Examining the Visions of Transitional Justice

David Hoogenboom

The University of Western Ontario
Department of Political Science
dhoogenb@uwo.ca

Please do not cite without permission from authors

Introduction

As the title suggests, the purpose of this paper is to draw out a broad understanding of the vision or normative aspirations, which drives the transitional justice field. This paper is part of a larger investigation of the ideals of transitional justice and the role international actors play in setting the agenda for post-conflict society. I am particularly interested in the way the field of transitional justice has been largely insulated from the criticisms leveled against the liberal peacebuilding agenda, despite their apparent close relationship. The argument of this paper, then, is that the normative vision for transitional justice is fundamentally shaped by the liberal peacebuilding paradigm. While this may not be problematic in itself, the liberal peacebuilding framework has largely embodied a particular view of the world impacted by neoliberalism. In its modern incarnation, neoliberal policies stress good governance, free markets, and civil and political rights, but reject policies that attempt to redistribute wealth. This, consequently, prioritizes civil and political rights over economic and social rights. Such a worldview can also be found in the field of transitional justice where the focus of mechanisms like trials and truth commissions is largely restricted to civil and political violations.

Defining Transitional Justice

Increasing attention has been focused on how societies respond to the need for social reconstruction following conflict. In these cases, both the international community and successor governments struggle with a set of moral, legal and political challenges. Among these is the questions of "what to do about the past." The international community has accepted that, after mass atrocities have occurred, the concept of "justice" needs to be promoted.[1] This impulse for some type of justice is the driving rationale for the field of transitional justice. While a relatively emerging field, Weinstein and Stover point out "the human desire to 'right wrongs' is as old as recorded history."[2] For them, the search for justice is a desire to reclaim what has been lost as a result of a crime that was committed.[3] The definition of justice, however, remains highly contested. There is no universal method to 'reclaiming the lost' and 'righting the wrongs'. Weinstein and

---

[1] See Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (New Brunswick: Transaction Publishers, 2000).

[2] Harvey M. Weinstein and Eric Stover, "Introduction: Conflict, Justice and Reclamation," in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity,* edited by Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004), 11.

[3] Ibid.

Stover suggest that caution needs to be taken when trying to formulate a specific definition as "justice, like beauty, is in the eye of the beholder and can be interpreted in a variety of ways."[4] After conducting research in Rwanda and former Yugoslavia, the authors suggest that the clarity of this concept remained rather tangled and multi-dimensional:

> For many of our informants, justice meant having a job and an income; for others, it was returning to the home they had lost; still others saw justice as the ability to forget the past and move on with their lives. For some, justice was testifying at a trial against the soldiers and paramilitaries who had murdered their families and destroyed their homes. For others, justice had to be exacted by revenge. Some said justice could only take place once their neighbors looked them directly in the eye and apologized for betraying them. Still others said it was finally learning the truth about their missing relatives and receiving their bodies for proper burials.[5]

Defining what justice looks like is a matter of interpretation with varying perspectives both between cultures and within them. Clark suggests that, "perceptions of justice are fundamentally shaped by a variety of factors, including personal experiences and group membership."[6] Consequently, justice can be a very personal journey, but with very public consequences for the wider society. What this suggests is that the process of seeking justice is both private and public at the same time, and attitudes towards justice can vary greatly from one person to the next just as much as they can vary from one culture to the next. There is no right way to pursue justice. As a result, the international community as well as the field of transitional justice has become a legitimating force in the "business" of justice.

In states transitioning from war to peace, then, justice can involve a series of actions and processes, which seek to recognize past crimes and attempt to move beyond their legacies.[7] As a way of organizing the various approaches to pursue justice, the transitional justice literature has categorized three dominant justice paradigms: retributive, restorative, and reparative.[8] From the retributive paradigm, criminal trials are the most common mechanism. Retributive justice, and the court system built upon its philosophical underpinnings, is a specific approach to doing justice and has been prioritized at the expense of alternative conceptions of justice. Retributive justice asserts that offenders have "taken an unfair advantage in committing a crime, which can only be correct by the administering of a punishment."[9] For Mani,

> the basic retributive urge is that wrongdoing must be punished simply because the wrongful act merits condemnation and punishment. A retributivist is someone who insists that it is a moral obligation to inflict suffering on a wrongdoer regardless of society's symbols or conventions. Retributive justice is 'backward-looking' because its raison d'etre is rooted in the past, in the commission of the act.[10]

Justice, then, is manifested through the state's (or international community's) procedures of inflicting punishment. In this sense, justice does not engage the victims. The recognition of the relative unimportance of the victim in the justice process has been the central focus of the restorative justice process.

The justice process is further complicated when the justice being sought is within a post-conflict context where mass atrocities have been committed. In these situations, the pursuit for justice can involve hundreds of thousands of personal sufferings. Any response, under such conditions will be wholly inadequate for dealing with the varied conceptions of justice. The problems associated with the nature of justice as being both personal and public and having significant consequences for the entire society

---

[4] Weinstein and Stover, "Introduction," 4.

[5] Ibid.

[6] Janine Clark, "The three Rs: retributive justice, restorative justice, and reconciliation" *Contemporary Justice Review* 11, no. 4 (2008): 333.

[7] 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).

[8] Martha Minow, *Between Vengeance and Forgiveness (Boston: Beacon Press, 1998).*

[9] Declan Roche, "Retribution and restorative justice," in *The Handbook of Restorative Justice*, edited by Gerry Johnstone and Daniel W. Van Ness (Portland, OR: Willan Publishing, 2007), 78.

[10] Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity, 2002), 33-34.

becomes ever more apparent in such a setting when the public consequences of continued suffering is a fragile peace between previously warring parties.

Beyond punishment, advocates suggest that criminal justice can help deter future crimes. Drumbl, however, suggests that there is no systematized evidence that definitively demonstrates the effectiveness of criminal trials in deterring international crimes asserting that some of the worst human rights violations including the Srebrenica massacre (1995) and the Kosovo ethnic cleansing (1998) took place while the ICTY was still active.[11] He argues that the failure to deter crimes is, in part, because "deterrence's assumption of a certain degree of perpetrator rationality, which is grounded in liberalism's treatment of the ordinary common criminal seems particularly ill fitting for those who perpetuate atrocity."[12] For Drumbl, the effectiveness of an international court to deter crimes is muted especially against the backdrop of "massive violence, incendiary propaganda, and upended social order that contours atrocity."[13] The cost-benefit analysis undertaken by an individual carrying out such atrocities is, perhaps, an over-enthusiastic view of their particular mindset within such circumstances.

Instead of deterrence, many scholars of transitional justice suggest that the goal driving legal prosecution is embracing the rule of law. Trials, convictions and punishment can build the status of a new state and increase the respect for law.[14] Drumbl identifies this rationale for punishment as expressivism. Such a process attempts to recognize the irrationality of the previous regime thus de-legitimizing its actions and paving the way for a new governing order. For McAdams, "the decision to act upon past abuses will amount to more than simply finalizing the break with authoritarianism. Assuming they [trials] are properly conducted, these proceedings should provide tangible evidence of the guiding principles – equality, fairness, and the rule of law – that are meant to define the new order of things."[15] Similarly, Mendez asserts that "redressing the wrongs committed through human rights violations is not only a legal obligation and a moral imperative imposed on governments. It also makes good political sense in the transition from dictatorship to democracy. In fact, the pursuit of retrospective justice is an urgent task of democratization, as it highlights the fundamental character of the new order to be established, an order based on the rule of law and on respect for dignity and worth of each human person."[16] 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."[17] The need for retributive justice to signal a break from authoritarianism and to affirm the new democratic state seems to have taken hold at the international level. Starting with the Nuremberg trials (1945) and the Tokyo Trials (1946) following the Second World War, retributive justice has remained the cornerstone the international community's approach to mass atrocities as evidenced by the establishment of the International Criminal Tribunal for the former Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994), and the permanent International Criminal Court (1998).

In contrast to the retributive model, restorative justice emerges from a unique view of wrongdoings. From the restorative perspective, a wrongdoing breaks down the very social fabric of a community. Crime is much more about the damaged relationships within community.[18] From the restorative perspective, which acknowledges the importance of community, damaged relationships represent both the effects of a crime, as well as the cause of crime. That is, a criminal act further damages the societal fabric of a community but it, perhaps more importantly, also signals an existing brokenness within the community. Any response to such collective brokenness must seek to restore the basic fabric of society. As a crime both implicates the community and contributes to its deterioration, the response must include the victim, offender as well as community members. Zehr highlights this suggesting that

---

[11] Drumbl, 169.

[12] Drubml.

[13] Drumbl, 171.

[14] Drumbl, 173.

[15] A. James McAdams, "Preface," in *Transitional Justice and the Rule of Law in New Democracies* edited by A. James McAdams (Notre Dame: University of Notre Dame Press, 1997), x.

[16] Juan E. Mendez, "In Defense of Transitional Justice," in *Transitional Justice and the Rule of Law in New Democracies* edited by A. James McAdams (Notre Dame: University of Notre Dame Press, 1997), 1.

[17] 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.

[18] Howard Zehr, *The Little Book of Restorative Justice* (Intercourse, PA.: Good Books, 2002), 22.

"restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible."[19] In contrast to the criminal justice paradigm where "violations create guilt," the restorative justice paradigm asserts that violations create obligations."[20] Instead of the guilt necessitating some form of punishment by the state, the restorative paradigm suggests that obligations are owed to both the victim and the wider community. Zehr asserts that, "justice involves victims, offenders, and community members in an effort to put things right."[21] This could include dialogue between these stakeholders, in which all "share their stories and come to a consensus about what should be done."[22] In this sense, the stakeholders includes both victims and offenders, as well as the community.

Proponents of restorative justice have identified truth commissions, the mechanism most closely associated with this paradigm, as an alternative to criminal prosecutions when responding to mass atrocities. Following the wave of military dictatorships throughout Latin America, many countries discarded the dominant retributive perspective on justice, opting, instead, to establish truth commissions as a response to the mass human rights violations that took place under these regimes. Such a choice was a political compromise as "[i]n many cases, the previous government insisted upon amnesties or pardons as a precondition for stepping aside."[23] With criminal prosecutions no longer possible, new governments were forced to look elsewhere for a legitimate response to the previous regimes' human rights violation. Consequently, the concept of a truth commission was adopted in order to "explain what had happened – which was critical to societies that had suffered through a reign of fear and terror epitomized by death squads and 'disappearances.'"[24] Argentina was the first country to adopt a truth commission, but such an approach has largely been connected to the democratic transition in South Africa, where the new government adopted the Truth and Reconciliation Commission (TRC) to investigate the mass human rights violations under the apartheid regime.[25]

In Latin America, truth commission were set up as a fact-finding mission. In many cases, it is argued that truth commissions were needed to "reverse the silence and denial of the dictatorship years, to establish the extent, origin and nature of the crimes, which were not well-known, and to know who had collaborated in an effort to limit their future influence."[26] The purported benefits of truth commissions, however, extend beyond mere fact-finding or fact-exposing mission. Mendeloff outlines some of the purported claims of the power of truth commissions. These include:

1. Personal healing promotes national healing.
2. Truth-telling promotes individual healing after psychological trauma.
3. Truth-telling promotes reconciliation.
4. Truth-telling can promote individual over collective guilt (and collective guilt is dangerous and undesirable).
5. Truth is important because forgetting, suppressing, or distorting the past causes war.
6. Truth-telling can serve as the basis of a new shared identity and collective identities which are peace-promoting.
7. The truth promotes democracy.
8. Truth-telling promotes an accurate historical record.
9. Truth-telling promotes respect for human rights and the rule of law and respect for human rights and the rule of law is peace-promoting.[27]

[19] Zehr, *The Little Book,* 37.

[20] Zehr, *The Little Book, 21.*

[21] Ibid.

[22] Zehr, The Little Book, 24.

[23] Hayner, *Unspeakable Truths.*

[24] Alexander Laban Hinton, "Introduction," in *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence,* edited by Alexander Laban Hinton (New Brunswick: Rutgers University Press, 2010), 3. (My Note: see also Neier 1999)

[25] Ruti Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal 16 (2003): 78.*

[26] Naomi Roht-Arriaza, "The New Landscapes of Transitional Justice," in *Transitional Justice in the Twenty-First Century* (Cambridge: Cambridge University Press, 2006).

[27] David Mendeloff, "Truth-Seeking, Truth-Telling, and Post-conflict Peacebuilding: Curb the Enthusiasm?" *International Studies Review,* no, 6 (2004): 363-375.

A great deal of theorizing has taken place since the first truth commission emerged in Latin America. Overall, however, Medeloff contends that the claims from personal healing to democracy promotion have been built on unstable ground and, for the most part, remain untested hypothesis.[28] Despite this, truth commissions are increasingly relied upon as a necessary component in a state's transition from war to peace and from authoritarianism to democracy.

In addition to retributive justice (prosecutions), restorative justice (truth-telling), the field of transitional justice has identified a third paradigm: reparative justice. Following episodes of mass violence, the social fabric of a county is often destroyed. As Spelman asserts, "we, the world we live in, and the objects and relationships we create are by their very nature things that can break, unravel, fall to pieces."[29] For Minow, "the core idea behind reparations stems from the compensatory theory of justice. Injuries can and must be compensated. Wrongdoers should pay victims for losses. Afterward, the slate can be wiped clean."[30] This, then, is the starting ground for the restorative paradigm: that humans and the relationships we build need to be repaired from time to time. In the transitional justice literature, the term refers to several legal and social measures including material reparations like cash payments or provisions for education, health and housing, restitution, or symbolic measures like commemorations, memorials, and apologies.[31] Reparative mechanisms have largely been overshadowed by the attention given to the prior two paradigms, however, for some victims they are the most concrete response to the human rights abuses.[32]

The field of transitional justice has identified various potential outcomes of these justice mechanisms, some of which have already been touched on above. Among others, these include: healing, building rule of law, mending relationships, deterring future crimes, strengthening democracy, and establishing historical narratives. Determining the actual outcomes from the potential remains a major area of analysis within the literature. Yet, this has not stopped those in the field from theorizing about this topic. For example, in discussing the ways reparations can assist the other major transitional justice mechanisms (criminal trials and truth commissions), de Greiff argues that "although reparations are well-established legal measures in different systems all over the world, in transitional periods reparations seek, as most transitional measures do, to contribute (modestly) [*sic*] to the reconstitution or the constitution of a new political community. In this sense also, they are best thought of as part of a political project."[33] For De Greiff, a potential outcome of reparations is the strengthening of a democratic state. He asserts that,

> Reparations constitute a manifestation of the seriousness of the state and of their fellow citizen in their efforts to reestablish relations of equality and respect…even under conditions of scarcity, funds are allocated for former victims, a strong message is sent to them and others about their (perhaps new) inclusion in the political community. Former victims of abuse are given a material manifestation of the fact that they are now living among a group of fellow citizens and under institutions that aspire to be trustworthy. Reparations, in summary, can be seen as a method to achieve one of the aims of a just state, namely, inclusiveness, in the sense that all citizens are equal participants in a common political project.

In this case the potential impact of reparations theorized by De Greiff is not limited to the compensation of injuries as pointed out above, nor is it simply repairing relations. Instead, it is acting as a symbol that all citizens are equal participants in this new democratic project; it has been put into service to affirm the new liberal order. This is problematic as reparations could also be viewed as a payoff by the state in exchange for silence. Democracy promotion is not inherent in reparations. Thus, in cases of transition, the essence of reparations is indeterminate, thus up for debate. Likewise, democracy promotion is not an inherent characteristic of trials beyond the meaning we have given them as a signpost to signal a new beginning. In other words, trials *could* be used to pursue a variety of ends. Similarly, truth commissions were adopted as a response to mass human rights violations, but their inherent value is in their ability to locate truth. What

---

[28] Mendeloff, "Truth-Seeking," 363-375.

[29] Elizabeth V. Spelman, "Coexistence and Repair," in *Imagine Coexistence* edited by Antonia Chayes and Martha Minow (San Francisco: Jossey-Bass, 2003), 236.

[30] Minow, *Between Vengeance,* 104.

[31] Pablo De Greiff, "Justice and Reparations," in *The Handbook of Reparations,* edited by Pablo De Greiff (Oxford: Oxford University Press, 2006), 453.

[32] Pablo De Greiff, "Repairing the Past: Compensation for Victims of Human Rights Violations," in *The Handbook of Reparations,* edited by Pablo De Greiff (Oxford: Oxford University Press, 2006), 1-2.

[33] De Greiff, "Justice and Reparations," 454.

happens with this truth is up for negotiation. While they are purported to promote democracy, their effectiveness is evident in theory alone. What becomes apparent from the literature is that, given the newness of transitional justice, the outcomes of these mechanisms remain largely interpretative and allows those in field to project their desired outcomes. As a result, the outcomes can be fundamentally shaped by ones perspective. For this reason, it is important to understand the vision that pervades much of the thinking about transitional justice. As the following section will examine, I argue that these outcomes have largely been shaped by the liberal peacebuilding project.

Contextualizing the Field of Transitional Justice

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.[34] 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 crimes against humanity. Consequently, Nuremberg is the first significant incarnation of the *thing* we call transitional justice. For Teitel, the Nuremberg Trials significantly impacted our understanding of post-conflict justice, stating that, "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."[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] Similarly, Ehrenfreund asserts that,

> Before Nuremberg, people living in totalitarian states had no protection against torture, murder and enslavement by their governments…Repressive heads of state could breach human rights on a massive scale and get away with it because they were shielded by the tradition of sovereign immunity. There was no international recognition of human rights. Within a nation's borders, human rights could be extensively violated and there was no recourse. No worldwide collective effort with teeth, no international court with powers of enforcement was in place to respond to the injustices inflicted by a sovereign government upon its own citizens…whether Robert Jackson realized it or not, what he did by winning his fight for such a trial was for the first time to give authority and force to the concept of international human rights."[37]

In 1948, the international community followed up these trials with the adoption of the Universal Declaration of Human Rights (UDHR). 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, adopted in 1966) and the Nuremberg Trials as a desire to build an enforceable framework for the protection of universal rights in the international sphere.[38] Similarly, Teitel argues that "while claims are made about the forward-looking nature of deterrence, it is clear that the Nuremberg prosecution was primarily intended to justify and legitimate Allied intervention in the war."[39] Throughout the Cold War, states remained the central actor in the international community; the realm of international law was restricted to the relations of sovereign nations.

The period leading up to the end of the Cold War, then, signaled a shift in the international community. This is, perhaps, best captured by the oft-cited title of Francis Fukuyama's 1992 book, *The End of History and the Last Man* in which Western liberal democracy is the end point of humanity's ideological evolution. While academics continue to debate the lasting changes, this period at least resulted in a significant expansion of the realm of possibilities envisioned by agents of democratic promotion. Carothers argues that the there were several event that significantly transformed the international political

---

[34] 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.

[35] Teitel, *Transitional Justice, 38-39.*

[36] Teitel, *Transitional Justice*, 31-32.

[37] Norbert Ehrenfreund, *The Nuremberg Legacy: How the Nazi War Crimes Trials Changed the Course of History* (Hampshire: Palgrave Macmillan, 2007), 122-123.

[38] David Chandler, "(Mis) Use of Human Rights," in *Human Rights: Politics and Practice,* edited by Michael Goodhart (New York: Oxford University Press, 2009).

[39] Teitel, "Transitional Justice," 73.

landscape, thus creating a welcoming environment for the emerging liberal tendencies, including both democracy promotion and international criminal prosecutions. Such events included:

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.[40]

While these trends were not driven by a single causal variable, Carothers suggests that, "they shared a dominant characteristic – simultaneous movement in at least several countries in each region away from dictatorial rule toward more liberal and often more democratic governance."[41]

In response to this, Diamond, among others argues that this trend established democracy as the typical form of government. [42] Indeed, there was a theoretical consensus regarding democracy as best available solution. 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 articulates 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."[43] Such assertions were building upon the liberal peace theory (and, its sister theory, the democratic peace theory).[44] Quinn and Cox identify the idea of a liberal peace as "an arrangement of affairs which can calm strife internal to states as well as instill a cooperative and mutually beneficial spirit in the international system"[45] According to these authors,

> the liberal peace is, a concept closely related to the democratic peace, though with some variation. Similarly to its democracy oriented sister theory, it posits that the internal structures of a state play a crucial part in determining its relations with others, and that those states which share certain similarities tend to be at peace. Both theories place importance on the role of representative institutions and shared values in constraining liberal/democratic societies from visiting aggressive violence upon one another. The liberal peace theory varies somewhat in also emphasizing a broader set of specifications than simply democracy, most notably the adoption of liberal capitalist economics, and also a more specifically liberal interpretation of how democracy should be defined.[46]

These ideas gained significant traction among Western powers, specifically the United States. For example, in 1994 then US President, Bill Clinton, asserted that, "Ultimately, the best strategy to ensure our security and to build a durable peace is to support the advance of democracy elsewhere. Democracies don't

---

[40] Tomas Carothers, "The End of the Transition Paradigm," Journal of Democracy 13, no. 1 (2002): 5.

[41] Carothers, "The End of the Transition Paradigm," 5.

[42] 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).

[43] 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.

[44] Bruce Russett, Grasping the Democratic Peace: Principles for a Post-Cold War World (Princeton: Princeton University Press, 1993); John M. Owens, "How Liberalism Produces Democratic Peace," International Security 19, no. 2 (1994): 87-125.

[45] Adam Quinn and Michael Cox, "For Better, for Worse: How America's Foreign Policy became Wedded to Liberal Universalism," Global Society 21, no. 4 (2007): 500.

[46] Quinn and Cox, "For Better," 501.

attack each other."[47]   The liberal peace did not just emerge spontaneously, but "has been the contingent product of the rise of the United States, and the consequence of the nation's 20th century internationalist turn."[48]   The end of the Cold War merely precipitated the liberalization of the international community, paving the way for wide scale, largely unconstrained, liberal peacebuilding. As Cox and Quinn point out,

> if only such features could become embedded in a given society, says the ideology of liberal peace, then the sources of its internal conflict would be ameliorated, or at least suppressed until ultimately forgotten amid other priorities, and peace could take root. If such a transformation were to occur, then the state in question could also take up a place as a member of the mutually respectful and peaceful international community, as reflected in the idea of 'liberal peace' as it pertains to state-to-state relations.[49]

These theories formed the "dominant lens through which the broader world views conflict and its resolution."[50]   The theory put forth several recommendation for states emerging from conflict including: liberal democracy (or representative multi-party democracy), human rights, a secular state, and integration of societies into the global market place through an open and market-oriented economy, and development according to capitalist models.[51]

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.[52]   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.[53]   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."[54]   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.[55]

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.[56]   Neoliberals believe that the economic sphere functions according to a basic rationality whereas the political sphere is assumed to be inherently irrational. A basic assumption of neoliberalism, then, is the institutional separation of society into an economic and political sphere as neoliberals claim that all problems of the economy can be resolved by socially-neutral experts using technical rationality. In practice, neoliberal policy prescriptions will emphasize market solutions over political solutions to relieve the problems of (re)distribution.[57]   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."[58]

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

---

[47] *Economist*. The Politics of Peace. April 1, 1995, 17.

[48] Quinn and Cox, "For Better," 500.

[49] Quinn and Cox, 501.

[50] Ibid.

[51] 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 and Quinn and Cox, 501.

[52] For a good summary of the neoliberal theory see: David Harvey, A Brief History of Neoliberailsm, (Oxford: Oxford University Press, 2005).

[53] Harvey, A Brief History, 5.

[54] Harvey, A Brief History, 2.

[55] Ibid.

[56] 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.

[57] Williams and Taylor, Neoliberalism, 23.

[58] Havey, A Brief History, 5.

sufficient condition to ensure the development of properly functioning markets."[59] 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."[60] 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."[61] 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."[62]

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. Given the acceptance of this view by the most influential international institutions working in post-conflict societies today (IMF and WB), understanding its impact is an essential for understanding both the developing and developed world.

Analysis

As a result of these forces, the liberal peace has transcended its status of theory to become an international prescription as the best solution for states emerging from war. 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."[63] The liberal peace, however, was not necessarily crafted as a coherent response to conflict and, despite its claims, remains a highly contested theory.[64] The solution to build liberal democracies in post-conflict societies, perhaps, speaks less to its ability to secure peace internally and more to its status at the international level.

I argue, that, as it is currently constituted, the vision which drives transitional justice is derived from this liberal peacebuilding framework. Consequently, the field has been stretched from its original focus on protecting human rights to affirming the importance of the liberal peace theory. Indeed, there seems to be a tacit acceptance of these ideas in the literature as transitional justice mechanisms have been put into service securing the liberal peace.[65] In fact, not only does the field accept these forces without question, it is more useful to suggest that transitional justice receives considerable legitimacy as a field *because* of these forces.

While the ability of the liberal peace thesis to secure a credible peace is questionable,[66] the larger concern are the neoliberal forces that have dominated the international political system since the end of the Cold War. As a way of encouraging good governance, but controlling government intervention, the neoliberal discourse prioritizes civil and political rights over economic and social rights. This seems to have had an effect on the realm of possibilities envisioned by transitional justice as the field has focuses

---

[59] Harrison, Economic Faith, 1306.

[60] Ibid.

[61] Ibid.

[62] 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.

[63] Rama Mani And Jane Krause, "Democratic Governance," in *Post-Conflict Peacebuilding: A Lexicon,* edited by Vincent Chetail, (Oxford: Oxford University Press, 2009), 106.

[64] Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict,* (New York: W.W. Norton & Company Inc., 2000); and Edward D. Mansfield and Jack Snyder, "Prone to Violence: The Paradox of the Democratic Peace," *The National Interest* 82, no. 39, (2005/2006): 39-45.

[65] In his outgoing article as editor of the International Journal of Transitional Justice, Weinstein suggested that, since the early 1990s, well over a billion dollars have been spent on mechanisms of transitional justice. For more information see: Harvey Weinstein, "Editorial Note: The Myth of Closure, the Illusion of Reconciliation: Final Thoughts on Five Years as Co-Editor-in-Chief," *International Journal of Transitional Justice* 5 no. 1 (2011): 1-2.

[66] For more on criticism of the liberal peace see: *New Perspectives on Liberal Peacebuilding*, edited by Edward Newman, Roland Paris, and Oliver P. Richmond (New York: United Nations University Press, 2009).

solely on remedying civil and political violations. As they are currently constituted, transitional justice mechanisms have largely precluded any analysis on deeper structural factors. Indeed, Laplante 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" and "diagnosis of human rights violations abstracted from the dynamics of social power and conflict" overlooks the fundamental pathologies of a society. [67]

Other critics in the field are slowly noting the limited exposure socio-economic, structural factors receive within transitional justice. Indeed, Miller argues 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 re-distributional possibilities of the project of transitional justice."[68] 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."[69] For human rights activists like Paul Farmer, such a response fails to adequately address the root causes of violence in a society. He argues that, "human rights violations are not accidents; they are not random in distribution or effect. Rights violations are, rather, 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 form harm."[70]

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.[71] According to Mani, we need to stress 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.[72] 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.[73] 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. [74]

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. However, Mani's solution to promote the lobbying of international institutions to adopt more humane policies, does 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. Such a view suggests

---

[67] 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.

[68] Miller, *Effects of Invisibility,* 286.

[69] Miller, *Effects of Invisibility,* 287.

[70] Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor,* (Berkely: University of California Press, 2005), 7.

[71] Mani, *Beyond Retribution,* 151.

[72] Mani, *Beyond Retribution,* 151-152.

[73] Laplante, *Transitional,* 333.

[74] Laplante, *Transitional,* 341.

that, currently, the peacebuilding process has been tipped in the favour of the neoliberal camp at the expense of the greater transitional justice ideals. However, it is not enough to assume that we have neoliberal agents (usually portrayed as those working for the IMF or World bank) working towards their goals of liberalization versus transitional justice agents working towards justice. Instead, I propose that the transitional justice discourse itself, is largely driven by a worldview influenced by the liberalizing forces that emerged since the end of the Cold War. This view is based on a fiction, which suggests that liberal democracy, good governance, and respect for civil and political rights is enough to secure peace. Such a perspective precludes the need to address deeper, socio-economic inequalities and, in fact, rejects most gestures to intervene in the economy in the name of social and economic rights. By accepting the basic tenets of this fiction, transitional justice is just as implicated in a worldview that prioritizes civil and political rights over economic and social rights.