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To cite this article: Matthew Mullen (2015) Reassessing the focus of transitional justice: the need to move structural and cultural violence to the centre, Cambridge Review of International Affairs, 28:3, 462-479, DOI: 10.1080/09557571.2012.734778

To link to this article: https://doi.org/10.1080/09557571.2012.734778

Published online: 11 Mar 2013.
Reassessing the focus of transitional justice: the need to move structural and cultural violence to the centre

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Abstract  After over six decades of evolution, transitional justice remains focused on courts and commissions, evidenced by the allocation of international attention and resources. This is understandable given that courts and commissions are ideal platforms to hold perpetrators to account. While violent individuals and events can be addressed through courts and commission, what cannot be adequately addressed is the structural and cultural violence that makes mass atrocities possible, and remains intact in spite of truth and accountability. Structural and cultural violence manifests as systemic vulnerability and dehumanization, and it is this type of built-in violence that continues to plague countries where transitional justice has been pursued, for example the criminalization and repression of communities in South Africa, or the forced evictions that occur daily throughout Cambodia. This article argues that it is this type of violence which should become the central focus of transitional justice.

Introduction

As former Bosnian Serb leader Rodovan Karadzic prepared to face charges of war crimes and genocide at The Hague, approximately 15,000 protesters took to the streets of Belgrade to show support for their venerated leader. While eyes were fixed on the Extraordinary Chambers of Cambodia awaiting the sentencing of Duch, former commandant of the central Khmer Rouge prison, Cambodian families throughout the country continued to face the constant threat of forced evictions, suppression of expression, arbitrary detention and other injustices at the hands of Cambodian authorities. Such examples of hate and vulnerability are prevalent throughout most, if not all, societies where transitional justice is being pursued. While onlookers are understandably captivated by courts and commissions, the latter’s inability to adequately address chronic cultural and structural violence leaves these transitioning societies perpetually vulnerable to being victimized by the next actor with an agenda.1

1 Peace scholar Johan Galtung devised the violence triangle to explain three types of violence: direct, structural and cultural. Direct violence is the overt manifestation of violence; the actual violent act. Structural violence may be best understood as the suffering and vulnerability caused by the structures in place: discrimination, poverty, marginalization and extraordinary consolidation of power. Cultural violence may be best understood as the attitudes, symbols and values that legitimize direct and structural violence: personal and/or societal support for, or acceptance of, human suffering.
This article questions the current allocation of resources and attention within the current transitional justice framework. In the lead-up to, and during, mass atrocities, societies are subjected to extensive structural and cultural violence. Structural and cultural violence makes mass atrocities possible. This structural and cultural violence remains long after the atrocities are over, leaving violent systems intact. In other words, while these societies are in ‘transition’, they continue to be subjected to violent systems and social environments. Nonetheless, this structural and cultural violence, which manifests as systemic vulnerability and dehumanization, has remained a peripheral focus in transitional justice efforts.

When observing past and present transitional justice efforts one finds that vulnerability and dehumanization remain prevalent despite the presence of sophisticated and well-performing courts and commissions. These courts and commissions have long been the central focus of transitional justice. In many cases, the success of transitional justice is measured through the perceived success of a court or commission. Many point to the success of the 1995 Truth and Reconciliation Commission in South Africa as an example of transitional justice prevailing (Fullard and Rousseau 2009). However, South Africa has been coined the rape capital of the world, and poor black South Africans are forced to live in intensely insecure slums separated from high-walled gated communities. Such victims of systemic structural and cultural violence in South Africa may perceive neither justice nor any real transition.

This article posits that it is time for transitional justice to make a paradigmatic and programmatic shift. The article demonstrates that, while important, courts and commissions are not capable of addressing the kind of widespread livelihood threats and dehumanization present in transitioning societies. Moving forward, the article argues, transitional justice should focus on structural and cultural violence, concentrating the bulk of attention and resources on more expansive efforts to directly address vulnerabilities and dehumanization. The article explains that addressing the systems that propagate violence and victimization is the only way to ensure that these societies do not witness a recurrence of tyranny and atrocities.

Structural and cultural violence: making mass atrocities possible

Outrageous behaviour and agendas produce outrage throughout society, paralysing the spread of cruelty. That is, unless the environment is embedded with structural and cultural violence. This is why leaders and groups with an oppressive agenda go to great lengths to instil or justify programmes of inequality,
discrimination, dehumanization and hate in efforts to convince entire societies to accept, or at least be unable to react to, atrocities. The installation of such programmes is not necessarily caused by an individual or group with an oppressive agenda. In some situations there is no intentionality, and instead existing discrimination or hate, seen as normal, produces outrageous programmes, which are generally accepted as normal and just. Intentionality and causation aside, these programmes make it possible for the mass diffusion of violence. Direct violence—the individual acts of violence which are the main discussion points at courts and commissions—is fundamentally different from structural and cultural violence. Structural and cultural violence manifests in the deprivation and dehumanization produced by economic, social and political structures (Christie 1997). Johan Galtung provided heuristic definitions of both cultural and structural violence in Peace by peaceful means:

Structural or indirect violence is defined as built into the person, social and world spaces and is unintended. Cultural violence or legitimizing violence ... serves to legitimize direct and structural violence, motivating actors to commit direct violence or to omit counteracting structural violence [and] can be intended or unintended. (Galtung 1996, 31).

‘Structural violence’ refers to institutional or systematic dehumanization—in the form of the denial of dignity, opportunity or access to necessary livelihood—that produces or allows direct violence. Structural violence can be both tangible and intangible. That is, structural violence may manifest overtly in the form of repressive legislation or poverty, or covertly in feelings of vulnerability or alienation. Simply put, in the absence of structural violence, mass atrocity is prevented by normal or decent people whose ‘humanistic values’ are able to outweigh the presence of evil. Conversely, structural violence, paired with cultural violence, actively converts or paralyses decency and rational decision-making (Barash and Webel 2008, 8). Thus, when talking about structural violence it is important to note that humanity can be either complacent or silenced. Regardless, individuals in a society have little to no control over the structural violence that exists or emerges.

Additionally, minimal changes to particular institutions may expand to the point that structural violence consumes the entire social space, establishing a new system of social roles, and a brutal social climate. What individuals can and cannot do becomes defined not only by institutions, but by society as a whole. And during this process of redefining who has access to what power and who receives what mistreatment, an environment in which evil can flourish emerges.

Given this rather simplistic understanding of structural violence, it is useful to consider why structural violence is a definitive element of transitioning societies. After all, structural violence exists in all societies, yet only certain societies have experienced mass atrocities. The best explanation may be found in the antithesis.

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3 The term ‘dehumanization’ is used throughout the article. However, in some cases the term ‘infrahumanization’—a lesser form of dehumanization—may be more appropriate. Infrahumanization refers to ‘the denial to an individual or group of some of the characteristics that make us human, rendering the target as less than human, if not wholly non-human’ (Castano and Giner-Sorolla 2006, 804). Collective infrahumanization and dehumanization are the product of a social identity predicated on an ‘in-group’—those who are like us—and an ‘out-group’—them.
How could vindictive individuals foster a scene of mass violence and dehumanization without the presence of unique structural conditions that make hate and suffering an ordinary aspect of the social space? Just or peaceful structures contain the spread of evil and violence. When structural violence is extensive, hate and suffering can spread, unchecked. Hence, structural violence is the variable that determines whether or not violent agendas lead to widespread atrocities. Structural violence, thus, may be best thought of as an enabler of atrocities that consumes and defines social spaces. But structural violence rarely exists in the absence of cultural violence. Combined, structural and cultural violence produce an environment where evil, hateful agendas can be accomplished.

Johan Galtung noted that ‘[s]ymbolic violence built into a culture does not kill or maim like direct violence or the violence built into the structure. However, it is used to legitimize either or both’ (Galtung 1990, 291). Galtung provided another clarification by describing cultural violence as the aspects of a culture ‘that makes direct and structural violence look, even feel, right—or at least not wrong’ (Galtung 1996, 196). In the same way that structural violence creates social structures that vindictive actors use to employ agendas of mass extermination or victimization, cultural violence produces the necessary emotions and attitudes for a widespread atrocity to take place. Populations are not likely to accept injustice simply because a law or policy orders them to. This reaction is more likely to be instilled in the society, and in its absence both structural and direct violence will be countered.

Without a certain level of cultural violence, even if only existing in subtle undertones distributed throughout a society, evil agendas cannot take shape. Mass atrocities cannot occur if there is no moral and pragmatic justification for what is taking place. Thus, cultural violence acts as an emotional framework that can be reconstructed and perverted to legitimize mass atrocities. Without violence-legitimizing feelings, however inconsistent or confused, societies remain cohesive, determined, and perceptive enough to delegitimize outrageous actions and agendas.

Cultural violence, when referred to in various debates about human rights, regularly correlates to certain religious or tradition-based practices. The notion of ‘culture’ and cultural violence referred to in this article is not bound to religion or tradition. The article uses ‘culture’ in a broader sense to refer to economic culture, political culture, and other types of culture that may not be based on religion or tradition. This understanding allows one to consider cultural violence relative to a wide range of practices within the entire societal infrastructure. Attitudes that underlie an action or structure may be grounded in factors like economic and political ideologies or linguistics, all of which are positioned in the realm of cultural violence.

One thing that needs to be clarified is that cultural violence does not imply mass guilt. In many societies masses of people may recognize and oppose cultural violence as it evolves. In other cases societies are consumed by cultural violence prior to recognizing what they have been subjected to. Thus, cultural violence-paralyses while it destroys. Barash and Webel proclaimed that the unfortunate truth is that ‘[o]ur cultural systems perpetuate regrettable patterns of social and political injustices, in which racism, sexism, militarism, and other forms of unfairness abound’ (Barash and Webel 2008, 1). Furthermore, the focus on cultural violence does not suggest that the culture as a whole is problematic. Rather, all a power-holder with an evil agenda needs is enough cultural violence in the society.
to facilitate widespread victimization. In other words, all that is necessary is enough emotional and practical support within sectors of the population to ensure that opposition doesn’t deter their agenda.

For mass atrocities to occur, a specific, though never identifiable, equation of structural and cultural violence must be present or constructed. As Rene Lemarchand writes, ‘it is the interplay between ethnic realities and their subjective reconstruction (or manipulation) by political entrepreneurs that lies at the root of the Hutu–Tutsi conflict’ (Lemarchand 1994, 588). Hence, Rwanda’s societal space possessed enough culture and structural violence for vindictive actors to pervert it in a self-serving manner. Attempting to identify the balance of structural or cultural violence is trivial because structural and cultural violence are interdependent. Christie (2001) stated, ‘While structure refers to external, objective conditions of a social system, culture refers to internal, subjective conditions of collectivities with a social system’; furthermore, ‘[c]ultural violence and hierarchical societal structures [displaying structural violence] are mutually reinforcing’ (1–2). Thus, attempting to address structural or cultural violence does not require separate efforts because both forms of violence produce the same societal ramifications: discrimination, vulnerability and dehumanization.

When chronic structural and cultural violence is present, mass atrocities become expected rather than outrageous. Reason and opposition is actively or implicitly silenced, creating an environment where individuals are manipulated into thinking that ordinarily obvious wrongs are right, or at least necessary. Carlos Santiago Nino referred to the process of ‘extreme conceptual divergence’ to describe perpetrators who display a sincere conviction that they were acting in the best interest of society (Nino 1998). In the case of Rwanda, thousands of moderate Hutus were murdered alongside hundreds of thousands of Tutsis, ‘underscoring the social and political cleavages behind a calculated strategy of extermination’ (Castells 2000, 108). The history of mass atrocities is filled with cases of people being victimized or killed as a means of ensuring the integrity of cultural and structural violence.

Regardless of whether the brutality occupying the social space was largely pre-existing or primarily constructed during the emergence of an atrocity, in transitioning societies the social fabric has been destroyed and must be mended. During mass atrocities discrimination and dehumanization necessarily become embraced, tolerated or impossible to combat. The have-nots, those who are painted as the chosen ones or duty-holders in the social space, are separated from the have-nots, those who are considered the ‘problem’ or ‘irrelevant’. Nick Haslam argued that rhetoric can dehumanize by creating a visual of persons who lack ‘uniquely human attributes’, making them animal-like. Haslam argues that dehumanization is ‘an everyday social phenomenon, rooted in ordinary social-cognitive processes’, rather than a process that only occurs in times of conflict and chaos (Haslam 2006). In the end, acknowledging that ‘aggression and dominance becomes acceptable under particular structural and cultural conditions’ allows one to challenge the notion that during mass atrocities wrongdoers are always coerced into doing something they are opposed to (Galtung 1996, 201). In this important shift, atrocities become no longer about evil minds who intimidate individuals into action. Rather, atrocity is about an entire social space governed by brutality and fear. The history of mass atrocities is composed of seemingly unmotivated acts of
brutality that can only be explained in terms of making the victims less than human, or at least unworthy of humane treatment. Indonesian soldiers and East Timorese militias would not have been willing to uproot three-quarters of the civilian Timorese population during the ‘scorched earth’ campaign if the perpetrators had identified these individuals as valuable human beings who deserved to be protected. In Sierra Leone there was a system of awards in place wherein displays of brutality were rewarded. Evidence from the 11 years of civil war showed that rebels not only killed to ensure their own survival; they decapitated, mutilated and tortured victims for promises of rewards (Kalyvas 2006). The human worth of the victims involved had become less valued than the rewards that could be gained. The historical evidence of mass disregard for humanity ushered in through changes in societal perceptions of right and wrong, rather than orders from madmen, demonstrates that reinstating humanity, dignity, tolerance and empowerment in the social space remains the only means of ensuring recovery.

In transitioning societies social spaces do not simply return to health after threatening actors are sufficiently neutralized. The entire social space has been changed piece by piece by means of constant campaigns, policies, propaganda and other less tangible measures. In some cases a person plants the seed of violence; in other cases individuals pervert the mistrust, hate and structural injustices that already exist. Structural and cultural violence result from historical tensions, sociopolitical shifts, and various domestic and international influences which contribute to dehumanization and hate in the social space. Individuals are able to use the indirect violence to change the attitudes, capabilities and vulnerabilities of the entire population. Given that the process of enlarging cultural and structural violence is complex and lengthy, expecting diminution to occur without directed and concerted efforts is misguided. Only by addressing the very system that urged, organized and facilitated the downward spiral are we able to reveal the truth about what happened and act accordingly (Mohamed 2009). This requires much more than assigning responsibility for the atrocity to select actors, or giving lip service to reform, development and capacity-building assistance (Hannum 2006, 589).

The evolving focus of transitional justice

The transitional justice efforts of today are the product of a legalist tradition tracing back to the Nuremberg and Tokyo trials. The International Military Tribunals for the Far East and at Nuremberg, as well as various de-Nazification programmes, established a model wherein individual perpetrators would be tried and punished. This retributive justice model was utilized again in Greece (1975) and Argentina (1983) to try military juntas. Punishing perpetrators was emphasized as a—if not the—crucial step in transitioning to societal peace and stability. The focus of transitional justice began to shift alongside developments in the study of democratization.

Katzenstein (2003) provides an analysis of the atrocities that occurred in East Timor and a critical analysis of the East Timor tribunal.
The focus of transitional justice broadened to account for the role of civil society and democratic institutions in transitioning societies. It was recognized that democratization and stability could not be achieved through prosecution alone. This gave way to questions about the compatibility between judicial and non-judicial transition efforts. Transitional justice broadened its focus to include broader societal issues, including the rehabilitation of victimized communities. Transitional justice efforts began to reform institutions and governments, implement development and democratization programmes, including revision of school curricula and civil society training, and provide rehabilitation programmes for victims. These were the first efforts to address structural and cultural violence. However, these programs are not the focus of transitional justice, as seen in the amount of attention and resources dedicated to institutions like the International Criminal Court, the International Criminal Tribunal for Rwanda or the Extraordinary Chambers in the Courts of Cambodia, despite the ongoing absence of basic livelihood protection for Cambodians and Rwandans. In addition to international courts, the international community has focused on local courts and commissions, which are the product of a broadening transitional justice focus.

Truth commissions and truth and reconciliation commissions have been employed as a way to ensure restorative justice and gather information. These commissions have moved away from institutions that functioned around perpetrators, offering amnesty to some perpetrators in order to ensure that perpetrators would take part and that a truth could be agreed upon. Understanding what happened allowed practitioners an opportunity to reform the necessary structures. Hence, commissions can be used as a stepping stone in the pursuit of structural peace. This approach has not been welcomed by all. Allen (1999) summarized: ‘Advocates of these institutions generally take the view that some form of recognition and disclosure of past offences is necessary if the new democracies are to distance themselves from the past and thus establish their legitimacy. However, they also argue that a commitment to full prosecution through the criminal justice system or through war crimes trials would be equally threatening to the new democracies by provoking hostility and division’ (315).

The debate regarding the pursuit of prosecution versus the pursuit of reconciliation is ongoing within the field of transitional justice. Diane Orentlicher (1991) proclaimed, ‘Whatever salutary effects it can produce, an official truth telling process is no substitute for enforcement of criminal law through prosecutions’ (2546). The perceived utility of punishment has fuelled the enthusiastic push for increasingly more robust punitive institutions, cumulating in the International Criminal Court. However, this adoption of a punitive paradigm hasn’t been universally embraced. Helena Cobban reflected broader criticism by noting, ‘The idealists who supported the ICC’s creation hoped that it would help check the power of governments and improve the well being of much-abused people. There is little to suggest that it will do either’ (Cobban 2006, 22).

The nature of transitional justice courts has changed both internationally and locally. While the International Criminal Court and the International Tribunals in Rwanda and Yugoslavia reflect the traditional model of internationally sanctioned prosecution of perpetrators, hybrid and ‘grassroots’ or ‘indigenous’ courts have allowed greater local involvement in judicial processes. Examples of these courts include the hybrid Special Court for Sierra Leone—and the Gacaca Courts, which
included over 8000 community-level courts throughout Rwanda. Many scholars have concluded that there is no golden equation for a relationship between a more peace-based and a more justice-based process of transitional justice; rather, the weight of each is dependent on ‘geopolitical realities’ and government capacities (Fletcher et al 2009, 217).

The shift towards engaging the masses and institutional reform is a positive step towards making structural and cultural violence a central focus in transitional justice. However, the current focus of transitional justice is such that perpetrators receive more headlines and protection than victims, courts and commissions receive more consideration than efforts to change the socioeconomic and political infrastructure, and memorials receive more attention than ongoing violence and discrimination. Romantic notions of accountability and social healing have distracted from the open wounds that transitioning societies retain.

The narrow scope of courts and commissions

Courts and commissions, which are the central focus of transitional justice internationally, are incapable of adequately addressing structural and cultural violence because they deal primarily with particular individuals, actions and policies. While other transitional justice activities often receive a nod from the international community, international expertise, resources and media outlets are channelled to courts and commissions.5 The narrow focus of courts is quite clear, as certain individuals are tried for certain crimes. The scope of commissions is more elusive, as many commission mandates commit to broad agendas such as national unity and reconciliation. However, as will be displayed, both commissions and courts attempt to address societal and systemic issues by confronting a limited number of individuals, actions and policies.

Within the current transitional justice framework comprehensive societal goals such as unity, reconciliation, stability, healing and accountability are pursued. However, judicial and non-judicial transitional justice mechanisms—international and local litigation, truth and reconciliation commissions, reparations, lustrating or institutional reform—deal with particular parts of a larger system. Thus, while the rhetorical goals of transitional justice ‘are primarily about societies, not individuals’, transitional justice necessarily treats atrocities as a sequence of ‘ordinary crimes’ (Aukerman 2002, 95). The claim that courts and commissions are not capable of addressing chronic systemic and societal problems, such as structural and cultural violence, can be substantiated by reviewing the focus and function of these institutions.

The narrow focus of transitional justice courts is obvious and necessary. Courts are in place to establish individual criminal responsibility. Individual criminal responsibility is accepted and promoted as a result of emotional and pragmatic appropriateness. Karl Jaspers noted, ‘It is nonsensical to charge a whole people with a crime. The criminal is always the individual’ (Jaspers 2001, 34). When mass atrocities take place the murder, rape and torture require individuals’ action, and

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5 Transitional justice has a significant impact on the media, and the media have an equally significant impact on the transitional justice modality, making the dissemination of a news-friendly discourse a must (Laplante and Phenicie 2009).
it is necessary to hold these individuals accountable for their actions. However, it is important to recognize that structural and cultural peace, the antithesis of structural and cultural violence, cannot be attained by punishing individuals. Proponents of prosecution emphasize the importance of the rule of law, particularly in situations of significant power imbalances. The international aid community has enthusiastically supported and financed courts, yet whether or not their ‘beneficiaries’ benefit from or support these initiatives is unclear (Duggan 2010, 315). Either way, this article asks, should the prosecution of a few, a hundred or even thousands of individuals take priority over efforts to pursue structural and cultural peace?

A fascination with brutality and wicked people is natural, but ‘the monster view of evil is dangerous because it simultaneously seduces and distances us’ (Guinness 2005, 86). James Waller noted that in the case of mass atrocities there is a tendency for ‘perpetrators, bystanders, and even victims to see the world as just’. Thus, prior to, during and after these troubling events ‘[w]e will rearrange our perception of people and events so that it seems everyone is getting what they deserve’ (Waller 2002, 254). Tyrants like Charles Taylor, Augusto Pinochet and Jean-Pierra Bemba deserve to be punished extensively, but do they deserve the energy, resources and attention that could otherwise be redirected towards addressing the structural and cultural violence they promoted? While the international media often portrays a situation where masses of victims eagerly await a tyrant’s conviction, a more realistic scene is one where victims spend their days struggling for protection and livelihood because their situation hasn’t changed. One could argue that another way to hold perpetrators accountable is to deconstruct the tyrannical structures and attitudes they promoted.

Truth and reconciliation commissions often do more than courts to target entire societies and systems. Hannum (2006) noted that the emphasis on individual wrongdoing becomes increasingly less relevant when a non-retributive approach is adopted. Commissions play an important role in transition, as they can satisfy both restorative and retributive imperatives by creating a ‘memory’ that mobilizes transition by equipping us with the tools to reflect and move on (Reychler and Paffenholz 2001). However, it is important to recognize that commissions, like courts, attempt to address systemic and societal issues through examining a ‘series of individual acts with similar characteristics revealing a systematic pattern of violence’ (Commission on the Truth for El Salvador 1993, 19).

The objective of all truth commissions is to establish what took place, or more accurately, what went wrong. In order to do this commissions investigate certain individuals and policies and provide a platform for victims to tell their stories. In Argentina, the National Commission for Enforced Disappearances focused

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6 Critics of transitional justice prosecution often point to the highly politicized process of determining when, what and to whom transitional justice applies to produces ‘a fairly narrow interpretation of violence within a somewhat artificial timeframe’ (Nagy 2008). For example, the slaughter effected by Henry Kissinger’s orders—a massive bombing campaign in Cambodia … [a]nything that flies, on anything that moves’—won’t be judged by the Extraordinary Chambers in Cambodia. Despite playing a significant role in Khmer Rouge recruiting efforts and the frustrated, hateful rhetoric that was instilled in Cambodian society, neither Kissinger nor Nixon nor Operation Menu are adequately accounted for in the historical framework produced by transitional justice (Owen and Kiernan 2006).
specifically on the practice of enforced disappearances, not on the broader system of tyranny. In Chile the National Truth and Reconciliation Commission and the subsequent National Commission on Political Imprisonment and Torture investigated cases, and even provided reparations, but this is not comparable to a comprehensive review of the socioeconomic and political infrastructure. Perhaps the most cited commission, the South African Truth and Reconciliation Commission, comprised a Human Rights Violation Committee, a Reparation and Rehabilitation Committee and an Amnesty Committee. All of these committees dealt with specific individuals, violations and policies.

None of this is to take away from the importance of these commissions and courts, and it is important to recognize that they have contributed to institutional reforms. However, the reality is that neither courts nor commissions provide a broad enough lens to contemplate systems or societies holistically. Widespread dehumanization, discrimination and vulnerability cannot be addressed by investigating certain individuals, policies and events. In order to address chronic cultural and structural violence the focus needs to shift from certain individuals, policies or practices towards entire socioeconomic and political infrastructures.

This article is not proposing that courts and commissions be abandoned. Rather, it is arguing that transitional justice practitioners should turn the majority of their attention and resources to efforts that directly target existing structural and cultural violence. Courts and commissions have a place in this equation, but they deserve only a fraction of the attention and resources that should be dedicated to the dehumanization and vulnerabilities that can be repeatedly exploited by those who continue to hold power.

**Getting to the core of dehumanization and vulnerabilities**

Taking a step back and attempting to comprehensively address the vulnerability, inequality and dehumanization that remain in transitioning societies is undoubtedly a more complicated task than targeting certain individuals and policies, but it is the only way to ensure that societies are able to overcome chronic structural and cultural violence. Once individuals become less than human, or unworthy humans, they retain this vulnerable and dehumanized status until the system and climate are actively repaired.

Daniel Christie has concluded that sustainable peace requires, ‘at a minimum, the equitable satisfaction of human needs for security, identity, well-being, and self-determination’ (Christie 1997). The inability to reassess and reform inhumane environments explains why an increasing number of violent riots caused by socioeconomic grievances have occurred in countries whose transitional justice mechanisms have inadequately addressed past systems of discrimination and repression (Laplante 2008). Landsman’s statement that many societies pursing transitional justice ‘have simply not had the power, popular support, legal tools, or conditions to prosecute effectively’ reflects an inability to acknowledge how much structural and cultural violence remains in these societies (Landsman 1996, 84).

When considering how to get to the core of structural and cultural violence it is useful to review indicators of hyper-inflated structural and cultural violence. There is no way of determining how or at what pace structural and cultural
violence increases. For example, pre-Pinochet Chile was a state in which constitutional rule and legality were highly valued; pre-genocide Rwanda, on the other hand, was a context in which brutality and control ruled (Hannum 2006). Lee Ann Fujii (2009) has demonstrated how the situation in Rwanda escalated to large-scale genocide. Fujii explains that local power-holder and killing groups recruited new individuals based not on a broad notion of ethnic identity but on ties to certain local groups. Structural and cultural violence may build locally, and it may build slowly or rapidly accelerate. Regardless, when structural and cultural violence is prevalent, there are observable signals. Evidence of structural and cultural violence is still overt in transitioning societies.

In 2008 Cambodian Prime Minister Hun Sen, a former battalion commander in the eastern zone of Democratic Kampuchea, threateningly proclaimed to the public that any Khmer Krom—an ethnic Khmer minority group whose members fled Southern Vietnam to seek asylum in Cambodia—who attempted to reclaim Kampuchea Krom would be provided assistance in the form of free coffins and ‘help to bury [their] corpses’ (Cambodia Daily 2008). This took place while the Extraordinary Chambers of Cambodia were hearing crimes against humanity charges against Nuon Chea. Fifty thousand Serb nationalists rallied in central Belgrade to honour Slobodan Milosevic, who died while at The Hague facing charges of genocide, war crimes and other crimes against humanity. Although the South African Truth and Reconciliation Commission began its work over 15 years ago, South Africa has received the ‘dubious distinction of being one of the world’s most unequal societies’, and while intra-race inequality is on the rise, inter-race inequality remains very high (International Regional Information Networks 2010). Whether manifesting in the form of solidarity with evil actors and symbols, open inequality or continued persecution and brutality, such examples corroborate the idea that systems that made tyranny able to continue to exist, making the rise of the next tyrant(s) possible, or even inevitable.

Even if all major wrongdoings could be accounted for, a downward spiral into mass atrocity cannot be mapped, given that specific events are only the manifestation of broader problems. Miriam Aukerman (2002) concluded that the only analogy for extraordinary evil is ordinary crime; however, the evil, violence, hate and discrimination that plague a society are not limited to perpetrators and actions. In the context of mass atrocities the entire social space takes on a violent character. Discrimination and hate become systematic, individual discretion and will are compromised and the line between perpetrator and victim is constantly in question. No action in these contexts can be treated as independent of the larger context.

There is much that can be learned about the core of structural and cultural violence from evaluating a situation where inhumane actions are accepted not only domestically but internationally, though not universally. It is useful to reflect on a situation where ordinarily inhumane actions either are accepted by societies throughout the world or these societies are paralysed to the point that there is

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7 Inequality in South Africa is exemplary of structural violence, and the potency of this systemic discrimination is a significant variable in South Africa’s standing among the worst of the worst in terms of the prevalence of violent crimes.
nothing the population can do to stop what is occurring. Moreover, lest there be an assumption that developed and democratic countries cannot be consumed by structural and cultural violence, let us reflect on how 9/11 changed views on human rights and human suffering in the developed world. Observers ‘failed to see what is truly radical about the post-September-11 world’ because they were ‘more concerned with the personalities of specific leaders and the physical skirmishes in the conflict than with the cognitive and structural nature of the adjustments’ (Schepple 2006). Following 9/11 much of society in the US began to voice support for violating the human rights of anyone who could have possibly been involved, and the prospect of collateral damage did not cause great concern. Those who voiced dissent lacked the support or capacity to prevent what they saw as outrageous behaviour. This same open support for a systematic disposal of even the most fundamental of human rights occurred in nations around the world as the global ‘War on Terror’ took shape. Had George W Bush and Dick Cheney publicly pursued the use of torture, the termination of various civil liberties and a wide-scale offensive into foreign countries prior to 9/11, public outrage would have ensued. And the proposal of such policies would have likely produced a widely supported movement for impeachment. The attacks on United States (US) soil changed the psyche of the American public immediately. The Bush administration promptly defined the enemy: terror.

Because ‘terror’ is an abstract noun, and terrorism is a tactic, the administration, along with media and intelligence agencies, began to construct a face for terror. The face gave the fearful something to fear and the hateful something to hate. Next, the agenda was proposed: defeat terror. Much of the American public had become convinced of, and consumed by, the end of defeating terror, so much so that the means by which this end would be accomplished became irrelevant. Defeating terror would entail granting the US government the discretion to forgo due process and spy on, detain, torture and kill those suspected of terrorism, as well as oversee military operations in which thousands of civilians would be injured and killed. Despite considering this suffering, the US government proceeded in its pursuit of terror. Enough of the American public supported or accepted these conditions that opposition was unable to prevent what they considered problematic behaviour.

As in many cases of mass atrocity, victimization became acceptable in the eyes of the American public because the only concern was defeating an abstract problem. What is often overlooked is that the acceptance of victims’ suffering required a devaluation of their human value. Because there was a demographic correlation between the evil problem and the victim, the suffering did not produce palpable outrage and anger in much of the American public. Furthermore, after structural and cultural violence defined the US society’s approach to terrorism, those in the society who questioned the agenda or criticized the tactics became the enemy. As President Bush said in a November 2001 news conference, ‘you’re either with us or against in the fight against terror’. Although Bush was speaking to nations, the same attitude applied to individuals who did not buy into the agenda. When WikiLeaks posted documents that revealed the troubling extent of torture and civilian deaths that had occurred in the War on Terror, it did not take long for WikiLeaks to become the target of public scrutiny. Rather than spreading public outrage at the evidence of human suffering, the WikiLeaks documents
created a public movement against ‘traitors’ (Burns and Somaiya 2010). What is important about this is the recognition that a new belief system and moral compass regarding ‘us’ and ‘them’ had been forged. The deserving and non-deserving, the protected and the vulnerable, were now defined.

What was once inhumane became humane in the opinion of the court and public in the context of the War on Terror. However, the American public’s perception of violence was not altered on a universal scale. The public continued to be outraged by violence occurring in Darfur, Myanmar and any other context where ‘unjust’ violence was taking place. Rather than acquiring a universal tolerance of violence and inhumane behaviour, the American public became accepting of only certain violence. If Al-Shabaab kills 20 civilians in Mogadishu, resentment and condemnation of such an atrocious act will be expressed across the US. However, a report of 20 civilian deaths resulting from a drone strike in Pakistan is considered by most to be unfortunate but necessary under the rhetoric of combating terrorism. The point of this critique is not to demonize the American public. Rather, this unfortunate but very real global scenario displays the process by which social systems support or accept what is normally considered outrageous behaviour.

Discrimination and dehumanization may discreetly consume societies and systems and may appear quite normal. This acceptance of brutality and discrimination in an educated and democratic-minded population displays the potency of cultural and structural violence. For the US, and the world at large, to move beyond the War on Terror there will need to be a comprehensive review of current attitudes and systems. Members of the Bush or Obama administration may provide a tangible target to blame, but putting the spotlight on them does not alter the fact that much of the American public continues to accept the suffering of innocent individuals. The spotlight on administration personnel may provide some satisfaction for critics, and a clear message will be sent through the ranks of the US and other governments. But, the security and intelligence system will retain its power to compromise the privacy and physical and mental integrity of individuals domestically and abroad. The war culture that has been established in the US will continue to thrive. The persistent hate, fear and ‘us or them’ attitude will remain. And the American public will not be forced to deal with the fact that innocent suffering was tolerated in the name of protecting the American way of life. Certainly, holding administration personnel accountable may be an important step in the pursuit of structural and cultural peace. But should stakeholders be more concerned with going after administration personnel or addressing the existing, immediate societal and systemic issues?

Transitional justice, in its current form, is fundamentally about a retributive–restorative continuum. Individual actors and actions are isolated, punishment or blame is sanctioned, immediate institutional problems are addressed, targeted capacity-building and social healing programmes are implemented and after the legacy of the antagonists is deconstructed the integrity of the social space is restored, in theory. This continuum creates a certain sense of tangibility, making transition measurable. Focusing on the complex and abstract aspects of societies and systems, thus, becomes undesirable and distracting. The Report of the Commission on the Truth for El Salvador described the dichotomy between components of the social system and individuals. The Commission concluded that
‘responsibilities must be established by naming names’, and proclaimed that ‘[t]his approach protects institutions and punishes criminals’ (Commission on the Truth for El Salvador 1993, 14). Today in El Salvador domestic violence is rampant, legislation is misused, public figures are killed and labour abuses and other forms of private sector exploitation are widespread. These issues are not entirely attributable to the mandate of the Commission on Truth but do relate to a deliberate effort to ensure that the focus of transitional justice efforts remained on certain individuals, rather than the broader systems and the society.

Transitional justice attempts to get to the core of dehumanization and vulnerability by reforming ‘abusive institutions’ (Van Zyl 2003). But, as this section has displayed, the only way to address widespread structural and cultural violence is to comprehensively reform the socioeconomic and political infrastructure. This may mean the complete deconstruction and recreation of political institutions. It may require a new constitution and a restructuring of executive, judicial and representative powers. It may mean extensive lustration of governmental bodies and curtailing the offensive power of the security forces. It may mean comprehensive redistribution of land, resources and opportunities. It may mean mass campaigns and awareness activities aimed at explaining to people how they have been exposed to propaganda and unjust agendas. Recent socio-psychological research suggests that post-conflict social healing requires ‘recognition of the collectivized nature of mass violence, [and] socioemoitonal and distributive forms of social learning’ (Aiken 2010, 166). Baines (2010, 409) notes that ‘social reconstruction’ requires comprehensive ‘moral renewal and social repair’, especially in ‘settings where ordinary people who engaged in violence against one another must live together’. Even something as basic as distributing land titles in Cambodia would have prevented the systematic land confiscations and forced evictions that occur each day throughout Cambodia.

Stepping back and focusing on the system and society as a whole allows both the domestic and international community an opportunity to consider what steps must be taken so that individuals can protect and empower themselves. Kamari Maxine Clarke notes that transitional justice necessarily, and inappropriately, conceptualizes a particularly helpless victim in need of rescue (Clarke 2009). The helpless individual is reliant on a leader, and a protector. Currently, transitional justice attempts to reverse a system that victimized by establishing the guilt of perpetrators and reforming the protective institutions—typically military and police—of a state. This, however, does little to address the susceptibility to victimization and reliance on state institutions for protection. Hannum concluded that, in environments of mass atrocity, institutions and attitudes are altered to the point that ‘reconstruction’ is no longer viable, and the aim must shift to ‘creation’ (Hannum 2006, 590). The vulnerable, victimized and manipulated individuals in the society deserve much more than reform and the rule of law, which regulate or modify existing power structures. These societies, particularly the most vulnerable and dehumanized communities, deserve a completely new power infrastructure.
Conclusion: is this asking too much of transitional justice?

Kora Andrieu (2010) notes, ‘Indeed, it is important not to have unrealistic expectations about what transitional justice can and cannot do.’ This article argues that transitional justice should shift its focus and bring structural and cultural violence to the centre. As has been shown, structural and cultural violence are abstract, often elusive and ‘highly resistant to change’ (Christie 2001, 2). So is it too ambitious to strive for a transitional justice paradigm and resulting strategies that focus on structural and cultural violence? Is this a real world approach to transition and justice? These questions are well founded. This article concludes by arguing that, while scepticism is inevitable, transitional justice can, and should, take tangible steps towards making structural and cultural violence a central focus.

A reversal of mass dehumanization, vulnerability and victimization requires, first, an objective reflection on societies and systems as a whole. This sounds like an overwhelming task, given that transitional justice practitioners are being asked to account for both tangible and intangible forces. However, all this really entails is a broadening of the current focus or scope. And what better time than at a moment of a society’s collective reflection on its past horror for it to look forwards and create something new?

When the scope is broadened, particular events, individuals and aspects of the system become less intangible, and it becomes possible to look comprehensively at societies and systems. For instance, in the case of the US and the War on Terror, when the scope broadens, the focus simply shifts from particular individuals in the administration and specific cases of wire-tapping and torture to include private military companies, public support for intervention and extra-judicial actions and the fundamental problems with the US security and intelligence infrastructure. In the case of Cambodia, the focus shifts from Duch and the S-21 Khmer Rouge torture prison to the current concentration of socioeconomic and political power, which leaves ordinary citizens largely defenceless against the authorities and elites.

Secondly, after transitional justice practitioners comprehensively reflect on problems with societies and systems, they must pursue tangible solutions to these problems. The difficulty here is to determine what is tangible. As mentioned above, in the context of Cambodia, distributing land titles to individuals who had settled on a plot of land would be a tangible act. Rewriting constitutions and restructuring political infrastructure would be a matter of pairing technical capacity with political will. Addressing unemployment and creating jobs in the most marginalized communities would be a tangible step towards protecting people from structural violence. Human and monetary resources can be redirected from defence spending to health and education. Campaigns and awareness-building activities could address the attitudes and perceptions of the masses. Perhaps the most complicated task would involve redistributing land, resources and opportunities, but this is not impossible.

The objective here is not to lay out a specific blueprint for accomplishing structural and cultural peace. The point is to demonstrate what broad thinking lends to broad initiatives. There is no shortage of technical capacity in the arena of mass communication, development and legislature. Given the chance and resources, skilled individuals could begin the push towards addressing the cultural and structural violence that plagues transitioning societies decades after
atrocities. If the amount of expertise that is invested in courts and commissions were dedicated to addressing widespread vulnerability and dehumanization, progressive and sophisticated initiatives would inevitably emerge. Bass (2000) argues that, despite all of the challenges and setbacks, transitional justice stakeholders should continue to pursue legalistic justice against war criminals. The same determination and perseverance will be needed in the pursuit of cultural and structural peace.

If transitional justice does undergo a programmatic and paradigmatic shift towards addressing structural and cultural violence, what will be the role of courts and commissions? As has been stated throughout this article, making structural and cultural violence a central focus does not entail abandoning prosecution, truth and reconciliation. But in the transitional justice framework advocated in this article, courts and commissions could play more of a facilitation role. Existing vulnerabilities and dehumanization would receive more attention and resources than any local or international courts and commissions so as not to sacrifice activities that could directly address structural and cultural violence. If existing structural and cultural violence is addressed, any courts or commissions will naturally be more effective. In other words, present injustices will be dealt with more urgently and extensively than past injustice so that transitioning societies can actually transition to a new era. Again, this article does not propose a particular formula or blueprint for employing such an approach, but there is obvious merit to and opportunity for such a programmatic and paradigmatic shift.

It is important to genuinely engage the ramifications of failing to do more to make structural and cultural violence a central focus of transitional justice. It is the systems of power distribution, which produce vulnerability and severe socioeconomic and political inequality, and cultures accustomed to hate and violence, which make tyranny possible. The only way to ensure that vulnerability, dehumanization and thus tyranny are minimized is to actively reverse the systems and attitudes that discriminate and dehumanize. Furthermore, because poverty and vulnerability—two products of structural and cultural violence—do not respect geographical boundaries, leaving a dehumanized social space intact may endanger entire regions (Duffield 2007, 1).

Ongoing efforts to improve the lives of those in transitioning societies will always be subject to criticism. As transitional justice scholars, practitioners and advocates continue to make notable progress, it may be an appropriate time to reflect on the fundamentals, such as purpose and scope. Is transitional justice delivering to transitioning societies the kind of justice that stretches beyond the headlines? Is transitional justice lessening vulnerabilities and addressing the basis of tyranny?

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