

**A Preliminary Examination of the Relationship  
Between Transitional Justice and the Neoliberal Discourse**

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## Introduction

Transitional justice scholarship has expanded significantly over the last ten years. This progress in the field corresponds to the overall growth of the practice of transitional justice, especially at the international realm. Indeed, the international community has come to the consensus that, in most cases, it must respond to the growing number of gross human rights violations occurring around the world. Recent research, (See Chandler 2000) suggests that the international community often pursues a one-size-fits-all approach when dealing with post-conflict societies. Often, the design adopted for these societies is modelled after the West's experience with state-building.

When we think of countries in "transition," we assume they are transitioning from X (ie. Iraq, Bosnia, Afghanistan, etc) to a liberal democracy. According to this model, the history and culture of X does not matter. It is assumed that it can and will, in time, transition to a functioning liberal democracy. A liberal democracy as an end-point is not all-together bad. Indeed, if we understand the democratic peace literature to be correct, the proliferation of liberal democracies will eventually result in greater levels of peace.<sup>1</sup> However, liberal democracy is a label given to a political order that has a very distinct history. When examining cases in which countries are emerging from conflict, we can see that the development of a liberal democracy has proven much more difficult, despite the monumental support from the international community.

In recent years, scholars have begun to critically reflect upon the, now sizeable, body of literature regarding transitional justice.<sup>2</sup> The early debates within transitional justice dealt largely with the choice of mechanism(s) (i.e. trials, truth commission, amnesty, and lustration) to be adopted by states transitioning from conflict to peace. In this case, peace was most often envisioned as only attainable within a liberal framework. The new vision for these post-conflict societies, consequently, was often some variant of liberal democracy and free-market capitalism.<sup>3</sup>

The vision of society that pervades the thinking within the field of peacebuilding can be characterized by its attachment to a specific type of progress, mainly that experienced within the much of the Western world. According to Jeong, "the notion of neoliberal peacebuilding, characterized by the establishment of formal democratic processes combined with promotion of a market economy, has been accepted almost universally in spite of some reservations about its

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<sup>1</sup> See: 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; and Michael Doyle, "Three Pillars of the Liberal Peace," *American Political Science Review* 99, no. 3 (2005): 463-466.

<sup>2</sup> See: Betts, Alexander. "Should Approaches to Post-conflict Justice and Reconciliation be Determined Globally, Nationally, or Locally?" *The European Journal of Development Research* 17 (2005): 735-752 and Pouligny, Béatrice. "The forgotten dimensions of 'transitional justice' mechanisms: Cultural meanings and imperatives for survivors of violent conflicts." *Centre for International Studies and Research*. (2007) [http://www.ceri-sciences-po.org/themes/re-imaginingpeace/va/resources/forgotten\\_dimensions\\_pouligny.pdf](http://www.ceri-sciences-po.org/themes/re-imaginingpeace/va/resources/forgotten_dimensions_pouligny.pdf)

<sup>3</sup> In cases like Bosnia-Herzegovina, power sharing mechanisms were utilized as a means to address ethnic differences. Despite this, the Bosnian constitution is grounded in the ideals of Western liberal democracy. See: Dejan Guzina, "Dilemmas of Nation-building and Citizenship in Dayton Bosnia," *National Identities* 9, no. 3 (2007): 222.

application strategies.”<sup>4</sup> Emerging from this particular approach is a “liberal democratic vision [that] stress[es] formal institutions and rules as well as political representation through elections.”<sup>5</sup> The term, neoliberalism, used by Jeong, must first be quickly unpacked. For liberal economists, neoliberalism (and its predecessor, classical liberalism) constitutes a view that covers a wider scope than merely a set of policies (what we generally have understood to be the ‘Washington Consensus’). However, a basic understanding is that the economy functions separately from the political and, as a result, economic analysis and policymaking must be thought of as separate from politics. Colin Hay defines neoliberalism as:

- (1) A confidence in the market as an efficient mechanism for the allocation of scarce resources
- (2) A belief in the desirability of a global regime of free trade and free capital mobility.
- (3) A belief in the desirability, all things being equal, of a limited and non-interventionist role for the state.
- (4) A conception of the state as a facilitator and custodian rather than a substitute for market mechanisms.
- (5) A defence of individual liberty.
- (6) A commitment to the removal of those welfare benefits which might be seen to act as disincentives to market participation (in short, a subordination of the principles of social justice to those of perceived economic imperatives).
- (7) A defence of labour-market flexibility and the promotion and nurturing of cost competitiveness.
- (8) A confidence in the use of private finance in public projects and, more generally, in the allocative efficiency of market and quasi-market mechanisms in the provision of public goods.<sup>6</sup>

Potential hesitations regarding this particular vision that drives post-conflict building are, indeed, plentiful. A vision of society can not be disconnected from that society itself. That is, visions that guide the progress of society must be connected to some reality and resonate within that society. The neoliberal vision, however, is inextricably connected to a Western reality and the forces that produced such a vision are situated within its history. While there may be positive consequences resulting from its export/import into non-western societies, academics have begun to question its viability.<sup>7</sup>

Over the last few decades, international institutions including the International Monetary Fund (IMF) and World Bank have provided a great deal of economic support for developing countries and countries emerging from conflict. Tied to this support are conditions that the state must meet in the re-structuring of their economy, largely related to the rolling back of the state’s involvement. As the IMF found out in the 1990s, it was not enough to simply force states to adhere to a menu of neoliberal policies; significant social engineering would be required as well. For, embedded in this neoliberal discourse are a set of assumptions about the nature of society, that is, that, however complex social relations might be, all individuals are quintessentially

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<sup>4</sup> Ho-Won Jeong, *Peacebuilding in Postconflict Societies* (Boulder: Lynne Rienner Publishers, 2005), 10-11.

<sup>5</sup> Jeong, *Peacebuilding*, 11.

<sup>6</sup> Colin Hay, “The Genealogy of Neoliberalism,” in *Neoliberalism: National and Regional Experiments with Global Ideas*, edited by Ravi K. Roy, Arthur T. Denzau and Thomas D. Willett. 51-70 (London: Routledge, 2007).

<sup>7</sup> See: Ian Taylor, “What Fit for the Liberal Peace in Africa?” *Global Society* 21, no. 4, (2007): 553-566.

market-oriented.<sup>8</sup> Indeed, a more complete understanding of neoliberalism is as a venture to spread free-market social relations. We are interested in examining the relationship between transitional justice and neoliberalism and the way transitional justice has been distorted by an adherence to a market rationale. Specifically, we are interested in examining the way neoliberalism has bounded a societies' response to mass atrocities and in particular the case of South Africa exemplifies the influence neoliberalism has had on efforts of reconciliation. In order to fully understand the dynamics that have shaped transitional justice, we will first briefly review the concept and goals of transitional justice, specifically reparative justice as it is embodied in the Truth and Reconciliation Commission in South Africa; second, we will examine the broader forces of globalization in which transitional justice mechanisms take place. Finally we will return to the case of South Africa to briefly examine how the goals of transitional justice have been shaped by the neoliberal discourse.

### **Transitional Justice**

In recent years, the field of transitional justice has brought about significant contributions to the study of peacebuilding. Born out of the demand for justice following mass violations of human rights in several regions of the world in the early 1990s, the field of transitional justice focuses on various types of justice and the best way to carry it out.<sup>9</sup> Transitional justice seeks to identify and address the root causes of violence and mass atrocities in an attempt to facilitate the transition to peace at the state as well as at the community level. More precisely, it attempts to deal with the legacies of past abuses and assist in the ongoing conflict transformation and transition to peace and democracy. In fact, it encompasses the “legal, moral and political dilemmas that arise in holding human rights abusers accountable at the end of conflict.”<sup>10</sup> Teitel adds that the field of transitional justice has to deal more generally with “the grounding within society of a normative shift in the principles underlying and legitimating the exercise of state power.”<sup>11</sup> Indeed, it is engaged in the (re-)creation of institutions inclusive of society members and reflective of peaceful social norms and new order. In this respect, it signals a radical breakaway from the previous social order where conflict and discontent thrived, and provides space for rethinking and casting a *new vision and direction for society*. This can be achieved through three different types of justice: Retributive, Restorative, and Reparative.<sup>12</sup> This paper will solely focus on reparative justice as it addresses the need to repair social and economic inequalities in post-conflict societies (specifically, South Africa).

It is argued that the very endpoint and goal of transitional justice is reconciliation.<sup>13</sup> The concept of reconciliation is, indeed, widely discussed in both the literature on peacebuilding and transitional justice. Reconciliation can, perhaps, be better understood as a process, than a goal.

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<sup>8</sup> Graham Harrison, “Economic Faith, Social Project and a Misreading of African Society: the travails of neoliberalism in Africa,” *Third World Quarterly* 26, no. 8: 1311.

<sup>9</sup>International Center for Transitional Justice ‘What is Transitional Justice ?’ (December 2008) <http://www.ictj.org/en/> ; accessed January 8th 2009.

<sup>10</sup>Christine Bell, Colm Campbell and Fionnuala Ní Aoláin, ‘Justice Discourses in Transition’ in *Social and Legal Studies* 13 no. 3 (2004): 305.

<sup>11</sup>Ruti Teitel, *Transitional Justice* (New York : Oxford University Press, 2000), 213.

<sup>12</sup> For a discussion of the differences between these conceptions of justice see: Howard Zehr, *The Little Book of Restorative Justice* (Pennsylvania: Good Books, 2002); Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998); and Elizabeth Spelman, *Repair: The Impulse to Restore in a Fragile World* (Boston: Beacon Press, 2002).

<sup>13</sup>Lydia Bosire, *Overpromised, Undelivered: Transitional Justice in Sub-Saharan Africa*, (December 2006) <http://www.ictj.org/en/news/pubs/index.html> (Accessed 12 November 2008).

For even in advanced democracies, there has never been a utopian style end-point in which all differences have been resolved. Instead, what advanced democracies contain are mechanisms that deal with differences (however defined) and a society that has reached a threshold of trust that confers to them a level of security in their daily lives. According to John Paul Lederach, reconciliation contains four necessary components: “[t]ruth is the longing for acknowledgement of wrong and the validation of painful loss and experiences, but it is coupled with mercy, which articulates the need for acceptance, letting go, and a new beginning. Justice represents the search for individual and group rights, for social restructuring, and for restitution, but it is linked with peace, which underscores the need for interdependence, well-being, and security.”<sup>14</sup> In the case of South Africa, the Truth and Reconciliation Commission was a clear attempt to bring about justice through reparations, either in the form of monetary compensations or acknowledgement through apologies.

### *Reparative Justice*

The purpose of reparative justice is to repair what wrong has been committed. In contrast to the retributive approach, it claims to focus on the victims rather than on the crime itself. It can nevertheless be argued that it does focus on the wrong committed in that it seeks to repair it in the benefit of the victims. Restitution and apology are two means through which reparative justice is carried out.<sup>15</sup>

Spelman, for instance, explains that the act of repairing what wrong has been committed in an analogy with a bicycle.<sup>16</sup> The author explains that when a bicycle has been damaged, it can be taken to the shop for repair. Parts that have been affected will be mended so that the bike will be returned to its previous condition and used again. Thompson defends the idea of reparative justice on the ground that such approach is fundamentally rights centered.<sup>17</sup> In his view, regardless of the circumstances and period the crime was committed, society has a duty to repair it.<sup>18</sup>

Rama Mani equates reparative justice with what she calls rectificatory justice.<sup>19</sup> She argues that the aim of such type of justice is that of erasing the damage through reparation (both psychological and economic compensation). Reparative/rectificatory justice seeks to address both the physical and emotional harm caused to the victims. It is fundamentally victim oriented and does not exclude punishment. Furthermore, she argues that it is flexible and sensitive to the nature of offences and their immediate impacts. Roth-Arriaza concedes that reparative justice is as forward-looking as it is backward-looking and notes that moral, rather than material reparation is essential for victims.<sup>20</sup> Reparation, in her view, is a delicate balancing act that seeks to acknowledge the wrong committed without furthering victimization of one of the parties to the dispute.<sup>21</sup>

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<sup>14</sup> John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington DC: United States Institute of Peace, 1997), 29.

<sup>15</sup> Elizabeth Spelman, *Repair: The Impulse to Restore in a Fragile World* (Boston: Beacon Press, 2002).

<sup>16</sup> Spelman, *Repair*.

<sup>17</sup> Janna Thompson, *Taking Responsibility for the Past: Reparation and Historical Justice*(Cambridge: Polity Press, 2002).

<sup>18</sup> Thompson, *Taking Responsibility*.

<sup>19</sup> Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002).

<sup>20</sup> Naomi Roht-Arriaza, “Reparations in the Aftermath of Repression and Mass Violence,” in *My Neighbor, My Enemy : Justice and Community in the Aftermath of Mass Atrocity*, edited by Eric Stover and Harvey Weinstein (Cambridge : Cambridge University Press, 2004), 122.

<sup>21</sup> Roht-Arriaza, *Reparations*, 123.

The delicate balancing act explained by Roth-Arriaza highlight the potential for further harm or victimization of one of the parties to the dispute. We would argue that, while South Africa undertook an attempt at repairing the societal fabric, this mechanism was undermined by the ANC's adherence to neoliberal policies. Such policies averted attention away from the most affected segment of society and further victimized those who should have been the central focus of this particular mechanism of transitional justice. We argue that instead of focusing on the victims, the focus of reparative justice, the state seemed to give greater priority to the concerns of the business class; the segment of society that was central to the adoption of neoliberal policies. Consequently, such actions moved undermined the core principles of reparative justice. The following section will provide an overview of the dominant global forces in which transitional justice take place. Following this, we will return to the case of South Africa to highlight how these global forces shaped the countries approach to rectifying the wrongs of the apartheid regime.

### **Dominant Global Forces**

Over the last half century, a majority of the countries classified as low-income have suffered from armed conflict.<sup>22</sup> When transitioning from conflict to peace, the previously war-torn societies often experience a great deal of political, social, and economic upheaval. The model generally adopted as the “way forward” is a liberal democratic state. Indeed, Teitel suggests 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.”<sup>23</sup>

In her examination of Teitel's work, Rosemary Nagy suggests that, it has “explicit concern with bringing ‘illiberal’ regimes into the fold of liberal democracy.” Accordingly, Nagy suggests that Teitel's work “treats established liberal democracies as benevolent models.”<sup>24</sup> Teitel's view is, no doubt, widely accepted among academics working within the post-conflict field. Indeed, Nagy correctly argues that, for individuals who have to live together following mass violence, transitional justice may be a foreign concept “steeped in Western liberalism, and often located outside the area where conflict occurred.”<sup>25</sup> Further, she argues that transitional justice is “accused of producing subjects and truths that align with market democracy and are blind to gender and social justice.”<sup>26</sup> Similarly, Mani argues that transitional governments “have to contend with an international climate where the prevalent liberal-democratic ideal...tends to favour freedom and liberty over equality.”<sup>27</sup> As a result, Mani suggests that issues of structural inequality remain largely ignored. In order to further understand the limitations of transitional justice, it is important to identify the global environment in which transitional justice takes place.

According to Stephen Gill, the “dominant forces of contemporary globalization are constituted by a neoliberal historical bloc.”<sup>28</sup> For the transnational elite, “the normative principles of neoliberalism have achieved hegemonic status as common-sense prescriptions on how best to configure—indeed restructure - political and economic life.”<sup>29</sup> In agreement,

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<sup>22</sup> Mani, *Beyond Retribution*, 126.

<sup>23</sup> 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.

<sup>24</sup> Rosemary Nagy, “Transitional Justice as Global Project: Critical Reflections,” Working Paper, 2.

<sup>25</sup> *Ibid.*, 1.

<sup>26</sup> *Ibid.*

<sup>27</sup> Mani, *Beyond Retribution*, 153,

<sup>28</sup> Stephen Gill, “Globalisation, Market Civilisation and Disciplinary Neoliberalism”, *Millennium: Journal of International Studies* 24, no. 3 (1995): 402.

<sup>29</sup> Ian Taylor, “What Fit for the Liberal Peace in Africa?” *Global Society* 21, no. 4, (2007): 553-566.

Overbeek and van der Pijl assert that, “neoliberalism has become the predominant ideology legitimating the privatisation of the state-controlled economy and the substitution of the market for the social provision of basic welfare.”<sup>30</sup> Similarly, Cox has suggested that,

There is something that could be called a nascent historic bloc consisting of the most powerful corporate economic forces, their allies in government, and the variety of networks that evolve policy guidelines and propagate the ideology of globalisation. States now by and large play the role of agencies of the global political economy, with the task of adjusting national economic policies and practices to the perceived exigencies of global economic liberalism. This structure of power is sustained from outside the state through a global policy consensus and the influence of global finance over state policy, and from inside the state from those social forces that benefit from globalisation (the segment of society that is integrated into the world economy). Neoliberalism is hegemonic ideologically and in terms of policy.<sup>31</sup>

As a hegemonic project that stresses liberalization, privatization and internationalization, neoliberalism produces negative effects including unemployment and falling real incomes. As a result, as a concept of control, neoliberalism is the “formulation of an identifiable fractional interest (the capitalist/business interests) in terms of the ‘national’ or ‘general’ interest. Neoliberalism is the *fundamental expression of the outlook of transnational circulating capital*.”<sup>32</sup> Given the acceptance of this view by the most influential international institutions working in Africa today (IMF and World Bank), understanding its impact is an essential for understanding the developing world.

#### *Clarifying the Concept of Neoliberalism*

The ideology of neoliberalism was first dominant in the United States and Great Britain with the Reagan and Thatcher Revolutions, respectively. In times, these ideas were proliferated through several channels like the International Monetary Fund and the World Bank. The forces emerging from this ideology attempt to fundamentally restructure society. A basic assumption of neoliberalism is the belief in the institutional separation of society into an economic and political sphere, assumed for all societies, regardless of their specific history. The economic sphere, then, assumed to function according to a basic rationality, is separated from the political sphere, and itself assumed to inherently irrational. This assumption, then, can simply manifest into the normative belief that the “rationality of economics should govern the irrationality of political decision-making.”<sup>33</sup> Consequently, neoliberals claim that all problems of the economy can be resolved by socially-neutral experts using technical rationality. Indeed, this line of thinking can lead to the assumption that, “economic motivation is the dominant driving force behind all human activity.”<sup>34</sup> Derived from this belief, neoliberal policy prescriptions will emphasize market solutions to relieve the problems of (re)distribution. At the core of this, is

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<sup>30</sup> Henk Overbeek and Kees van der Pijl, “Restructuring Capital and Restructuring Hegemony: Neoliberalism and the Unmaking of the Post-war Order,” in *Restructuring Hegemony in the Global Political Economy*, edited by Henk Overbeek (London: Routledge, 1993), p. 1.

<sup>31</sup> Robert Cox, “Civil Society at the Turn of the Millennium: Prospects for an Alternative,” *Review of International Studies* 25, no. 1 (1999): 12.

<sup>32</sup> Overbeek and van der Pijl, *Restructuring*, 15.

<sup>33</sup> Ibid.

<sup>34</sup> Paul Williams and Ian Taylor, “Neoliberalism and the Political Economy of the ‘New’ South Africa,” *New Political Economy* 5, no. 1 (2000): 22.

that “long-term harmony of interest is implicit in economic activity within the framework of a free market.”<sup>35</sup>

With this, the rolling back of the state is identified as an integral process in order to unleash the market forces. The state’s role, in this light, is to provide a “conducive environment for the private accumulation of capital by the bourgeoisies – both international and local...the redesigned pro-capitalist state is expected to protect the capitalists and their physical assets from destruction by the possible actions of the exploited and marginalized subaltern classes.”<sup>36</sup> Utilizing the old argument made by classical economists, the privatization of the state assets, which provided them with some control over the “levers of the mode of production, is driven by a rationale which posits that “the state is not efficient in the management of a business enterprise, irrespective of the sector of the economy in which such entity is based.”<sup>37</sup>

As a result of this “rolling back” of the state, there is often a retrenchment of the social safety net forcing states that adopt these policies to end various programs in areas such as public education, public housing, and public transportation. In many African states, the World Bank has pressured governments to stop investing in public higher education and, instead, allow private ownership to assume control over these vital services. In response to this, Kieh asserts: “ultimately, the overarching contours is the facilitation of the rapacious process of capital accumulation by metropolitan-based multinational corporations and other businesses. That is, the capitalist doctrine dictates that all ‘barriers’ to profit-making are to be removed, and the possibilities for the unbridled and unfettered accumulation of wealth be expanded and protected.”<sup>38</sup> What we see, then, is that the principle of profit-making trumps the condition of basic human needs. Vulnerable groups including women and children will be, no doubt disproportionately affected. According to Joseph Stiglitz, former vice president and chief economist of the World Bank, the economic solutions subscribed by the IMF and the World Bank have “the feel of the colonial rulers...they help to create a dual economy in which there are pockets of wealth...But a dual economy is not a developed economy.”<sup>39</sup>

The role of the IMF and World Bank has steadily increased throughout the world. Today, these institutions are not merely loan providers. As witnessed by the Structural Adjustment Programs, they have become heavily involved in institutional reforms and governance in developing countries.<sup>40</sup> While neoliberalism emerged to describe a specific new economic doctrine, it, no doubt, alludes to a “broader ideological norm – liberalism – concerning the nature of society.”<sup>41</sup> 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.”<sup>42</sup> As a result, Harrison suggests that we need to move beyond the 1980s and 1990s conception, that is, neoliberalism must be further conceptualized beyond the basic understanding of the retrenchment of the state. A richer

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<sup>35</sup> Williams and Taylor, *Neoliberalism*, 23.

<sup>36</sup> George Klay Kieh, Jr. “The New Globalization: Scope, Nature and Dimensions,” in *Africa and the New Globalization*, edited by George Klay Kieh, Jr. (Hampshire: Ashgate Publishing Limited, 2008), 14.

<sup>37</sup> *Ibid.*, 14.

<sup>38</sup> *Ibid.*, 15.

<sup>39</sup> Joseph Stiglitz, *Globalization and its Discontents* (New York: W.W. Norton, 2003), 40.

<sup>40</sup> John Makum Mbaku, “The African Debt Crisis and the New Globalization,” in *Africa and the New Globalization*, edited by George Klay Kieh, Jr. (Hampshire: Ashgate Publishing Limited, 2008), 31.

<sup>41</sup> 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): 1304.

<sup>42</sup> *Ibid.*, 1311.



understanding of neoliberalism, is as a “*project to expand and universalize free-market social relations.*”<sup>43</sup> This definition, according to Harrison, incorporates some fundamental differences in the understanding of the world. The word ‘project’ refers to the importance of agency – that is, there is a definite ‘author’ or ‘authors’ of this doctrine. Further, the incorporation of the phrase, ‘free market social relations’ alludes to the fact that, much of the work being done by the IMF and World Bank goes beyond a ‘rolling back of the state’. To Harrison, neoliberalism is an attempt to shape the economy, the state, and society.<sup>44</sup>

The faith in the removing of the state, ever present in the 1980s has given way to a realization that “reducing the state’s unproductive involvement in society was not a sufficient condition to ensure the development of properly functioning markets.”<sup>45</sup> The provision of social infrastructure was needed to ensure the conditions for individuals to act socially in a market-conforming fashion; “education provides the cognitive ability to balance utilities; roads create mobility, and bring markets to more remote areas. A stronger state ability to establish a regime of property in rural areas is seen as a key part of agricultural development, allowing land to be used more efficiently, productively and as collateral for loans.”<sup>46</sup> The states expansion into society did not fit nicely into the neoliberal framework; however, according to 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.”<sup>47</sup> Such social engineering sought to bring the wisdom of the free market into both public institutions societies, in general.<sup>48</sup>

To support this argument, Harrison suggests that this neoliberal reform has been underpinned by a large amount of “new techniques of survey and data generation.” which “rely on the existence of utilitarian individuals as social units.”<sup>49</sup> These methods of seeing society and making it readable for the state have profound repercussions as it “evacuates societies of their ‘deeper’ content: their gender, class and cultural relations, all of which might be very important sites of inequality, perceptions of justice, and perceptions of the nature of markets.”<sup>50</sup> Such a thin conception of society, then, renders “‘the social’ as a set of emerging market-like activities. Indeed, such a way of seeing society also informs the neoliberal authors of the way they understand society, as conforming with a ‘marketised’ view of the world.”<sup>51</sup> Bond illustrates this particular view quoting a senior advisor to the United Nations Conference on Human Settlements, who, in discussing the status of the city in this new globalized world, asserted that: “the city is not a community, but a conglomerate of firms, institutions, organizations and individuals with contractual agreements among them.”<sup>52</sup> Such an atomistic view of the world produces a social ontology of individualism which provides the foundation for the neoliberal experiment of social engineering, thus robbing Africa of its rich history.<sup>53</sup> The

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<sup>43</sup> Ibid., 1306.

<sup>44</sup> Harrison, *Economic*, 1306.

<sup>45</sup> Ibid., 1310.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid., 1311.

<sup>50</sup> Harrison, *Economic*, 1311.

<sup>51</sup> Ibid.

<sup>52</sup> Patrick Bond, *Elite Transitions: From Apartheid to Neoliberalism in South Africa* (London: Pluto Press, 2000), 169.

<sup>53</sup> Harrison, *Economic*, 1013.

implication of this vision of humanity is that the neoliberal agenda does not conform to the social features of African societies and, as a result, it is “ill-equipped to capture the cardinal features of African societies.”<sup>54</sup> Indeed, “markets cannot exist outside social and cultural milieus; they only work and they only make sense as culturally embedded social activity.” This is echoed by Badie, who suggests that, Western and Non-Western societies (themselves, internally diverse) have their own distinct histories and cultural foundations. Indeed, “most non-Western societies are characterized by a complex network of informal and community-based economies that are not easily reducible to market logic.”<sup>55</sup> The neoliberal vision and its fundamental premise have, at great cost, been lifted to the universal as an objective explanation for the functioning of the market. Such a vision does not reflect any society within this world; not in Africa, or, perhaps not anywhere else.

We believe that neoliberalism, as a hegemonic discourse, has had an impact on transitional justice, as well. Indeed, Mani argues that “peacebuilders have been misguided in their economic approach to countries emerging from war. They have prioritized economic growth over equity, ignoring the grievances of war-torn populations about distributive inequities.”<sup>56</sup> Indeed, Mani correctly argues that the use of such policies in countries emerging from conflict often overlook the political and social realities on the ground and have often “treated countries emerging from violent conflict like ordinary peaceful countries in their economic policy prescriptions, overlooking the potential social and political ramifications in this volatile environment.”<sup>57</sup> Indeed, such an approach often overlooks the way systemic injustice have impacted conflict. While Mani recognizes that tensions between segments of the society can be the result of various factors, she argues that experiences and perceptions of social and economic inequalities among groups can have a significant impact on the emergence of conflict.<sup>58</sup> Consequently, this may requires states in transition from conflict to address such issues for the consolidation of peace.

### **Post-apartheid South Africa: Tensions between Justice and Neoliberalism**

The following section will briefly examine the way neoliberalism has shaped responses to the questions of justice and injustice in South Africa. Conflict in society offers opportunities for individuals or businesses to profit from the turmoil. In the case of South Africa, during the apartheid regime, blacks earned wages significantly lower than whites; an obvious consequence of the racial capitalism which systematized the exploitation of black labourers.<sup>59</sup> According to Terreblanche, “the Truth and Reconciliation Commission (TRC) acknowledged that ‘the mining industry...benefited from migratory labour and the payment of low wages to black employees’. The gold-mining industry did indeed benefit enormously from migrant labour, the compounds system, the extraordinary low wages and the relatively poor safety and health conditions in the gold mines.”<sup>60</sup> Other sectors of the economy including the white agricultural industry benefitted

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<sup>54</sup> Ibid., 1014.

<sup>55</sup> Bertrand Badie, *The Imported State: The Westernization of the Political Order*, (Stanford: Stanford University Press, 2000), 41.

<sup>56</sup> Mani, *Beyond Retribution*, 127.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Sampie Terreblanche, “Dealing with systemic economic injustice,” in *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa* edited by Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town: University of Cape Town Press, 2000), 266.

<sup>60</sup> Terrablanche, *Dealing*, 266.

significantly from the systemic exploitation of blacks by the apartheid regime. Terreblanche asserts that it was clear “the apartheid system (or, more correctly, the system of racial capitalism) was deliberately constructed in a very close collaboration between (white) business and (white) politicians to create a (mainly African) labour repressive system on behalf of white business.”<sup>61</sup> While the TRC recognized the culpability of the business class in the exploitation of blacks, they did little to rectify these economic injustices, but, instead, appealed to the business class to voluntarily compensate black Africans for the passed indiscretions. Terreblanche suggests that such a meagre stance by the TRC does little to actually recognize and rectify the actions of the business class. Terreblanche asserts that,

what should be remembered, however, is that the exploitation of blacks did not happen voluntarily. It was compulsory and systemic. It was based on an economic and political system embedded in a network of compulsory legislation and justified by ideologies that were propagated as self-evident truths. To expect that business will be prepared to compensate the blacks voluntarily – and to the necessary degree – for the injustices committed towards the majority of them for almost a century is not only too idealistic but also rather naive. To give businesses the opportunity to pay off their ‘apartied debt’ through ‘charity’ will boil down to an opportunity to let them off the hook.<sup>62</sup>

Speculation as to why the TRC neglected to take an assertive position against the business sector is plentiful. Preliminarily, we wonder whether such results were, in part, the consequence of the hegemonic position of neoliberalism within the international system.

Before assuming power, the ANC was clearly suspicious of international pressure to conform to the ideals of free-market capitalism. Instead, it clearly asserted a belief in the ideals of democratic socialism.<sup>63</sup> Bond argues that “many within the ANC who had lived in Tanzania, Zambia, Uganda, and elsewhere on the African continent shared a gut feeling that a democratic South Africa must avoid the World Bank (and its neoliberal policies) like the plague”<sup>64</sup> Despite such sentiments towards international pressure, once assuming power, the ANC eventually adopted neoliberal policies. The manifestation of this is evident in the South African’s macro-economic strategy hailed as the Growth Employment, and Redistribution (GEAR) Strategy. Prior to this, a general debate took place within South Africa regarding the best strategy for rectifying the social, economic and political legacy of apartheid. One broad approach called for the “unfettered role of the market and the private sector as leading forces in the reconstruction and development process.”<sup>65</sup> This approach adhered to the basic notion of “economic growth through the trickle-down effect” in which the state plays a minimal role in the economy and, instead, allows market forces to distribute the wealth. Conversely, the second approach sought an “active role of the state in the reconstruction and development process.”<sup>66</sup> Such an approach suggested that “economic growth can only happen through an effective process of wealth

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<sup>61</sup> Ibid., 265.

<sup>62</sup> Ibid., 267.

<sup>63</sup> Richard Peet, “Neoliberalism in South Africa,” in *Globalization, the Third World State and Poverty-Alleviation in the Twenty-First Century*, edited by B. Ikubolajeh Logan (Aldershot: Ashgate Publishing Ltd, 2002), 126.

<sup>64</sup> Ibid., 160.

<sup>65</sup> Ishmael Lesufi, “Six Years of Neoliberal Socioeconomic Policies in South Africa,” in *Globalization and Post-Apartheid South Africa* edited by Abebe Zegeye, Richard Harris, and Pat Lauderdale (Toronto: de Sitter Publications, 2005), 22.

<sup>66</sup> Ibid.

redistribution, with the state as an active instrument directing such a process.”<sup>67</sup> In 1996, the government adopted the GEAR strategy which was “clearly located within the parameters of the first approach in which economic growth takes precedence over redistributive issues. Subsequent to its adoption, the government immediately announced that the strategy was not subject to negotiation in its broad outlines.”<sup>68</sup> The goals of the GEAR strategy have been defined as “stimulation of sustainable economic growth, creation of employment, and the redistribution of wealth.”<sup>69</sup> However, such ends are achieved through the adoption of a neoliberal approach with “an emphasis on a reduced role of the state in the economy.”<sup>70</sup>

The function of the state is limited to the creation of an “enabling environment for the business community to play its leading role. As such, the private sector is expected to play a central role in the reconstruction and development of the state. According to Lesufi, “since the private sector is in the first and last instance driven by profit motives, it means profitability will be the key determinant of the extent of reconstruction and development.”<sup>71</sup>

Early reports have suggested that the strategy has “achieved those goals promoting the interest of capital, while it failed to meet the needs of the poor. As well, under the GEAR strategy, the inequalities and poverty continued to rise.”<sup>72</sup> Critics of the GEAR strategy suggest that the “ANC was not merely stalling on its redistributive promises, but undermining its very capacity and will ever to deliver.”<sup>73</sup> In defense of their policy choices, the ANC was adamant that such a path was not the decision of any international institutions, but rather, was a plan devised to hold off any intrusions by institutions like the IMF and World Bank.

In opposition to this claim, Patrick Bond argues that, such a statement did not accurately portray the facts in South Africa. He asserts that:

- (1) The government’s lead promoters of *Gear* committed to the strategy not as a holding action against future IMF/WB pressure, but *because they believed in neoliberalism* (or at best that they believed ‘There is No Alternative’.
- (2) The act of (intelligently) spending lots of resources on social expenditures itself serve as a key component of an alternative economic strategy (alongside an intelligent investment programme aimed at basic-needs infrastructure, as economists Ben Fine and Zav Rustomjee have recommended)
- (3) The Bank and IMF already regularly celebrated *Gear*’s success in translating trade and financial liberalization plus fiscal discipline into ‘more pain to the victims in order to correct the economy’ (hence, what indeed was the difference, except that victims were told their suffering was ‘non-negotiable’ ANC policy, rather than a form of – perhaps more dignified – suffering at the hands of Washington technocrats.<sup>74</sup>

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<sup>67</sup> Lesufi, *Six*, 22.

<sup>68</sup> *Ibid.*, 23.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> Lesufi, 32. See also: Janis van der Westhuizen, *Adapting to Globalization: Malaysia, South Africa, and the Challenges of Ethnic Redistribution with Growth* (Westport, Praeger, 2002), 115.

<sup>73</sup> David Pottie and Shireen Hassim, “The Politics of Institutional Design in the South African Transition,” in *Can Democracy be Designed? The Politics of Institutional Choice in Conflict-torn Societies* edited by Sunil Bastian and Robin Luckham (London: Zed Books, 2003), 66.

<sup>74</sup> Bond, *Elite Transitions*, 190.

Indeed, whether imported by ANC leaders or exported/imposed by international institutions, such ideas were, no doubt, ultimately shaped by the neoliberal discourse. Similarly, Peet argues that the neoliberal ideas emerging from, what he identifies as the academic-institutional-media complex (centered in Washington), in concert with ideas about economic restructuring emanating from business alliances within the country (South Africa), obliterated the alternative, socialistic proposals based in the anti-apartheid struggle. He asserts that the “contest in South Africa, as elsewhere in the Third World, was so uneven that the victory of neoliberalism was almost inevitable and alternative policy formulations pointless.”<sup>75</sup>

We suggest that the implications for such policy decisions may have had a significant impact on transitional justice in South Africa. As previously covered, the TRC efforts in forcing the business sector to systematically address the previous crimes under the apartheid regime were limited. To do so would have resulted in the intrusion of the state into the affairs of the businesses sector. Instead, the TRC called on businesses to voluntarily address such issues in a way more suited to charity. That is, they were not required to do anything beyond the type of charitable giving undertaken by any corporation throughout the world. We suggest that such findings speak to the dominance of the neoliberal discourse within the international system. Indeed, its impact is not only felt within the ‘economy’, but has significantly shaped the way South African elites viewed the role of the state in the administration of justice. That is, decisions of justice and injustice, what is right and wrong, and what is considered moral and immoral behaviour was left to the market to decide. We argue that the neoliberal discourse has had a significant impact on society at large and, specifically, on the process of transitional justice. Similarly to Mani, we would suggest that the inability to adequately repair societal wrongs as a result of the racial capitalism can have negative consequences on the process of reconciliation in post-conflict societies, thus undermining the goals of transitional justice.

## **Conclusion**

This paper has examined the way the neoliberal discourse, which attempts to impose a marketized vision of society, has shaped certain aspects of transitional justice. Using the case study of the TRC in South Africa, we show how the neoliberal discourse has impacted the implementation of reparative justice, thus potentially undermining the wider efforts of rebuilding societal fabric. We argue that, while the TRC was initially committed to rectifying the systemic inequalities in society, it was unwilling to directly force the businesses sector to take part in the reparative process beyond a voluntary basis. We suggest that there may be a relationship between the ANC’s adoption of neoliberal policies and the TRC’s reluctance to interfere in the business sector. We believe that the field of transitional justice needs to be aware of the greater global forces at play in post-conflict societies in order to provide a better understanding of the challenges facing states in transition. In response to this, we suggest that transitional justice mechanisms may not function in isolation of the politics of society. That is, such mechanisms may not be as neutral in righting the wrongs of the past.

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<sup>75</sup> Peet, *Neoliberalism*, 136.

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