End* (Cambridge: Cambridge University Press, 2004), 42.
[40] Rama Mani And Jane Krause, "Democratic Governance," in *Post-Conflict Peacebuilding: A Lexicon,* edited by Vincent Chetail, (Oxford: Oxford University Press, 2009), 106.
[41] Pierre Hazan, "Transitional Justice after September 11: A New Rapport with Evil," in *Localizing Transitional Justice: Interventions and Priorities after Mass Violence,* edited by Rosalind Shaw and Lars Waldorf with Pierre Hazan (Stanford: Stanford University Press, 2010), 50.
[42] Jack Donnelly, Human Rights, Democracy, and Development," *Human Rights Quarterly* 21, no. 3 (1999): 608.
[43] Ruti Teitel, "Bringing the Messiah Through the Law," in *Human Rights in Political Transitions: Gettysburg to Bosnia,* edited by Carla Hesse and Robert Post (New York: Zone Books, 1999), 189.

For example, Sriram suggests that transitional justice has largely remained unscathed in the emerging criticism of liberal peacebuilding. She suggests the central criticism of this paradigm questions its appropriateness in states emerging from conflict as its one-size-fits-all approach results in several negative externalities for transitional societies. For Sriram, democratization, in general, is viewed as inherently destabilizing, particularly because of the international community's excessive focus on elections.[44] Given that transitional justice and liberal peacebuilding "share key assumptions about preferable institutional arrangements and a faith that other key goods – democracy, free markets, justice – can essentially stand in for, and necessarily create, peace,"[45] transitional justice is implicated in this wider critique of liberal peacebuilding. Furthermore, Sriram notes that transitional justice provides another potential point of contention for newly democratizing states, as underpinning the transitional justice process in a post-conflict society is often a set of basic notions regarding what is needed in a society emerging from conflict. International organizations such as the WB advocate mainly for legal accountability through juridical mechanisms. Often, these juridical solutions are resisted by those accused of crimes especially, when such individuals are in positions of power or hold considerable power among some segments of society. If they choose to, such individuals can potentially threaten the peace process. Even without a direct threat like this, trials can result in populations unfairly blaming or being blamed for past atrocities. As a result, Sriram argues that this can blindly categorize a society between victims and perpetrators, thus preventing a more refined understanding of a rather complex post-conflict society.[46]

Further, Sriram suggests that the emphasis on legal accountability can be inappropriate in some countries where the justice system has been devastated by conflict and unable to deliver judgments in complex areas of international crimes, or where legalized justice was never a significant institution in the society.[47] Similarly, Nagy correctly argues that, for individuals who have to live together following mass violence, transitional justice may be a foreign concept "steeped in Western liberalism, and often located outside the area where conflict occurred."[48] Such criticism, while extremely relevant, focuses mainly on the political or cultural problems posed by transitional justice and does not touch on the potential impact that neoliberalism, as a unique perspective for viewing the relationship between the state, society, and the economy, can have on transitional justice.

In terms of economic policies, Sriram recognizes that the development of market economies following conflict can often exacerbate existing inequalities in society, suggesting that "simply embedding market forces without dealing with past grievances and inequities may entrench old grievances or create new ones. It is for this reason that land reform and other programmes are often in demand after conflict, even though they may operate at cross-purposes with marketization."[49] However, such criticism does not touch on the impact of neoliberalism on transitional justice. In contrast, Mani's book, *Beyond Retribution*, does make an explicit connection between neoliberalism and transitional justice, highlighting its impact on distributive justice. In terms of this relationship, Mani suggests that it has failed to adequately address the real concerns of survivors of conflict. Peacebuilding agents have often focused on the material effects of conflict and have overlooked questions of distributive justice, which often underlie conflict in

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[44] Chandra Lekha Sriram, "Transitional Justice and the Liberal Peace," in *New Perspectives on Liberal Peacebuilding*, edited by Edward Newman, Roland Paris, and Oliver P. Richmond (New York: United Nations University Press, 2009), 119.
[45] Sriram, *Transitional Justice,* 112.
[46] Sriram, *Transitional Justice, 119*-120.
[47] Sriram, *Transitional Justice,* 121-122.
[48] Rosemary Nagy, "Transitional Justice as Global Projects: Critical Reflections," *Third World Quarterly* 29, no. 2 (2008): 276.
[49] Sriram, *Transitional Justice,* 114.

many countries.[50] In these cases, resource scarcity is considered a probable cause of conflict, when, in reality, a more likely explanation to civil strife is injustice, that is, the prevailing social, economic, and political structures that favour an elite few at the expense of the rest of society. However, the dominant paradigm of neoliberalism does not adequately address these concerns. Mani suggests that the approach of these institutions is fundamentally flawed in post-conflict situations, since these models are based on perfect market conditions. This assumes an economy that functions within a strong state that can provide public goods, a functioning legal system, and acceptable means for social distribution. Here, Mani relies on the work of Carbonnier, who proposes that certain basic assumptions underpinning this economic model do not take into account the realities on the ground in countries following mass conflict. Instead of adjusting for these market "imperfections" in the economic model, neoliberal approaches count the consequences of conflict and war as "incidental, exogenous circumstances." Consequently, because these factors do not fit into the dominant model (neoliberalism), they are not recognized as important variables which may or may not impact the functioning of the market and overall outcomes.[51]

For Mani, it is clear that the neoliberal model, which stresses liberty over equality in order to promote privatization and liberalization, is wrongly applied in post-conflict situations, to the detriment of peace.[52] Similarly, Laplante, inspired by the writings of human rights activist and physician Paul Farmer, suggests that a focus on trials and reparations, which ignores economic and social inequalities, is "like treating the symptoms while leaving the underlying illness to fester."[53] According to Farmer, "Rights violations are . . . symptoms of deeper pathologies of power and are linked intimately to the social conditions that so often determine who will suffer abuse and who will be shielded from harm."[54] In response, Laplante suggests that any "diagnosis of human rights violations abstracted from the dynamics of social power and conflict" overlooks the fundamental pathologies of a society.[55]

In addition, Miller also recognizes the limited exposure socio-economic, structural factors receive within transitional justice, asserting that, "the reduction of economic questions to the need for reparations and, in turn, a focus on the pressure on reparations as an issue of limited resources in a nascent economy curb the redistributional possibilities of the project of transitional justice."[56] By ignoring economic questions, transitional justice literature does not focus on the economic causes of conflict, nor their potential to undermine peace. Further, Miller suggests that there is often a complete disregard for the role that international actors, including external states and multinational corporations, play in conflict. Such oversight, according to Miller, makes "transnational structural imbalances seem irrelevant with regard to internal violence or repression."[57]

A Response to Liberalism

Mani concludes that the reason for this failure to address questions of equality in post-conflict society is a result of a mix of factors including: risking a negative response from elite groups and institutions that, for some reason, reject ideas of redistribution; a desire to maintain an economically-friendly environment for business communities and international investors; and/or a lack of resources to carry out any significant policy of redistribution.[58] Mani stresses the need

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[50] Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002), 127.
[51] Mani, *Beyond Retribution*, 135-136.
[52] Mani, *Beyond Retribution*, 135.
[53] Lisa J. Laplante, "Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework," *International Journal of Transitional Justice* 2, no. 3 (2008): 333.
[54] Laplante, *Transitional*, 337.
[55] Laplante, *Transitional*, 333.
[56] Miller, *Effects of Invisibility*, 286.
[57] Miller, *Effects of Invisibility*, 287.
[58] Mani, *Beyond Retribution*, 151.

for a shift from neoliberal policies to ones that highlight the need for equitable societies. Given their significant influence in post-conflict societies, she believes that the Bretton Woods Institutions, including the IMF and WB, must spearhead this shift. [59] Similarly, Laplante suggests that the international community must broaden its understanding of justice to include structural violence, referring to the embedded socioeconomic conditions that produce such poverty and inequality in a society.[60] For example, she believes that there needs to be explicit recognition of economic, social, and cultural rights, in order to legitimate and protect social justice. While some mechanisms, like truth commissions highlight the impact of socioeconomic factors in a historical context, they do not present them as a rights violation, *per se*. Without situating them in a language of rights, there are no explicit duties to be fulfilled. Instead, she suggests that it is left to political leaders to decide whether or not to address such structural concerns. [61]

These observations help improve our understanding of the impact of neoliberalism on transitional justice. Despite its goals of protecting international human rights, when it comes to questions of the economy – distribution of economic wealth as a means of resolving these socio-economic inequalities – transitional justice falls largely silent. Recognizing this, it is difficult to ignore this intimate relationship between transitional justice and the wider goals of neoliberal peacebuilding. I believe that these solutions which promote the lobbying of international institutions to adopt more humane policies do not adequately account for the relationship between transitional justice and the neoliberal peacebuilding enterprise. Such prescriptions assume that neoliberalism and transitional justice are fundamentally at odds with each other and are working against each other. According to this perspective, the international community's neglect of socio-economic justice is a result of the uneven power relations between the two. That is, the whole peacebuilding process has been tipped in the favour of neoliberal camp at the expense of the transitional justice camp. However, I believe we need a more nuanced understanding of the transmission of these ideas into a post-conflict society. That is, it is not enough to assume that we have the neoliberal agents (usually portrayed as those working for the IMF or World bank) working towards their goals of liberalization versus transitional justice agents (themselves, largely characterized as those related to the International Centre for Transitional Justice or individual academics, broadly speaking) working towards justice. The following section will attempt to construct a preliminary framework for a more in-depth understanding of the movement of these liberal and, more specifically, neoliberal ideas.

A Universal Language?

The work of Bourdieu can provide us with further insight into these globalizing forces. According to Bourdieu, contemporary social hierarchies and social inequality (like that which exists both between developing and developed states, as well as those that exist within states) must be understood as products of symbolic power. For Bourdieu, symbolic power is the ability to make people see and believe in a vision of the world. Symbolic systems, whether art, religion, science, justice or language are imbued with power and perform three functions: (1) *Cognition:* Bourdieu views symbolic systems as "structuring structures." The different symbolic universes (myth, language, art, and science) are instruments for knowing and constructing the world. They are cognitive structures which order and shape our understanding of the social world.[62] This protection of the liberal ideals of human dignity and individual freedom tied up in both transitional justice and neoliberalism fundamentally shapes how we order and understand the social world and is consequently articulated through the liberal peacebuilding process; (2) Symbolic systems are also structures that are, themselves, structured. As Swartz asserts, they are

[59] Mani, *Beyond Retribution*, 151-152.
[60] Laplante, *Transitional*, 333.
[61] Laplante, *Transitional*, 341.
[62] Bourdieu, *On Symbolic Power*, 164-165.

"codes that channel deep structural meanings shared by all members of a culture."[63] This notion of progress, including the protection of human dignity and individual freedom, articulated through the liberal peacebuilding process is fundamentally a product of the Western experience – as first articulated by the Early Greeks, through Christianity and the enlightenment era with writers like John Locke. These ideals have formed the basis of Western civilization; and (3) *Social Differentiation:* Bourdieu asserts that symbolic systems can serve a political function as instruments of domination. By imposing a definition of the social world that conforms to the interests of particular groups, dominant symbolic systems can legitimate social ranking by "encouraging the dominated to accept the existing hierarchies of social distinction."[64]

Here, we see that this Western notion of transitional justice which "embodies a liberal vision of history as progress, a redemptive model in which the harms of the past may be repaired in order to produce a future characterized by nonrecurrance of violence, the rule of law and a culture of human rights," clearly serves the interests of the West as much or more than the countries it seeks to help. Indeed, liberal peacebuilding and, more specifically, transitional justice, help serve the interests of the West in the building of peace, rule of law, and as a by-product, thus creating the conditions for the emergence of markets. These values serve the goals of international peace as much as they do the goals of global capitalism (by freeing up markets). Indeed, the construction and legitimization of the social world is not manufactured according to a deliberate or purposive agenda, rather, as Bourdieu states, it is "from the fact that agents apply to the objective structures of the social world structures of perception and appreciation which are issued out of these very structures and which tend to picture the world as evident." [65] So, our application of these ideas is simply because this is the way we see the world, however, by imposing a definition of the social world – the desire to protect universal human dignity and individual freedom – we also give tacit support to the fundamentals of neoliberalism. This results in what Bourdieu identifies as symbolic violence, that is, the exercise of oppression that is not recognized as such by the dominated (nor sometimes the dominant). Indeed, much less a project of global capitalism, this reproduction of inequality as witnessed by the liberal peacebuilding program must be understood as a projection of our own understanding of the world. However, this does not deny its impact in supporting inequality between, say the 'north' and 'south', but it does provide a more nuanced understanding of the West's relationship with the developing world via liberal democracy building and, more specifically, transitional justice.

We must recognize, then, that the ethico-political ideals of human dignity and individual freedom are fundamentally at the root of both neoliberalism and transitional justice and that such ideals form the basis of the Western conception of progress. Rather than at odds with each other, transitional justice and neoliberalism are working towards the same goal, the glorification, and, consequently, protection of the *universal ideals of human dignity and individual freedom*. Thus, both are suspicious of the rationality of the state as an agent to protect these rights (and for good reason). In this respect, neoliberalism and transitional justice work towards similar goals, the protection of these rights. However, agents that exhibit more neoliberal tendencies may have a greater suspicion in the state as a rational entity. In response, rather than grouping people into neoliberal and non-neoliberal, a better understanding is based on where individuals stand on this state-rationality spectrum.

Rooted in the supposed universal ideals of human dignity and individual freedom, both of these ideals embody a liberal vision of the world that seeks to limit the state's authority. Instead of being posed at odds with each other, it is better to understand the relationship of neoliberalism

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[63] David Swartz, *Culture and Power: The Sociology of Pierre Bourdieu* (Chicago: The University of Chicago Press, 1997), 83.
[64] Swartz, *Culture and Power*, 83.
[65] Pierre Bourdieu, "Social Space and Symbolic Power," *Sociological Theory* 7, no. 1 (1989): 21.

and transitional justice as existing on a liberal spectrum regarding the rationality of the state. In this light, it is understandable why the goals of the transitional justice, including the pursuit of human rights protection through the establishment of peace and order rooted in the rule of law, under gird the neoliberal notions of free market capitalism as the truest expression of individual freedom and human dignity as they are both rooted in a liberal vision of the world.

Conclusion

First, we must establish two observations: (1) For state's emerging from conflict, liberal peacebuilding requires transitional justice to re-establish order in society is needed to consolidate peace and re-establish the rule of law in a newly created liberal democracy. Likewise, transitional justice - holding criminals accountable, re-building the rule of law, etc. - as a means of protecting universal human rights (built on the belief of human dignity), depends on the liberal framework for its own existence as it provides international legitimacy and support to these processes. This is a symbiotic relationship; and (2) Embedded in the notion of transitional justice is the protection of individual human rights, based on the "inherent dignity and of the equal and inalienable rights of all members of the human family."[66] Similarly, the neoliberal discourse is the belief that the political ideals of human dignity and individual freedom are universal. Respect for these ideals requires liberating individual entrepreneurial freedoms and protecting their interests. Indeed, both visions of the world are based on a liberal framework rooted in the universal ideals of human dignity and individual freedom.

In conclusion, our understanding of the relationship between neoliberalism and transitional justice as at odds with each other does not properly explain how each are situated within a larger liberal vision of the world. Neoliberalism and transitional justice are both instruments for knowing and constructing the world that are fundamentally embedded in a western perspective. The relationship between the two is better understood as existing on different places on a liberal spectrum of rational state behaviour. Further research is needed to explore this liberal discourse as it relates to both transitional justice and neoliberalism and how this discourse shapes the perspective of all Western agents involved in the state-building field. In suggesting this, I argue that we cannot envision the movement of neoliberal ideas throughout the world (including through transitional justice mechanisms) as simply a purposive set of actions designed to infiltrate state/society relations like a Trojan horse, as this does not provide a complete explanation of the transmission of ideas. Instead, we must see both transitional justice and neoliberalism as liberal responses to protect individual rights but with varying suspicion of the rationality of the state.

[66] Universal Declaration of Human Rights (1948).