

TRANSITIONAL JUSTICE AS NEOLIBERAL APPARATUS:
POWER, SUBJECTIVITY AND SACRIFICIAL VIOLENCE

Josh Bowsher

*Thesis submitted to the University of Nottingham for the degree of Doctor of
Philosophy*

2015

ACKNOWLEDGEMENTS

I am grateful to many people, without whom this thesis would not have been possible. First and foremost, I would like to thank my supervisors, Dr. Colin Wright and Dr. Tracey Potts, who have been extremely supportive of this project and whose knowledge and experience have shaped my thinking in innumerable ways.

I also thank the School of Cultures, Languages and Area Studies at the University of Nottingham for supporting my research with funding that has allowed me to complete the project.

I would also like to extend my gratitude to the staff and students at the Centre for Critical Theory at the University of Nottingham. Since I arrived there in 2010 to begin my MA, the Centre has always felt a little bit like home. Thanks to all for a warm, friendly environment where it has been possible to think creatively and, above all, to share in our thinking. In particular, I'd like to thank Stefanie Petschick, Tom Harding, Joe Willis, and David Eckersley. Quite apart from them all being a lot of fun, it has been wonderful to learn in the company of such talented critical thinkers.

I'd also like to thank my family: my parents, Andii and Tracy, my brother Ben, and my sister Bekih, for their support, without which I would have surely given up a long time before now. Thank you. Finally, I'd like to thank my partner in crime, Georgie, whose support, kindness and, above all, patience has helped me along the way, but particularly during the final months. Thanks to you for listening to me ramble with a smile, and always seeming to know precisely what to say.

ABSTRACT

This thesis aims to critically conceptualise the relationship between transitional justice and the project of neoliberal globalisation, which, since the end of the Cold War, has sought to transform post-conflict societies according to economic logics that emphasise individualism, enterprise and competition.

In the last 25 years, Transitional justice has risen to the forefront of the human rights movement, and is now firmly embedded in the institutions of global neoliberal governance such as the UN, the International Monetary Fund (IMF), and the World Bank. Normatively conceived as an ‘apolitical’ set of technocratic mechanisms, the relationship between transitional justice and processes of ‘neoliberalisation’, which are often a significant part of post-conflict transitions, remains largely undertheorised by scholars and practitioners.

Addressing this problem, the thesis follows two interrelated lines of enquiry. First, with reference to the work of Michel Foucault, the thesis conceptualises transitional justice as an apparatus (*dispositif*) with a set of practices that support the process of neoliberal transition. Secondly, by drawing on René Girard’s theory of sacrifice, the thesis shows that the central mechanisms of the apparatus, that is, trials and truth commissions, are practices of ‘sacrificial violence’ designed to expel the ‘evil’ of the past and lay a foundation for the neoliberal society that comes after. Using the transitions of Rwanda, South Africa, and Sierra Leone as case studies, the thesis demonstrates that these practices of sacrificial violence produce narratives and engender subjectivities that support and prefigure neoliberal transitions designed to reconstitute war-torn states as market societies.

CONTENTS

INTRODUCTION | Transitional justice and Critique |1

SECTION 1

01 | A Theory of Transitional Justice |23

02 | Transitional Justice as Apparatus |63

03 | Transitional Justice as Apparatus II |103

SECTION 2 (CASE STUDIES)

04 | Rwanda, the ICTR and Retributive Expulsion |143

05 | Neoliberal South Africa and the TRC |187

06 | Truth AND Justice in Sierra Leone |233

CONCLUSION | Another Transitional Justice? |288

BIBLIOGRAPHY |314

INTRODUCTION

| TRANSITIONAL JUSTICE AND CRITIQUE |

Since the mid-Eighties, transitional justice has risen to the forefront of the human rights movement, attending to post-conflict or 'transitional' societies through legal and quasi-legal institutions. The term 'transitional justice' has come to denote the use of criminal trials and truth commissions, as well as a range of other measures including lustration, and reparations, all designed to assist transitional societies to deal with past human rights abuses and to aid processes of liberal democratisation. Starting life as the work of Non-Governmental Organisations (NGOs) and human rights lawyers, transitional justice is now favoured by an array of international institutions such as the UN, the International Monetary Fund (IMF) and the World Bank. These institutions all advocate – and are involved in – the use of transitional justice practices, as a means of ameliorating the 'traumatic' pasts of transitional societies and reconstructing them in the image of a liberal, democratic, rights-respecting nation-state.

Transitional justice has thus become increasingly ubiquitous. To date transitional justice has been deployed in numerous contexts including in Latin America (Argentina, Chile, Columbia, and Guatemala, for example), Eastern Europe (notably the former Yugoslavia but also post-Communist countries like Romania, Poland, and others), Africa (South Africa, Rwanda, Sierra Leone, Sudan, Uganda, and so on) and South-East Asia (Cambodia). It is little wonder then, that in reflecting on the current state of

transitional justice, Rosemary Nagy (2008, p. 276) was inclined to declare that ‘the question today is not whether something should be done after atrocity but how it should be done.’ With refracted but perhaps inadvertent echoes of the title to Vladimir Lenin’s famous essay ‘*What is to be done?*’, the phrase captures both the revolutionary march that transitional justice has made on human rights, peacebuilding, and systems of global governance, and the urgent speed at which it has been incorporated into them as a body of theory and practice that is now understood as ‘common sense’.

In the wake of this rise, transitional justice is now represented by a burgeoning academic field, which includes its own journal, the *International Journal of Transitional Justice*, as well as several research centres including the Transitional Justice Institute at Ulster University, the Essex Transitional Justice Network at the University of Essex, and the Oxford Transitional Justice Research network based at the University of Oxford. Academic work has done much to bring together the normative conceptual terrain of transitional justice, and to refine the central tenets of its approach.

Ruti Teitel (2000), for example, has sought to theorise how various forms of transitional justice might serve a profound normative role in the transition from conflicts and/or authoritarian rule to liberal democracy. Similarly, an edited volume by Neil Kritz (1995) brought various authors – including leading academics such as José Zalaquett, Jon Elster and Naomi Roht-Arriaza – to outline the theoretical scope of transitional justice. Other authors have considered how certain mechanisms support transitions in different ways. For example, Martha Minow (2000), Teresa Godwin Phelps (2004), and Priscilla Hayner (2010) have sought to outline the philosophical, ethical and practical reasons for using truth commissions to address transitional justice issues over other mechanisms like trials. In a similar vein, Roht-Arriaza and Javier Mariezcurrena (2006) edited a volume, which addressed how various transitional

justice mechanisms might coexist and complement each other in practice. The reader will be given a more detailed treatment of this work in chapter 2, and the theoretical support for various approaches will be examined thoroughly in the case studies (chapters 4, 5, and 6).

Nevertheless, there are relatively few critiques of transitional justice, which challenge the normative assumptions that constitute it. Lamenting this problem, Catherine Turner (2013, p. 194) argues that ‘while there has been significant critical engagement with the requirements of transition [...] this critique has focused on the need to ensure a more broadly defined and nuanced definition of transitional justice.’ Critiques of transitional justice have focused on the theorised needs of transitions without a significant engagement with the theoretical and normative assumptions that constitute those needs. For example, some academic work has addressed the difficulties with ‘top-down’ transitional justice, and advocated a variety of grassroots approaches as a remedy (see: McEvoy and McGregor, 2008). While this work locates a failure to meet transitional justice’s normative criteria, it does not question the assumptions that underpin them.

In particular, the assumed relationship between transitional justice and the political (and economic) project of liberalism has often avoided substantive criticism. This could well be attributed to the context of transitional justice’s rise following the end of the Cold War, when a triumphant liberalism sought to universalise itself in a putatively ‘post-ideological’ area conceived as ‘the end of history’ (Fukuyama, 1989). But more than that, with a grounding in human rights law, the broadly legalistic approach¹ of transitional justice is often presented as a technocratic exercise deployed to *overcome*

¹ Used hereafter to denote the ‘legal’ nature of transitional justice, rather than referring only to criminal justice.

the political context of conflict and mass violence. Indeed, as Turner (2013, p. 201) argues, 'the application of legal form is seen as a means of transcending existing political conflict and allowing a society to move towards a new form of governance, shielded by the formality of law and legal procedure.'

The result is that the assumed 'goods' of transitional justice - that is, dealing with the legacy of human rights abuse and supporting a nascent liberal democracy – are not subjected to much interrogation. Indeed, following the assimilation of transitional justice by international financial institutions, there has been no penetrating critical analysis of the relationship between transitional justice, human rights and the globalisation of neoliberalism, which these institutions are implicated in. Moreover, there is very little questioning of the practices used to *deliver* transitional justice, particularly its central mechanisms: criminal trials and truth commissions. While their effectiveness as legal and quasi-legal institutions is often critiqued (Gibson, 2002; Hamber & Wilson, 2002; Olsen, Payne, & Reiter, 2010), the idea that their legalism might obfuscate their political purposes and effects is rarely brought into question. Little time is given to the notion that the purpose of these mechanisms might be conceptualised very differently from (and very critically of) the normative function that they are given by academics and practitioners.

There have been some exceptions to this lack of critique. In her aforementioned article, Turner (2013) responds to the problem by forwarding a Derridean deconstruction of the binaries of war/peace and law/politics that seem to lie at the heart of transitional justice. Nagy (2008), on the other hand, has taken issue with the field on a number of fronts by exploring transitional justice as a global project. Noting the privileging of legal responses to conflict and violence, Nagy argues that transitional justice often favours an approach that imagines the future singularly in the image of a

liberal democracy. Its liberal legalism, she shows, means that it is often 'blind to gender and social injustice,' (ibid., p. 276). Finally, Zinaida Miller (2008, p. 268) has noted the potential problems caused by transitional justice mechanisms which serve to 'define key issues related to the past which must be resolved.' By ignoring questions of structural violence and inequality, Miller argues, transitional justice renders them 'invisible' and fails to grapple with a number of questions pertaining directly to the conflict.

Most recently, critical research has featured in a special issue of the *International Journal of Transitional Justice* edited by Makua Mutua. The special issue offers a platform for some of the latest normative critiques, from the negative effects of the monolithic use of the International Criminal Court (ICC) in Africa (Okafor & Ngwaba, 2015) to the need to incorporate issues around corruption into the practice of truth commissions (Robinson, 2015). Such contributions might be accused of falling into Turner's trap of further elaborating a definition of transitional justice, rather than questioning the assumptions upon which any definition might be built. Nevertheless, others articles have pressed to alter the normative framework of transitional justice by encouraging the inclusion of socio-economic rights in its processes, as well as proposing to rethink its relationship with liberal peacebuilding (Fourlas, 2015; Bundschuh, 2015). This nascent body of work is a promising starting point, and suggests that there is an appetite to address transitional justice more critically.

That being said, this thesis proposes that more can be gained by subjecting transitional justice to a sustained engagement with critical theory. Critical theory has been influential in academic approaches to law and legal studies. It has become a mainstay in the field of critical legal studies where poststructuralist thought and continental

philosophy have often provided a framework for theoretical approaches to law.² Crucial insights have also been gained from critical theory's interaction with human rights (see: Agamben, 2008 [1993]; Badiou, 2001; Brown, 2004; Rancière, 2004; Spivak, 2005; Odysseos 2010). It is odd then, that critical theory has thus far failed to find a foothold in transitional justice research, with theoretical works like Turner's occupying a relatively marginal position within the field. As such, transitional justice could benefit from a set of new and productive engagements with critical theory. Doing so may provide a critical reconceptualisation of transitional justice that enables academics and practitioners to further reimagine the field beyond the normative liberal concepts by which it is defined.

Building on some of the insights brought by Nagy, Miller and others, this thesis offers such engagement. It aims to provide a critical theory of transitional justice that questions how transitional justice mechanisms operate, bringing its political functions and effects into sharper focus. In particular, I hope to provide a theory of transitional justice that can more critically locate the relationship between transitional justice, questions of socioeconomic violence and inequality, and the systems of global neoliberal governance implied by international institutions like the IMF and the World Bank. In doing so, it is hoped that the thesis will provide a new critical perspective in the study of transitional justice that may be useful for transitional justice researchers and practitioners. Grasping precisely what is to be gained from this critical theory of transitional justice will be better understood by introducing the general trajectory of my approach.

² For example, the edited volume by Matthew Stone, Illan rua Wall, & Costas Douzinas (2012).

Transitional Justice: A Critical Theory?

This thesis is built on two central and interrelated hypotheses, which will now be taken each in turn. First hypothesis: the central mechanisms of transitional justice, that is, trials and truth commissions, are practices of ‘sacrificial violence’ designed to expel the ‘evil’ of the past and lay a foundation for the post-transitional society that comes after. More precisely, I argue that transitional justice mechanisms delimit the break between a society’s tumultuous past and its peaceful future by violently expelling a symbolic representative of the past. This representative is one who epitomises and is deemed ultimately responsible for the evil that has passed. Through practices of expulsion, I argue, transitional justice provides a foundational moment in which societies become unified in their spatial and temporal opposition to the expelled representative of ‘evil’. Simply put, my interest is in how transitional justice constructs post-transitional society by providing new binaries of past/future and inside/outside through acts of sacrificial violence.

While transitional justice is not limited to trials and truth commissions, these mechanisms have been central not only in the popular imaginary but also in practice. Indeed, as Alison Bisset (2012, p. 1) notes, ‘within the field [...] truth commissions and criminal prosecutions have emerged as the primary mechanisms for responding to a legacy of serious human rights violations.’ Recourse to other practices like lustration, where high ranking officers of the former regime are disbarred from serving in a public office, most notably in post-Communist Europe, has been much less frequent. While I do not doubt that other practices may also have expulsive properties,³ my focus on trials and truth commissions reflects the current state of transitional justice in which

³ One can see how lustration, for example, ‘expels’ former leaders from office.

either or both mechanisms have been the central focus of most, if not all, initiatives to date.

The hypothesis challenges the normative framework of transitional justice, which conceives of trials and truth commissions as distinct or even opposed entities that function in very different ways. Defined by the so-called ‘truth vs. justice’ debate, researchers have characterised transitional justice by a central opposition between trials and truth commissions. For researchers and practitioners on the ‘justice’ side of the debate, the use of criminal trials constituted a kind of retributive justice that, by prosecuting those guilty of human rights abuses, could provide some kind of accountability for the past, as well as to ‘advance the normative transformation of [transitional contexts] to a rule-of-law system.’ (Teitel, 2000, p. 28) For proponents of the retributive model, the emergence of truth commissions was primarily connected to the provision of amnesty laws in early transitional contexts such as Argentina. As such, truth commissions appeared to represent a difficult compromise that seemed unable to deliver the clear legal redress promised by criminal trials.

However, proponents of truth commissions soon began to claim that they may represent ‘a different, possibly better, kind of justice than do criminal conviction and punishment— “restorative” justice.’ (Greenwalt, 2000, p. 198) This perspective was undergirded by a critique of criminal trials that saw them as counter-productive to ‘goods’ such as reconciliation. Prosecuting leaders of the previous regime could, for example, destabilise the fragile peace that had been established. Consequently, the proponents of truth commissions argued that they were better placed than criminal trials to provide an historical account of the past, and could better support objectives of national healing and reconciliation (Laplante, 2009). There can be no doubt that a thesis which places sacrificial violence at the heart of this set of practices may offer the

opportunity for its proponents to critically reflect on the violences involved in achieving any notion of ‘healing’ or ‘reconciliation’.

More recently there has been a shift away from this absolute opposition, with a growing realisation that truth commissions and criminal trials could be used in tandem as a package of measures (Roht-Arriaza, 2006, p. 8). Nevertheless, this new turn, which recognises trials and truth commissions as complimentary endeavours, still carries this binary opposition even if it is theorised in less antagonistic terms. This approach, which recognises that trials and truth commissions fulfil complimentary but *fundamentally different* purposes, recognises the persistence of their difference, and that this difference remains central to the field. Much more will be said on this opposition throughout the course of the thesis, but this sketch shows that dissolving this opposition by showing that a similar practice of sacrificial violence inheres in *both* trials and truth commissions, provides something of a novel and possibly controversial approach to theorising transitional justice.

This approach is designed to unearth what hides behind the often depoliticised legal frameworks of transitional justice, showing that, at its core, transitional justice mechanisms constitute a primarily political act. To emphasise the political nature of this gesture, the thesis borrows its theory of sacrifice from the work of René Girard (1986; 2003 [1978]; 2005 [1972]), a French theorist and philosopher whose work on sacrifice, while relatively unknown in critical theory, has been very influential in the fields of anthropology,⁴ and theology.⁵ While a detailed treatment of Girard’s theory awaits the reader in chapter 1, a gesture towards it will demonstrate its value to the thesis in this respect. For Girard, sacrificial violence resolves mass violence by

⁴ For example, the field of generative anthropology pioneered by Eric Gans (1993)

⁵ Such as the theology of Walter Wink (1986; 1992)

symbolically expelling a 'scapegoat' deemed responsible for the crisis. Importantly, this is underpinned by a contingent and constructed relationship between mass violence, causality, and the sacrificial scapegoat. The responsibility of a 'scapegoat' is not determined by some foundational, *apriori* causality, but is constructed through a narrative that only needs to plausibly connect a scapegoat to the crisis (Girard, 1986, p. 15).

Girard's theory is thus well placed to reposition transitional justice's reliance on human rights law as but one of many discourses that could ascertain different notions of causality, and, as a result, different 'scapegoats'. By looking to Girard this thesis can probe the often naturalised and 'common sense' rationality of human rights law, showing that, ultimately, recourse to it is decisional (even if that is not immediately obvious) and, as such, in service of a particular political project. Furthermore, because I insist that sacrificial violence inheres in both truth commissions and criminal trials, the framework emphasises the political nature of transitional justice by challenging its seemingly non-violent lexicon that incorporates techniques of 'reconciliation', 'justice' and 'healing', designed to break the cycle of violence.

On this front, I take up one of the points raised by Robert Meister (2011, pp. 293-294), in the concluding chapter of his book, *After Evil*, which, strikingly, also makes use of the writings of Girard. While our focus and our approaches diverge significantly, Meister's observations remain a useful way of framing this point. Referencing Girard, Meister argues that the human rights movement sees itself as the 'end', that is, the means with which society can peacefully overcome both violence and politics. Against this self-legitimising framework, Meister points out that, in fact, 'violence is what comes next – a violence that claims to break the cycle of violence.' Similarly, the aim of this thesis is to use a Girardian framework to show that transitional justice is both

violent and political, but it hides both its violence and its politics behind its 'rational', legal vernacular.

And this brings me to the second hypothesis. If sacrificial violence is central to transitional justice, then what is its politics? More precisely, what political project does this violence serve, and can this relationship be conceptualised? I want to suggest that such questions can be made intelligible by positioning transitional justice as an apparatus of global neoliberal governance that serves to support the project of neoliberal societal transformation that often takes place following a transition. As such, sacrificial violence, I argue, constitutes one of the central practices of a global apparatus that is tied up with the hegemonic project of neoliberal globalisation, that seeks to transform nation-states according to the logics of neoliberal economics.

On this front, the thesis will advance two proposals. Firstly, the thesis will make use of concept of apparatus (*dispositif*)⁶ developed by Michel Foucault. Denoting an ensemble of theories, practices, and actors which strategically coalesce in order to resolve historically constituted problems (Foucault, 1980, pp. 194-195), the term will be used to conceptualise transitional justice in order to take account of the diffuse and shifting actors, theories and practices that it encompasses throughout both space and time. While transitional justice has become a relatively well-known post-conflict activity, there have been debates about what constitutes transitional justice (Winter, 2013) and whether transitional justice can be thought of as a distinct field of inquiry

⁶ It is worth noting the debate over translating the French term *dispositif* into English. The term 'apparatus' (*appareil*) loses some of the connotations of *dispositif*, which should be brought to the reader's attention. As Jeffrey Bussolini (2010, p. 96) has argued, more than simply a 'machine' or a 'structure', *dispositif* also encompasses its specific arrangement, connoting the way different elements strategically coalesce with different effects. In the absence of an 'ideal' translation I ask the reader to read my use of 'apparatus' with this, more dynamic connotation in mind.

and activity (Bell, 2009). As such, the term apparatus may provide a framework that brings more clarity by linking various practices, actors, institutions, discourses and propositions together as a coherent object, brought together under the moniker of transitional justice.

Moreover, by placing the concept of sacrificial violence within the conceptual framework of 'apparatus', with its emphasis on the Foucauldian notions of power and knowledge, it becomes clearer that these mechanisms are dynamically shaped through practices of power related to specific discourses and knowledge. As such, it enables the analysis to conceptualise how sacrificial violence might be shaped by certain disciplinary sensibilities that are themselves tied up with power and imply a relationship with certain governmental regimes and political projects. On that basis, this thesis insists that the apparatus of transitional justice is caught up in – that is, put into practice for – a global governmental project that sees post-conflict contexts as opportunities to transform societies along neoliberal lines.

My second proposal, therefore, is to utilise the term 'neoliberalism' to conceptualise the political project that sits behind transitional justice. While some academics have begun to consider the relationship between transitional justice and liberalism, socioeconomic violence and inequality, there has been a lack of conceptual clarity around precisely what is meant when these terms are deployed. Where transitional justice scholars have tried to raise political questions about the relationship between transitional justice and socio-economic issues this has sometimes caused considerable difficulties. The term liberalism, for example, is potentially obfuscating, referring both to parliamentary forms of democracy and to economics; it can be unclear if it means one or both of these potential connotations. Similarly, the terms 'socioeconomic' and,

more, 'socioeconomic violence', can often be quite nebulous, connoting a whole range of issues that may or may not be reconcilable.

Conversely, the term 'neoliberalism' offers more conceptual clarity, providing the opportunity to capitalise upon the plentiful research on the term offered by the field of critical theory. With recourse to Foucault's (2010) now published *Birth of Biopolitics* lectures, given at the Collège de France, as well as a new and burgeoning field of work by authors such as Philip Mirowski (2013), Wendy Brown (2015), and Pierre Dardot & Christian Laval (2013), the term neoliberalism can cut through some of these uncertainties by providing a different frame of reference. This work shows neoliberalism to be more than simply a narrow set of policy developments such as privatisation, or a quantifiable increase in inequality. Rather they share an insistence that neoliberalism is best understood as a social and cultural regime (as well as a political and economic one), replete with practices designed to produce individuals as economic subjects, that is, as individual enterprises who understand themselves as economic beings.

Defining neoliberalism by this overarching strategy provides some very useful coordinates. Firstly, it describes a political project without necessarily implying a centralised authority or a conspiratorial cabal of individuals, intent on 'secretly' transforming society. It thus encapsulates a rationality that seems both globally ubiquitous and locally differentiated by referring both to practices recommended, proliferated, and maintained through international institutions like the IMF, the World Bank, and even the UN, as well as other strategies that are particular to specific contexts but that fit within the broader framework of neoliberalism's overarching strategy. Secondly, its practice-based, subject-focused framework implies a specific trajectory for this investigation. The thesis must demonstrate that the sacrificial

violence of transitional justice has a productive relationship with neoliberalism understood as a set of governmental practices that imply the construction of certain kinds of subjectivity. Simply put, it is a case of showing how, as an apparatus, transitional justice supports processes of neoliberalisation designed to produce individuals as enterprises.

The Question of Method

Undertaking this analysis first requires constructing a critical framework that accommodates Girard's concept of sacrificial violence within Foucault's framework of the apparatus. Such a task is by no means simple. Girard's disciplinary context inside the school of philosophical anthropology is not easily reconciled with Foucault's post-structural, historical approach. Indeed, Girard conceptualises violence as an essentialised human condition, and forwards sacrifice as a final act of reprisal designed to contain our own natural tendency towards violence. Girard also posits the sacrificial act as a radically democratic moment, free from power relations, in which a community coheres through the unanimous choosing – and subsequent expulsion – of a sacrificial victim. In other words, there is work to be done in reconciling Girard's theory with a Foucauldian framework.

As a remedy, the thesis will proceed by lifting Girard's logic of sacrifice away from its essentialised, ahistorical anthropology. As such, it will make use of Girard's observation that mass violence undifferentiates and disassembles societies, which can then only be saved by an act of sacrificial violence, one that 'redifferentiates' them through a new logic of difference opened up between a society and its scapegoat. On the other hand, contra Girard himself, the thesis will argue that this logic of sacrifice is *not* the result of some ahistorical human nature but is instead constructed by the

discourses and practices of transitional justice as a historically constituted apparatus. Taking these Foucauldian co-ordinates, the thesis will then demonstrate how the nexus of power and knowledge is utilised by the apparatus to define and expel particular kinds of 'scapegoat'. Such scapegoats, I argue, construct historical narratives and imply the production of subjectivities that prefigure and support processes of neoliberalisation in transitional societies.

While chapter 1 will deal with this framework fully, it is important to highlight the methodological disposition implied by working with Foucault. Above all, the approach taken will be historical albeit a specific way of 'doing' history. For Foucault, history should be treated genealogically, avoiding the tendency to consider certain objects like 'madness' and even notions of subjectivity as ahistorical domains of transcendental knowledge. Moreover, genealogical enquiry should not focus around a search for foundations or origins: as Foucault (1984, p. 80) puts it, 'the genealogist needs to dispel the chimeras of origin.' Genealogy should thus be conceptualised as a descent which 'disturbs what was previously considered immobile; it fragments what was thought unified.' For Foucault (1980, p. 117), then, genealogy is 'a form of history that can account for the constitution of knowledges, discourses, domains of objects etc.' Genealogy traces the emergence, transformation and rise of certain domains of knowledge, discourse, practice and subjectivity. It follows that my own approach will explore transitional justice as the historical emergence, constitution, and transformation of a variety of knowledges, discourses, practices and so on.

In this way, genealogy usefully provides a means of 'writing a history of the present.' (Foucault, 1978, p. 31) It confronts moments of transformation to locate the developments which have arranged a present day social formation, like that of transitional justice. Mitchell Dean (1994., p. 21) has helpfully explicated this term. For

Dean, a history of the present is, 'characterised by its use of historical resources to reflect upon the contingency, singularity, interconnections, and potentialities of the diverse trajectories of those elements which compose present social arrangements and experience.' In other words, it is neither interested in giving a characterisation of any given period or issue, nor is it interested in judging this moment by the values of the present. Instead, 'one can say that genealogy is a way of linking historical contents into organised and ordered trajectories that are neither the simple unfolding of their origins nor the necessary realisation of their ends,' (ibid., p. 35).

Above all, genealogy implies an approach that focuses on the construction and practices of apparatuses 'without having to make reference to a subject which is either transcendental in relation to the field of events or runs in its empty sameness throughout the course of history,' (Foucault, 1980, p. 117). Rather, the concern is with certain constellations of knowledge and practice which have certain objectives and produce certain effects, most of all, transforming the way in which subjects conduct themselves. The focus of the analysis, therefore, will be the objectives of transitional justice, the way these objectives are pursued through practices, and finally the ways in which these practices attempt to produce subjective effects.

There is also an ethical point raised by this kind of methodology. While the investigation explores how transitional justice seeks to strategically produce certain subjectivities, this should not be confused for any claim to speak for subjects and the ways in which they relate to their experience of transitional justice. To speak for subjects in this way would risk forcing individuals into particular subject positions and thus reproduce the very power effects I aim to critique. Avoiding this conundrum, the claims made about transitional justice are taken from the 'surface' of discourse and practice, focusing on the subject transitional justice intends to produce and how it sets

about producing it. As chapter 1 will demonstrate, the production of subjectivities is always made in the struggle between the outcome strategically desired by the apparatus and the individuals subjected to it. The aim is not to claim the voice of particular subjects but to simply show how they are implicated in these struggles.

The critical framework will be tested in 3 case studies, which each represent key moments in the development of transitional justice. Whilst their widespread acclaim as successful examples of certain models of transitional justice already makes them good choices for case studies, they also represent points at which particular mechanisms have been legitimised, providing an opportunity to examine how certain mechanisms have evolved as responses to the historical challenges that transitional justice practices have attempted to resolve. The selection of the case studies is also in keeping with a genealogical perspective, which seeks to capture moments of emergence, transformation and institutionalisation, before the 'centralising power effects,' (Foucault, 2004, p. 9) of such institutionalisations are given the appearance of solidity and foundation.

To begin this endeavour, the thesis examines one of the first major international criminal trials constituted as the field emerged in the early Nineties, namely the International Criminal Tribunal for the former Rwanda (ICTR). The ICTR which followed the Rwandan Genocide marks a point at which criminal justice, particularly in international law, became possible, desirable and integral to transitional justice practices. The example of the ICTR will then be juxtaposed with the South African Truth and Reconciliation Commission (TRC), which represents a moment in which the truth commission became institutionalised as a legitimate and rival mechanism to the criminal trial. Finally, the mixed-mode approach in Sierra Leone provides an opportunity to explore a paradigmatic example of the recent move towards integrated

transitional justice approaches which utilises both criminal trials and truth commissions simultaneously. This final case study will thus test the critical framework against current and more complex trends in the implementation of transitional justice.

In each of these case studies the task will be to understand how transitional justice uses a practice of sacrificial violence, and how this supports the neoliberal transition taking place in each context. As such, each case study will seek to understand how neoliberalisation takes place in concrete practices and to relate its transitional justice mechanism(s) to this process. It is a case of showing how transitional justice supports, prefigures – that is, lays the foundations for – a neoliberal society that comes after the transition. Doing so will require an interdisciplinary approach that makes use of policy documents of governments, NGOs and other organisations, as well as the transcripts and legislation of transitional justice mechanisms. It will also involve making use of the academic research around each case study in diverse fields of history, sociology, politics, political economy, and transitional justice, in order to critically map the surfaces of the social, political and economic stakes of the transition and transitional justice's relationship to them.

It is important to acknowledge some of the difficulties posed by untangling the dense and overdetermined histories of each case study when much of the academic material, like the primary sources, is implicated in the very problem I aim to critique. As a remedy, I have sought alternative academic perspectives designed to perform the critical function of contesting the claims made by transitional justice as it imposes itself on different contexts. In this sense, the approach is properly genealogical, utilising alternative ways of conceptualising transitional contexts in order to counteract and unsettle the foundational function of transitional justice narratives in the case studies I present.

A Note on Structure

In order to navigate its arguments, the thesis is laid out in the following way. Chapter 1 will construct the critical framework. It will outline and consider the strengths and weaknesses of Girard's theory of sacrifice, and the reasons why it provides an appropriate theoretical framework for this investigation. Reflecting on its weaknesses, Chapter 1 then considers how Girard's theory might better accommodate both a historical analysis of violence and of power through an interaction with Foucault's concept of the apparatus. Giving an extensive outline of Foucault's theory, the chapter develops a synthesis that encompasses Girard's key insights about sacrificial violence as a logic, which is constructed by the apparatus and its mechanisms. Finally, the chapter will consider the global nature of neoliberal governmentality as a way of setting the context in which transitional justice operates. As such, it will rely on the work of Foucault, Brown and others in order to outline the central tenets of transitional justice and to conceptualise the way in which it operates.

chapters 2 and 3 will take up some of the outstanding issues that have been thrown up by the theoretical approach of chapter 1. Chapter 2 will outline transitional justice as an apparatus whose emergence must be understood as historical. Considering the crystallisation of the apparatus in the coming together of discourses around human rights, and 'transitions' to liberal democracy, the chapter will provide a genealogical history of transitional justice as it emerged out of the human rights movement of the late 1970s. On the one hand, this brief history of transitional justice will provide the opportunity to consider its central elements, that is, its discourses, practices, actors, its key concerns and objectives. On the other hand, it will also consider its historical relationship with the rise of neoliberal governmentality.

Chapter 3 will address the question of power. It will outline how transitional justice structures transitional societies through practices of power designed to produce certain kinds of subjects, guiding them towards particular 'scapegoats'. Through an analysis of NGO practices, the chapter will show how transitional justice operates through the production of Victims and Saviours as interdependent subjectivities. Whilst Victims are posited as helpless, passive subjects the apparatus conceives of its 'workers' as Saviours, armed with the expertise to help and support Victims through transitions. Outlining this dynamic, the chapter will demonstrate that the apparatus relies on an asymmetry of power that enables it to dynamically shape the transition through its sacrificial violence. Finally, it will consider how the production of Victim subjectivities provides a powerful tool for a project of neoliberalisation, supporting its needs by attempting to reconfigure the way subjects understand themselves in relation to the past and the future.

The second half of the thesis is dedicated to examining these insights in the case studies. Chapter 4 will examine how the ICTR expelled those it deemed most responsible for the genocide of Tutsis and their Hutu supporters. It will argue that human rights law provided a particular framework for understanding the question of responsibility that was individualising and minimising, utilising the legal framework of command responsibility to convict leading officials and elites as the representatives of evil, avoiding questions around the responsibility of Rwandan society as a whole. It will consider how this mechanism serves Rwanda's post transitional neoliberal project, providing as it does both narratives and forms of subjectivity that are suited to replacing the 'totalitarian' structures of the Rwandan state with forms of neoliberal governance.

Chapter 5 will examine the South African TRC, demonstrating that its practices of truth-telling defer responsibility for the past to apartheid itself, reified as an 'actant', which is symbolically expelled through the process of the truth and reconciliation commission. It will argue that this involves a symbolic violence. Here, human rights discourse provides a particular kind of discursive apparatus that problematises apartheid as mass violence against physical bodies, rather than as a socio-economic form of exploitation stemming from a racialised form of capitalism. The chapter will show how the effect of the TRC was not only to enable the economic inequality of the previous regime to continue, but to support the neoliberal reconfiguration of South African society after apartheid. Providing an individualising and de-politicising narrative to understand the violence of the past, the TRC provides one means with which to dissemble the communitarian and radical politics of the anti-apartheid movement.

Finally, chapter 6 will consider Sierra Leone's transition as a paradigm shift to a 'mixed-mode' approach to transitional justice. It will aim to analyse the Sierra Leone Truth and Reconciliation Commission (SLTRC) and the Special Court for Sierra Leone (SCSL) as an 'assemblage' designed to deal with the past through sacrificial violence. The chapter will argue that each mechanism takes responsibility for different parts of a sacrificial procedure, exploiting the strengths and minimising the weaknesses of each. It will consider how these mechanisms contribute to Sierra Leone's neoliberal transition by constructing particular narratives of the past, and implying subjective transformations that suit the neoliberal Sierra Leone that followed the transition.

The concluding remarks will be an opportunity to reflect on the arguments made through the course of the thesis. But it will also be an opportunity to explore some sites of tension as well as political opportunities opened by the critique. Among other

things, it will explore the recent Greek ‘truth commission on debt’, as a possible template for another transitional justice, one that meets the challenges presented by the rising hegemony of globalised neoliberalism. In the end, I hope this thesis provides opportunities to consider ideas about mass violence and what comes after; to think about the ways societies come to terms with the past and how it might be possible rethink them in order to consider justice, not only in a narrow legal sense but in a broader horizon of possibilities. With this final discussion I hope to gesture towards at least one small glimmer on that horizon.

01

| A THEORY OF TRANSITIONAL JUSTICE |

Girard, Foucault and the Apparatus of Sacrificial Violence

In a discussion of transitional justice efforts in Peru, Kimberley Theidon (2006, p. 436) argues that the central mechanisms of transitional justice, that is trials and truth commissions, should be understood as legal rituals. They are, she argues, 'important performative aspects; via the secular rituals embodied in transitional legal practices, collectives engage in 'ritual purification' and the reestablishment of group unity.' This allows Theidon to make connections between what Nagy (2008) has described as the global project of transitional justice, and what the former has called the micro-politics of community based rituals in post-conflict Peru. Without wishing to substantively comment on the relationship between the two, Theidon's characterisation of transitional justice is interesting inasmuch as it touches on what I argue is the central function of both criminal tribunals and truth commissions. Indeed, her recourse to the term 'purification' helpfully points towards the expulsive efficacy of transitional justice mechanisms whilst, thanks to the positive connotations of the term, obfuscating the violence which is a necessary part of any act of expulsion.

On this last point, and in contrast to Theidon's term 'purification', this analysis provides a framework which ensures that the violence inherent to the secular acts of

purification provided by transitional justice mechanisms is properly understood, in order to better comprehend the political stakes involved. Apprehending this violence, it will be argued, can be achieved by utilising the theory of sacrifice, which has been developed by René Girard. This chapter will provide the theoretical foundations for the central arguments of the thesis. It will begin by outlining Girard's theory of sacrifice as a fundamental anthropology, and argue that its value is in providing a logic of sacrifice that describes mass violence as a social crisis which effaces difference. Against the 'undifferentiating' effects of violence, it describes the act of sacrifice as a process of expulsion which reconciles the community in their shared disgust for an immolated scapegoat and generates a new logic of difference(s) for the community. Girard's two-part schema, it will be argued, provides a framework for understanding the function of criminal trials and truth commissions.

Having outlined the value of Girard's theory, the chapter will turn to the necessary task of highlighting its weaknesses. Placed in an anthropological tradition concerned with uncovering essentialised notions of human nature, Girard's theory, the chapter will argue, is neither attentive to the social and historical nature of particular contexts, nor to power and politics. In order to address this issue, the chapter will show that augmenting Girard's theory with Foucault's concept of an apparatus (*dispositif*) can help to maintain Girard's logic of sacrificial violence, whilst placing it inside a framework that is more concerned with questions of history, politics and power. It will then become possible to formulate transitional justice as an apparatus designed to respond to a historically constituted problem through recourse to mechanisms of sacrificial violence that are guided, conditioned, or mediated by knowledges, discourses and practices of power.

By orienting the framework around the concept of apparatus, it becomes possible to attend to the relationship between transitional justice and politics. This chapter will thus enter its final section by arguing that the term apparatus enables this project to theorise transitional justice as serving some function in regards to the hegemonic project of neoliberal globalisation. As such the chapter will outline the central tenets of neoliberalism with recourse to Foucault's own work, as well as the work of theorists such as Brown, Dardot and Laval, and Mirowski. In making this move, it will point towards the emergence of global forms of neoliberal governance, particularly in the realm of humanitarian intervention as the governmental context in which the apparatus sits. In doing so, it will aim to demonstrate that post-conflict societies provide strategic opportunities for the further expansion and entrenchment of neoliberal ideas, policies and practices.

By way of conclusion, the chapter will reflect on two trajectories implied by the thesis thus far. On the one hand, it will demonstrate the need to explore the history of transitional justice particularly in regards to the way it has become embedded in the structures of global governance. On the other hand, it must show that the practices of transitional justice serve a function in regards to the project of neoliberalisation. These trajectories will be discussed briefly at the end of the chapter in order to introduce the next steps of the thesis, which will be developed in chapters 2 and 3.

A Theory of Sacrifice: Girard's Fundamental Anthropology

Drawing from schools of anthropology and literary criticism, Girard (2003 [1978]) calls his work a 'fundamental anthropology' that places sacrificial violence at the cornerstone of human culture. His anthropological project can thus be termed 'fundamental' because it attempts to produce a totalising theory of 'humanity'.

Girard's work is oriented around an anthropological enquiry into the myths, religions and rites of (what are problematically titled) 'primitive' cultures, in order to garner insights about the development of human culture. Highly influenced by Emile Durkheim (2008 [1912]), whose anthropological research emphasised the role of the sacred in the maintenance of cultural orders, Girard developed a theory of sacrificial violence that asserts its generative role in the production and management of social orders. Developed in key texts *Violence and the Sacred* (2005 [1972]) and *Things Hidden since the Foundation of the World* (2003 [1978]), Girard proposed that by studying myths, literary texts and the rituals of 'primitive' cultures it is possible to glimpse – but never fully see⁷ – the foundational role of sacrificial violence in human societies. A greater understanding of this assertion can be ascertained with a fuller explication of Girard's fundamental anthropology.

As a starting point, it is important to emphasise that what Girard developed, in fact, was a theory of human society where violence plays a central role in both the degeneration and the (re)generation of communities. Indeed, Girard's theory of sacrifice is underpinned by his assertion that violence exists as a kind of *a priori* 'natural' concept that is driven by mimetic desire. For Girard mimetic desire is a foundational human relation in which an object becomes desirable by two or more subjects. Imitation alone is the source of desire here, such that to speak of mimetic desire is also to speak of mimetic rivalry. As Girard (2005 [1972], p. 154) puts it, 'rivalry does not arise because of the fortuitous convergence of two desires on the same object.' Instead, a rival desires the possession of another subject. In possessing the object, the subject acts as a model for the rival. At the same time, rather than desiring

⁷ Girard (2005 [1972], p. 326) argues that 'the theory [...] is paradoxical in that it is based on facts whose empirical characteristics are not directly accessible.'

the object from the outset, the subject's desire for the possessed object is appropriated when she is alerted to the rival's desire; 'the subject desires the object because the rival desires it.' (ibid., pp. 154-155)

For Girard (1996, p. 12), violence is generated by the contest over the object of desire. In other words, 'violence is not originary; it is a by-product of mimetic rivalry.' More importantly, mimetic violence is a 'contagion', which is likely to overflow its bounds:

As an object becomes the focus of mimetic rivalry between two or more antagonists, [others] tend to join in, mimetically attracted by the presence of mimetic desire. Mimesis is mimetically attractive [...] mimetic rivalry can spread. (ibid.)

Importantly, Girard supposes that mimetic violence exists prior to the formulation of the community. With an echo of Thomas Hobbes' (2005 [1651]) famous *Leviathan*, Girard argues that 'culture', 'order', and 'society' are preceded by 'the mimetic violence of all against all.' As Andrew McKenna (1992, p. 69) argues in quasi-religious tones, 'in the beginning are violent doubles, multdoubles.'

But what intervenes to end this pre-communal scenario is not the social contract between a community and a sovereign as Hobbes would have it. Rather, what intervenes is a unanimous act of sacrificial violence. For Girard, mimetic antagonisms eventually come to be unanimously deferred to a single individual (or a small group of individuals), who is differentiated from the others, and is expelled by them. Mimetic violence is thus sublimated by a second generative violence in so far as a community is formulated in its unanimous opposition to this individual. Thanks to this individual, Girard (2003 [1978], p. 102) contends, 'in so far as it seems to emerge from the community and the community seems to emerge from it, for the first time there can

be something like an inside and an outside, a before and after, a community and the sacred.'

The interiority of the community is thus located by the exteriority that is constructed by the violent expulsion of an 'othered' individual. The community is made possible by the generation of differences implied by the production of a primary difference between the community and its other. Sacrificial violence thus functions primarily as a symbolic process even if it is a real, visceral event. Indeed, when challenged to relate the sacrificial victim 'not only to the problem of violence [but] to the question of signs and communication,' Girard (2003 [1978], p. 99) responds by positioning the victim as a transcendental signifier, in which 'the signified constitutes all potential and actual meaning the community confers on the victim and, through its intermediacy, on to all things.' As such, humanity escapes nature and enters culture through a violent act where difference, and thus cultural and symbolic orders are constituted.

But the act of sacrifice does not prevent violence once and for all. Rather, the community continues to be haunted by mimetic violence in two ways. Firstly, Girard (2005 [1972], p. 98) argues that all rituals constitute a re-enactment of the sacrificial mechanism designed to ward off a fresh bout of mimetic violence. As Girard argues:

I contend the objective of ritual is the proper reenactment[sic] of the surrogate victim mechanism; its function is to perpetuate or renew the effects of this mechanisms; that is, to keep violence outside of the community.

Through the examination of various Greek myths, literary examples, and anthropological investigations, Girard aims to show how this mechanism is continually recreated. Ritual, he argues, first enacts processes of undifferentiation, where the pre-communal chaos of mimetic violence is performed 'through a theatrical re-enactment

of the mimetic crisis in which the differences that constitute a society are dissolved.’ (Girard, 1996, p. 11) This is always followed by simulated forms of sacrificial violence designed to re-order or re-differentiate society (ibid.).

Secondly, mimetic violence continues to provide a very real threat to society, and a real outbreak of violence within the community is always possible, even in ‘modern’ societies. Such an outbreak of mimetic violence is theorised by Girard (2005 [1972], p. 52) as a crisis for a community, not only because its spread is limitless (save for the annihilation of its members), but also because the spread of *imitative* violence represents ‘a crisis of distinctions – that is, a crisis affecting the cultural order.’ It is a collapse of the differences between individuals who are now mere imitators of each other as well as a crisis of symbolic orders including, first of all, the primordial prohibition delineated by the originary sacrifice: the ban on intra-communal violence. It is thus ‘crisis of order and meaning in terms of the difference between good and bad as between true and false.’ (McKenna, 1992, p. 63)

To resolve such a crisis, societies revert to sacrificial violence or what Girard (1986) calls the scapegoat effect. Here societies are reconciled by unanimously projecting their violence onto a scapegoat (figurative or real; a single individual or a small group), who ‘cannot be perceived as innocent and impotent; he must be perceived [...] as a creature truly responsible for all the disorders and ailments of the community.’ (Girard, 1996, p. 15) This effect is generated by a stereotypical accusation ‘which justifies and facilitates this belief by ostensibly acting the role of the mediator.’ (Girard, 1986, p. 16) It provides a narrative, which ‘bridges the gap between the insignificance of the individual and the enormity of the social body.’ (ibid.) The Stereotypical accusation is a discursive mediator that I shall call an *accusatory narrative of responsibility*, which defines a causal relationship between a scapegoat and the crisis.

Importantly this narrative isn't necessarily factual or 'real'; it merely facilitates the social body's belief that the scapegoat is truly responsible in order to mobilise their convergence on this 'other'. For example, by examining the writings of Gillaume de Machaut, Girard (1986, p. 16), points out the scapegoating of Jewish people in the outbreak of the great bubonic plague. In that particular case the accusatory narrative connecting Jews to the plague was the premise that they were poisoning the rivers. Whilst this anti-Semitic response is laughably false, it serves the purpose of plausibly providing a convenient scapegoat. As such, while there is the obvious violence of the expulsion, this is preceded by the symbolic and narrative violence involved in the constitution of certain subjects as truly responsibly. This will be developed more fully in due course.

Once the community converges on a scapegoat sacrificial violence provides a resolution to the crisis. But this is also the resolution of the crisis as a crisis of difference; 'sacrifice restores order by restoring difference.' (McKenna, 1992, p. 30) Just as the generative violence of the founding murder provided a kind of transcendental signifier, so too the scapegoat mechanism articulates a new logic of difference, such that the values of good and bad, true and false, emerge 'as the consequence of a violent decision that resolves the crisis.' (ibid, p. 63) By inserting a spatial and temporal break into a mimetic crisis a new social body is formulated both against the past, and against the scapegoat as its creator. The community is formed through this violent, foundational act as a benign cultural order, which must be preserved lest it fall into the hands of another mimetic crisis.

I want to argue, albeit with some modifications that will become clear shortly, that this form of sacrificial violence inheres in both criminal trials and truth commissions. My point is that not only do these mechanisms provide transitional societies with a

moment of sacrificial expulsion, but also that this 'generative' violence provides a new logic of difference that articulates post-transitional societies to themselves. Transitional Justice, as per Richard Kearney's (1999, p. 252) explanation of Girard's theory, operates through the expulsion of an 'other', which 'transmutes conflict into law.' In this context, law obviously refers narrowly to 'rule of law', which is central to the juridical foundations of transitional justice's claims about itself. But law also refers, here, generally to cultural and social values, ethics, and rules held in common.

Girard was already aware of the similarities between the sacrificial nature of ritual he was 'discovering' and the juridical institutions of 'modern' societies. Girard (2005 [1972], p. 22) postulated that a legal system provides a kind of temporal break between 'primitive' and 'modern' societies, in so far as a judiciary rationalises sacrificial rituals. As Girard put it 'the break comes at the moment when the intervention of a legal system becomes constraining;' when a 'system can [...] reorganise itself around the accused and the concept of guilt.' In other words, legal systems rationalise violence and responsibility through concepts of criminal guilt and the burden of proof. Such concepts constrain violence by rationally arbitrating between individuals. As a result, the need for sacrifice is lessened, because with the judicial system guilt is properly apportioned: 'the violence does indeed fall on the 'right' victim; but it falls with such force, such resounding authority, that no retort is possible.' (ibid.)

But Girard's dichotomy between the ritualised practices of 'primitive' cultures and the 'rational' judicial systems of modern societies can be problematised in transitional periods following mass violence where social orders, including legal systems, have collapsed. Certainly, by attempting to impose legal orders upon such contexts, transitional justice remains bound to concepts such as guilt and evidence.

Nevertheless, in the face of a mass violence and the dissembling of legality, any particular response to the problem of responsibility is far from inevitable. The analysis aims to show that the juridical rationality of transitional justice is but one rationality that, when applied to periods of mass violence, also produces a kind of scapegoat effect. Its juridical mechanisms, I argue, are not so much about arbitrating a dispute between two parties, but providing a moment of sacrificial violence in which a social body can emerge in opposition to the past. My hypothesis is that both trials and truth commissions are practices of expulsion which delineate the responsibility of a scapegoat at the expense of other possible narratives.

In forwarding this theory I am reminded of Ruti Teitel's (2000, pp. 220-221) concluding remarks in *Transitional Justice*, one of the first unified, normative theories of transitional justice. There, Teitel concludes that 'transitional justice is above all symbolic.' For Teitel transitional justice mechanisms are symbolic acts; 'ritualised legal processes,' which 'enable gradual controlled change.' In this sense, the symbolism Teitel is describing is more than merely symbolic in a pejorative sense, it is a rite, a ritual with real effects. Indeed, as she argues in the penultimate paragraph, 'their potential lies in their ability to reconstitute the community.' (ibid., p. 230) My argument is that these legal practices are rituals in the Girardian sense; they can reconstitute society through the spatial and temporal difference 'of the community from itself, within itself,' (McKenna, 1992, p. 57) produced by the expulsion of a scapegoat.

Beyond Philosophical Anthropology: Girard, History and Power

And yet, in forwarding this thesis I recognise the limitations of Girard's theory in its application to transitional justice practices. Indeed, there are two interrelated critiques

of Girard, which the sacrificial theory of transitional justice I am unfolding must overcome. In the first case, it is a question of history; or, more precisely, of the socio-historical context in which transitional justice arrives. Transitional justice *qua* transitional justice is a relatively new phenomenon and it is problematic to shoe-horn the process into a kind of transcendental and essentialised cycle of violence and ritual. Indeed, the danger of taking Girard's thesis without any modification is that the social, historical and political details are lost to a temporal continuity that stretches back the very beginnings of the 'human community'.

Girard's reliance on mimetic theory presents a key difficulty in this regard. In this model all conflicts seem to be inspired by the mimetic desire for something (often power) possessed by another. At best this could be described as a kind of truism in that all conflicts are, to at least some extent, involved in a battle for power (in some form). Nevertheless, to subordinate all conflicts to this desire seems reductive to say the least. What is needed, then, is to move away from a theory of violence that foregrounds the inevitable antagonisms of human nature in order to recognise the socio-historical particularities of a conflict. At the same time, the conundrum is one of attending to this difficulty whilst maintaining the central edifice of Girard's framework where violence 'undifferentiates' a society, such that it can only be reconstituted through a new logic of difference provided through sacrificial violence. The question, then, is one of creating a framework in which 'undifferentiation' occurs whilst foregrounding its socio-historical specificity and not falling back into the essentialism of mimetic theory.

Beyond this problem of history, there is also the problem of power. For Girard, the act of sacrifice is the simultaneous decision of a given community, who acting in unison decide upon a victim and act to expel them. The scapegoat is held in common, it is '[...]

the focal point for all members of the community.’ (Girard, 2003 [1978], p. 99) In Girard’s theory the moment in which a scapegoat is selected and sacrificed is variously described as ‘unanimous,’ (1996, p. 11) ‘spontaneous,’ (2005 [1972], p. 104) or the act of a ‘mob’ (1986, p. 16). These terms imply that sacrificial violence is a moment of radical democracy in which every member of the community is equally complicit in both the choice of the scapegoat and the violence against them. It once again recalls the Hobbesian Leviathan (Hobbes, 2005 [1651]) - that moment where any human society transcends the state of nature through a shared allegiance to the sovereign. The critical difference here being the replacement of a sovereign power with a scapegoat. What is missing from this picture is the complex power relations that are involved in contemporary societies.

Even where Girard gets close to admitting that power may intervene in the human condition he delineates, there is a concerted move away from this proposition. As I showed earlier, Girard (1986, pp. 15-16) sets up the ‘stereotypical accusation’ as a mediating force between scapegoats, communities and their social crises. By entering the realms of ‘mediation’ Girard inadvertently opens up a discussion around the power relations involved in particular kinds of representation. Indeed, with Girard’s example of the scapegoating of Jews for the plague, it is immediately clear there are particular power relations involved in this choice of victim. But Girard (*ibid.*, p. 15) is not concerned with this: ‘our concern is more elementary; we are only interested in the mechanism of the accusation and in the interaction between representation and acts of persecution.’ Girard removes the necessity of thinking causation in historical terms, relying on mimetic theory as the driver of violence and persecution. In its current form Girard’s theory cannot properly grasp transitional justice as a political operation.

In contrast, it is evident that transitional justice is always mediated through a complex set of relations between discourses, institutions and practices. The courtroom as a 'technology', for example, is not produced directly by the community itself, but rather administered by the juridical apparatus of a government or international law, which also involves a complex set of interactions with institutions such as the UN, as well as the influence of agencies such as NGOs. In other words, the sacrificial practices of transitional justice are part of a web of discourses and institutions in which people are enmeshed. The notion that sacrificial violence is a sovereign moment of radical democracy is thus a problematic proposition. Any social-historical exposition of Girard's work must investigate the ways in which certain power relations might intervene in sacrificial violence.

In light of these criticisms, and understanding that sacrificial violence is subject to the interventions outlined above, there are certain stakes which need to be explored. It begs the question of how the people involved in the conflict, 'the community', interact with these sacrificial mechanisms? No less important is the relationship between power and the political. If a sacrificial moment is guided by forms of power then what politics, which political project, structures and is structured by this sacrificial practice? This latter point causes a significant quandary which is difficult to navigate.

Nevertheless, a starting point is provided by Maurizio Lazzarato, a philosopher and critical theorist whose work on the power relations inherent to financialised neoliberalism will inform later discussions. For now, however, Lazzarato's work serves another purpose. In *Governing by Debt*, Lazzarato (2015, pp. 79-82) makes a critique of Girard's project, which crystallises the problems that have been sketched thus far. There, he argues that Girard 'turns sacrifice into a universal that is supposed to explain and encompass everything. His arguments betray a veritable mania for totalization.' In

response, Lazzarato re-reads some of Girard's anthropological case studies in order to complicate Girard's totalising gesture. The main purpose of this venture is to draw attention to the fundamental issue with Girard's thesis, in which sacrifice becomes human nature, a moment of transcendence which makes society and culture – a social body – possible. But, asserts Lazzarato, 'the institution of sacrifice does not proceed from human nature, from the original violence that supposedly defines all societies, as Girard would have us believe.'

Lazzarato's grievance is not with the idea that a sacrificial act provides a moment of transcendence within the society in which it occurs, but rather it is with the suggestion that this transcendence is somehow prior to any political order. In fact, the reverse is true: sacrifice is 'the result of an appropriative political gesture carried out by the state, the priest and the bureaucrat.' (ibid., p. 82) Sacrifice, then, is an intrinsically political gesture:

to speak of sacrifice means that the constitution of transcendent political formations has already begun. Sacrifice and transcendence are born together; they in no way designate a primitive origin but rather a political victory over other forms of organization. (ibid.)

Lazzarato's intervention reverses the ideological drift of Girard's thesis by asserting that sacrifice is an attempt at transcendence which issues from a political project that was already existent beforehand.

This intervention inserts, first, the question of history, for a political project is necessarily a historical production. But it also inserts the problem of power, of political power, into the heart of Girard's hypothesis. It is thus a question not only of thinking transitional justice as a sacrificial practice, but also as one in service of a political project. And this adds another complication: how can a moment of unanimous

decision, the collective immolation of a scapegoat, be understood as the mobilisation of the population in the fulfilment of a political project? I suggest that it is a question of understanding power as a diffuse, productive process capable of mobilising a population towards the immolation of its scapegoat. To put it another way, it is a matter of salvaging the transcendent sacrificial moment of Girard's thesis, by theorising it in relation to practices that are constituted historically, and which have the power to mobilise individuals as subjects towards the goals of a political project. I argue that these problems can be addressed with recourse to the work of Foucault.

What is an Apparatus? Power, Knowledge, Subjectivity

Questions about the nature of power and history have always been at the centre of Foucault's work. Whether exploring concepts of madness, sexuality, or the ways that states 'govern' individuals, the continuity of Foucault's work is in its distinctly post-structuralist approach that foregrounds interrelated concepts of history and power. In short, Foucault has critiqued essentialising and a-historical approaches to these issues, showing how certain kinds of knowledge have developed at certain moments, and defined social relations and norms, as well as the conduct, behavior, and self-awareness of individuals. Foucault's emphasis on the way in which historically specific formations of knowledge shape human behavior makes his work suited to addressing the problems I outlined above. In particular, Foucault's concept of *dispositif* or apparatus provides the most useful theoretical concept not only to address Girard but also transitional justice.

What is an apparatus? In an interview published in English as 'the Confession of the Flesh', Foucault (1980, p. 194) begins by defining an apparatus as:

[...] a heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions [...] the apparatus itself is the system of relations that can be established between these heterogeneous elements.

For Foucault, these elements coalesce into an apparatus as a strategic response to a particular historically constituted problem. Indeed, for Foucault (ibid., p.195), any given apparatus is a 'formation, which has as its major function at a given historical moment that of responding to an urgent need. The apparatus therefore has a dominant strategic function.' In other words, an apparatus should be understood as a contingent interlinking of discrete elements, determined by socially and historically defined needs.

Importantly, the apparatus and its system of elements is not summoned once and for all. Instead, the apparatus emerges, evolves and transforms as it interacts with the problem in which it is designed to intervene. As Foucault (ibid.) argues:

The apparatus [...] is constituted and enabled to continue in existence insofar as it is the site of a double process. On the one hand, there is a process of *functional overdetermination*, because each effect – positive or negative, intentional or unintentional – enters into a resonance or contradiction with others and thereby calls for re-adjustment or a re-working of the heterogeneous elements that surface at various points. On the other hand, there is the process of *strategic elaboration*.

In other words, the apparatus remains in a continuing state of flux as a result of the interactions it has with its environment. An apparatus entails experimentation and adjustment in order to better respond to the problem against which it has emerged. On this basis, new elements emerge and old ones disappear through strategic modification.

How does an apparatus strategically respond to a given historical problem? Quite simply, an apparatus is intimately tied up with power-knowledge (*pouvoir-savoir*), as Foucault (1978, pp. 27-28) defined it. To make a proper analysis of power, Foucault's starting point was to completely reconsider classical ideas about state power. Foucault (1998 [1979], pp. 88-89) argued that Western thought had failed to properly understand power because it had been formalised in juridical models of sovereignty: 'in thought and political analysis we still have not cut off the king's head.' In response, Foucault (2004, p. 29) asserted that power is best understood not as something possessed by a sovereign, but as 'something that circulates.' Power is diffuse, and dispersed across the social body; 'it is something that is exercised and it exists only in action.' (ibid., p. 14) For Foucault, power is distributed through the social body in practices that have material effects.

Moreover, for Foucault the circulation of power is dependent on knowledge. Foucault (2004, pp. 33-34) asserted that 'the delicate mechanisms of power cannot function unless knowledge, or rather knowledge apparatuses, are formed, organised, and put into circulation.' Power operates as a result of certain knowledges; it is on the basis of these knowledges that power has effects, that is stratifies and organises human beings in the social body. From here it is possible to see how an apparatus might operate:

[...] The apparatus is thus always inscribed in a play of power, but it is also linked to certain coordinates of knowledge, which issue from it but, to an equal degree condition it. That is what the apparatus consists in: strategies of relations of forces supporting and supported by types of knowledge. (Foucault, 1980, p. 196)

For example, in *Discipline and Punish*, Foucault (1978) demonstrated that in the late 18th century knowledges of the human body, of architectural spaces, and methods of observation made a new disciplinary apparatus of the prison possible. Any apparatus,

therefore, can be defined as an ensemble of discursive and non-discursive elements that strategically intervenes through practices of power, which shape and are shaped by particular knowledges.

For Foucault, the role of power is intimately tied up with the production of subjectivity. Rather than understanding power as the coercion of the human subject under a sovereign, Foucault was concerned with the 'productivity' of power. Indeed, as Foucault (2004, pp. 29-30) pointed out 'in actual fact one of the first effects of power is that it allows bodies, gestures discourses and desires to be [...] constituted as something individual,' such that 'the individual is in fact a power-effect.' This being the case, the purpose and the effect of power is the production of subjectivities on the basis of knowledge. The central tenet of his project was thus 'to study the multiple peripheral bodies, the bodies that are constituted as subjects by power-effects.' (ibid., p. 29)

What does this triad – power, knowledge, and subjectivity – mean in terms of the conceptual framework of an apparatus? On this front, Giorgio Agamben's extension of Foucault's work is a useful point of reference. As Agamben (2009, pp. 11-12) argues, an apparatus is a machinery of government; 'it designates that in which, and through which, one realizes a pure activity of governance devoid of any foundation in being.' In this sense, the objective of governing is not to act on or to subjugate some kind of foundational or transcendental subject; it is not the slavery of a universal subject to a sovereign power. Rather, it is 'a set of practices, bodies of knowledge, measures, and institutions that aim to manage, govern, and orient – in a way that purports to be useful – the behaviours, gestures, and thoughts of human beings.' (ibid.)

An apparatus thus utilises – whilst being no less utilised by – power and knowledge in order to induce certain subjectivities. In short, ‘apparatuses must always imply a process of subjectification, that is to say, they must always produce their subject.’ (ibid., p. 11) Moreover, the production of subjectivity is strategic insofar as it is designed to turn human beings to certain ends which are compatible with the governmental goals of the apparatus. For now, then, it is enough to say that the apparatus governs its socio-historical problem; it induces and incites subjectivities, turning beings towards certain ideas and idealised behaviours in order to resolve the socio-historical problem for which it was constituted. This insight will be developed in chapters 2 and 3, which will show how transitional justice developed as a set of techniques designed to respond to the problem of ‘transitions’ that emerged in the mid-Eighties.

There is an important cautionary note to be made here; power is not a unidirectional flow, which move from apparatuses into bodies, investing itself in the total colonisation of subjects. Power is relational. Subjectivity is produced in the interaction between individuals and apparatuses. Once again, Agamben (ibid., p. 14) usefully clarify this idea:

We have then two great classes: living beings (or substances) and apparatuses. And, between these two, a third class - subjects. I shall call subjects that which results from the relation and [...] the relentless fight between living beings and apparatuses.

Here, Agamben crystallises a key point: the production of subjectivity is an ‘agonistic’ relation that is dependent on the varying degrees of struggle between the apparatus and its subjects.

Transitional Justice as Apparatus

By introducing Foucault's concept of 'apparatus' to Girard's theory, the latter can be enriched by the former's appreciation of historicity, as well as his theory of power, knowledge, and subjectivity. As a result, several theoretical propositions emerge, which will be explored over the course of the rest of the thesis. The first proposition is that transitional justice might be best understood as the coalescing of several discourses, philosophical and theoretical propositions, practices, actors such as NGOs and advocacy groups, institutions, governments and so on. In this regard, the sacrificial violence of trials and truth commissions constitutes a central practice of the apparatus.

Secondly, the sacrificial violence of transitional justice is not the result of a violent human essence, but the socio-historical development of practices designed to respond to a historically emergent problem. Supplementing Girard's concept of the scapegoat mechanism with Foucault's term apparatus thus resolves a major issue in the sense that it is no longer reliant on the timeless antagonisms of mimesis but the systematic development of governmental techniques designed for a particular purpose. What is retained from Girard is a logic of sacrifice that is produced by the knowledge/power of the apparatus, whilst what is rejected is any 'fundamental anthropology' that would tie humanity to an essentialised disposition.

Consequently, the process of undifferentiation is not the breakdown of order through the becoming-same of individuals through mimesis. Instead, the process of undifferentiation is constructed through a discursive framework and is applied to the context in which the apparatus operates. The process of undifferentiation is created as the result of discourses, which are applied to the context of mass violence, rather than being part of the engine 'underneath' mass violence. This seemingly radical

departure is not, in fact, too far from the position forwarded by Girard (2005 [1972], p. 168):

From within the system only differences are perceived; from without the antagonists all seem alike. From inside, sameness is not visible; from outside, differences cannot be seen. Only the outside perspective, which takes into consideration the reciprocity and unity and denies difference, can discern the workings of violent resolution.

What Girard admits is that undifferentiation can only be understood from the 'outside' as the result of a rigorous application of his own framework. My argument is therefore that Girard has not uncovered the real workings of mass violence and, indeed, that the frameworks used by transitional justice to understand mass violence also construct the problem as one of undifferentiation.

In making this argument, I am reminded of the phrase 'cycle of violence', which has a common parlance in transitional justice and peacebuilding circles, and is often used by academics such as Tim Gallimore (2007) to conceptualise the workings of violence. Indeed, not only was the phrase used in the *Lomé Peace Accord* (1999) which mandated Sierra Leone to conduct a truth commission in order to 'break the cycle of violence,' but more recently by Kofi Annan (2015) when addressing Columbia's decision to hold a truth commission. Seemingly with little reference to Girard,⁸ the concept of 'a cycle of violence' thus provides an analytical framework in which the political struggle of adversaries is obviated by foregrounding the 'becoming-sameness' implied by the reciprocity of their violence. The construction of undifferentiation will be properly set out in chapters 2 and 3.

⁸ Although Gallimore (2007) does make passing reference to Girard's work.

Thirdly, the resolution to the problem of undifferentiating violence remains a moment of sacrificial violence, which provides a new logic of difference. Nevertheless, I insist that the process leading towards a sacrificial expulsion should be modified in light of Foucault's work. Sacrifice is not a radically democratic moment of unanimous violence. Rather, it is a process that is 'managed' by practices of power, which, to varying degrees, direct transitional societies towards a sacrificial mechanism. The scapegoat effect, I argue, is the result of a particular field of power relations and practices designed to furnish beings with particular subjectivities and to foster certain conducts. Understanding transitional justice in terms of a scapegoat effect must, therefore, also be an analysis of the practices of power which bring such mechanisms to bear.

Finally, I argue that sacrificial violence is not an 'originary' moment in which a polis is formed, but the staging of a foundation by a political project that exists prior to the exercise of sacrificial violence. There are two major points that arise as a direct consequence of this proposition. On the one hand, the choice of scapegoat is a political decision, which engenders a logic of difference acceptable to the political project that it serves. On the other hand, the subjectivities engendered by the practices of transitional justice are congruous with, that is, useful for, the political project in which transitional justice is involved.

As such, the relationship between violence and politics is perfectly articulated through the act of sacrificial violence. Nevertheless, while one could point to *the act* of expulsion as the purest expression of this relation, the dissimulated nature of expulsion in both trials and truth commissions serves as a reminder to think more carefully in regards to where the violence is located. My argument here is that its violence resides in the managed project of selecting and constructing the scapegoat, rather than simply in the expulsion itself. Through the power relations of the

apparatus, the violence of transitional justice is the symbolic, subjective and narrative violence that is caused through the displacing, discarding and destruction of other narratives, discourses, and subjectivities in favour of those which are most conducive to the political project being realised after the transition. The next priority, then, is to understand the political project for which transitional justice has become a useful tool.

Neoliberalism: An Art of Government, a Logic of Practice

This thesis argues that the purpose of transitional justice might be better understood in the larger context of global forms of neoliberal governance, constituted as a set of knowledges, strategies and practises made by institutions like the UN, IMF, the World Bank as well as credit ratings agencies, NGOs, national governments and so on. It is a case of relating transitional justice to contemporary neoliberalism, which should itself be understood *as a globalised project of governing*. Understanding the concept of global neoliberal governance, and transitional justice's place within it, is not a straightforward task; it requires outlining the mechanics of contemporary neoliberalism before elucidating how its basic tenets appear on global scale as mechanisms of governance which are reasonably distinct, but inextricably interlinked with, national practices of neoliberal government.

On this front, Foucault's own analysis of neoliberalism developed in his lectures at the Collège de France between 1978 and 1979, and published in English as *Security, Territory, Population* (2009) and *the Birth of Biopolitics* (2010) respectively, provides a useful starting point. For it outlines the stakes involved in the neoliberal project through the analytic lens of power/knowledge, framing it in terms that suit the theoretical framework this chapter has outlined so far. Using these terms, Foucault endeavours to formulate neoliberalism as a set of interrelated knowledges,

techniques, strategies and practices of power, which 'govern'. Foucault's point is that neoliberalism can be best understood as an art of government or, rather, a 'governmentality'.

Governmentality describes a general strategy of government: it is precisely the collection, use and practical deployment of knowledges as a kind of guiding rationale for the act of governing. But for Foucault (2009, p. 108) governmentality also describes the historical emergence of a particular kind of power that 'has the population as its target,' and 'political economy as its major form of knowledge,' and which is exercised through specific governmental apparatuses, techniques and practices. This pairing of the population and economy could be articulated something like this: '[t]o govern properly, to ensure the happiness and prosperity of the population, it is necessary to govern through a particular register, that of the economy.' Governmentality, historically co-emergent with the development of economics as integral to the art of 'governing well', thus centres on the production and mobilisation of certain kinds of economic theories and practices, which realise certain ends.

For Foucault, governmental power is consistent with his overarching analysis of power/knowledge in so far as it relies on (primarily economic) knowledges deployed in a set of practices that produce particular kinds of subjectivity, which serve the aims of the government. In other words, the realisation of certain ends is dependent on the power-knowledge nexus to produce certain kinds of subject. As Foucault (1982, pp. 789-790) argues, government consists in 'guiding the possibility of conduct and putting in order the possible outcome [...] the way in which the conduct of individuals or of groups might be directed.' In summary, the project of government is to encourage particular trajectories of thought, behaviours and actions, to produce subjectivities that are turned towards strategic ends.

Importantly, then, 'neoliberalism' is not the project of a single locus of authority, but as a diffuse governmental rationality, which incorporates a variety of actors, practices, and techniques that are themselves guided, unified by this strategy of government. Dardot and Laval (2013, p. 149) help to articulate this point by asserting that neoliberalism is a general strategy, but 'one that does not derive from the will of a strategist or the intentionality of a subject.' Instead, it should be understood as a 'strategy without a strategist;' it is a 'certain logic of practices [...] the multiplication and generalisation of such techniques that gradually imparts an overall direction, without anyone being the instigator.' If neoliberalism has become a new global norm, it is as a result of 'certain relations between social forces and economic conditions, without having being 'chosen' in a premeditated fashion by some general staff.' (ibid., pp. 148-149)

Consequently, it is important to incorporate a Foucauldian commitment to the historical specificities of transformation and reject the notion that neoliberalism is an ahistorical, intransigent form. While Foucault's analysis may help to explain the key strategy of neoliberalism as concerned with the production of a certain kind of subject, I do not wish to conflate this with an entirely uniform set of techniques and practices. Indeed, Brown (2015, pp. 20-21) has argued that neoliberalism 'is at once a global phenomenon, yet inconsistent, differentiated, unsystematic, impure [...] it is globally ubiquitous, yet disunified and non-identical with itself in space and over time.' Having investigated the differentiated result of neoliberal rationalities in contexts such as China and Malaysia, Aihwa Ong (2007) points out that this diversity may be down to its interaction with other social, cultural and political formations in diverse contexts. In short, neoliberal governmentality has a 'promiscuous capacity to become entangled

with diverse assemblages, thereby crystallizing political conditions and solutions.’
(ibid., p. 7)

Following these arguments, I insist that neoliberalism corresponds to an overarching strategy or rationality of government, which is achieved through a varying and transforming set of techniques, practices and apparatuses, or, in other words, ‘tactics’ that differ according to both their particular geographical location and their given historical moment. Furthermore, the product of neoliberal tactics should be considered as far from determined, and instead as the intended, unintended, incidental and accidental consequences of the unfolding of neoliberal logics in concrete situs. While the case studies point towards some of these localised entanglements, the task now is to understand the ‘global’ strategy of neoliberalism.

The Neoliberal Ambition: A Rationality of Government

As Dardot and Laval (2013, p. 37) show, neoliberal thought first appeared as a response to the failure of classical liberalism, which, following the First World War, had seen ‘repeated economic crises, speculative phenomena, social and political disorder,’ which served to demonstrate ‘the utter fragility of liberal democracies.’ Liberalism’s failings came to be understood as an inability to incorporate ‘the phenomenon of enterprise – its organization, its legal forms, the concentration of its resources, and new forms of competition.’ (ibid., p. 23) The neoliberal project grew out of the crisis provoked by these realities, and involved nothing less than reconceptualising liberalism itself. For Neoliberal thinkers like Friedrich Hayek the problem with classical liberalism consisted in ‘confusing the operating rules of a social system with inviolable natural laws.’ (ibid., p. 57) The liberal emphasis on exchange as a natural law created the illusion that the economy was somehow an independent sphere from government.

This uncritical acceptance of the *laissez-faire* principle, 'led people to misunderstand the constructed character of the market's functioning.' (ibid.)

The response of early neoliberals was to displace the concept of natural exchange with the notion of constructed competition, conceptualising the market as an artificial structure 'with formal properties [...] that assured, and could assure, economic regulation through price mechanism.' (Foucault, 2010, p. 132) In classical liberalism the market was conceived as a natural space of freedom in which 'men' made exchanges, one which the state would do well to keep entirely clear of. Neoliberalism inverts this axiom, significantly restructuring concepts of freedom and agency; freedom is no longer conceptualised as the *apriori* condition for the market, rather, freedom is achieved through the structure of the market. As a result, neoliberalism reconceptualises the role of the state as engaged in a specific form of intervention, that is, in producing, configuring and sustaining competitive markets. As Rob Van Horn and Mirowski (2009, p. 161) argue, the market does 'not naturally conjure the conditions for its own continued flourishing, so neoliberalism is first and foremost a theory of how to re-engineer the state in order to guarantee the success of the market.'

It is worth pausing for a moment to point out that this new rationality of the state was legitimised by constructing a single ideological adversary through the concept of totalitarianism, which conflates Keynesian policies with both Communism and Nazism. In particular, a powerful analysis by the so-called 'ordo-liberals' 'considered Nazi Germany not to be an effect of capitalism, but the most extreme version of what is opposed to capitalism and the market—planning.' (Read, 2009, p. 30) The critique goes further still, showing how the Keynesianism of the post-war settlement contained the same 'totalitarian' antagonisms as Nazism, that is, economic interventionism. Foucault

(2010, p. 110) pithily summarises their argument thus: the 'English Labour party socialism will lead you to German style Nazism. The Beveridge plan will lead you to the Göering plan.' In summary, the neoliberal critique of central planning managed to link central planning to totalitarianism as 'the 'totalitarian' risk of a new protagonism of the state to the detriment of 'civil society' along the example of Nazism or Communism.' (Cicarelli, 2008, p. 316) This point will become more critical in the course of the thesis.

Re-articulating the 'proper' role of the state as the regulator of constructed competition, however, was not the only significant innovation early neoliberals had to offer. It was coupled with a restructuring of the subject as an economic being, *homo oeconomicus*. This move begins with a re-examination of the role of labour in the economy. It becomes apparent that it can no longer be sufficient for the worker's labour to be measured only by labour time. Rather, the neoliberals observe, the functionality of the worker in the market place is subject to a whole range of human activity. What is required then, is to incorporate and subject all human activities to an economic analysis, insofar as they effect *homo oeconomicus* functioning within the market place. Suddenly, then, 'everything for which human beings attempt to realize their ends, from marriage, to crime, to expenditures on children, can be understood 'economically' according to a particular calculation of cost for benefit.' (Read, 2009, p. 28) *Homo oeconomicus* is not simply the economic component of 'man' but is the matrix through which their reality is constructed.

In this way, economic man comes to be seen as a competitor within the market who no longer simply earns a wage. Rather, they invest in their 'human capital':

Salary or wages become the revenue that is earned on an initial investment, an investment in one's skills or abilities. Any activity that increases the capacity to earn income, to achieve satisfaction, even migration, the crossing of borders from one country to another, is an investment in human capital. (ibid., p. 27)

Each part of *homo oeconomicus*' life comes to be articulated as something which can be turned towards an economic advantage, something that advances their competitiveness in the market. *Homo oeconomicus*, as the subject of human capital, is produced 'as an entrepreneur, an entrepreneur of himself.' (Foucault , 2010, p. 226)

Brown (2015, p. 31) has shown that neoliberalism is best understood as a rationality that 'disseminates the *model of the market* to all domains and activities,' in order that 'it configures human beings exhaustively as market actors.' The important reminder that Brown provides is that neoliberal rationalities don't literally marketise all spheres, but attempt to configure them according to market logics even where money is not at issue. In summary, then, the aim of neoliberal governmentality is to produce individuals who view every aspect of their life as a competitive market (even where money is not at stake) and who no longer simply earn a wage but respond to the injunction to become an enterprise; neoliberal government is the generalised production of the subject as an enterprise.

The innovation, in this respect, is a response to the Marxist critique of 'old', liberal capitalism as the exploitation of labour through the extraction of surplus value as profit. The utopia of neoliberalism is presented as the alleged overcoming of this critique. As Dardot and Laval (2013, p. 297) put it:

The neoliberal subject cannot lose, because he is both worker who accumulates capital and shareholder who enjoys it [...] performing without limits and enjoying the fruits of one's accumulation unhindered – such is the imaginary of the neo-subjective condition.

In terms of an overarching strategy then, this thesis is in agreement with Dardot and Laval (*ibid.*, p. 106), when they argue that neoliberalism aims to create a state that, through a range of techniques and governmental practices, ensures ‘a process of self-formation of the economic subject, as a self-educating, self-disciplining subjective process whereby individuals learnt to conduct themselves.’

The neoliberal position is subject to its own critique, one which demonstrates the dark side of its rationality. As Brown (2015, p. 38) argues, ‘when everything is capital, labour disappears as a category as does its collective form, class.’ This dismantles the very rationale that upholds forms of solidarity such as unions, paving the way for the dismantling of collectivised economic mechanisms including social security. The result is worrying; in the increasing absence of these mechanisms the neoliberal subject is ‘exposed in all areas of his life to vital risks from which he cannot extricate himself, their management being a matter of strictly private decisions. To be a personal enterprise assumes living entirely in risk.’ (Dardot & Laval, 2013, p. 275) Furthermore, citing the analyses of various authors (see: Picketty, 2014; Stiglitz, 2013; 2015), Brown (2015, pp. 28-29) shows that neoliberalism associated with an increase in inequality, through the reduction in wages (as a result, in part, of the lack of strong union representation), social goods like health and education, which become privatised, and acute wealth accumulation by those in the top strata. Precarity, anxiety and inequality are the hallmarks of neoliberal governmentality.

Neoliberalism and Financialisation

Materially, neoliberalism has been brought to bear through what Dardot and Laval (2013, pp. 146-147) describe as ‘the great turn’, beginning in Europe and North America with the elections of Thatcher and Reagan, which saw a ‘neo-liberal strategy’

radically alter 'the mode of exercise of government power.' Importantly, financialisation has been central to the unfolding of neoliberal policy since its seemingly irresistible rise, which began with Reaganomics and Thatcherism. While Foucault had not foreseen this co-emergence, others like Lazzarato have demonstrated that it is fundamental to the neoliberal project. As will become clear, it will be useful to better understand the relationship between neoliberal governmentality and financialisation and to see how the former shifts, transforms or is bolstered by the latter.

Lazzarato's recent project undertaken in two works, *The Making of Indebted Man* (2012) and *Governing by Debt* (2015), demonstrates that the rise of neoliberalism has also been accompanied by processes of financialisation, which have a significant bearing on the neoliberal rationality of government. For Lazzarato (2012, p.25), finance is central to understanding neoliberalism, because 'neoliberalism has, since its emergence, been founded on a logic of debt.' Importantly, Lazzarato argues that neoliberalism is co-emergent with a general shift in monetary policy, which involves the privatisation of money such that money is created by borrowing through private banks. The result has been that, now, 'money itself is debt.' (ibid., p.97)

The shift towards a debt economy under neoliberalism is important for two reasons. Firstly, at the level of the individual: financialisation – debt – has been fundamental to governmental attempts to produce subjects as individual enterprises, by augmenting low wages with access to finance and credit. As Lazzarato (ibid., p. 19) argues, finance has become increasingly part of everyday life, where consumption is serviced by mortgages, student loans, and other forms of credit. Debt has become a means of making investments in one's own human capital; it 'is the technique most adequate to the production of Neoliberalism's *homo œconomicus*.' (Lazzarato, 2015, p. 70) To

make this point, Lazzarato (ibid., pp. 70-71) shows that student loans encourage students to:

[N]ot only consider themselves as human capital, which they must valorize through their own investments but they also feel compelled to act, think and behave as if they were individual businesses. Debt requires an apprenticeship in certain behaviour, accounting rules, and organizational principles traditionally implemented within a corporation.

While student loans represent a particularly 'western-centric' example of neoliberal practice, as I will show, a multitude of different practices such as microloans operate in a variety of contexts where 'rather than giving handouts to poor households,' organisations 'offer small loans to foster small-scale entrepreneurial activities.' (Morduch, 1998, p. 1)

Secondly, at a global level, debt becomes strategically useful for international financial institutions (IFIs) such as the World Bank, the International Monetary Fund (IMF), the World Trade Organisation (WTO), various credit ratings agencies, and so on. As Lazzarato (2012, p. 99) points out, debt has provided opportunities for these organisations 'to seriously undermine State sovereign power.' This is also a major concern of Dardot and Laval (2013, p. 153), who argue that, during the great turn, IFIs became the site of a series of disciplinary experiments established by governments 'won over to the dogma of monetarism.' This so-called 'Washington Consensus' transformed the IMF and the World Bank into disciplinary institutions, which aimed 'to impose the political framework of the competitive state or the state whose activity tends to make competition the law of the national economy.' (ibid., p.194) As they demonstrate, these institutions offer credit to states through structural adjustment programmes, but only on the condition that the state apparatuses are transformed into facilitators of competitive markets.

Global Neoliberal Governance: Post-Conflict Contexts and Transitional Justice

In this sense, the pervasive rise of neoliberal governmentality has not only been pursued by the governments of nation states, but governmental practices that operate at the global level. Jacob Sending and Ivor Neumann (2010, pp. 138-139) have pointed out that IFIs now have a central role in governing the globe in so far as they establish 'at the global level, of a range of different indicators, standards and ratings, setting clear criteria and standards for how government should relate to and regulate the economy.' By enforcing these frameworks through finance, loans, aid, and so on, these institutions are 'central vehicles in producing and disseminating [...] frames of reference for the evaluation, rating, and discussion about how societies should be governed.' (ibid., p. 133) Both disseminators and disciplinary apparatuses for neoliberal governmentality, IFIs and their practices are at the cornerstone of a kind of global neoliberal governmentality.

The reconfiguration of IFIs has also been accompanied by the rise of other forms of global government in a number of specific contexts. In particular, the post-Cold War environment has seen increasing appetite for a particular kind of 'humanitarian' interventionism on the part of governments and international organisations such as the various UN agencies in the event of conflict and post-conflict situations. This kind of intervention is increasingly orientated not only around bringing conflicts to an end, but also to providing post-conflict states with 'long-term assistance such as peace-building, capacity-building, empowerment and development.' (Chandler, 2001, p. 681) It is in this context, I argue, that transitional justice becomes a key governmental apparatus. It is crucial, therefore, to better understand the nature of these governmental interventions and their relationship to neoliberal governmentality.

First, it must be understood that these interventions take their cue from a commitment to 'liberal peacebuilding'. As Chandra Lekha Sriram (2007, p. 581) observes, post-conflict intervention 'appears to be driven by a single paradigm, that of liberal internationalism.' It thus rests on liberal assumptions: 'the central tenet of this paradigm is that the surest foundation for peace, both within and between states, is market democracy, that is, a liberal democratic polity and a market-oriented economy.' (Paris, 1997, p. 56) Peacebuilding aims to establish a peaceful, stable future for conflict ravaged nation-states by transforming along liberal lines. But, in doing so, it also has a global ambition in mind. Underpinned by the 'democratic peace' thesis, Sriram (2007, p. 581) argues, liberal peacebuilding assumes that market democracies 'are less likely to go to war with each other, and which is often argued to result in more accommodating or rule-obeying behaviour by states.' In other words, peacebuilding sets about reconstructing the state so that it can accommodate itself within the global order of liberal nation-states as means of achieving the utopian ambition of world peace.

While humanitarian interventions often proclaim to convert post-conflict states to liberal democracies, this must be understood as a woolly term that obfuscates the place of neoliberal ideas within the project. Mirowski (2013, p. 38) has noted that there has been little clarity around the term 'neoliberalism' often resulting from 'outsider' confusion, which conflates neoliberalism with other terms such as libertarianism or classical liberalism. As such, liberal peacebuilding should not be mistaken for a return to classical *laissez-faire* liberal economics, nor should its drive to construct parliamentary democracies out of war-torn states be overemphasised. Indeed, this author is suspicious of peacebuilding's commitment to the principle of liberal democracy, at least in any classical understanding of the term, following both Brown

(2015) and Mirowski's (2013) analysis of neoliberalism's destructive effects on democracy (writ large).

Brown (2015, p. 108) shows that the economism of neoliberal governmentality extends to the liberal democratic state itself, such that, 'the citizen-subject converts from a political to an economic being and that the state is remade from one founded in juridical sovereignty to one modelled on the firm.' With a nod to Brown's reminder that neoliberalism is not the literal marketisation of all spheres, but their subjection to economic rationalities, I thus highlight the following passage from Mirowski. Neoliberalism seeks:

[...] to transcend the intolerable contradiction of democratic rejection of the neoliberal state by treating politics *as if* it were a market, and promoting an economic theory of 'democracy.' In its most advanced manifestation, there is no separate content of the notion of citizenship other than as a customer of state services. (2013, p. 58)

Democracy is no longer conceived as a process of deciding how to run a sovereign state, a notion that exists outside of economic thinking, but how best to manage the firm. As such, democratic choices become consumer choices conditioned by 'concerns with economic growth, competitive positioning, and credit rating.' (Brown, 2015, p. 110)

Finally, Mirowski (2013, p. 62) has shown that this economised version of democracy is secured, because the increasingly financialised nature of the economy means that the World Bank, WTO and IMF, and credit rating agencies, are able to 'lock in' 'neoliberal policies and therefore, to restrict the range of political options of national governments.' Such arrangements he argues 'address the neoliberal conundrum of how to hem in and at the same time obscure the [neoliberal] state.' The thesis,

therefore, will emphasise the installation of 'market economies' as a central tenet of the peacebuilding model, which takes primacy over the institutionalisation of parliamentary democracy. In other words, the processes of neoliberalisation designed to integrate countries into the global economy, remain the often obfuscated centre of post-conflict interventions. As such, this author henceforth exercises his scepticism by inferring (neo)liberal democracy, where others may simply say liberal democracy.

Post-conflict interventions, then, might be better thought of as exploitable opportunities to implement neoliberal governmental rationalities as part of a general peacebuilding programme designed to produce nation states in the image of western (neo)liberal democracies. As such, post-conflict contexts are situations in which it becomes possible to bring 'about reforms aimed at transforming pre-modern modalities of government into orderly, predictable, disciplinary and disciplined administrations.' (Zanotti, 2006, p. 152) In other words, they manage the transition to a neoliberal society through institutional reforms that are guaranteed not only by signing up to international agreements, laws and regulations, but also as a precondition for aid and credit from organisations such as the IMF and the World Bank.

In this way, post-conflict contexts also become opportunities for 'international development' techniques that are underpinned by a neoliberal impetus that emphasises the production of economic subjects. Duffield (2007, p. 67) has demonstrated that this global paradigm is also concerned with (neo)liberal interventionism articulated around practices of development that centre upon the idea of sustainability through self-reliance. Importantly, Duffield remarks that 'people in this holistic and people-centred development are valued in terms of their ability to embrace risk and effectively manage life's contingencies.' One could argue, then, that

this self-reliant, resilient subject shares the same underpinning as the neoliberal subject identified by Foucault. It is little wonder that Duffield refers to this subject of development as an 'entrepreneur', such that 'development interventions create enabling choices and opportunities for such entrepreneurs to prove themselves by bettering their [...] self-reliance.'

These processes involve a variety of actors. I have already pointed towards the involvement of international organisations such as the World Bank and the IMF. However, Laura Zanotti (2009, p. 7) has demonstrated that post-conflict interventions not only involve UN agencies, such as their peacekeeping force and their development programme (UNDP), but 'can only be accomplished by integrating and regulating an array of international and local constituencies, such as NGOs, the military, the private sector and more.' Duffield (2007, p. 27) appears to agree, arguing that 'those interconnecting UN, donor, military and NGO endeavours that mobilised to intervene [...] increasingly appear as assemblages of occupation defining [... an] enduring multiagency apparatus.' Far from a centralised and authoritarian form of global government, then, the post-conflict transition is managed by networks of agents including international organisations and institutions, national governments as well as NGOs who share governmental rationalities with overlapping goals

The clearest example of this new form of neoliberal governing has been what Duffield (ibid, p. 91) described as the governmentalisation of NGOs, whereby 'NGOs, while remaining independent, self-acting and capable of respectful criticism, have come to see their own interests and those of their beneficiaries as overlapping with those of donor and recipient states.' The result has been 'a process of mutual enmeshment [...] the NGO movement now works with and between donors, recipient states and beneficiary groups.' Empirical research by Anna Ohanyan (2008, p. 1) supports

Duffield's argument. Ohanyan suggests that in post-conflict contexts 'the proportion of World Bank projects with NGO participation increased from 10 percent in 1991 to over 40 percent in 1995.' This move demonstrates a 'deepening engagement of NGOs in global policymaking structures,' which, 'has evolved into a distinct and novel institutional mechanism, namely a policy network-based system.' (ibid., p. 3)

Elaborating on the decentralisation of these networks and their plurality, Ohanyan (ibid.) describes them as 'governing without government.' this term perfectly describes an emerging reality in which governing is no longer an operation carried out by a single locus of authority but by a variety of actors who share and contribute to the unfolding of a particular rationale. In this sense, 'governing without government' also goes hand in hand with the notion of a 'strategy without a strategist'. But it also speaks to the notion that 'existing' neoliberalism is produced through the necessary interaction between its theoretical strategy and the historical, social, and cultural contexts of the countries it is engaged with. As Ohanyan (ibid., pp. 21-26) argues that the network of global governance interacts with 'policy environments' where the actors concerned, the constituencies they serve, and the structures that emerge in the implementation of policy all effect the particular tactics and outcomes of any given post-conflict intervention. These mobile and varied 'networks' of governance will be explored in more detail as the thesis progresses, particularly in the case studies where particular 'environments' will be given close scrutiny.

For now, though, the section above has provided a sketch of the particular context in which the apparatus of transitional justice will be placed. In summary, it has shown how neoliberal global governance has emerged following the 'great turn' delineated by Dardot and Laval and risen to hegemonic status following the end of the Cold War. It has shown that the rise of neoliberal hegemony has meant that post-conflict

situations have become a strategic site for processes of neoliberalisation through the nexus of humanitarian intervention, peacebuilding and development. But it has also sketched out some of the actors involved in these scenarios as chains or networks of diffuse and varied institutional sites that crystallise in a variety of contexts. Importantly, by providing this context it has also pointed to some additional trajectories for research which will help to successfully position transitional justice as an apparatus which utilises sacrificial violence.

Transitional Justice: A Trajectory for Research

First, the analysis needs to demonstrate the historical nature of transitional justice's sacrificial violence, in order to dispense with the Girardian claim that sacrifice can only be properly understood as the cyclical recurrence of human nature. More, the positioning of transitional justice within the context of global governance also demonstrates the need for a critical exploration of the history of transitional justice as an apparatus, which emerges from and becomes incorporated into the structures and practices of a global and yet decentred project of neoliberalism. In other words, it is a question of showing a specific history; one that positions transitional justice in a specific time but also ties its sacrificial violence to a particular political purpose.

Moreover, the analysis needs to show the workings of power, knowledge and subjectivity in the apparatus. It will need to demonstrate, contra Girard, that sacrificial violence is a mechanism which is conditioned or guided by specific knowledges, discourses and practices of power. But it is also a question of demonstrating the function of the apparatus and its use value in terms of a neoliberal project; how precisely does transitional justice serve neoliberal government? Neoliberalism is, first and foremost, directed at the generalised production of *homo aeconomicus* who,

through practices of power, are induced to respond to competition and risk. If the mechanisms of transitional justice have a relationship with neoliberal governmentality it is thus because its practices of power, including its sacrificial violence, are productive; they have effects which are felt; that are efficacious in the order of subjectivity. These two enquiries, one predominantly historical, one primarily an 'empirical' investigation of practices, constitute the preoccupation of the next two chapters.

First, then, it is a matter of understanding the historical relationship between transitional justice and neoliberal governmentality. It is incumbent upon the next chapter to demonstrate that transitional justice appears as a response to a historically situated problem but without its place within global governance being predetermined and directed from its inception. Rather, it must show that transitional justice developed as a set of discourses, dispositions and practices that have gradually come to be incorporated into larger mechanisms of global governance. That is to say, the next chapter has to confront the moments of transitional justice's emergence and its transformations and to locate the developments which have shaped it and contributed to its status in the present as a governmental formation. In short, the next task for this analysis is to begin with the 'infinitesimal mechanisms, which have their own history, their own trajectory, their own techniques and tactics.' (Foucault, 2004, p. 30) Analysing these mechanisms provides opportunities to see how they 'have been and are invested in, colonized, used, inflected, transformed [...] by increasingly general mechanisms.' (ibid.) It is with this task that the next chapter will commence.

02

| TRANSITIONAL JUSTICE AS APPARATUS |

Discourses, Actors, History

John Laughland's, *A History of Political Trials* (2004), constitutes a bold dehistoricisation of transitional justice. It insists that law (and the trial mechanism in particular) provides an intransigent, unchanging response to periods of conflict followed by radical shifts to new regimes of government. As Laughland (*ibid.*, p. 16) makes clear in his introduction to the text:

Human rights activists hail this brave new world in which the judicial system is used to enforce political change, and to bring dictators to heel, the fashionable name for which is 'transitional justice' [...] But the general principle of subjecting heads of state [...] to the criminal law is in fact neither new nor brave. On the contrary it has a rich and fascinating history.

By taking key examples which range from Charles I to the more recent trial and execution of Saddam Hussein, Laughland constructs a lengthy history with a striking continuity throughout. There does indeed appear to be a recurring deployment of law and the criminal trial to prosecute former heads of state in the wake of mass upheaval and conflict.

Given that Laughland is preoccupied with these historical continuities, it is not surprising that he himself draws from Girard's theory of sacrifice to understand the forces at work in the recreation of the same processes throughout human history. Laughland (*ibid.*, p. 31) argues 'Girard has written at length on this deep seated human

reflex. I shall argue, as this account of the history of political trials unfolds, that it often plays a decisive role.’ While the previous chapter has set the groundwork for disentangling Girard from his own problematic assumptions about both history and power, Laughland’s insistence poses another challenge. If Laughland’s theory is correct, what are the grounds for situating transitional justice in a particularly contemporary context?

There are several criticisms that can be made of Laughland’s project, not least his narrow definition of transitional justice which fails to take account of its range of other mechanisms such as truth commissions, reparations, and lustration. More importantly, as Paige Arthur (2009, p. 328) might argue, Laughland’s line of argumentation risks ‘imputing ideas about ‘transitional justice’ to actors who, presumably, were unlikely to have held them.’ Arthur’s argument thus articulates an important point regarding the problem with Laughland’s analysis. Like Girard, Laughland foregrounds the continuity of practices at the expense of the discourses and institutions which situate these practices in a historically singular moment. They can only claim an historical continuity by ignoring the particularities of each ‘scene’, with its own politics and its own relations of power.

Nevertheless, Laughland’s argument rests largely on the correct observation that, throughout history, the trial mechanism seems to recur at particular symbolic junctures in order to try the leaders of prior regimes. This must be recognised. As such, it is important to ask on what level it is possible to accommodate this observation whilst still insisting on situating transitional justice within a particular and relatively contemporary context? On this front, a genealogical approach is useful insofar as it can recognise the continuity that Laughland traces, but turn it towards an analysis that

recognises a historical context that bequeaths transitional justice with its own singularity in regards to this larger history.

This chapter will therefore take a particular approach to outlining the historical emergence of the apparatus. It will pay attention not to the deployment of the trial – or any other transitional justice mechanism – but rather, it will approach transitional justice as the specific coming together of various legal and quasi-legal discourses and mechanisms, as well as other techniques, designed to strategically respond to the problem of ‘transitions’ that emerged in the mid-Eighties. As such the chapter will approach the history of transitional justice in a way that responds to Foucault’s own historical characterisation of apparatuses, where any given *dispositif* ‘has as its major function at a given historical moment that of responding to an urgent need [... it] has a dominant strategic function.’ (1980, p. 195)

As a starting point, the chapter will bear in mind that Foucault’s genealogical methodology should be understood as ‘writing a history of the present,’ (Foucault, 1978, p. 31) that captures moments of transformation in which certain discursive and non-discursive objects emerge, and locates the developments which have arranged a present day social formation. The chapter aims to proceed by identifying the claims transitional justice makes, not only about the problem, but also about how it intends to attend to it. In doing so it is possible to highlight several discourses which transitional justice utilises in these endeavours. The apparatus, I argue, crystallises in their coming together. Mapping this convergence makes it possible to locate the historical context in which transitional justice begins to emerge.

The chapter thus aims to show that transitional justice’s claims about itself are made from the interlocking of discourses of ‘transition’, ‘liberalism’, and ‘human rights’.

Using this 'signature' as a starting point, the chapter will show that while the apparatus owes a debt of gratitude to the post-war tribunal at Nuremberg, it emerges from the context of the nascent human rights movement of the late 1970s. From here, the chapter will demonstrate that the apparatus emerged through institutions and actors such as NGOs, lawyers, academics, and national governments who saw the problem of transition primarily as a legal response to the past, which would enable a successful transition to liberal democracy. Finally, it will aim to show how transitional justice has been governmentalised, that is, normalised as a technique of governing by dint of its incorporation into the practices of peacebuilding conducted by institutions such as the UN and the World Bank.

There are a two benefits to this approach. In the first case it provides a historical analysis that opens up a discontinuity or a break with Laughland's continuum and locates transitional justice in a relatively recent history. In doing so, it does not entirely reject Laughland's thesis but stresses that the apparatus is defined by the crystallisation of certain discourses and practices that inhere within the apparatus. Secondly, it provides an opportunity to examine key elements of the apparatus, not only in terms of the discourses which articulate its purpose and practice, but also of the institutions and agents involved in the apparatus at both the global and local level.

There will also be an opportunity to integrate these discoveries into two major arguments of the thesis as a whole. In the first instance, it will be possible demonstrate the historical resonances that transitional justice has shared with the neoliberal project. The history of transitional justice will be brought into the larger context of 'the great turn' to neoliberalism and to show that its major ideas lent it to being governmentalised, following the end of the Cold War. Secondly, and by way of conclusion, it will demonstrate how these arguments reframe the Girardian element

of this thesis. On the one hand, it will show the way in which the apparatus discursively constructs the tumultuous past of transitional societies as processes of undifferentiation. On the other hand, and as a means of leading into the next chapter, it will reflect on how its discourses construct an accusatory narrative of responsibility. Human rights, it will conclude, constructs not only the framework in which the crisis understood but who can and cannot be considered as responsible for it, constraining the field of possibility where a 'scapegoat' is concerned.

The Signature of Transitional Justice

First, then, it is a case of locating the discursive 'signature' of transitional justice, by identifying the discourses through which the apparatus constructs its problem. In this endeavour, the following passage from Teitel (2000, p.3) is instructive:

Debates about "transitional justice" are generally framed by the normative proposition that various legal responses be evaluated on the basis of their prospects for democracy. In these times of massive political movement from illiberal rule one burning question recurs. How should societies deal with their evil pasts? This question leads to others that explore the relation of the treatment of the state's past to its future [...] which legal acts have transformative significance? What, if any, is the relation between a state's response to its repressive past and its prospects for [...] ushering in liberalization.'

In this rich passage Teitel gives an indication, albeit via several questions, of the central claims of transitional justice. Importantly, Teitel's line of questioning is organised around the recurrence of three key discursive nodes: the temporality of transition (a before and after), the law, and liberalisation. The passage thus indicates that the interconnection of these nodes constructs and organises the apparatus. By further unpacking these elements – and their interconnectedness – it is possible to better

identify the specific historical juncture at which this problem arises, and the particularities of the solution which transitional justice proposes.

In the first case, and somewhat obviously, the problem is precisely one of political transition. As Teitel (*ibid.*, p. 5) goes on to argue ‘the problem of transitional justice arises within the distinctive context of transition – a shift in political orders.’ The problem is imbued with a temporal element: a need to dislocate the past in order to create a stable future. Resultantly, transitional justice has developed a discourse around occupying the liminal space between two orders, and the necessity of utilising devices that deal with this temporal shift. Subsequently, the argument that transitional justice ‘is both backward- and forward-looking,’ (*ibid.*, p. 7) becomes integral to the field. Indeed, the phrase has gained a lot of currency, appearing in work by leading scholars including Kora Andrieu (2010a; 2010b), Nagy (2004), and Paul Gready (2011) among others. ‘Dealing with the past’ with an implied service to a better future, has been another form of expressing this duality.

Secondly, transitional justice posits that the problem of transition is substantively a legal one. Importantly, though not explicitly touched upon in the passage above taken from Teitel, transitional justice is situated in relation to a particular and relatively contemporary body of law, namely human rights. Indeed, the relationship between transitional justice and human rights is an assumptive given for the field. In her conceptual history of transitional justice, Arthur (2009, p. 322) shows that, since its emergence in the Eighties, transitional justice has been mainly concerned with holding previous regimes to account for systematic human rights abuses. Indeed, as the chapter will later explicate in more detail, transitional justice emerged as ‘a new discipline in human rights,’ (Andrieu 2010b) rooted in its ideals, and sharing many of its concepts and concerns. Transitional justice thus articulates the past as a set of

human rights abuses, criminal acts committed by the former regime. In this way, human rights law renders the past intelligible by providing the framework through which it can be viewed, problematised and subsequently dealt with.

As a result, transitional justice tends to problematise the past in terms of physical violence, or mass violence, rather than in terms of more structural issues such as capitalist exploitation or neo-colonialism, which would have been the markers of Marxist and Third-Worldist discourses. Indeed, Nagy (2008, p. 284), focussing mainly on civil and political rights, has argued that the remit of transitional justice is to deal with the phenomenal violence that characterises the past:

By and large transitional justice pertains to genocide, torture, disappearance, massacre, sexual violence and other war crimes. In the privileging of legalistic approaches, transitional justice tends to focus on gross violations of civil and political rights (arbitrary or indefinite detention, severe assault, ill-treatment, etc.) or on criminal acts (property destruction, abuse of children, etc.).

Transitional justice thus uses the legal lexis of human rights as a means of 'delimiting narration of violence and remedy.' (ibid., p. 276) Importantly, then, transitional justice conceives of itself as a juridical remedy; it provides a form of legal redress that deals with the problem of physical violence.⁹

Returning to the backward- and forward-looking schematic of the apparatus, it is worth quickly drawing attention to how this concept of legal redress spans the temporality of past and future. For scholars like Andrieu (2010b), for example, attending to the criminal activity of the past can perform some kind of closure which enables a nation-state to move forward. Quite simply, dealing with the crimes of the

⁹ Even if its mechanisms aren't strictly speaking 'legal mechanisms', the approach the past from the legalistic standpoint of human rights violations.

past can help societies 'come to terms with their past, *and move on.*' As Kirsten Campbell (2014, pp. 68-69) points out this is achieved through various means, but which all rely on a kind of recognition of the past, whether this be criminal accountability or through processes of memorialisation and the construction of official histories that deal with the legal context of human rights abuses. How exactly transitional justice brings about a closure is dependent on the particular arrangement of the mechanisms it deploys. The case studies will treat this in much more detail. For now, Andrieu's point usefully articulates the logic of transitional justice as a deployment of mechanisms designed to bring about a closure and help nations to move toward a peaceable future.

But what is this notion of a peaceable future? Answering this question brings this analysis to the final discursive node, liberalisation, which is often used interchangeably with phrases such as 'transition to liberal democracy' or, often, simply 'transition to democracy'. The centrality of this concept to the field is clear. For Teitel (2000, p. 3) it is an assumption built into her line of questioning: '[w]hat, if any, is the relation between a state's response to its repressive past and its prospects for creating a liberal order?' Similarly, in her historical excavation of the 1988 Aspen conference, which first begin to speak of transitional justice *qua* transitional justice, Arthur (2009, p. 322) shows that the question for those present was how 'to foster a transition to democracy.' This has been the reality of transitional justice, where, as Miller (2008, p. 270) argues, 'in the vast majority of cases, transition occurs in conjunction with a project of economic and/or political liberalization.'

In this sense, the *raison d'être* of transitional justice is not simply to deal with the legacy of a nation's human rights abuses in order to bring about a closure designed to cordon off, or dislocate, the past. Rather, it has a political ambition within its purview.

Transitional justice is concerned with dealing with the past in order to make a meaningful contribution to a particular image of the future. What is articulated here is the explicit conditioning and foreclosing of the forward-looking element of transitional justice to a singular vision of the future, namely a liberal market democracy. The relationship between transitional justice's political imaginary of the peaceable future and the political project of neoliberalism will be drawn out later in the chapter. For the moment, it is important to point towards the way transitional justice has articulated a rationale to explain how its activities contribute to this particular envisioning of the future.

On the one hand, dealing with the past through legal instruments is said to re-establish the rule of law necessary to the proper functioning of a liberal society. This argument was forwarded as early as 1992, when the scholars, activists and officials from transitional governments participated in the *Justice in Times of transition* conference, from which Kritiz's book is compiled. In her report on the conference, Mary Albon (1995, p. 43) shows that it was generally agreed that transitional justice was important, because it could (re)establish the rule of law, 'providing equal protection to everyone, is the cornerstone of democracy.' On the other hand, dealing with human rights at the moment of transition is, as Andrieu (2010a, pp. 538-539) argues, 'considered essential to building a culture of human rights,' which is perceived to be the cornerstone of any fledgling liberal democracy. In encouraging a culture of rights transitional justice contributes to building of a stable liberal democracy.

Overall then, the aspiration of transitional justice is to make concrete links between dealing with human rights abuse and a broader social transformation, albeit of a particular kind. As Campbell (2014, p. 69) argues, transitional justice thus has grand ambitions for its own activities. Its practices are aimed on the one hand to draw a line

under that past whilst simultaneously attempting ‘to make new transitional associations that can serve as the building blocks of a postconflict society.’ As I have already set out, this thesis proposes that the contribution that transitional justice makes to the future of a transitional society is intimately tied up with the sacrificial violence central to both trials and truth commissions.

For now, however, it is important to take stock of the chapter’s current position. So far, I have outlined the main discourses of transitional justice, which frame the way that it constructs its problem and the way it conceives of itself as the solution. The strategic function of transitional justice can be neatly summarised in the following terms: it is an apparatus which traverses the liminal temporality of transition, *looking backwards* by dealing with past human rights abuses in order to *look forward* and contribute to an emergent and fledgling liberal democracy. Importantly, the nexus created between human rights and liberal democracy begins to give us a sense of the historical placement of transitional justice. The next step is thus to try and contextualise the apparatus within the historical moment implied by these discursive interconnections. In doing so, it will be possible to identify the problem of transitional justice as a specifically historical one involving actors including NGOs and the UN. Moreover, the historical connections between the emergence of transitional justice and neoliberalism can be drawn out.

The Apparatus in Historical Situ: Human Rights and Transition

As my brief examination of John Laughland’s work showed, constructing a definitive history of transitional justice is a contested terrain. Laughland places transitional justice in a lineage that goes back as far as Charles I. Similarly, Elster (2004) has traced a history of transitional justice that reaches into classical antiquity. Elster presents a

compelling case, but I remain in agreement with Arthur's critique and insist that Elster risks imputing ideas to actors who were unaware of them. Indeed, their historical examples might be better understood as what Foucault (1984, p. 76) terms as 'different scenes,' in which a variety of mechanisms, including the criminal trial, have usefully been put to work. These mechanisms weren't deployed with reference to concepts like human rights, 'transition', or liberal democracy. As such, it is a question of finding a point at which this 'signature' crystallised in order to articulate, justify and demand recourse to what are now understood to be transitional justice mechanisms.

On this front, it is tempting to idealise the post-war period which saw both the UN Declaration of Human Rights and the International Military Tribunal (IMT) at Nuremberg, which convicted high ranking Nazi officials for crimes against humanity. Indeed, as Costas Douzinas (2000, p. 115) has noted, these developments constitute the 'foundational acts' of human rights. Indeed, the importance of the International Military Tribunal to the history of transitional justice is not lost on Teitel (2003, pp. 72-74), whose own genealogy of transitional justice gives it the preeminent role in what she describes as the first wave of transitional justice.

It is easy to see the attraction to this line of thinking; the IMT at Nuremberg first utilised human rights law to prosecute an old regime for its use of violence against its own citizens. It also represented the internationalisation of human rights in the sense that the charge 'crimes against humanity' became a legal precedent in international law. In this way, the charge of 'crimes against humanity' decisively facilitates the scope and nature of transitional justice; it provided an internationalised legal precedent through which future mechanisms of legal redress for human rights abuse became possible. The idea that the charge of 'crimes against humanity' had made the IMT the 'trial of the holocaust,' (Laughland, 2008, p. 106) rather than simply a war crimes tribunal, is a

popular position. Seen from this perspective, the post-war moment provides a 'gestation period' of an emerging scene for transitional justice, one where the past is problematised as the legal phenomenon of state persecution.

Nevertheless, there is a danger of falling foul of Arthur's critique. In the first instance, picking out the legal novelty of 'crimes against humanity' risks imputing the idea that the protection of human rights was a central concern of the protagonists involved in the IMT. In fact, the main driving force behind the decision to try the Nazi leaders was 'aggressive war'. As the American jurist Quincy Wright (1946, p. 75) put it: 'gaining a positive legal judgement in the illegality of aggressive war [...] was at the forefront of the design of the dominant American Nuremberg prosecution.' Furthermore, it is difficult to claim that a transition to liberal democracy was on the minds of the main protagonists at Nuremberg. Considering that East Germany was to be run as a socialist state, this would take no end of intellectual gymnastics to argue.

Perhaps most damning of all, however, is the fact that human rights was scarcely on the radar either for governments, as a mass movement, or in the popular imagination of the post-war period. This period actually marked a kind of stasis, where the politics of the Cold War would foreclose human rights as an international legal project. Revisiting the history of human rights, Samuel Moyn (2014, p. 25) has demonstrated that, while human rights 'percolated in diplomatic and legal circles beginning in the 1940s, it was not until the 1970s, with the emergence of dissident movements in Eastern Europe, that it entered common parlance.'

Starting at this historical juncture, where human rights becomes a set of material as a set of material practices, bears more fruit. It positions human rights as a broader concept which acts upon and is diffused through wider social phenomena. As Moyn

(2014, p. 25) argues, the 1970s marks 'the moment when human rights triumphed as a set of beliefs and as the stimulus for new activities and institutions, particularly non-governmental organizations.' The rise of human rights activists and NGOs in this period locates a juncture at which the human rights movement and a novel set of practices came to the fore. In fact, as will be demonstrated shortly, the work of NGOs engaged in human rights work is not only a crucial precondition but a driving force in the construction of transitional justice.

Understanding the rise of human rights might be served best, however, by first contrasting it with the intervening years between the UN declaration of human rights and this juncture, which were characterised by a different set of ethico-political coordinates, particularly for humanitarian NGOs. As David Chandler (2001, p. 678) points out, in the early post-war period, humanitarian assistance was the work of large international NGOs driven by 'the principle of impartiality derived from the desire to assist without discrimination except on the basis of needs, giving priority to the most urgent cases of distress.' As such, post-war humanitarianism was organised as a depoliticised mode of intervention that imposed no pre-requisites on who it helped, other than an emphasis on material need. Michael Ignatieff (1998, p. 118) argues this kind of early humanitarian work 'made no distinction between good wars and bad, between just and unjust causes, or even between aggressors and innocents.'

In this period, NGO interventions were characterised by short-termism. By attempting to avoid the political, what set NGO intervention apart from other strategies was a certain articulation of 'need'. NGOs made politically neutral interventions targeted at the needs produced by emergencies, which James Fearon (2008, p. 53) argues 'are "sudden," "abnormal," cause widespread suffering, and often involve refugees. Wars, famines, and natural disasters such as earthquakes and tsunamis appear to be the

leading examples.’ NGO interventions were designed to treat the fallout of these ruptures and were, as Duffield (2007, p. 49) puts it, ‘a discretionary international protection *of the last resort* that [came] into play when an otherwise self-contained and homeostatic condition of self-reliance [broke] down.’ (My emphasis)

By the late 1960’s however the trajectory of NGOs changed as they ‘sought to move beyond the traditional non-strategic humanitarian aims of saving human lives and reducing human suffering.’ (Chandler, 2001, p. 681) This shift is what Nicholas Leader (1998, p. 14) has identified as a movement from a ‘needs-based humanitarianism to a rights-based humanitarianism.’ This shift was precipitated by a number of humanitarian situations which challenged and ultimately discredited neutral post-war, needs-based humanitarianism. Contexts such as the Biafran conflict of 1968 in which the Nigerian government was charged with accusations of genocide against Igbo secessionists, provided situations in which consensual impartiality would mean complicity in genocide. This meant that, in cases like the Biafran experience, the concept in which, to reiterate Ignatieff (1998, p. 118), ‘there is no distinction between aggressors and innocents,’ was subject to an important reversal. Subsequently, NGOs begin to make judgements and act according to the production of precisely that difference.

These contexts forced a shift towards what Chandler (2001, p. 884) calls a ‘more invasive approach of solidarity.’ That is, a new humanitarianism emerged oriented around working for – and with – specific groups who have been made vulnerable by aggressors. Such a move would require a reworking of the principles of humanitarianism to fit this newfound form of intervention. For, as Leader (1998, p. 14) notes, while the principle of ‘impartiality makes the ethical basis for action clear [...] solidarity [... implies] essentially political choices about which groups and organizations

an agency works with.’ According to Chandler (2001, p. 881), this problem found a resolution as the new humanitarian principles gradually incorporated the language of human rights: NGOs ‘sought to use the terminology of human rights in an attempt to justify political policy choices in the language of ethics.’

Human rights provided NGOs with an ethical underpinning for this shift, the centre of which was human rights victims who needed to be protected from abuses, particularly by ‘savage’ governments. As Bernard Kouchner (quoted in Allen & Styan, 2000, p. 825), founder of Médecines San Frontières (MSF), would later argue ‘This is the revolution [...] The victim, not the government, speaking in the name of the victim - for the first time.’ This would also crystallise a shift from the short-term interventions of needs-based humanitarianism to long-term practices of rights-based humanitarianism. For in positing the need to support victims, the emphasis shifted from a need to protect biological life from oblivion to practices to ensure humanity would cease to be victimised. Rights-based humanitarianism was not about an intervention of the last resort, but about long-term strategies that would prevent the production of victims.

This shift is marked by a splitting of humanitarianism into two distinct strands or sets of practices. On the one hand, conflict situations called for increased structural capacities, or the production of an environment in which the long-term security of victims could be guaranteed. As such, this necessitated ‘the move of relief NGOs from emergency humanitarian aid to long-term developmentalism in the 1970s.’ (Chandler, 2001, p. 681) On the other hand, the idea of solidarity with the victim meant a turn to human rights advocacy. It meant ‘the extension of involvement from the provision of immediate assistance to victims of conflict to the greater commitment of [...] advocacy work for victims and concerns for the long-term protection of human rights for ‘at risk’

groups.’ (Ibid.) While the former has its own history, the latter is crucial for the development of transitional justice.

The first forms of human rights advocacy were not articulated with reference to any particular transitional justice aims. In fact, their strategies were altogether unambitious, particularly in comparison to the development NGOs which made concrete efforts to develop post-conflict environs for the long-term benefit of Victims.

As Arthur (2009, p. 334) points out:

Up to the mid-1980s, the central aim of the international human rights movement had been to shame repressive governments into treating their citizens more justly [...] the issue of accountability for violations had not been a central concern—since it was often impossible.

In other words, while human rights advocacy was concerned with protecting victims of human rights abuses, these were not conditions in which anything like transitional justice would be possible. This poses a question of when, and under what terms, this shift was possible.

This changed with the ‘third wave’ of democratisations that took hold of Latin America in the Eighties and would later sweep through Eastern Europe and Africa. As Arthur (ibid) notes, for NGOs, ‘[t]he ending of repressive regimes in Latin America in the early to mid-1980s forced a shift in strategy and thinking.’ These democratisations not only signalled a shift away from authoritarian rule, but also towards new regimes that had opposed totalitarian governments through the vernacular of human rights and were thus concerned with reckoning with past abuse (Zalaquett, 1989, p. 25). Subsequently, these new liberal regimes were preoccupied with deploying mechanisms that could address the previous regimes legacy of rights abuse. Truth commissions and criminal

trials were utilised by these new liberal regimes in order to confront human rights abuses. The logic of their deployment, that is, the choice to use these particular mechanisms, will be given greater attention in the case studies. For now, it is enough to show that they signalled an overwhelming shift in the practice of advocacy.

Subsequently, human rights advocacy was defined by the practice of pressuring and supporting governments to hold regimes accountable for human rights abuses. In Argentina, for example, the Mothers of the Plaza de Mayo pressed for efforts to hold the former regime accountable for the mass of disappearances which had occurred under it (Arthur, 2009, p. 335). As such, the 'third wave' constituted an emerging social phenomenon and signalled a new field of activity for NGOs, one which was concerned with more than dealing with legacies of abuse. It rearticulated human rights advocacy around a new field of practice, which recognised these sites were a new and unique context, grouped together under the category 'transitions', where dealing with legacies of abuse might very well contribute to broader goals of liberalisation.

As such, while human rights abuse had been a key concern for NGOs, the 'third wave' had reoriented the problem with a new inflection organised around a transition to liberal democracy. For the benefit of clarity, Lawrence Weschler (1989, p. 92) usefully locates the problem, precisely in this historical context:

countries as varied as Uganda, Argentina, South Korea, Chile, South Africa, Brazil, The Philippines, Uruguay, Guatemala, and Haiti (all of whom were represented at the Aspen Conference) [...] confront the same sorts of questions as they attempt to move from dictatorial to democratic systems of governance—in essence, the question of what to do with the former torturers persisting in their midst.

In other words, while human rights discourse goes some way to framing the problem, it is only with the possibility of democratic (and economic) liberalisation that

transitional justice can emerge as an apparatus. The problem is not so much with human rights abuses per se, but how not dealing with human rights abuses is a problem for a transition to liberal democracy. In many ways then, the context of Latin America in the eighties served to provide some experimental approaches to this problem.

Recalling Foucault's argument about the stuttering emergence of apparatuses, it is important to insist that this new field of activity did not just self-evidently appear. A commitment to genealogy demands the rejection of concrete origins or singular, *once and for all* appearances (Foucault, 1984). Instead, new apparatuses come from a series of transformations that gradually cohere into dominant historical constructions. With this in mind, it is important to demonstrate that transitional justice emerged through the construction and systematisation of transitions as a knowledge and practice by NGOs, activists and scholars. The category of 'transition' is not self-evident or natural but drawn from and imposed upon this context in order to form a field of knowledge and practice. The question is how this knowledge was drawn together; who was responsible for its systematisation?

Arthur (2009, p. 337) notes that in earlier theories of modernisation 'liberal Western policymakers and political scientists did not speak of "transitions to democracy," but rather of socioeconomic modernization as a precondition of an evolutionary process of political development.' But the transitions of Latin America would fly in the face of these received ideas, demonstrating that democratisation could be achieved without the *apriori* development of socio-economic conditions. In this sense, 'the notion that a democracy could be established in almost any country [...] through a shortened 'sequence' of elite bargaining and legal-institutional reforms rather than through long-term socioeconomic stages [...] was something new.' (ibid.) These contexts came to be

understood as a new form of political change that could be categorised together. As human rights activist Jose Zalaquett (1989, p. 24) noted at the time, 'since 1983, the perception began to be formed, internationally, that there was a trend toward democratisation, or at least toward more political freedom all over the world [... these] changes were numerous concentrated in time.'

The use of human rights as a dominant vernacular for new governments in these contexts would provide a further linkage between them. It would also bring them together under the purview of human rights NGOs and activists, who had already begun new forms of advocacy in these contexts. As such, the unprecedented nature of these transitions would be pushed by human rights scholars, activists and lawyers, through several conferences organised in this period. They considered the Latin American phenomenon precisely within the context of transitions, and explored the significance of the new human rights activities that took place there.

On this front, the 1988 Aspen Institute conference is a useful starting point. Gathering together NGOs, human rights activists and scholars, it would begin this process of systematisation. As Arthur (2009, p. 322) notes, the conference endeavoured to 'sort through the moral, political, and legal implications of recent trials, commissions of inquiry, purges, and other measures intended to hold previous regimes to account for systematic human rights abuses, as well as to foster a transition to democracy.' The conference confirmed both that the category of 'transition' was existent, and that human rights activities were integral to the enterprise. Indeed, in his paper to the conference, Zalaquett (1989, p. 26) asserted as much, arguing that 'dealing with transitional political situations is a new area of human rights practice that poses some complex ethical, legal and practical questions.' As such, the conference not only

recognised 'transition' as a new category for which human rights activity was necessary, but was designed to outline and organise the complexities of this problem.

Subsequently, the Aspen conference also explored the mechanisms that had been deployed to ameliorate these situations and sought to evaluate them on these terms. As Arthur (2009, p. 325) notes, it 'dealt with a distinct set of measures—prosecutions, truth-telling, restitution or reparation, and reform of abusive state institutions—whose aims were to provide justice for victims and to facilitate the transition in question.' In the end, the conference posited that these mechanisms: i) contributed in some way to solving the transitional problem which had been identified and could therefore be brought into relation with each other; and ii) as such, could be comparatively evaluated under interrogation by the same ethical, moral and political criteria. In doing so, it postulated that, like the myriad of contexts in which they'd been deployed, these mechanisms could be brought together under the same category.

After the democratisations of Latin America, the collapse of communism quickly followed, and the liberalising transitions of post-communist states invited immediate comparison. In many respects, they provided a kind of vindication that 'transitions' did, in fact, signal a new context which required a new type of human rights activity. It is not surprising then that the 1992 Charter 77 conference in Salzburg was designed specifically to take a comparative approach to events in Eastern Europe, exploring them in light of what had already happened in Latin America. As Kritz (1995, p. xix), an attendee at the conference, notes:

one major theme of the conference [...] was the extent to which the Central and Eastern Europeans and former Soviets who were just emerging from communist rule could learn any useful lessons from the Latin American transitions a decade earlier.

It recognised that the category of transition could be used to describe the Latin American phenomenon and the post-communist transitions alike. Moreover, that the mechanisms which had been deployed in Latin America might also usefully serve the post-communist states.

Interestingly, Kritz's narrative of the conference exposes the gap between the phenomena themselves and their systematisation in a transitional justice framework. Kritz (*ibid.*) notes that the first day of the conference had been dogged by an opposition between the Latin American and European contingents, concerned precisely with the impossibility of apprehending the two contexts in a single, overarching premise: 'the suffering of our people during the old regime and the difficulties resulting from our legacy is far worse than any hardship you endured [...] There is little we can learn from your experience.' In other words, the initial reaction of those at the conference was to insist on the singularity of their situation and to reject attempts at categorisation. But by the second day, there had been a shift:

By day two of proceedings, there was a gradual but palpable recognition that many of the details and dilemmas were not so different. How best, for example, to highlight the division between the old and new government, so as to instil public confidence in the latter [...] above all, how to achieve authentic reconciliation and prevent the future recurrence of abuses of the sort inflicted by the old regime. (*ibid.*, pp. xix-xx)

The hesitance of participants gave way to a recognition that striking similarities could bridge this gap, and that the category of transition could be a suitable intellectual framework which might encompass both waves of democratisation.

In other words, their similarity was not, in any way, natural or self-evident. Rather, their categorisation could only be comprehended through their reading in the matrix of transitions. This conference, therefore, gives an insight into the emerging

knowledge of transitions, gathered together from discourses of transitional temporality, human rights law and liberalisation. Over the course of the two conferences, this knowledge was at once drawn from and laid over these 'transitional' situations, problematising them in similar ways, and thus advocating similar mechanisms as a solution.

These conferences mark the assembling of the apparatus, in terms of its key discourses (temporality of transition, human rights law, liberalisation) and the gathering together of its mechanisms (trials, truth commissions, reparations, lustration). They began to weave together a field of knowledge and practice which could be used to identify and remedy transitional contexts. These developments also mark the bedding down of the apparatus in key institutional sites, which are responsible for producing, organising and deploying this knowledge through various practices. As such, during this period the apparatus would, to use Arthur's eloquent description, 'crystallize around such organizations as the US-based Project on Justice in Times of Transition (1993), Justice in Transition (1994), and, the International Center for Transitional Justice (2001), as well as other NGOs, universities, and international institutions.' (2009, pp. 324-325)

The term 'transitional justice' gained currency as a means of describing this new apparatus. Indeed, as Kritz (1995, p. xx) remarks, by the time of the Salzburg conference the United States Institute of Peace had already begun a project called 'transitional justice'.

Transitional Justice and Peacebuilding: Governmentalisation

Following the end of the Cold War, and what Fukuyama celebrated as the end of any serious challenge to (neo)liberalism, transitional justice became normalised 'a global project', following:

the institution of international criminal tribunals, hybrid courts [...] the transnational proliferation of truth and reconciliation commissions (TRCs); the expansion of transitional justice scholarship such that it now has a dedicated journal, research centres and academic programmes; and the birth of international and regional transitional justice NGOs. (Nagy, 2008, p. 275)

The success of transitional justice has led to its 'governmentalisation', that is, the entrenchment of transitional justice in the institutions mechanics of global governance. In particular, transitional justice would find itself at home in the post-conflict interventions of the emerging networks of global governance. Indeed, both Andrieu (2010a) and Sriram (2007) have shown that transitional justice is now a staple in the peacebuilding initiatives of international institutions like the UN and the World Bank, 'Western' governments and NGOs.

It is unsurprising then, that the UN Security Council (2004, p.4) has positioned transitional justice as an integral part of the UN's peacebuilding work. Transitional Justice is now integral to the UN's ongoing efforts to 'enhance human rights [...] promote accountable governance and peacefully resolve conflict.' It is perhaps quite easy to see why this integration has happened. In making the dislocation of the past one of its priorities – in the language of human rights, no less – transitional justice claims to deal with some key concerns for peacebuilding. More, with its forward-looking elements, transitional justice projects a future compatible with the vision of the peacebuilding project. Given its claims of both re-establishing the rule of law and creating a culture of human rights, it does so at a structural and affective level.

For transitional justice, greater integration with the peacebuilding paradigm has thus meant greater integration with international institutions. It has been set on a trajectory where, today, transitional justice has become 'an active domain of policy, practised by the United Nations, and supported by regional organisations, international Financial Institutions, bilateral donors and specialised NGOs.' (Sriram, 2007, p. 579) This has meant, among other things, that the UN has taken a much greater role in supporting governments to produce and provide transitional justice mechanisms as part of a wider peace-building strategy. For example, in a report by the UN security Council (2004, pp. 5-6) lists a number of 'peace operations' where transitional justice mechanisms have been deployed as part of the UN's mission. Up to the time of its writing, this included, among others, Cote d'Ivoire, Liberia and Haiti.

In these contexts, and many more since the report was written, the UN's role has been extensive, involving planning, supplying staff, as well as material support, guidance and assistance on the ground (ibid). In the face of the UN's (and other international institutions') enlarged and more central role within the apparatus, transitional justice has been emboldened in its 'insistence against unwilling governments that it is necessary to respond to egregious violence and atrocity,' with increasing capacities to provide 'financial, institutional and normative support for reckoning with the past, attending to the needs of victims, and setting the foundations for democracy, human rights and the rule of law.' (Nagy, 2008, p. 275)

More recently, the World Bank published an article by Pablo De Greiff (2010), which outlined the relationship between transitional justice and (assuredly neoliberal) development. It reflects an increasing appetite for transitional justice to be properly integrated into the peacebuilding initiatives of IFIs. Most interestingly, the justification for using transitional justice is articulated in a profoundly neoliberal way. In the last

chapter I showed that neoliberal governmentalities involve an increasing economism, where the model of the market is transposed to 'all domains and activities – even where money is not at issue – and configures humans exhaustively as market actors.'

(Brown, 2015, p. 31) Similarly, the rationality for transitional justice goes as follows:

Unaddressed human rights violations, like poverty, leads to 'adverse forms of recognition' which in turn weaken the 'capacity to aspire.' Or, they lead to a weakening of trust (the erosion of social capital), which increases transaction costs, diminishes investments, and in the end, are akin to a reduction in market size. (de Greiff, 2010, pp. 13-14)

While this economised perspective is by no means the norm, it is interesting that transitional justice is not only increasingly one of the World Bank's post-conflict development concerns, but that the justification for this emerging relationship is given in economic terms.

What started as the effort of human rights NGOs, activists, lawyers, and a select few national governments, has thus been integrated into a much larger peacebuilding network, incorporating international institutions like the UN, as well as IFIs such as the World Bank and the IMF, and, finally, western donor governments. Before turning attention to the use value of transitional justice to these institutions as part of a hegemonic neoliberal project, however, it is important to understand the historical conditions for the governmentalisation of transitional justice. In short, it is a question of exploring the relationship between transitional justice and neoliberalism. The emphasis here is not so much the development of well-defined and institutional relationships, but the accidents and emergences that predisposed transitional justice to being integrated into systems of global governance.

An Alternative History of Transitional Justice: the 'Great Turn'

On this front, the history of the apparatus might be better understood by critically recasting it in the context of the parallel history of the 'great turn' to neoliberalism, as described by Dardot and Laval (2013, pp. 146-193). In placing transitional justice in this history, not only will it be possible to detect the strategic use value of emerging transitional justice mechanisms, but also to clarify the relationships between transitional justice and what might be better described as (neo)liberal democracy. It is by no means insignificant that the rise of human rights and transitional justice and the turn towards neoliberal governmentalities occupy the same temporal landscape of the 1980s onwards. A more critical exploration of these histories aims to show that they are implicated by each other as part of a series of social, political and economic shifts taking place at the time.

Without wishing to re-tread the ground of the previous chapter, it will be useful to briefly recall the 'neoliberal turn' as previously outlined before specifically turning towards its relationship to the emerging human rights movement. Shedding more light on the turn, Gérard Duménil and Dominique Lévy (2011, p. 17) show that it was precipitated by the social, political and economic conditions that crystallised as a result of a major and global economic crisis, which:

destabilized these social patterns: the structural crisis of the 1970s. The crisis was the consequence of the downward trend of the profit rate and the cumulative inflation rates in which economic tensions were expressed. It created the conditions for the imposition of neoliberalism.

As Dardot and Laval (2013, p. 151) point out, the turn responded to the crisis, starting with the political programmes of both Thatcher and Reagan, and 'subsequently replicated by a large number of governments and transmitted by major international organizations like the IMF and World Bank.' Indeed, this period crystallised a new

governmental orientation towards neoliberal policies, where privatisation, trade liberalisation, and monetarist policies were used to transform states into facilitators of a global competitive order (Ibid., p.153).

It is possible to see that many of the so-called third-wave transitions were part of this turn. Indeed, as Naomi Klein's *The Shock Doctrine* (2007) helpfully points out, the context of an emergency or crisis provided opportunities for neoliberal economists particularly from the Chicago school,¹⁰ to roll out their economic policies. In Eastern Europe, for example, post-communist social orders were not only committed to democracy but to neoliberal economic reform. The changes advocated by neoliberal economists not only in Eastern European countries but also inside the IMF, encouraged a radical transformation. As Klein (2007, pp. 177-181) demonstrates, in Poland wholesale privatisations of industries and the elimination of price controls were demanded in return for desperately needed IMF loans. This is also true of some of the Latin American transitions such as in Bolivia, where the debt crisis and soaring inflation encouraged the newly elected government to undertake a radical neoliberal economic programme (ibid., pp. 142-154).

Other transitions in Latin America, however, complicate any straightforward integration of the parallel histories of neoliberalism and transition. In particular, Chile and Argentina belong to a slightly disjointed convergence of these timelines, which begins slightly earlier and prefigures 'the great turn'. The military dictatorships in these countries from the early to mid-seventies provided opportunities for neoliberal economists to experiment with their economic policies. Indeed, Milton Friedman and

¹⁰ Home to eminent neoliberal scholars including Milton Friedman and set up with help from Hayek. See the history of the Chicago school delineated by Rob Van Horn and Philip Mirowski (2009) for more details.

the Chicago School provided the economic blueprint for the regimes in both countries (ibid., pp. 77-78). Obviously, as well as the slight discrepancy in time frame, these regimes also radically differ from the pairing of neoliberal economics and liberal democracy that has often been the hallmark of neoliberal transition. Instead, they relied on the use of state terror to impose neoliberal economic policies.

In Chile, the more extreme regime both in terms of its brutality and the scale and speed of its economic reforms, the authoritarian state secured neoliberal reforms by crushing dissent. The regime of General Augusto Pinochet embarked on a radical economic plan that included privatisation, the introduction of financialisation, and the elimination of price controls. Healthcare and social security were privatised, and, more radical than anything that has been attempted in 'the West', Pinochet's regime also transformed the school system into a private voucher system (Fischer, 2009). Importantly, this economic system was secured through the use of state violence to quell opposition, including left wing sympathisers and trade unions. Dardot and Laval (2013, p. 93) have shown that the primacy given to individualism in the neoliberal doctrine has meant that it has been philosophically committed to combatting 'the lethal poison of collectivism,' in order to successfully implement a competitive market society. Through a systematic use of torture, kidnapping, and murder, Pinochet's regime enforced the embrace of its new individualistic, 'economic' society.

When both Argentina and Chile went through their democratic transitions, it was not really a problem of embracing a hitherto unknown economic system, but how to manage democratisation whilst maintaining the neoliberal transformations that had been embarked upon under authoritarian rule. For Argentina, the debt crisis following the transition meant that the possibility of socio-economic transformation was foreclosed, with the need for IMF financial support further limiting its options. By the

late Eighties, the ongoing economic crisis prefigured the election of Carlos Menem and brought a dramatic turn to neoliberal governmentality (Blake, 1998). In Chile, Karin Fischer (2009, p. 336) notes that the 'managed transition' not only 'took place within the confines of the 1980 constitution [...] but the structure of the state in terms of socio-economic organization remained intact.' Indeed, Fischer concludes, 'the foundations of the neoliberal model survived the return to parliamentary democracy.'

While this provides the kind of discontinuous genealogy of neoliberalism that Foucault would surely approve of, it is nevertheless interesting that like most – if not all – of the 'third-wave' countries, in both Chile and Argentina human rights became the dominant vernacular through which the old regimes were deposed, leading the way for some experiments in transitional justice to emerge. To understand why human rights dominated this landscape and, subsequently, why transitional justice emerged in these contexts, it is important to show how the human rights movement offered a kind of utopia, which suited the demands of differing locales where the rise of neoliberal governmentality played a decisive role in the shape of the transition. Such an insight can be grasped by examining – as well as expanding upon – the critical history of the human rights movement outlined by Moyn.

Human Rights and Neoliberal Transitions: A Universal Concept of Evil

Importantly, Moyn (2012) positions the ascendancy of human rights in the political context of collapsing left-wing movements, not only in Europe, but also in Latin America. As Moyn (2012, p. 121) demonstrates, the rise of human rights in Europe took place as the economic crises of the 1970s and the emergence of dissidents from the USSR 'resulted in the mistrust of more maximal plans for transformation – especially revolutions but also programmatic endeavours of any kind.' With the decline of more

'maximal' political projects, human rights enabled 'diverse actors to make common cause as other alternatives were seen as unviable – a convergence that often began as a strategic retreat from those prior, more grandiose utopianisms.' (ibid.)

In France, for example, the arrival of dissidents such as Alexandr Solzhenitsyn and his popular *Gulag Archipelago*, caused a crisis for the left. As Jessica Whyte (2012, p. 20) shows, the disquieting arguments of Solzhenitsyn, which showed how the Gulag was rooted in Marx's own work, 'led to a reconsideration of revolution and of its relation to human rights.' The *Nouvelle Philosophie* arrived on the French intellectual scene, dedicated to 'recasting the promise of emancipatory social transformation as inherently totalitarian.' (ibid., p. 21) The human rights movement began articulating a critique of left-wing utopianism as the radical evil of human rights abuses.

Similarly, in Latin America human rights rose as a result of the 'failure of more maximal visions of political transformation and the opening of the avenue of moral criticism in a moment of political closure.' (Moyn, 2012, p. 141) Human rights thus came to dominate popular resistance to the authoritarian regimes in Chile, Argentina and Uruguay, as a purely strategic move. In a context where the severity of their repression limited the scope for internal activism, the global human rights movement exemplified by Amnesty International and Human Rights Watch became the only available means through which to support suffering left-wing activists (ibid., p. 142). While this began as a strategic development 'it soon became a philosophy,' as the demand for socioeconomic rights and societal transformation transmuted into the demand for universally accepted rights (ibid). In doing so, the opposition to right-wing authoritarianism focused not on unpopular economic policies, but on the systemic rights abuses taking place.

Moyn's point is that, as the utopias of the left faded, human rights succeeded because it was malleable; it could be used to oppose both left and right wing authoritarianism whilst simultaneously making no extra demands for any particular political utopia. At the centre of its success was a radical new definition of evil, which could incorporate the political cause of both the right and an emerging (neo)liberal left. evil was no longer the structural and social violences of global capitalism, but, rather, the physical violence of totalitarian regimes. Importantly, as a result of this shift, the human rights movement had a particular resonance for those converted to the neoliberal cause, if only because it bolstered their own the critique of totalitarianism. Just as neoliberal thinkers were emboldened by their ability to bracket Nazism, Communism and Keynesianism together as the dangerous result of economic interventionism, Whyte (2014, p. 221) argues, 'those who advocated this new politics of rights in the 1970s displayed a marked tendency to conflate various different political regimes in a single critique of totalitarianism.'

The humanitarian NGOs that emerged from France in this period, including *Médecins Sans Frontières* (MSF), for example, show some of the disquieting new resonances between neoliberalism and human rights politics. Before the Seventies, 'Third Worldism' had an important place in French intellectual thought. With its roots in Marxism, it supported national liberation struggles designed to take control of the redistributive capacities of Third World states (Malley, 1999). The new rights organisations such as MSF were radically opposed to this. Indeed, MSF would set up a think tank called *Libertés Sans Frontières* (LSF), which attracted prominent members of the right including Jean-François Revel, Alain Besançon, and Jean-Claude Casanova. LSF reflected the anti-communism and anti-totalitarianism of the MSF leadership, and led the attacks against Third Worldism (Davey, 2011, pp. 540-541).

The attacks centred on a critique of 'Third World' states as totalitarian and engaged in the new evil of human rights abuse. This new attitude is summarised by Claude Malhuret, a former president of MSF, who, in an interview with *Paris Match* in 1985, argued that Third Worldism should be attacked 'for repeating that the people of the Third World are always right; that Third World regimes which refuse democracy are always right; that the West is responsible for the misery of the Third World; that we are starving it by eating too much.' (Forestier, 1985 cited in Davey, 2011, p. 541) As an indication of this new paradigm, the position taken by Malhuret is interesting because it begins to combine both rights-based and neoliberal critiques of totalitarianism. On the one hand, the allusion to the anti-democratic nature of 'Third World' states as a violation (amongst others) of civil and political rights. On the other hand, the bullish defence of the West reflects the turn towards a neoliberal rationality, where redistributive (and, as such, interventionist) mechanisms are rejected with an implicit responsabilisation of so-called 'Third World' states as improperly configured for the economic wellbeing of their population. I will return to this theme throughout the remainder of the thesis.

For now, however, the French example highlights the potential value of – as well as some of the conditions for – the emergence of transitional justice in both Latin American and Eastern Europe. While the human rights movement could be mobilised to denounce the governments of these politically diverse contexts, its reconceptualisation of evil also suited the neoliberal conditions that either followed or were able to continue after their demise. As Meister (2011, p. 25) puts it, the legacy of this moment is that evil is 'no longer a system of social injustice [...] rather, evil is described as a time of cyclical violence that [...] can be put in the past.' By defining evil as the criminal problem of human rights abuses, early experiments in transitional

justice provided a means of dealing with the past that avoided drawing attention to the lack of a redistributive socio-economic project after the transition. By conceptualising the problem as one of physical violence, the solution was not policies of economic redistribution, nor to radically reimagine the state, but a form of legal or quasi-legal redress.

Miller (2008) has described this problem as transitional justice's 'effects of invisibility'. For Miller, one of the effects of transitional justice's focus on human rights is the foregrounding of individualised instances of pain at the expense of a wider backdrop in which other actors and structures of violence are implicated. Quite simply, 'silence occurs not only through the literal absence,' but through the tendency to 'background structural factors in favour of more obvious concerns about physical violence.' (ibid., p. 273) The narrative 'crystallises around our horror at the inhuman act rather than, for example, the unjust international distribution of wealth.' (Meister, 2011, p. 47)

With his theory of violence, Slavoj Žižek (2008, pp. 1-2) provides clarity here. For Žižek the phenomenon of physical violence or 'subjective' violence, is but part of a triumvirate of violence. It is accompanied by two other *objective* forms of violence, the symbolic violence of submitting to language, and systemic violence, 'the often catastrophic consequences of the smooth functioning of our economic and political systems.' The problem with a human rights perspective, therefore, is that it stops us from perceiving the other two. For subjective violence is experienced against 'the background of a non-violent zero level. It is seen as a perturbation of the 'normal,' peaceful state of things.' Thinking of violence as a relation between a physical act and a normal, peaceful state of affairs, is precisely what makes us blind to other forms of violence. For Objective violence is the invisible, which 'sustains the very zero-level standard against which we perceive something as subjectively violent.' As such, human

rights provide a framework in which violence is perceived at the subjective level, as carried out by clearly demarcated agents, leaving the objective violences which support and contribute to it without a proper interrogation.

Seen from a historical perspective, it is obvious that transitional justice's inability to address the 'socioeconomic' has been both a lamentable failure and the key to its rise. Importantly, the convergence of the histories I have been tracing does not show transitional justice's deliberate, directed or concerted effort by neoliberal thinkers to put it to work. Rather, much like the emergence of neoliberalism itself, the rise of transitional justice and its relation to neoliberal governmentality is the result of 'certain relations between social forces and economic conditions, without having being 'chosen' in a premeditated fashion by some general staff.' (Dardot & Laval, 2013, pp. 148-149) That transitional justice became the institutional response to the emerging context of transitions to a new neoliberal reality is not the work of conspirators but the result of a series of strategically useful interrelations that gradually led to the incorporation of the apparatus into increasingly 'global mechanisms' of neoliberal governance.

This history demonstrates that transitional justice arrives as the result of two general shifts in what Foucault would call the 'regime of truth'. Foucault (1977, p. 13) argued that 'every society has its regime of truth, its 'general politics' of truth; that is, the types of discourse it harbours and causes to function as true.' For example, Foucault (2010, pp. 17-18) has shown that liberalism emerges when the quasi-science of economics becomes a regime of truth regarding the government of society. This investigation has shown that transitional justice arrives at a moment when there is a shift in the economic regime of truth from Keynesianism to neoliberalism, and at the same time, a congruous ethico-political shift from a progressive statism (articulated by Third

Worldism, European social democracy, as well as socialism and so on) to anti-statism articulated through the critique of the totalitarian state offered by human rights. These seemingly global shifts in the regimes of truth provided the discursive space in which transitional justice could emerge.

Transitional Justice and Girard: Undifferentiation and Accusation

The excavation of the history of transitional justice has enabled a thorough investigation of its discourses, its actors and the conditions of its emergence. It has shown that, far from a timeless recurrence of sacrificial violence, transitional justice has emerged as the result of specific social and historical conditions. Moreover, it has shown that these conditions have a relationship to the somewhat parallel emergence of 'material' neoliberalism, and that a particular congruence between human rights and neoliberalisation has been strategically useful. Such congruences have, no doubt, made transitional justice's eventual institutionalisation into formal networks of global governance possible. Having covered this ground, it is now possible to return to the Girardian element of the thesis and to show how this historical excavation has a bearing on at least two of the previously problematised aspects of Girard's work: the problem of undifferentiation as a 'natural' concept and the problem of the accusatory narrative as a concept which is evacuated of politics and power.

I start with undifferentiation, which Girard (2005 [1972]) problematically positions as the result of mimetic rivalry, an essentialised and inescapable human condition. In contrast, I argue that if transitional justice is an apparatus then the moment of crisis or undifferentiation should be understood as the product of a discursive regimen, which is laid over the historically situated contexts of 'transition'. In these moments of societal breakdown, meaning is woven together by the socially and historically

embedded discourses deployed through the institutions of transitional justice. From this brief investigation of the history of transitional justice, it is possible to see that the apparatus intervenes both to conceptualise and to resolve the crisis of mass violence. Here, violence is conceived as undifferentiation in a construction that is facilitated by the discourses of human rights and of (neo)liberal democracy.

From this perspective, undifferentiation is not a timeless and universal concept, the constant replaying of a mimetic violence which destroys the community. Rather, transitional justice utilises human rights to problematise the past and the idea of (neo)liberal democracy as an idealised vision of the future. In doing so, the very idea of undifferentiation is conceptualised by transitional justice as a pure dissembling of civilisation understood narrowly by the parameters set by these discourses. In this respect, I sympathise with Michael Neocosmos (2011, p. 361), who has argued that transitional justice provides a framework where 'what appears to be 'the past', seen as an undifferentiated whole, is simply defined negatively in relation to an idealised (future) state of affairs.' Simply put, the combination of parliamentary politics and neoliberal economics marks the normative principle of civilisation, and human rights becomes a conceptual tool designed to problematise contexts that don't adhere to those civilisational norms.

In this respect, human rights discourse provides a remarkably supple conceptual terrain, which in differing ways provides a vision of undifferentiation that is conceptually sound in both the post-conflict and post-totalitarian transitions, which the apparatus serves. In the case of post-totalitarian transitions, this can be understood with reference to the savages, victims, and saviours metaphor forwarded by Mutua (2001). For Mutua, the discourse of human rights creates a binary between a savage state and a victim who is subject to its abuse. In the savages/victims

opposition, Mutua (2001, p. 202) argues 'the human rights story presents the state as the classic savage, an ogre forever bent on the consumption of humans.' On the other hand, the victim is 'a powerless helpless innocent whose naturalist attributes have been negated by the actions of the state.' (ibid., p. 203) Importantly, the powerlessness of the victim makes an intervention from NGOs, international institutions and even western governments, an ethical imperative. These predominantly Western forces constitute the Saviour, 'the good angel who protects [...] the victim's bulwark against the tyrannies of the state.' (ibid, p. 204) The victim is the nodal point which at once attests to the savagery of the state, and justifies the intervention of a saviour.

But for Mutua, more than just describing the real, material phenomenon of the 'bad' state and 'good' interventionists, the metaphor of the savage state and the western saviour describes the binary opposition between two socio-political formations which these agents represent. The resonances between human rights and neoliberalism as bearers of a critique of totalitarianism should therefore be emphasised here. Human rights discourse constructs the totalitarian state as an active, undifferentiating agency because it produces an interstitial position between 'nature' and 'civilisation'. In the context of a hegemonic neoliberal rationality, one which stands in for 'the West', human rights discourse provides proof of the deterioration of society as the result of a 'totalitarian' antagonism that operates differently from the (neo)liberal norms that constitute 'civilisation'. Simply put, the practice of delegitimising states by showing their 'totalitarian' recourse to violence, provides evidence of the disassembling, undifferentiating effect of the totalitarian state on 'civilisation'.

Secondly, In the case of post-conflict contexts, human rights discourse provides a concept of undifferentiation that conforms to Girard's differential inside/outside

dynamic which was briefly outlined in the previous chapter. To the parties involved on the 'inside' a conflict will probably be marked by the absolute difference between each faction, at the level of ethical and political values. In other words, 'from inside, sameness is not visible.' (Girard, 2005 [1972], p. 168) Human rights, however, provides a perspective 'from the outside', 'which takes into consideration the reciprocity,' of violence (ibid.). It does so by articulating an ethical position that foregrounds the rejection of violence over the political circumstances in which that violence takes place.

Alain Badiou (2001, p. 9) has criticised human rights for precisely this problem, arguing that its ethical demand to stop suffering leads to situations in which 'politics is subordinated to ethics.' As the case studies will point out, the result is that both sides are equally denigrated as rights abusers, regardless of their political coordinates. In this way, undifferentiation is constructed through a human rights framework not only in terms of the dissembling issue of mass violence, but also as the becoming sameness of political opponents, who are now conceptualised as undifferentiated by their mutual engagement in rights abuse.

Mutua (2001, p. 204) argues that, in response to this problematisation of 'undifferentiating' violence, the human rights project 'is both anti-catastrophic and reconstructive.' It is anti-catastrophic because it intervenes to stop more human rights calamities. At the same time, in advocating and constructing a (neo)liberal future, the human rights project is also reconstructive because it seeks 'to re-engineer the State and the society to reduce the number of victims, as it defines them.' (ibid.) The narrative, then, is one in which the savage state produces victims, forcing a saviour to intervene. The saviour's intervention is a long-term strategy; one of cleansing the state of its savagery and instrumentalising it for a neoliberal project. In placing itself at a

threshold which claims to deal with the savage past and to make concrete gains towards the (neo)liberal democratisation of the state, transitional justice plays an integral function in this project.

As a consequence of this analytical framework, these discourses are also brought to bear on techniques of sacrificial violence themselves. Human rights frames the crisis in a particular way, as the problem of mass physical violence, an individualised problem of criminal activity which implies individual liability for the crisis. In this sense, the question of responsibility is produced through human rights discourse, which provides the frames of reference that articulate, identify, or reify a scapegoat. For example, the problematisation of conflict in terms of human rights abuse brings legal knowledges into play, themselves liberal in nature. As Teitel (2014, p. 20) argues, these might advocate trials and tribunals on the basis that they 'bring out the significance of individual action,' and ascribe individual criminal responsibility.

In other words, if human rights discourse provides an analytical framework of undifferentiation, then it also provides the framework for a process of redifferentiation; the value of its discourse is its ability to identify the source of evil as a scapegoat – real or figurative – and whose expulsion propagates redifferentiation. Just as human rights inscribes its definition of evil into each post-conflict context, transitional justice intervenes to identify, delegitimise and eradicate its author, real or figurative; material or symbolic. In this way, transitional justice mechanisms become strategically useful, providing forms of sacrificial violence that articulate a new logic of difference constructed through the difference between a society and its scapegoat. They provide a foundational logic of difference between good and evil; past and present; society and its other.

This also opens up another set of questions. If the question of responsibility is already circumscribed by discourse, then how are these particular discursive conditions brought to bear on transitional contexts through practice? To put it another way, this investigation has already discovered a history of transitional justice and its relationship to politics, but what is missing is the way in which practices of power act upon these contexts and direct a 'community' towards the selection of particular scapegoats. How does knowledge (human rights etc.) engender practices, which constitute certain subjectivities and subjective relations that give shape to the sacrificial violence of the mechanisms of transitional justice? Finally, what is the relationship between these practices and the neoliberal transitions in which they exist. These questions animate and shape the conditions for the investigations of the next chapter.

03

| TRANSITIONAL JUSTICE AS APPARATUS II |

Power, Practices, Subjectivities

A major shift in Foucault's work is the transformation of his methodological approach from archaeology in his earlier work such as the *Archaeology of Knowledge* and the *Order of Things*, to the genealogical method which directed later works like *Discipline and Punish* and the *History of Sexuality*. As Foucault (1980, p. 112) describes, 'archaeology' explored the formation of knowledge as organised by a set of rules concerning statements. It was a question of examining 'what *governs* statements, and the way in which they *govern* each other so as to continue a set of propositions which are scientifically acceptable.' Eventually, Foucault became frustrated by the limits of his archaeological method, realising that it lacked an analysis of power, and more precisely, an analysis of '*the effects of power* peculiar to the play of statements.' (ibid., p. 113)

Foucault thus developed his genealogical methodology in order to incorporate power as a central component in his analytical framework. Articulated through the language of warfare, genealogical methodology was described as an examination of 'the relations of force, strategic developments and tactics [...] relations of power, [and] not

relations of meaning.’ (ibid., p. 114) As I have noted, genealogy provided a way for Foucault (and now avowed Foucauldians) to examine the relationship between discourse, power and subjectivity. Above all, the major concern of this project was to see how subjectivity is constructed by historical formations of knowledge that become “embodied” through practices of power.

Enacting a similar shift, this chapter is designed to incorporate and foreground the question of power. The chapter is therefore concerned with the concepts of the subject and power in the functioning of transitional justice. It aims to understand how the apparatus exercises power through practices, and in doing so, produces subjectivities. Importantly, the interest of this analysis is with linking these practices and subjectivities back to the strategic function of the apparatus. That is, this chapter aims to answer the following questions: Firstly, what practices does transitional justice engage in and what subjects does it produce? Secondly, how does the production and regulation of these subjects contribute to the overarching aims of transitional justice – its strategic function?

In order to answer these questions, the analysis will begin by arguing that through human rights discourse, transitional justice aims to produce two subjects, which can be discerned through the concepts of the ‘victim’ and the ‘saviour’ forwarded by Mutua. It will then proceed to explore how NGOs are responsible for producing and regulating these subjectivities through practices of advocacy. Broadly speaking, the chapter will thus consider how these practices – and the subjectivities they engender – help transitional justice to achieve its overall objectives.

Having done so the thesis will follow two key trajectories. In the first instance, the analysis will link the workings of the apparatus back to the work of Girard. It will do so

by taking Girard's notion of the accusatory narrative and argue that the subjectivities constituted by transitional justice enable the apparatus to strategically shape the process of narrative production. In other words, it will outline how transitional justice 'carries' transitional societies towards certain expulsive mechanisms (the criminal trial and the truth commission). In doing so, it will demonstrate how the apparatus utilises practices of power in order to facilitate the expulsion of a 'scapegoat', which avoids questions of socioeconomic injustice and structural violence and thus, dislocates the past in away useful for the project of neoliberalisation.

In the second instance, it will make a critique of the relationship between transitional justice and the neoliberal project at the level of subjectivity. It will do so by arguing that, in constructing the past through the framework of human rights, transitional justice attempts to produce and regulate individualised, depoliticised, victimised subjectivities, with the effect of obfuscating questions of socioeconomic injustice and structural inequality altogether. As such, it will demonstrate that human rights discourse performs an important preparatory function for a neoliberal project, by channelling individuals away from the possibility of more political, active and communitarian forms of subjectivity that would be problematic for the neoliberal project. In order to make this case, the first challenge is to give a rigorous outlining of the subjectivities engendered by transitional justice.

Subjectivities: Victims and Saviours

The first question, then, is precisely what is the subject of the apparatus? What subjectivities are conditioned by the apparatus and thus characterise transitional justice as such? I want to suggest that the apparatus is characterised by a fundamental division which splits the subject into the separate categories of the Victim and the

Saviour¹¹ delineated by Mutua (2001, p. 203). On the one hand, the Victim denotes a passive subjectivity, 'a powerless helpless innocent,' defined by an inability to act. On the other hand, the Saviour is an active subject who acts on behalf of the Victim, or through whom the Victim is capable of acting. But while Mutua's critique of human rights provides a useful form of categorisation, according to a Foucauldian approach these subjectivities – their production – relies not only on power, but the knowledges which define and these categories. What is needed, then, is an understanding of the knowledges which underpin the Victim and the Saviour.

Understanding this split subjectivity, I suggest, is dependent on an excavation of its origins in classical liberalism and the liberal subject, the genealogical predecessor to neoliberalism and the neoliberal subject. Emerging out of the enlightenment, liberal philosophy conceived of humanity (although, admittedly this was largely restricted to white European males) as defined by a general essence, which was transcendental to the course of history. For liberalism the timeless and essential nature of its subject is located in the common capacity for reason, and consequently the ability 'to will, choose and act.' (Langlois, 2004, p. 254) Thus it positions a version of humanity whose basis is a 'transcendental self' defined as a willing subject.

For Foucault (2010 pp. 272-273), this subject emerges with the writings of Locke, as well as other liberal thinkers such as David Hume, and is articulated as the subject of interest. These thinkers provide a radical novelty insofar as they theorise a subject who 'appears in the form of a subject of individual choices which are both irreducible and non-transferrable.' (ibid., p. 272) These choices, which are solely the domain of the individual, are called interest. As a consequence, 'what is important is the appearance

¹¹ Which will be capitalised hereafter, deploying them as proper nouns in order to emphasise their status as subjective categories

of interest for the first time as a form of both immediately and absolutely *subjective will*.' (ibid., p. 273) The liberal project is thus tied to the emerging knowledge of individual interest, and the agency involved in making choices as an absolutely individual will.

Indeed, liberalism should be understood as a governmental project designed to secure and enable the individual's pursuance of their interest in the economy. For liberalism was 'coincident with the emergence of political economy (and its successor economics).' (ibid., p. 19) The emergence of the economy as a site of knowledge for governments in the 18th century is important because of the way in which privileged individual interest as the foundation upon which good governance was defined. Liberal government is defined by the concept of freedom as oriented around the pursuance of individual interest and in relation to the new knowledge of economics. Quite simply, freedom is deployed as individual economic freedom understood as the means by which a population is properly governed.

But the subject, although conceived by liberal thinkers as such, is not naturally or transcendently free or 'willing': 'freedom in the regime of liberalism is not a given, it is not a ready-made region which has to be respected.' (ibid., p. 65) Liberal government from the 18th century is concerned with the production of apparatuses and 'mechanisms with the function of producing, breathing life into, and increasing freedom, of introducing additional freedom.' (ibid., p. 67) Subsequently, the liberal project is characterised by the creation of apparatuses designed to produce a rational 'free' subject; the production of *laissez faire* in which a subject can operate freely becomes the objective of liberal government. Importantly, freedom here connotes freedom from coercion by the state. As a result, liberal governmentality is concerned

with producing freedom through the principle of self-limited government, that is, by creating spaces free from the intervention of the state.

Human rights articulates both of its subjects in relation to this individual subject of interest and freedom. At its root is the particular and originary formulation of human rights as the protection of individuals against the actions of governments. As Douzinas (2000, p. 118) notes, human rights emerge out of the older concept of natural rights as an internationalised, and thus universalised, protection of humanity from the state: 'they were created as a superior or additional protection from the state, its military and police, its political and public authorities, its judges, businesses and media.' As such, the subject of the Victim is constituted relationally in as much as it formalises a category of subject whose humanity has been violated by the state. While rights became practice in the 1970s it is worth noting that this philosophical disposition is present in the legal codification of rights in the UN's Universal Declaration (2013 [1948]), which defines rights in relation to the activity of the state. The legal discourses of human rights constitute a knowledge of the Victim as a formalised and international legal category; the one whose legal rights have been impeded is one whose humanity has been effaced.

In this way, the Victim describes the very inversion of the liberal subject. Where liberalism sought to proliferate interest through spaces of freedom, the human rights victim is the 'emaciated, dying body [which] equates man with his animal substructure, it reduces him to the level of a living organism pure and simple [...] nothing other than the set of functions that resist death.' (Badiou, 2001, p. 11) In other words, human rights abuse is the active denial of individual freedom and interest, insofar as the field of choices becomes the limited ability to avoid death. Their abuse thus puts a definition of humanity at stake; the Victim is helpless because their freedom to will, choose, and

act has been denied to them. If the liberal project was one which posited a 'free' subject, then the Victim categorises those who, through their victimisation, have been denied, or not 'developed the capacity to act freely and autonomously.' (Sending & Neumann, 2006, p. 659)

Secondly, the Victim demands the intervention of a Saviour precisely because their very humanity is put at stake. In representing the state's denial of freedom, the Victim becomes more than simply a subjectivity, but an ethical category that demands an ethics of intervention. Indeed, François Laruelle (2015, p. 56) has shown that the Victim is split between the concrete object and the abstracted ethical knowledge of the rights of man. The latter, which posits the powerlessness of the Victim, calls into being another, an intellectual (who I will continue to call the Saviour) who 'receives the power and the right to protest, without the initial pain, just bad conscience.' As such, the Saviour emerges as a kind of extensionality that 'completes' the Victim. The Saviour acts, wills and chooses on behalf of a Victim who is incapable of doing so itself; that is, the Saviour acts in the *interest* of the Victim who is rendered unable to exercise it on their own.

Laruelle's critique usefully captures the sense in which this framework coheres through a power relation (the Saviour 'receives the power') that is formulated between Victim and Saviour. In other words, it supplies a somewhat Foucauldian perspective to this twin subjectivity in the sense that the materiality of its ethical underpinning is not evacuated of power. Rather, power is the very precondition through which it becomes possible. But more than simply show that the Victim is constructed under the subjugation of the Saviour's power, Laruelle's analysis shows that this construct relies on a kind of mutual enmeshment. The substance of the power relation is thus a kind of labour which is divided between Victim and Saviour such that 'the victim is the

“phenomenological” consciousness, which suffers and “works”,’ while the Saviour ‘is its witness and conductor, its guardian and defender.’ (ibid.) The result of this enmeshment is that Saviours are ‘also victims of power, certainly in a different way than victims; they are “embedded” at the front or “at the scene of action.”’ (ibid., p. 57)

But the Saviour’s labour goes beyond mere extensionality. Beyond providing an agency which was hitherto negated, as Mutua (2001, p. 204) insists, ‘the simple, yet complex promise of the Saviour is freedom.’ What is this freedom? This promise is conceptualised as ‘freedom from the tyrannies of the state.’ (ibid.) Mutua’s turn of phrase grapples with the overarching objective of the Saviour: through interventions the intention is to transform Victims into liberal subjects endowed with their own human capacity to act, will and choose. The Saviour therefore is defined by an almost paradoxical set of practices: the Saviour is ethically obligated to act on the Victim’s behalf, with the promise of eventually returning the Victim to their own humanity defined as their own ability to act, will and choose.

Where Mutua emphasises the liberal subject, however, this analysis insists that the neoliberal subject, as a strategic modification of the former, is, in fact, the result of any intervention. In light of this distinction, it is worth taking pause to sharpen the terminology used here. Like the liberal subject, the neoliberal subject is defined by the imperative to act and to choose, but under different conditions. Earlier I showed that one of the imperatives of neoliberal governmentality is to subjugate everything to the logic of economics, including democracy and so on. As Brown (2015, p. 41) notes, when ‘economization configures the state as the manager of a firm and the subject as a unit of entrepreneurial and self-investing capital,’ the effect is to ‘transpose the meaning and practice of democratic concerns with equality, freedom and sovereignty [...] to an

economic register.’ As a result, ‘liberty itself is narrowed to market conduct.’ As such, while one might agree that the Saviour’s promise is freedom, it is important to emphasise that it is shaped by the contours of neoliberal transitions and, as such, conditioned by economic logics. Where liberalism would conceive of freedom as a ‘natural’ freedom cultivated by *laissez-faire* policies, neoliberalism considers freedom as the result of competitive markets, which are regulated and maintained by the state.

In order to produce the neoliberal subject, the Saviour’s agency is tied to a dense connection of knowledges involved in the production practices designed to carry the Victim from the animal back to their humanity – from the Victim to the willing subject. This dense nexus of knowledge makes the Saviour a complex subjectivity, which exists not only concretely in the act of intervention itself, but also through the constant production of knowledge designed to theorise and assist the Victim. Indeed, it is this nexus of knowledges and expertise that, in relation to the passive Victim, empowers the Saviour to act in this long-term process of humanisation. Bal Sokhi-Bully’s description of human rights as ‘governmentality by experts’ (2011) definitively captures this position.

Sokhi-Bully (*ibid.*, p. 259) begins by asserting that expertise denotes a ‘distinct field of knowledge known only to experts [...] which resembles a shared disciplinary sensibility.’ Here, what might be called ‘expert knowledge’ has explicitly Foucauldian connotations:

Experts, in their decision-making capacity, operate within power relations that can be described as ‘pastoral’. As used by Foucault, this refers to a type of power that has connotations of Christian thought and the relation of a shepherd to his sheep. The ‘good shepherd’ represents a ‘pastoral expert’. (*ibid.*)

The holders of expert knowledges exert their power relations as ‘good shepherds’ whose expertise privilege them with the capacity to guide others. Pastoral power, as Foucault (2009, p. 165) summarises, is the use of expertise in the ‘the art of conducting, directing, leading, guiding, taking in hand and manipulating men [...] an art with the function of taking charge of men collectively and individually.’ This rings true here, where not only a knowledge of human rights but other, interconnected knowledges are needed to take the Victim on a trajectory of re-humanisation. In the case of human rights, therefore, this ‘pastoral power’ experiences a doubling; because the Victim is a passive subject, it must be governed for it cannot – even minimally – govern itself.

In this framework, experts ‘govern’ through human rights in a dual process which captures the mutual reciprocity of power/knowledge. Experts govern ‘through expertise—and here ‘govern’ refers to the processes of ‘governing rights’ on the one hand, and ‘governing through rights’ on the other.’ (Sokhi-Bulley, 2011, p. 264) This has specific consequences for transitional justice and other aspects of post-conflict intervention. Firstly, the notion of ‘governing through rights’ denotes the knowledge of the Victim which justifies their intervention, but also binds them in a paternalistic power relationship with the Victim. Secondly, it refers to the knowledges (of the market, development, advocacy, transitional justice, and so on), which are deployed by Saviours in order to achieve the Victim’s long-term freedom. Finally, it is also the development of the practical knowledges which each intervention brings. In other words, it denotes what Foucault (1980, p. 195) refers to as ‘strategic elaboration’: the refinement and recirculation of practices deployed within each intervention as a set of expertise which justify their long-term interventions.

In contrast, ‘governing rights’ connotes the production of new knowledges which alter, transform and rearticulate the meaning and understanding of human rights

themselves. Indeed, as expert, the Saviour is responsible for using the expertise that come with each deployment in order to regulate the notion of rights themselves. This broadens the concept of Saviour as a subject to encompass the myriad of legal scholars, economists, sociologists, anthropologists and development theorists who not only regulate rights, but also connect them with other knowledges in order to provide frameworks that secure the freedom of the Victim. As such, they are also tied into this paternalistic structure in which only their expertise – and nothing emanating from the Victim *as an agent of itself* – can provide frameworks which will guarantee the security and rights of the Victim. In this sense, while one might think about the Saviour in the concrete practice of intervention, it actually refers to an array of subjects who, in more abstract ways, are empowered by human rights to come to the assistance of the Victim.

Articulating itself through human rights discourse, not to mention making claims about its own contribution to a liberal democratic society, transitional justice thus functions through the production of this twin or split subjectivity. The Saviour is constantly produced and maintained in the very operation of the apparatus, the wide-ranging '[...] international web of individuals and institutions [...] held together by common concepts, practical aims, and distinctive claims for legitimacy.' (Arthur, 2009, p. 324) Conversely, the Victim is at once the abstract ethical category that drives the Saviour's work, and the real, 'material' Victim which the Saviour acts upon in concrete contexts. This being the case, it is important to reflect on the ways in which, through transitional justice activities, Saviours are understood to act in the interest of the Victim as an ethical category which is always related to material contexts.

On the one hand, the legal codification of rights formulates the Victim as a legal category and demands a specific kind of intervention in the form of legal and quasi-

legal redress. One might simply term this 'getting justice for the Victim.' But this is supported by other kinds of knowledge such as psychology, which claims that transitional justice can address the trauma of the Victim by providing closure and healing. This is true of both truth commissions and criminal trials, where the act of symbolic closure is often suggested to provide a kind of symbolic closure for the Victim. Indeed, while some believe judicial condemnation of wrongdoing 'provides victims with closure and facilitates their healing,' (David & Choi, 2006, p. 341) others would argue that healing can be better achieved through truth-telling exercises (Minow, 2000; Govier, 2002). Such practices, whilst constructed through a theoretical understanding of the Victim's interest, also pertain to real, material Victims who have been abused in any given context.

Other justifications, on the other hand, are underpinned by a defence of an abstraction – unknown but possible future victims – and pertain much more to the ethical demands of human rights discourse. For example, the juridical response to human rights abuse is often constructed around two arguments. In the first case, as Teitel (2000) and others (see: Kritz, 1995; Aspen Institute, 1989), have made clear, the justification for transitional justice mechanisms is constructed around re-establishing the rule of law and thus preventing future abuse inside a particular milieu. In the second case, and a less well founded argument, transitional justice is said to provide a deterrent against other future rights abusers in other contexts, who would be deterred by the possibility of prosecution (Kim & Sikkink, 2010). Rule of law and deterrent based arguments hinge on the ethical abhorrence that the Victim represents and the need to negate the production of future rights abuses. As such, transitional justice is justified in the interest of an abstract future Victim whom it is ethically obligated to protect. These justifications pertain more broadly to an assumption that transitional justice

performs a function in regards to '[re-engineering] the state and the society in order to reduce the number of victims as it sees them.' (Mutua, 2001, p. 203)

So far, I have traced the origins of the twin subjectivities of human rights, and understood their general functions, whilst remaining comfortably at the level of abstraction. The next task, then, is to demonstrate how the twin figures of human rights are concretely produced by practices *as subjects*. In particular, how does transitional justice produce Victims and Saviours; what practices call the Saviour into being and which identify, create and condition the Victim? Moreover, how do these practices 'carry' a transitional society towards transitional justice? Getting to these question will only be possible, however, by first identifying the institutional site, the specific 'sub-group' of Saviours from which these practice emanate.

NGOs: Transitional Justice and Neoliberal Civil Society

As a mainstay in the field of transitional justice fold, NGOs have been consistently involved in practices designed to support and produce mechanisms of transitional justice in post-conflict settings. Though not often the subject of transitional justice scholarship, NGOs quite often 'make vital contributions to transitional justice processes.' (Backer, 2003, p. 297) Eric Brahm (2007, p. 62) has suggested that NGOs 'have often played important roles in promoting and supporting transitional justice experiments around the world.' Indeed, Brahm goes as far as to argue that, for each context, the relative success of any transitional justice mechanism, 'often reflects the relative strength of human rights groups and organized survivors' groups in pressing the new government to act.' This being the case, NGOs are a useful site of exploration because of the importance of their role in the period before transitional mechanisms are operational.

Their use value in this respect is not limited to their role in pressing for transitional justice but also extends to the relationship between this function and their role as agents of civil society with a clear responsibility to the members of transitional societies. As Sending and Neumann (2006, p. 658) have shown NGOs 'convey and mobilize the preferences and concerns of individuals and communities.' It is not simply that NGOs pressure governments into adopting transitional mechanisms, but that they perform this function as part of their remit to represent and convey the interests of different constituencies. If the sacrificial violence of transitional justice is 'governed' by power, then the ways in which NGOs might mediate between transitional societies and transitional justice mechanisms are insightful. In particular, their relationship with transitional *subjects*, provides a key insight into the ways in which practices of power are crucial to the deployment of transitional justice mechanisms.

First, however, it is important to complicate the notion that NGOs simply mobilise the interests and preferences of their 'constituents'. This way of expressing their function is in danger of skirting over the relations of power involved in their activities. Indeed, it is important to address this problem by properly taking into account the emerging governmental role that NGOs have taken in the emerging networks of global governance. Following some of the discussion in chapter 1, I want to suggest that NGOs involved in transitional justice engender relations of power that are more complex than the simply conveyance of interests. Indeed, as this analysis will show, 'these organisations' modes of operations are [...] relations of power that are integral to the practices of governing.' (ibid.) On this front, it is important to note that many NGO practices reflect a context in which neoliberal rationalities have begun to transform the purpose of civil society itself. Such developments are worth drawing attention to and will serve to enrich the chapter's later discussions.

To understand the neoliberal transformation of civil society, it is first necessary to briefly return to Foucault's analysis of classical liberalism. As Foucault (2010, p. 295) demonstrates, civil society emerges with an important function in regards to liberal government's objective of facilitating individual interest. This new subject of interest demands new technologies to ensure freedom: 'the art of governing must be given a field of reference, a new reality on which it will be exercised [...] this new field of reference is civil society.' (ibid.) Civil society is thus constituted as a new plain of action, a space in which individual freedom can take place. It is, in other words, that which facilitates individual interest whilst enabling it to remain bounded within a space that correlates to government and governance.

A 'technology of government,' (ibid., p. 296) civil society was important because it provided spaces in which individuals (predominantly bourgeois white males) could pursue their interests. But while Foucault ascribes the need for civil society primarily as the means through which governments could facilitate the pursuance of economic interests through exchanges, civil society also constituted the space through which a broader range of interests could be articulated and pursued. In a history of NGOs, for example, Steve Charnovitz (1996, p. 191) places the emergence of NGOs at the late eighteenth century when 'individuals with shared interests created issue oriented NGOs to influence policymaking.' As such, the abolition movement, the peace movement and the trade union movement are all early examples of the pursuance of common interests through civil society (ibid., pp.194-196). Trade unions represent a particularly powerful example of the classically liberal conception of civil society: the coming together of workers in the pursuit of their common interest in improving wages and working conditions.

Following the neoliberal turn, however, NGOs have both proliferated and undergone significant changes. As Sangeeta Kamat (2004) has shown, the proliferation of NGOs has gone hand in hand with the collapse of 'third worldism' and the rise of the state-phobic approach of the new humanitarianism. Following this shift NGOs have come to replace the developmental state 'as the honest broker of 'the people's interests'.' (ibid, p. 158) Such transformations have led to larger role for NGOs in the practice of governance in the face of the globally ubiquitous, neoliberal re-articulation of the state. As I showed in chapter 1, Duffield (2007, p. 91) has called this the governmentalisation of NGOs. Indeed, pointing to a wealth of research conducted into NGOs working at the 'grassroots' level, Kamat (2004, p. 168) shows that NGOs have moved away from 'programmes that involve structural analysis of power and inequality and instead adopt a technical managerial solution to social issues of poverty and oppression.'

Part of this shift is related to the utilisation of NGOs by governmental donors such as national governments and international financial institutions. The relationship between NGOs and the World Bank, for example, has been significant in the sense that it has significantly shifted the scope and practice of NGOs:

Donor monitoring and accounting systems require NGOs to implement social and economic projects in an efficient and effective manner [...] the new economic regime has led to a culture of professionalization and depoliticization of NGOs. (ibid.)

As such, the professionalisation of NGOs has been driven by their subjection to neoliberal rationalities, which demand conformity to economic logics. Such transformations reflect the neoliberal drive to subjugate all human activity to the rationality of the market. As a result, NGO projects are provided financial investment according to their particular technical expertise, but also according to their economic

efficiency, and their ability to demonstrate 'impact' or 'return on investment'. The political horizon for modern NGOs has become limited; organising for broad societal transformation does not readily fit the requirements of large governmental donors who are governed by, and govern others, according to the logic of economy.

Far from providing a 'third sector' conceived separately from the market, NGOs have moved to the forefront of a governmentality by experts. As a result, NGO projects often become technical programmes aimed at individual empowerment, rather than concerned with overtly political goals. As Kamat (*ibid*, p. 169) notes, this is a narrowly defined notion of entrepreneurial empowerment where individuals become 'clients; who 'are encouraged to be entrepreneurial and find solutions to their livelihood needs.' This provides a kind of neoliberal articulation of social justice, no longer concerned with transforming the socio-economic structures in which individuals are placed, but with adapting individuals – whose issues, it must be assumed, are down to their maladaptation to the laws of the economy – according to the demands of the market (Dardot & Laval, 2013, p. 187).

It also demonstrates how the transformation of civil society has mirrored the shift from liberal to neoliberal theories of the market. Recalling chapter 1, classical liberal economics conceived of the market as a place of natural exchange; it delimited a space which the state would best stay clear of altogether. Problematizing the notion of natural exchange, the neoliberals theorised the market as a technology of economic competition, which had to be constructed and regulated by states. Similarly, just as civil society in classical Liberalism denotes the 'natural' coming together of individual subjects of interest, neoliberal civil society relies on NGOs to construct, organise and manage, that is to govern, the interest of subjects, constrained, of course, by the logic of the market.

NGOs II: Practices of Power

Taking this transformation of civil society as a basis for understanding the function of NGOs, the next task is to explore the practices of NGOs as they work in the field of transitional justice. In doing so, this chapter will add to a small body of literature on transitional justice NGOs by giving a detailed and granular analysis of the practices of NGOs engaged within the apparatus. In doing so, it will also move a step further, demonstrating precisely the power relations NGOs engender. The aim is not just to outline NGO practices but to see how, through these very practices, NGOs 'conduct the conduct' (Foucault, 1982; 2009) of post-conflict populations and direct them towards the goals of transitional justice, and, following that, the wider goals of neoliberalism.

For the sake of clarity, this section will chart a range of examples, which have been organised by a 'typology' of practice, rather than separated into the discrete practices of individual NGOs. As such, the practices of NGOs have been organised along two categories. The first set of practices, *acting-in-the-name of the Victim*, constitute the practices which NGOs use to advocate, shape and deliver transitional justice including advocacy and mechanism design. The second set of practices, *producing the Victim*, refer to the practices of 'enmeshment' between NGOs and the population, which aim to produce Victim subjectivities. These practices are obviously intertwined, and are certainly implicated in each other. Nevertheless, their separation is useful because they perform different roles in the critical framework I am relying on to examine them. While the former show more effectively the way in which power shapes transitional justice's sacrificial violence, the latter has a strategic importance in terms of the relationship between transitional justice and neoliberalism. These arguments will be given a closer treatment towards the end of the chapter.

There are two precautions to note here. Firstly, my claim is not that responsibility for both of these functions rests solely upon NGOs. There are other actors¹² with their own practices that also make significant contributions. Secondly, the NGO practices shown here are not exhaustive, nor do they claim to be definitive; other practices exist and some of them may even be quite unorthodox. Unorthodox practices would remain, however, entirely within the spirit of using ‘apparatus’ as a conceptual framework. After all, apparatuses are not only defined by a set of knowledges, that is, rules that govern their trajectory, but also by their interaction with material contexts, and, as such, subject to change through experiments and the emerging knowledges that are gleaned from them. The objective here, is to outline those practices that might be considered typical for the apparatus.

Acting-in-the-Name-of the Victim

In a recent article, Kieran McEvoy and Kirsten McConnachie (2013, p. 490) outline the function of the Victim as a legitimating factor for transitional justice actors and institutions. They argue that victims are central to transitional justice’s self-legitimacy:

For those who work in and seek to justify the institutions of transitional justice, victims are routinely deployed as part of the ‘language, etiquette and rituals of self-legitimation’ [...] Justice or support for victims are often the reasons advanced by lawyers, judges, psychologists, *human rights activists* and others for their involvement in transitional justice.

In terms of advocacy, the relationship between victims and NGOs can be discerned with reference to Kouchner’s description of the human rights project: ‘[t]his is the revolution [...] The victim, not the government, speaking in the name of the victim.’

¹² National governments, for instance.

(quoted in Allen & Styan, 2000, p. 825) This idiom has become definitional for many advocacy NGOs such as 'Voice for the Voiceless' (*Voix des Sans Voix*), a human rights NGO based in the Democratic Republic of Congo.

In the realm of transitional justice, human rights advocacy epitomises the imperative to act in the name of the Victim. Advocacy denotes a multifaceted set of practices designed to both pressure and support governments and international institutions to adopt transitional justice mechanisms. NGO involvement in this process is geared specifically around the desire to achieve human rights accountability. As Brahm (2007, p. 63) notes, efforts to secure transitional justice have been led by NGOs who, in transitional settings, are 'a prime advocate of accountability for the past.' Christine Bell and Johanna Keenan (2004, p. 334) might agree with this perspective, arguing as they do that 'NGOs have a particular role to play in ensuring that [...] accountability happens.' At the moment of transition, therefore, key NGO practices are designed to push for transitional justice mechanisms insofar as they are a means of achieving some form of human rights accountability.

Reports released by Human Rights Watch (HRW) (1993; 1995) in the case of the former Yugoslavia are a good example of this approach. They were designed precisely in order to pressure the Yugoslavian government, and the UN into ensuring that transitional justice mechanisms were deployed. In 1993 the UN Security Council had called for the creation of an international criminal tribunal. But nearly eight months later no steps had been taken to create one. Impatient with the lack of movement and worried about the disappearing Human Rights Watch released a statement detailing eight cases, which they insisted were ready for prosecution immediately. This document, and documents of this nature, forcefully call for prosecution as an absolute imperative. It

is no surprise that this particular document ends with a polemical call to action: 'The U.N. should investigate and prosecute war crimes -- now!' (HRW, 1993)

Reports of this kind are often underpinned by meticulous research on rights abuses in specific contexts, which constitute an expertise that justifies their advocacy. Indeed, through a range of examples, David Backer (2003, p. 302) has noted that human rights NGOs are 'renowned for collecting data and compiling reports on various abuses.' HRW is no different in this respect, and their advocacy work is underpinned by rigorous, meticulous research. This begins with an initial investigation stage where incidents are thoroughly researched by interviewing victims, and witnesses as well as by examining local media reports. Importantly, researchers must frame each incident 'as it relates to international human rights and humanitarian law.' (HRW, 2014) In doing so incidents are turned into knowledge in regards to human rights. They are constituted as object of knowledges, that is, as cases of human rights abuse, in order to form the basis of HRW's advocacy.

Importantly, these case studies connect with other, more generalised knowledges through which the apparatus problematises and constitutes the objects that it understands to come under its purview. Indeed, press releases made by HRW (1993;1995) in regards to the former Yugoslavia advocate for transitional justice not simply in terms of the need for justice for victims, but also in terms of the need to re-establish the rule of law and to deter other would-be rights abusers from committing similar crimes in future. Alongside research, these arguments are the basis for practices of advocacy, which demand legal and quasi-legal forms of redress on behalf of the Victim.

More recently, the governmentalisation of transitional justice has enabled a more scholarly approach to transitional justice advocacy. At a time when transitional justice is no longer a question of 'whether something should be done after atrocity but how it should be done,' (Nagy, 2008, p. 276) the approach to advocacy has changed. Scholarly approaches consider the viability of different mechanisms in transitional contexts with particular reference to its ability to foster a stable liberal democracy. This approach is characteristic of the ICTJ (2014), who utilise their expertise in order to advise '[...] state institutions and policymakers at the local, national, and international level.' On this front, the work of the ICTJ often begins with research trips in transitional contexts in order to collect data which will allow them to advocate for certain transitional justice mechanisms. Following these trips reports with full recommendations are written so as to guide transitional governments and international institutions on the best possible course of action where transitional justice mechanisms are concerned.

The ICTJ's report on Kyrgyzstan by Maria Merky, Bogdan Ivanišević, and Eugene Huskey (2010), is a good example of this practice. The report follows the 2010 uprisings in Kyrgyzstan and the drastic democratic reforms which have taken place in its aftermath. It is the outcome of a weeklong research missions designed to 'assess whether a transitional justice approach might assist the country in its transition process.' (ibid., p. 4) In contrast to the account of the initial research conducted by NGOs, the purpose of this mission is not to locate Victims. Rather it is to conduct 'an assessment of how Kyrgyzstan might address them by providing effective mechanisms for acknowledging past human rights violations and other abuses of power, securing accountability for those abuses and reparations for victims.' (ibid.) In order to make these recommendations the researchers conducted interviews with activists, political

leaders, analysts, and government officials to understand how these actors ‘analyze the characteristics of past human rights violations and other major abuses of power.’ (ibid., p. 8) The report concludes with a set of recommendations which includes transitional justice package for tailored for Kyrgyzstan’s attempts to deal with the past.

Once a national or international commitment to transitional justice mechanisms has been given, NGOs are also involved in their design and implementation on a consultative basis. This has more often been the case where governments have opted for either a package of measures or a truth commissions, where the design of transitional justice is less restricted by the more formal legalism of criminal trials. Following the governmentalisation of transitional justice, there has been an increasing recognition that ‘civil society can play an important role in deliberating about, formulating, scheduling, and prioritizing goals and in forging measures to realize [transitional justice].’ (Crocker, 1999, p. 381 cited in Duthie, 2009, p. 12) Here the expertise of NGOs ensure that transitional justice mechanisms achieve their objectives.

Brahm (2007, p. 64), for example, points out that human rights groups bring legal expertise to the design or build-up phase of transitional justice. Through processes of lobbying, he argues, groups have an impact on what does and doesn’t qualify for prosecutions and amnesty, where judicial proceedings are put in place. For example, ‘in Guatemala, the Alliance Against Impunity also worked to ensure that the National Reconciliation Law crafted there would exclude amnesty for gross human rights violations such as genocide.’ (ibid.) Similarly, a report written by Hugo van der Merwe, Polly Dewhurst and Brandon Hamber (1999), shows that NGO organisations played a crucial role in the conceptualisation and design of the South African TRC. There, civil

society took a leading role in the drafting of the TRC, because the requisite legal expertise was drafted in from NGOs such as Justice in Transition.

NGO engagement with transitional justice is often justified with reference to their perceived expertise, even where their conclusions might be oppositional to the perspective of the state. For example, van der Merwe *et al* (ibid.) show that mental health NGOs argued that the psychological impact of the TRC on Victims was underappreciated and that the TRC focused more on national rather than individual healing. As a result, these organisations lobbied to ensure that the TRC provided ‘counselling services for victims; counselling services for TRC staff; training for TRC staff in trauma management,’ and more (ibid.). In this example, the involvement of NGOs in shaping the policy and practice of the TRC was as a result of their perceived expertise in regards to the Victim as the object of psychological knowledges concerning trauma and healing.

In recent years, the perceived expertise of NGOs has afforded them more involvement in the design stage. In a report commissioned the ICTJ, Kirsten McConnachie (2004) both aims to promote and standardise engagements between NGOs and truth commissions. The report recommends that ‘NGOs should identify their existing priorities and fit a truth commission into those agendas, rather than allow the commission to determine the terms and parameters.’ (ibid., p. 13) In other words, the ICTJ argues that NGOs should take the lead in shaping the interests and areas of investigation of a truth commission, rather than allowing the institution and its proponents to take a lead on this front. Because they know about – and act in – the interest of Victims, if NGOs ‘gain visibility for their cause within the commission, it will strengthen the process and final product.’ (ibid.)

The ways in which NGOs can get involved in mechanism design are numerous. For example, the ICTJ has suggested that NGOs should be involved in drafting or contributing to legislation that establishes the commission, designing, supporting and carrying out public consultations, and so on (ibid.). Similarly, the UN has taken steps to ensure that NGOs are heavily involved throughout the design and implementation of transitional justice mechanisms, making proposals in a truth commissions 'tool kit' published by the UN Office of the High Commissioner for Human Rights (UNCHR) (2008). The tool kit argues that NGOs can support the work of truth commission by holding national conferences to debate proposed terms, helping to draft legislation to establish the commission, and so on.

Producing the Victim

While these activities are all united by the agency of Saviours, it is important to point out that they are often underpinned by other, often interrelated practices, which produce and regulate the Victim. Before looking at these practices in detail, however, it is worth briefly sketching out the framework through which I understand the process of 'subjectivation',¹³ that is, the production of subjectivity that pertains to the Victim. Doing so, I suggest, is possible with reference to Foucault's *The History of Sexuality*, where one of Foucault's concerns is with how speech acts become constitutive of subjectivity. Indeed, through the example of confession, Foucault shows how speech is tied up with notions of both subjectivity and power. For Foucault (1998 [1979], pp. 58-59), 'the truthful confession was inscribed at the very heart of the procedures of individualization by power.'

¹³ Borrowed from Deleuze's book on Foucault (2006), the term subjectivation is chosen because it implies the productive impulse of power. With a reference to 'activation', the term is better suited than the more repressive connotations of subjectification.

In confession, Foucault argued, the relationship between power and the speech act was one in which the confessor underwent a process of subjectivation, that is of becoming a subject. Jeremy Tambling's expansion of Foucault's thought on the relationship between speech, subjectivity and power in the act of confession usefully clarifies this point. He explains:

Confession is constitutive of the subject [...] those addressed by a confessional discourse are [...] made to define themselves in a discourse given to them, and in which they must name and misname themselves; and secondly, made to think of themselves as autonomous subjects responsible for their acts. (Tambling, 1990, p. 2)

In other words, truth avowals 'subjectivate' individuals who are constrained to understand themselves and the world around them through a discursive practice which is always external. Subjectivation via confession should be understood as a process where speech acts enter an individual into a certain relation to themselves.

In the same way, I propose that, through various practices, individuals are encouraged to speak as the Victim, and to understand themselves as such. In other words, the subjective production of the Victim is articulated through speech acts that are themselves framed through the expertise of the Saviour and which encourage individuals to enter into a symbolic relation with themselves as victims. Nevertheless, it is important to remember that power is relational; subjectivity, as Agamben (2009) would argue, is the product of the relationship between apparatuses and beings. As a result, the subjectivation of individuals is far from universal or uniform, but precisely the individuated product of processes that rely on the consent or rejection by beings of the power relations of a given apparatus. My investigation of NGO practices is concerned with the 'ideal' subjectivity they engender, without making any claims about the uniformity of the end product.

To begin thinking about these practices I first want to return to HRW and their advocacy work, which often relies on interviews conducted with the alleged victims of human rights abuse. While my earlier investigation showed how these interviews were used to construct particular incidents as objects of knowledge that are useful for advocacy projects, it is also the case that, conversely, these practices are crucial to the production of Victim subjectivities. HRW (2014) claim that their interview methodology is conditioned by several imperatives, but the key objective is to extract information about the incident and corroborating its truth, which requires victims to provide an overview of the incident, and to do so in detail. In other words, they are incited to tell the truth regarding their victimisation; to share their experience in a particular way. Through the interview process individuals are asked to 'define themselves in a discourse given to them, in which they must name and misname themselves.' (Tambling, 1990, p. 2) Recognition, not to mention access to legal redress, is dependent on submitting to this form of subjectivation.

At other times, the ability of NGOs to *act-in-the-name-of* the Victim, is a direct result of the support services that they provide to them. Indeed, as Backer (2003, p. 304) notes, NGOs often provide 'critical services directly to affected individuals and communities.' Some of these speak to human rights in a direct and legal sense, as in the case of the many legal clinics in Latin America, KOR in Poland and organisations like Lawyers for Human Rights in South Africa, which provide individuals legal advice and representation (ibid). Such practices incite individuals to think of themselves as Victims in a very legal sense, that is to understand their own experience as meeting a set of legal criteria through which they are categorised as victims of human rights abuse and can seek some sort of legal redress.

Other practices are conceived around interrelated notions of victimhood, such as the psychologised concept of the victim, articulated around notions of trauma and therapeutic therapy. In South Africa, for example, organisations such as the Centre for the Study of Violence and Reconciliation, and the Trauma Centre for Survivors of Violence and Torture, offered professional counselling services to individuals effected by human rights issues (ibid.). It is important to understand that these, too, construct a Victim subjectivity.

Nikolas Rose (1988, p. 184) has shown how the historical emergence of disciplines such as psychology and psychiatry have provided discourses that constitute 'new sectors of reality and make new aspects of existence possible.' In other words, psychology and psychiatry have opened up a relatively new subjective reality according to the construction of the human as a psychological being, which is subject to a range of conditions such as neurosis, psychosis, and, so on. Such discourses not only provide the individual a new subjective relation to themselves, but, in doing so, they provide a correlative discipline through which such conditions can be managed or *governed*. Psychological conditions can be remedied through therapies, that is, 'through the systematic government of subjectivity.' (ibid.) Like confession, then, 'psy' discourses provide a means through which individuals can name themselves as well as articulate and understand their experiences.

In the case of counselling offered by NGOs, the use of psychological knowledges constructs individuals as Victims primarily by relating human rights abuse to the psychological condition of trauma. Through counselling services, one's experience of one's self as a Victim becomes articulable as the experience of suffering from trauma. One becomes a Victim, then, once one understands oneself as traumatised by human rights abuse. Indeed, a whole range of discursive practices such as, for example,

cognitive behavioural therapy, might be deployed in an attempt not only to provide a framework in which Victims can understand themselves as traumatised individuals, but also to ameliorate the trauma by treating its causes and its symptoms.

These various practices provide a sketch of some of the ways in which Individuals enter into networks of human rights NGOs, and through matrixes of power-knowledge are constructed as, incited to become, Victims. Importantly, the passivity of this subjectivity is not necessarily proffered simply through the relation to oneself as a Victim, but rather the agency it provides Saviours as those with the power and the expertise to attend to this condition. In the case of transitional justice, the Victim is constrained to act vicariously through experts who not only advocate for transitional justice mechanisms, but shape and condition them to the perceived benefit of Victims. Here, transitional justice mechanisms become a desirable governmental technology because of their perceived ability to manage the problem of Victims.

Tshepo Madlingoza (2010, p. 210) has subjected this position to a vigorous critique, arguing that 'transitional justice experts, both from the First World and Third World [...] appropriate the right to speak for victims by dint of our geopolitical and institutional privilege.' Although this analysis would recast the idea of institutional privilege as the privilege of expertise, Madlingoza is correct that this appropriated agency is rooted in the relationship between Victim and Saviour.¹⁴ The Saviour: 'gets to be the speaker or representative on behalf of victims,' not because the latter invited and gave her a mandate but because [they] sought the victim out, categorized her, defined her, theorized her, packaged her, and disseminated her.' (ibid., pp. 210-211)

¹⁴ Madlingoza calls the expert the transitional justice entrepreneur, an appropriate gesture when considering the relationship between neoliberalism and transitional justice I am trying to elaborate.

Saviours produce Victims, using their expertise to define them as 'hapless' and 'passive', and assume the role of 'the authoritative knower who is ordained to teach, civilize and rescue the benighted, hapless victim.' (ibid., p.211)

The passivity of the Victim, therefore, is not only assumed in the expertise of the Saviour, but produced through practices that ensure it becomes a subjective reality. In working in the name of the Victim, NGOs attempt – at least – to create passive subjects whose interests cannot be achieved by self-mobilisation, but only through the expertise of NGOs acting on their behalf. Through practices which act in their name, the Victim *qua* Victim is produced as a disempowered subject, unable to act on their own, only to be vicariously empowered through the work of NGOs.

Power, Discourse and the Accusatory Narrative

This sketch already points to the ways in which relations of power are involved in the production and deployment of transitional justice. But it is important to emphasise that this field of power relations is far from 'natural' or 'inevitable'. In a fairly recent article, McEvoy and McConnachie (2013, p. 496) reiterate the well-trodden argument that in the South African TRC 'the decisions as to which victims' voices were heard and the ways in which those voices were recorded, edited, performed or broadcast all reflected choices by those managing the process.' It is not difficult to see how this argument might be transposed to the relationship between NGOs and Victims in general. Human rights discourse provides a particular definition of victimhood, defines what is relevant in regards to it, and the way in which it should be acknowledged. These decisions are made manifest through practices of power, which not only shape the subjective reality of individuals, but guide, condition and shape the potential remedies.

As experts, Saviours practice their power, directing Victims towards transitional justice mechanisms that are designed to ameliorate their victimisation.

Crucially, this field of power relations is not simply a matter for Victims. Rather, it is extended across transitional societies as a whole. Miller (2008, pp. 267-268) shows that transitional justice 'is a definitional project,' which defines and narrates 'key issues related to the past which must be resolved.' By dint of their expertise, NGOs working in transitional justice take a leading role in this project, defining human rights victimhood as the primary issue relating to the transition. In doing so, the pastoral power of NGOs is extended to the population as a whole. Positioned as the primary concern for transitions, knowledge – and the ethical urgency – of the Victim is extended in order to guide whole transitional societies towards transitional justice mechanisms. But this is not achieved through the Victim in its own right. Rather, the perceived needs of Victims serve to underpin other knowledges that are designed to achieve broader societal goals which justify guiding the population towards transitional justice.

In the previous chapter I showed that the notion of 'dealing with the past' is a crucial discursive node for transitional justice, with supposed benefits for the entire social body. But it is only through human rights, and, as such, the Victim, that dealing with the past and these 'more abstract justifications for transitional justice [...] such as securing justice, deterring others from atrocity, upholding 'the rule of law' determining the 'truth' about the past.' (McEvoy & McConnachie, 2013, p. 490) cohere. As such, the governmentality of NGOs extends to the general population because their expertise regarding the Victim pertains more broadly to the good of the social body. The needs of Victims, therefore, are prioritised for the entire context and, on this basis,

NGOs are empowered to advocate, shape and condition transitional justice mechanisms not only on behalf of the Victim, but for the population as a whole.

This has implications for, and must be resituated within, the context of the Girardian theoretical framework the thesis has been working with thus far. Remembering the previous chapter, human rights discourse limits the articulable realm in which sacrificial violence takes place. As a disciplinary knowledge, it creates discursive boundaries regarding how the past may be understood, and, crucially, as to what can and can't constitute a scapegoat. It does so by conferring meaning on the crisis which has erupted in a given context: it operates on the history or narrative of the conflict concretely connecting the crisis to human rights abuse. Just as Girard demonstrated that the accusatory narrative forms a kind of truth in regards to a crisis, I argue that human rights dynamically shapes this moment because it functions as the site of truth regarding a conflict. Human rights articulate an authoritative version of the past which must be dislodged and othered from the social body.

What this chapter has shown is that these discursive constraints, this regime of truth, is brought to bear on material contexts through practices that engender the apparatus' specific relations of power. The accusatory narrative is facilitated by expertise manifested in the practices of advocacy, mechanism design and so on, which are imbued with, and operate through, the relational power of the Victim/Saviour dyad. NGOs use their expertise through a kind of pastoral power which turns a community towards a particular 'scapegoat'. That is to say, by utilising the Victim/Saviour structure through practices of advocacy and mechanism design, NGOs are able to carry a population towards an act of sacrificial violence.

As such, it is possible to begin conceptualising how Lazzarato's reworking of Girard's framework might function. Lazzarato (2015, pp. 80-82) argues that the use of sacrificial violence is not foundational insofar as a politics appears retrospectively, that is, in the pure becoming of a society in relation between it and its scapegoat. Rather, sacrificial violence is the 'the result of an appropriative political gesture carried out by the state, the priest and the bureaucrat.' (ibid., p. 82) Sacrificial violence is not the origin of a politics but its transcendence, such that sacrifice becomes the foundation of a *polis* born out of a political victory. In the case of transitional justice, I have shown that the figure of the bureaucrat or the priest, a figure which I have called the Saviour, governs through an expertise to give shape to particular kinds of sacrificial violence.

What I have shown so far, then, is that transitional justice provides a disciplinary sensibility, which shapes and constructs the past, and which is 'victorious' through the transcendent act of its own sacrificial violence – even if this violence is not acknowledged as such. Indeed, the dissimulation of violence might provide its greatest strength in this regard, hiding itself under notions of peace, reconciliation and the rationality of the law. What remains to be understood, however, is the relationship between this governmentality and the political project which it supports. What is the relationship between transitional justice and neoliberalism?

Neoliberal History, Neoliberal Subjectivity

As I have teased out both in this chapter and the one preceding it, human rights provides an analytical framework that is neither natural, nor is it neutral; rather, it has political effects. One of these effects is that rights abuse becomes the privileged locus through which a conflict is understood. As Miller (2008, p. 268) laments, this truth is partial. It is often constructed at the expense of questions of a socioeconomic nature,

which 'are consistently underplayed [...] for the sake of punishing clearly defined crimes under a standard of individual accountability. It is precisely this partial truth, which becomes politically useful for the neoliberal project.

Meister (2011, p. 25) has shown that the strategic value of human rights is that it enables societies to achieve 'a moral consensus that the past was evil' so that, it becomes possible 'to reach a political consensus that the evil is past.' This consensus can be achieved through human rights precisely because it narrows the definition of evil, by reducing 'the scope of social injustice to pain and the scope of political evil to cruelty.' (ibid., p. 69) As a result, a political consensus that the evil is past only becomes operational insofar as it no longer includes socio-economic exploitation and structural violence. Transitional justice practices thus unite societies across different socio-economic interests, because while they recognise, at least minimally, a certain kind of injustice, they make no future demands in terms of the socio-economic interests of elites, or the redistributive capacity of the state. The sacrificial foundation of the polis, therefore, makes no demands for societal transformation through the construction of any kind of egalitarian or redistributive state apparatuses.

But more than a simple continuity with the socio-economic injustice of the past, I want to emphasise that this amounts to a complicity in the particularly neoliberal character of the transition, rather than simply a kind of continuity with an iniquitous past. Neoliberal governmentality considers any attempt by the state to exert sovereignty over the economy or to intervene in the economic interests of elites (or anyone for that matter) as anathema. Any attempts in this regard, transgress the fundamental neoliberal rule of the competitive state, and risks the accusation of totalitarianism already implied by the decision to articulate the past through the framework of human rights.

The violent expulsion of evil conceived through the lens of human rights provides a kind of utopian imperative that obeys the contours of a neoliberal transition. If evil is the production of physical pain through cruelty, then the 'good' society at its opposite need only provide the minimal good of protecting individuals from physical cruelty. As such, it provides no impediment to the business of reengineering the state to facilitate competitive markets and to adapt individuals to market logics. Indeed, the wisdom of doing so is never brought into question. One might suggest, then, that transitional justice first operates upon the histories of transitional societies, constructing a narrative of the past that serves a neoliberal transformation of the future.

While this is one aspect of transitional justice's service to neoliberalism, it is also important to point out that this project is significantly bolstered by the reach of the apparatus into the order of subjectivity. More than simply delimiting a narrative of the past through the framework of human rights, the power of transitional justice is that this narrative is connected to an ecology of practices that, in fact, produce and condition individuals as subjects. For if individuals are to engage with transitional justice they must do so by conforming to the way in which transitional justice addresses not only the past, but them as those who lived through it. Indeed, I have already shown that transitional justice aspires to rearticulate certain individuals to themselves as Victims of cruelty, as a body in pain who can only be relieved through the agency of another.

Louiza Odysseos (2010, p. 764) has argued that the practices of human rights produce subjective transformations that 'displace prior lexicons and frameworks, such as revolution, wealth redistribution and structural change for the expression of claims for social transformation, discontent and political and social fervour more generally.' This productive displacement of subjectivity is focused along two interrelated subjective

shifts. Firstly, human rights practices are individualising. They are designed 'to decollectivize both injury and responsibility and to redescribe systemic violence as series of individual crimes.' (Meister, 2011, p. 28) Secondly, human rights practices are depoliticising. Importantly, the depoliticising quality of human rights is not only a shifting of perspective from the political struggle 'inside' the conflict to a transcendent ethics that can be observed from the 'outside.' Rather, one should remember that its depoliticising character is subjectively inscribed in the passivity of the hapless Victim, which displaces other forms of political agency – either latent or realised.

More than merely transforming *some individuals* into Victims, however, the scope of transitional justice is to generalise a subjective transformation across the social body. For those who are not Victims, but who have a presence in – and are witnesses to – the past, the practices of transitional justice also enact subjective transformations. For these 'others', transitional justice might be best understood as the first step in a process of what Odysseos (2010, p. 750) has called 'ontogenesis,' taken, here, 'from its origins in developmental biology where it usually denotes the development of organisms from embryonic origin to maturation.' As such, ontogenesis describes a process in which beings are transformed into subjects through practices of ontological development. Importantly, ontogenesis is 'concerned with the development of conscience of ourselves about the kinds of subjects that we are and, additionally, inappropriate actions or 'wrongs' which human rights are meant to eliminate or prevent.' (ibid., p. 759) One of the ways in which ontogenesis functions is when a 'passionate denunciation of the wounds of the present,' (ibid., p. 758) pushes individuals to think of themselves and others in the framework of human rights.

It is precisely this ontogenetic function that transitional justice is designed to carry out. Through sacrificial violence, transitional justice not only provides a definition of evil,

but denounces it through an act of expulsion that dislocates it 'spatially' from the polis, and 'temporally' into the past. For non-Victims, this sacrificial act demands, above all, that they 'bear witness' to the past, which is both valorised through and itself valorises the Victim as the individual body in pain. Through the act of bearing witness' non-Victims are thus called to suspend other forms of subjectivity, other kinds of political activity and agency, and 'to identify *with* individual victims (or at least their pain) and also *to see themselves as victims,*' of the past now they know the truth about evil (Meister, 2011, p. 28, my emphasis). The act of bearing witness thus puts to work the abstracted ethical principle of human rights of which Badiou (2001, p. 10) is so scathing ('man is the being who is capable of recognising himself as a victim'), in the realised, material relation of oneself to a regime or a conflict.¹⁵

In the transcendent ethical moment of overcoming evil by expelling it, the individualism of human rights is elevated through its victimary inversion and becomes the privileged locus of understanding *vis-à-vis* the subject. As a result, it is not only concrete Victims of human rights abuse but society as a whole, which becomes implicated in practices that are designed to dislocate the past not only in terms of an externalised and reified evil, but *ontogenetically* in the order of subjectivity. For this wider public, transitional justice enacts a process of dissembling. It acts as an ideological clearing house, which displaces collective and communitarian subjectivities, some overtly political and others not, with the individualism of human rights.

This process is integral to the implementation of a neoliberal project. Dardot and Laval (2013, pp. 96-97) have emphasised that the original neoliberal thinkers emerged not

¹⁵ Or, as is often the case, both at the same time.

only as a reaction to the failure of liberalism, but also to the rise of communitarian politics with designs on more collectivised economic relations (through trade unions, for example). Against the rise of social reformism and radicalism, neoliberals wished to reassert the principle of individualism, even if in a radically new form. As such, an imperative of neoliberal political projects has been to formulate tactics of decollectivisation as a prerequisite for the implementation of a 'market society'.

Historically, various different neoliberal projects have taken aim at 'collectivism' through a range of tactics. In Chile, for example, Pinochet's regime destroyed not only the collectivised political relations of left wing activists, but also the economic relations of trade unions through a sustained campaign of terror (See: Klein, 2007, pp. 75-87). Similarly, Thatcher's neoliberal revolution in Britain was predicated on a confrontational transformation of the relations between workers and businesses that greatly eroded the collectivised economic relations of workers (Dardot & Laval, 2013, pp. 147-160). Through these kinds of practices human beings come to be reduced to individualised subjects that can be inserted into various economic apparatuses in order to exert their individual freedom as a competitor in the market. In altogether different terms, transitional justice provides a productive form of individualisation that prefigures and accompanies the implementation of the neoliberal project. Through the seemingly more benign language of rights, transitional justice performs an ideological stripping back of the subject to the Victim who stands as inverse of freedom and agency.

But more than simply stripping back, this process prefigures and conditions the process of maturation to a neoliberal subject. Here, the split temporality of the dislocated past and the new horizon of the present opened up by the sacrificial act is crucial. Through the sacrificial act, transitional justice asks the social body to understand themselves as

individuals who, situated in the evil past, have not been free, but who, situated in an emerging present, are or may soon be free. The promise of transitional justice, is that the present, that temporality which has overcome evil, will provide a society in which individuals become the subjects of rights and, as such, can exercise their freedom. The reality of the neoliberal constraints on most, if not all, transitions is that freedom becomes a purely economic exercise. Rights become the limited freedom to choose, not only as consumers of products and services, but also as investors who make choices with regard to their own human capital.

In this sense, there is no real contradiction between the passive subjectivity of the Victim and neoliberal subject as an 'entrepreneurial self,' who 'cannot be passive but must move strategically in a world rife with risk.' (Mirowski, 2013, p. 96) In fact, the former serves as a precondition for the latter. For the Victim is eminently governable, insofar as the pastoral power of another, the Saviour, 'shapes [these] subjects in order to integrate them into new structures,' of government (Odysseos, 2010, p. 763). As such, transitional justice provides a kind of individualisation that serves a blank slate, a kind of primordial subjectivity that can then be moulded, incited to express its freedom, to use its agency as an economic subject of competition. In this way, overcoming evil becomes the adaptation and insertion of subjects into the economic apparatuses of competition, and the valorisation of the self as an entrepreneur.

Brown (2015, pp. 129-130) has noted that neoliberalism can only function by taking up the almost paradoxical position of unifying whilst individualising. Radically obfuscating questions of socio-economic stratification (into classes, for example), neoliberalism emphasises collaborative effort through 'stakeholder consultation' and 'multiparty cooperation,' in order to 'produce practical solutions for technically defined problems.' One should not mistake collaboration for collectivised responsibility, however. As

Brown notes, 'neoliberal governance operates through isolating and entrepreneurializing units and individuals, through devolving authority, decision making and the implementation of policies and norms of conduct.' Neoliberalism, she concludes, is at one a process of 'integration and individuation, cooperation without collectivization – neoliberal governance is a supreme instance of *omnis et singulatum*, the gathering and separating, amassing and isolating.' My argument, then, is that transitional justice takes the primordial step in the production of *omnis et singulatum*. For transitional justice is both unifying and individualising; it unifies and amasses the social body in the project of violently expelling evil whilst simultaneously projecting and producing individualised subjects as the substance of the new society, ready to be shaped into enterprises.

Having made this point, this analysis has arrived at a theoretical sketch of the processes at work in the ongoing mobilisation of the apparatus in transitional contexts. What is now necessary is to test this framework in concrete case studies. These cases are required, firstly, to demonstrate how transitional subjectivities are produced in particular, material contexts. Secondly, they are required to demonstrate how each mechanism performs a certain kind of symbolic expulsion, where a narrative of the past is constructed, reified and expelled. Only in doing so can the thesis which has been forwarded be properly attentive to the history with which the previous chapter was concerned. More, only by doing so can it fully comprehend the tension between the apparatuses functional overdetermination – what it strives to achieve – and its strategic elaboration – its plasticity, its ability to subtly adapt to the problems it encounters in its interactions with concrete contexts.

04

| RWANDA, THE ICTR AND RETRIBUTIVE EXPULSION |

Individual Responsibility, Human Rights and Neoliberalism

The Rwandan Genocide of 1994 remains one of the most unfathomably brutal events of the twentieth century. The slaughter of the Tutsi minority, as well as so called 'Tutsi collaborators' and moderate Hutus at the behest of the ruling Hutu government began in April, following the assassination of Rwandan president Juvénal Habyarimana which acted as a catalyst to the events. By July, with the use of guns and machetes, the army, the *Interhamwe* – an armed and organised militia group – and ordinary Hutu citizens had killed over 800,000 people. This accounted for between one tenth and one eighth of Rwanda's total population. The end of the killings coincided with the successful overthrow of the Hutu government by Paul Kagame's Tutsi led Rwandan Patriotic Front (RPF), who had been in conflict with the 'Hutu' government since 1990. By the end of the violence, the country was decimated, with large casualties and wide-scale external and internal displacement.

Following the demands of the new RPF government, and based on the evidence provided by several international NGOs, the UN Security Council announced an International Criminal Tribunal for Rwanda (ICTR) on November 8, 1994. By February

1995 it was decided the tribunal would be based at Arusha, in nearby Tanzania. Its aim and scope was to prosecute those responsible for the genocide and provide a historical record of the events of 1994 (Kamatali, 2003, pp. 116-117). By the end of 1995 the ICTR announced its first indictment, but it would only be in 1998 that the ICTR would convict its first indictee, Jean-Paul Akayesu for genocide. While the ICTR continued its work president Kagame's regime began processes of post-conflict reconstruction and transition.

By the Noughties, the post-genocide transition has, it seems, transformed Rwanda along neoliberal lines. Indeed, to the 'international' and 'business' communities, the transition has dramatically changed Rwanda's fortunes. In 2012 the *Economist* called Rwanda 'Africa's Singapore,' (Business in Rwanda: Africa's Singapore?, 2012) evoking a comparison the so-called 'Asian Tiger' of the global economy because of its attempts to emulate its success by becoming business friendly. Neoliberal Rwanda has been greeted with great optimism by global business leaders like financial services mogul, Christian Angermeyer (quoted in Chu, 2009, p. 1), who happily declares 'Rwanda is a place [where] we can make money and also make a huge difference [...] The best thing we can do is not to give charity, but to treat it as a normal economy.' Shrugging off outstanding questions about President Kagame's role in continuing political oppression, the *Economist* saw fit to celebrate that 'The country is blessedly free of red tape, too. It ranks 45th in the World Bank's index of the ease of doing business, above any African nation bar South Africa and Mauritius.' (Business in Rwanda: Africa's Singapore?, 2012)

Business optimism has been propelled by strong progress in Rwanda's processes of economic neoliberalisation, including the privatisation of most industries (70 out of 104) such as the country's lucrative coffee sector (Boudreaux & Ahluwalia, 2008, p.

175). This, among other measures, has been part of Rwanda's *Vision 2020* strategy, which is designed to transform the country by generating a larger private sector and increasing investment in human capital. The scale of this project is nothing short of a complete reconstruction of the state along neoliberal lines, with 'a small but effective, flexible public sector that can lay the foundations for Rwanda to be competitive in the modern international economy.' (Ministry of Finance and Economic Planning, Republic of Rwanda [MoFEP], 2000, p. 15) Not only, then, does *Vision 2020* lay the groundwork for a future with a small state, but a particular kind of government. Indeed, it expresses the twin imperatives of neoliberal government, where the role of a *limited government* is oriented around *constructing competitive markets*.

What is particularly interesting is that the neoliberal project in Rwanda, has been framed in terms of 'good governance.' Indeed, the *Vision 2020* document has emphasised technocratic governance, 'focusing on the importance of a capable state that stimulates economic development,' (Ansoms & Rostagno, 2012, p. 431). The use of the term governance, rather than simply government, is significant. Brown (2015, p. 123) has noted, the term signifies more than simply the running of the state but is borrowed from the language of business to signal the processes through which firms should be run. The term governance, therefore, signals the collapsing of a distinction between the public and private sectors, and the presence of New Public Management (NPM) practices, which are designed to 'transfer private-sector management methods to public services,' (ibid., p. 124) such that the functioning of the state is replete with economic techniques.

Perhaps unsurprisingly, these developments have been supported by the international community. For example, the World Bank's 2001 'Competitiveness and Enterprise Development' project, which has supported the government in its neoliberal

restructure. Amongst other things, the project has taken on the following tasks: 'updating the commercial law and supporting the government's privatization program through technical assistance, capacity building [...] an overhaul of the country's financial sector that led to the recapitalization of banks, the establishment of an insurance market.' (Traore *et al.*, 2013, p. 37) Other international initiatives have targeted the development of the Rwandan population. Maria Ron-Balsera (2011, p. 281) has recently shown that 'involvement of the international community has brought a major emphasis on human capital development in the education sector.' Through the increasing presence of donors and international NGOs, the education sector has been transformed according to economic logics, which define education 'as an investment, based on economic rates of return and efficiency.' (ibid.)

Haunted by the recent past, Rwanda's neoliberal project is deeply connected to the imperative of human rights, 'never again'. As President Kagame (quoted in Chu, 2009, p. 1) argued, 'we know that if that past is never going to happen again [...] we must grow our economy, create opportunities for higher wages, so that we create the conditions for tolerance, trust, and optimism.' Moreover, some academics, such as Karol Boudreaux (2007), see economic liberalisation as a necessary part of Rwanda's reconciliation. In other words, the connection between neoliberalism, human rights and reconciliation in Rwanda has been positively affirmed in what can be considered the mainstream of public discourse. What supports and legitimates the belief that Rwanda's reconciliation should be managed through the reconfiguration of state and society along neoliberal lines?

Following the central claim of this thesis that transitional justice can lay the groundwork for processes of neoliberalisation, this chapter aims to explore the ICTR's role in the support and justification of this rationale. As such, the emphasis of this

analysis will be on outlining how the tribunal constitutes what Girard would understand as a mechanism of expulsion, which strategically responds to a social crisis by expelling a scapegoat who bears responsibility for the crisis. Furthermore, I argue this process of expulsion is mediated by the legal discourses and procedures of the ICTR, particularly its reliance on criminal notions of individual responsibility in conjunction with its human rights underpinning. It is under the mediation of these discourses that Rwanda's 'scapegoat' is selected and this in turn provides a very particular historical narratives of the genocide. Finally, then, the contention of this chapter is that this expulsion – and its narrative – provides a foundational legitimacy for the processes of neoliberalisation which defines Rwanda's post-genocide society

The Criminal Trial, Human Rights and Transitional Justice

Before coming to the central arguments of the thesis, I want to begin by contextualising the ICTR in the history of the apparatus. As such, my first question is about the relationship between transitional justice and the criminal trial in general. Quite simply, in what terms and under what conditions did it make sense for the criminal trial to become a technology of the transitional justice apparatus? But there is also another question that leads more directly to the case study at hand: under what conditions and according to which justifications did the ICTR come to be delivered as a suitable transitional justice response for Rwanda?

The criminal trial has always been a significant technology of transitional justice, perhaps because the International Military Tribunal (IMT) at Nuremberg has often been valorised as the progenitor of transitional justice. At the 1988 Aspen conference, for example, the conference attendees agreed that the tribunals at Nuremberg and Tokyo 'were of seminal importance in establishing the principles that gross violations

of human rights must be punished and that the society must be cleansed and restored to decency.’ (Henkin, 1989, p. 2) In this sense, the IMT gave transitional justice a set of ethical and disciplinary co-ordinates, providing a juridical framework for ‘dealing with the past’ which was intertwined with an ethics of human rights interventionism. It is also worth noting here that the Girardian quality of the trial mechanism was clearly not lost on the delegates; its efficacy being described in terms of its ability to ‘cleanse’ society through processes of expulsion.

That being said, having taken their cue from the IMT, precisely how the criminal trial would fit the wider goals of transitional justice was not immediately obvious. Indeed, the task of the Aspen Institute was also to work through how the trial mechanism would contribute to goals like reconciliation, liberalisation, and so on. During the conference, the need for a historical record of the past had been conceived as a primary objective of transitional justice: ‘there was common agreement that the successor government had an obligation to investigate and establish the facts so that the truth be known and be made part of a nation’s history.’ (ibid., p. 4) From this perspective, truth was said to ‘foster national reconciliation’, ensuring that there could be no exculpatory re-imaginings of the past (ibid., p. 5). For many conference attendees it was clear that criminal trials had a role in fulfilling this objective. Indeed, his contribution to the conference Jaim Malamud-Goti (1989, p. 81) argued that through court evidence criminal trials produced truth by establishing precise facts.

While this is now a common place justification of criminal justice within the academic elaboration of the field (See: Roht-Arriaza & Mariezcurrena, 2006; Robertson, 2007; Teitel 2014, p. 105), widespread acceptance of this argument has not always been a given. For example, some gathered at the Aspen conference argued that the punitive nature of trials might outweigh the reconciliatory potential of the truth, particularly in

politically unstable transitions like Chile. It was argued by some that criminal trials would mete out punishments which would make it 'more difficult to build a fair and durable political system.' (Henkin, 1989, p. 3) In short, tensions appeared as a result of the perceived gap between the moral value of punishing human rights abusers, as per the IMT, and the need to foster reconciliation.

Despite these misgivings, the moral weight of the IMT seems to have combined with the perceived ability of trials to contribute to the (neo)liberal futures imagined by transitional justice in order to justify the continued use criminal justice as an appropriate tool for transitional justice. Along with the IMT inspired 'duty to prosecute', the arguments forwarded regarding liberalisation would become typical of transitional justice discourses as a whole. For transitional societies, it was argued that trials might 'proclaim and enforce its moral condemnation of past abuses and [...] affirm the norms of civilisation.' (ibid.) These norms are thus defined by the classically liberal aims of 'establishing the rule-of-law' and of foregrounding the rights of individuals (ibid.).

While the Aspen conference had valorised the IMT as the conceptual progenitor of what would become transitional justice, it would not be long before the IMTs legal novelties would be put to work in a practical sense following events in the former Yugoslavia and Rwanda. Not only did the ad-hoc tribunals for Yugoslavia and Rwanda share a similar framework to the IMT at Nuremburg, but would also feature one the main charges brought against Nazi officers, 'crimes against humanity'.¹⁶ Above all, the establishment of international tribunals for Yugoslavia and Rwanda reflected the new

¹⁶ The other major charge, 'Genocide', was criminalised in the post-war period following the 1948 UN Convention on Genocide. In fact, the ICTR boasts the first successful prosecution of the crime of genocide.

realities of global politics, where a victorious (neo)liberalism was no longer hamstrung by the bipolarity of the Cold War. As Teitel (2014, p. 18) argues, the emergence of the ICTR marked the advent of the 'rights globalisation'. In short, it reflected the fact that human rights had become the ethical face of the new liberal governmental rationale.

Significantly, by the time the UN Security Council had called for the creation of the ICTR in 1994, it had been with transitional justice aims in mind. But while aims such as 'deterrence' and 'promoting the rule of law' were apparent (UN Security Council, 1994, p. 1), one of its wholehearted assertions seemed to have unilaterally ended one the debates that had taken place over the course of the Aspen conference. The UN Security Council was:

Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would [...] contribute to the process of national reconciliation and to the restoration and maintenance of peace. (ibid.)

The UN's certainty in regards to reconciliation seems odd given the relative ambivalence of the Aspen conference. Odder still, The UN's assertion was not explicated in more detail over the course of document. Indeed, it is difficult to find the rationale which underpins the assertion that the ICTR somehow contributes to national reconciliation, even in the reports conducted in the run-up to the UN resolution (see: UN Secretary General, 1994).

Nevertheless, the words of Tim Gallimore (2007, p. 116), spokesperson for the Office of the Prosecutor for the ICTR, are insightful in this regard. He argues, that 'the ICTR has placed on the public record the undisputed legal and historical fact that genocide was committed against the Tutsi in Rwanda in 1994. This recognition should also

promote national reconciliation.’ But exactly how legal ‘facts’ or ‘truths’ contributes to reconciliation can only be properly understood when the concept of ‘historical truth’ is considered in the light of the individualised responsibility offered by criminal proceedings. For Gallimore (ibid.), ‘the concept of individual criminal responsibility, an important element in ICTR jurisprudence, avoids criminalizing and stigmatizing an entire group for the crimes committed by its members.’ That is, theoretically at least, reconciliation can be attained by criminalising the few, leaving the vast majority with an historical truth that does not burden them with ultimate individual responsibility.

Many at the time, including Judge and President of the ICTR Laity Kama (quoted in Kamatali, 2003, p. 118), agreed that the ICTR’s fundamental offering was a kind of justice that ‘allows the replacing of the idea of collective political responsibility with that of individual criminal responsibility.’ Kamatali (2003, p. 118) shows that the rationale for choosing this strategy was the possibility of reconciliation, which came precisely from ascribing guilt to individuals: ‘avoiding holding a specific group [...] on ethnic, regional, political, or other grounds responsible [...] was the most crucial step in bringing about reconciliation.’ In this respect, the strategy of using trials to foster ‘reconciliation-based-in-truth,’ (Teitel, 2014, p. 85) should be considered as an exuberant embrace of the emerging field of transitional justice. More, the pairing of individual responsibility and historical facticity should be regarded as an advancement not only of transitional justice debates into practice, but also in the positioning of the criminal trial as a mechanism capable of fostering reconciliation.

The Accusatory Narrative: The Legacy of Individual Responsibility in the ICTR

One of my primary interests is in how the ICTR’s criminal proceedings served to construct the accusatory narrative of responsibility. There are two aspects to highlight

at this juncture. Firstly, the criterion of *plausibility* is supported through the procedural framework of the law, which rationalises and procures the ‘truth’ regarding the matter at hand; ‘specific charges [...] must be proven on the basis of credible evidence.’ (ibid., p. 33) Secondly, the individual is concretely connected to the societal crisis because this procedural framework is mobilised in order to prosecute *individuals*. In words that echo Girard, proving the criminal charges can ‘link the individual and the collective.’ (ibid., p. 20) Through the judicial production of truth, a differentiation is thus made between individuals who are *criminally responsible* and the population at large. This procedural framework forms the basis of sacrificial violence. Society becomes present to itself in the denunciation – the othering – of those criminally responsible. Here, expulsion finds its spatial and temporal consistency in the judgement of guilt and criminal sanctions, which both verifies the facticity of the narrative and confirms the ‘otherness’ of those responsible.

The task now is to see in detail how these processes are brought to bear on the situation in Rwanda. It is a case of seeing, first, how the framework of the criminal proceedings, with their emphasis on ascertaining individual responsibility for human rights abuse, construct a particular narrative about the genocide. Importantly, in doing so, it will be possible to discuss how this particular narrative is beneficial for the expansion of a neoliberal future in Rwanda.

Echoing the IMT at Nuremberg, the ICTR embodied ‘a liberal focus on individual judgement and responsibility.’ (Teitel, 2003, p. 73) But this is slightly more complicated than it first appears. The question is how to ascribe guilt; how is individual responsibility conceived? The problem of this question, the severe difficulty in answering it, was perhaps first posed in post-war Germany by thinkers like Karl Jaspers (1947) who were haunted by the complicity of German society in the Nazi Genocide.

Rethinking this question after Rwanda, Mahmood Mamdani (2001, p. 5) argues that post-war Germany is both a useful and a limited comparison. For Mamdani, the Nazi Genocide was characterised by the bureaucratic administration of Zyklone B, a technology which 'allowed a few to kill many.' In other words, the expression which characterises the question of German guilt might be located in the famous epithet often attributed to Edmund Burke, 'all it takes for evil to triumph is for good men to do nothing.' This sentiment of 'passive' responsibility is foregrounded over an active agency.¹⁷

Conversely, the Rwandan Genocide was premised on mass violence, differentiated from the Nazi Genocide by the instrumentalisation of the machete as the technology of killing. As Mamdani (ibid., p. 6) argues, 'the machete had to be wielded by a single pair of hands. It required not one but many hacks of a machete to kill even one person [...] it was carried out by hundreds of thousands, perhaps even more.' In other words, the Rwandan Genocide was the mobilisation of many in the killing of many. The reality of this difference articulates very different terms in which the question of guilt is understood. In a situation where responsibility seems so widespread, culpability so diffuse, the problem is not only one of erecting individual responsibility over collective responsibility, for this does not solve the problem of mass guilt. It threatens to overspill into the highly impractical and problematic (given the wider goal of reconciliation) criminalisation of all. As such, a very particular conception of individual responsibility would be needed.

The connection between the IMT and the ICTR here needs to be foregrounded. Just as the IMT had chosen a focus on prosecuting the leaders and architects of German

¹⁷ Although I would point out that this framework for understanding National Socialism ignores the mobilisation of large swathes of the population in the 1930s.

National-Socialism, the ad-hoc tribunal for Rwanda would attempt to resolve this question by prosecuting with a special emphasis on the leadership as primarily responsible for the genocide. In the now famous words of chief prosecutor, Robert Jackson (quoted in Owen, 2006, p. 25), the mandate of the IMT at Nuremberg was, 'to reach the planners and designers [...] the inciters and leaders.' Similarly, the main task before the ICTR was to '[hold] accountable the architects of the genocide.' (Gallimore, 2007, p. 239) In making this move, individual responsibility, was recast as command responsibility and framed not as the act of wielding a machete, but responsibility for mobilising the masses with machetes. Only this version of individual responsibility could possibly propagate a narrative in which 'truth-as-reconciliation' could take place.

The way that the ICTR constructed this version of responsibility during its proceedings can be better understood with reference to a couple of examples. For expediency's sake I will take two of the earliest cases brought before tribunal, that of Clément Kayishema and Jean-Paul Akeyesu. The particularities of each case brings forth points about the way in which the conception individual responsibility constitutes an important narrative operation. In the case of the Kayishema, a prefect, with governmental authority over the prefecture of Kibuye, criminal proceedings were brought before him in order to determine his responsibility for events which happened in this particular locale. This included attacks on a stadium and a church complex where Tutsi refugees had gathered carried out by members of the army, unofficial militias and armed civilian, which resulted in the death of thousands of Tutsis (*Judgement in the case of the Prosecutor vs. Clément Kayishema and Obed Ruzindana*, 1999, pp. 3-13). Each of these events was converted by the ICTR into criminal charges, such as a 'crimes against humanity' for which Kayishema's individual responsibility could be measured.

Importantly, the course of his sentencing makes it clear that his guilt – his responsibility – was measured with a particular emphasis on the aggravating circumstances, which denote individual culpability. Largest of all was the relationship between the genocide and his position as a government official. Of relevance here is the positioning of Kayishema's responsibility in terms of 'the disregard for his obligation, *as a prefect*, to protect the Rwandan people,' as well as the use of his position to 'effectuate the crimes in Kibuye.' (ibid., p. 4) Indeed, as the judge's sentence makes clear it is this authority which makes Kayishema criminally responsible: 'this chamber finds that Kayishema was a leader in the genocide in Kibuye prefecture, and this abuse of power and betrayal of his high office constitutes the most significant aggravating circumstance.' (ibid.) Indeed, Kayishema even received a higher sentence than his co-defendant Obed Ruzindana, in part because Kayishema's government position was higher (ibid., p. 6).

Similarly, Jean-Paul Akeyesu, was tried for his responsibility in the murder and rape of Tutsis in the commune of Taba, a sub-district in the prefecture of Gitarama (*Judgement in the case of the Prosecutor vs. Jean Paul Akayesu*, 1998). Like Kayishema, the events in Taba were understood to be, that is, produced as 'crimes against humanity' for which his individual responsibility could be judged. At the time of the genocide Akeyesu held the position of bourgmestre of the commune, a government position, answerable to the prefect. Like Kayishema, the measure of his responsibility was his authority and the degree to which this enabled him to plan and execute the genocide. Indeed, the case of the prosecution appears at pains to demonstrate the relationship between his governmental authority and the crimes for which he is tried.

What it is particularly important to acknowledge about the Akeyesu case is that it rested on connecting not only Akeyesu's *de jure* powers, such as control over the

communal police, to the execution of the crimes, but also his *de facto* powers, which were considered to be 'significantly greater than that which is conferred upon him *de jure*.' (ibid., p. 23) While the former deals with the formalised aspects of Akeyesu's bourgmestre role which burden him with individual responsibility, what is particularly powerful is the witness testimony which positions his responsibility through *de facto* powers:

[...] Witness S went further and stated that the people would normally follow the orders of the administrative authority, i.e. the bourgmestre, even if those orders were illegal or wrongful. Witness V said that the people could not disobey the orders of the bourgmestre. (ibid., p.26)

As such, it is not just the use of his authority which lands Akeyesu with individual responsibility, but also the potential overreach of his power, which added to his ability to plan and to carry out acts which contributed to the Rwandan Genocide.

In order to solve the problem of responsibility, criminal liability is mobilised in the form of governmental authority. In doing so, not only are some individuals concretely connected to the crisis as its architects, but, a differentiation is constructed between *génocidaires* who wielded machetes and those who are *truly responsible* because they had effectuated the genocide. In a situation often dichotomised between killers (savages) and Victims, this version of individual responsibility creates a third term – the other – those in government, against which Rwandan society can redraw its own boundaries. The criminal proceedings' construction of the 'truth', as per Girard's accusatory narrative, is thus an operation which does not produce absolute truth, but rather exists as a particular interpretation of the facts according to legal rationalities. It is a construction of history, a foundational act that deals with the past only in so far as the past is malleable, and can be moulded to serve particular notions of the future.

Individual Responsibility and the Neoliberal Future

I believe the positioning of individual responsibility as outlined in the particulars of these two cases is significant not only as an operation upon the history of the past, but one which is beneficial for Rwanda's neoliberal transition. Certainly, the individualisation of responsibility is as Teitel (2014, p. 20) points out, is a classically liberal tendency. It foregrounds 'the significance of individual action [...] of agency and responsibility.' But more than simply a tendency of classical liberalism, the individualisation of responsibility remains central to neoliberalism itself, even if it is cast in purely economic terms.

The role of the ICTR, then, is one of taking what is by nature a monstrous, collective activity and rendering it into highly individualised terms, where responsibility is reduced to relative degrees of authorship and authority. By nature, this operation obfuscates the collective nature of the genocide. Indeed, it is possible to think of this legal framework as subtly active in a process of individualisation, which has a function in the formation of a neoliberal future. It works as a form 'ontogenesis;' strategies that are 'concerned with the development of conscience of ourselves about the kinds of subjects that we are and, additionally, inappropriate actions or "wrongs".' (Odysseos, 2010, p. 758) In foregrounding individual responsibility, the ICTR functions as a moral tale that at once posits a version of humanity in which individuals are *agents* which bear the ultimate responsibility for their actions, whilst also extolling the expectations –and warning of the dangers – that come with the freedoms of that agency.

On the other hand, the particularities of the third term created by the accusatory narrative, that is, those *truly responsible*, dynamically shapes the genocide narrative for political ends. For positioning the state's authority – as invested in responsible

individuals – as the evil, which must be expelled begins the production of a narrative in which Rwandan society has simply been coerced by the governmental authority of particular individuals. At its worst this could leave the impression that they were simply vessels for the actualisation of a genocidal ideology. Indeed, where the ICTR is concerned this kind of deferral is emphasised by some of the witness testimonies. In the Akayesu case, for example, responsibility is established, not only by demonstrating the legal powers of the accused, but the relationship between the state and the civilians. Witness 'S', for example, argues that 'the people would normally follow the orders of the administrative authority, i.e. the bourgmestre, even if those orders were illegal or wrongful.' Similarly, Witness V testified that the people 'could not disobey the orders of the bourgmestre.' (*Judgement in the case of the Prosecutor versus Jean Paul Akayesu*, 1998, pp. 27-30)

The opposition between the State and the population is central to a popular analysis written by Filip Reyntjens (1996, pp. 244-245), which offers something of a caricature of the Rwandan state: 'the state is present everywhere and every Rwandan is 'administered'. The structure is pyramid-like and orders travel fast and well from top to bottom [a] combination of strong centralism and some devolution of tasks of implementation.' This is juxtaposed with an account of the population which seems more at home in a Victorian anthropologist's diary than a contemporary analysis of genocide:

Rwandans do not dislike being taken care of by public authorities. A long history of oppressive rule and distrust of everyone and everything has made them reluctant to attract attention [...] This contributes to socially conformist behaviour: many Rwandans tend to do what their neighbours do or what a person in authority tells them to do. (*Ibid.*, p.245)

The result is that the problem of genocide becomes a problem of the state, and, more precisely of the state *intervening too much*. The problem is of 'intrusive state regulations into every sphere of daily life,' which contribute to the conditioning of banal conformist behaviours that enabled the genocide (Hintjens, 1999, p. 248).

This framework reflects a problematic discourse that has gained currency in some circles. For its proponents, mass participation in the genocide can be explained by 'psychosocial account based on the presumed social conformism and obedience of Rwandans.' (ibid., p. 243) This in spite of the fact that as Andy Storey (2001, p. 369) points out, Rwanda has a history of civil disobedience, even under the oppression of the Habyarimana regime. For example, one could highlight the case of 'southern farmers [...] tearing up anti-erosion devices which they had been forced to dig under the government's compulsory communal labour programme.' (ibid.) Acts like these seem to be glossed over by a mainstream discourse that appears to be too willing to offer a simplistic analysis of the one-party rule, which has dominated Rwanda's history.

Despite pigeonholing a whole population in cultural and racial stereotypes, it is also common currency – at least for the post-genocide leadership – 'inside' Rwanda. Indeed, research conducted by the International Crisis Group (2001, p. 3) shows that the RPF are comfortable with reproducing this discourse:

RPF views on Rwanda's political reconstruction [...] identifies an overly centralised state structure and ruthless dictatorship as the two root causes of the 1994 massacres According to the RPF, the Rwandan population was disempowered and obeyed like automatons, blindly accepting the scapegoating of the Tutsi community and the Hutu internal opposition.

In the words of RPF leader Tito Rituremara (quoted in ibid.) 'the majority were very docile, guided by "power" leaders.' This has contributed to a narrative of genocide in

which international pressure for democratisation made genocide thinkable in the 'fundamental goal of regime survival under conditions of [...] growing political opposition.' (Hintjens, 1999, p. 242)

Crucially, this discourse often emphasises a connection between the state's role in the genocide and its economic programme beforehand. Indeed, Hintjens is at pains to point out the parallels of a state with an intrusive economic programme and the mobilisation of the population in genocide. For Hintjens there is a concrete relationship between, 'the strict requirement to obey orders,' which 'had been applied to development activities at the level of each local community,' and genocide obedience, which dramatically recasts the former: 'From April 1994, the same requirement was applied with similar thoroughness to achieve a different aim: the rapid elimination of all Batutsi.' (Ibid., p. 269) Similarly Reyntjens (1996, p. 145) argues that the relationship between a highly administrative state and an obedient populous 'can be a powerful tool at the service of development, but it can also be used to conduct a highly efficient [...] genocide.'

The importance of this narrative inside Rwanda is demonstrated by the RPF government's self-confessed attempts to dismantle the 'genocidal machinery' (cited in International Crisis Group, 2001, p. 5). On the one hand, the Rwandan government has engaged in a decentralisation policy aimed at transferring administrative measures and authorities away from a central government and towards local government, designed to attack the 'lack of initiative and dependency syndrome on the part of the majority of the population, caused especially by overcentralization.' (Ministry of Local Government and Social Affairs [MoLGSA], Republic of Rwanda, 2001, p. 4) The process involves devolving social, political and economic decisions towards local levels, in order to:

enable and reactivate local people to participate in initiating, making, implementing and monitoring decisions [...] to strengthen accountability and transparency in Rwanda,' and 'to develop sustainable economic planning and management capacity at local levels. (ibid., pp. 9-10)

The decentralisation policy is significant in the ways that it connects Rwanda's traumatic history to the particularly neoliberal vision of its future, even if, at first glance, decentralisation doesn't appear to be a particularly neoliberal device.

Brown (2015, pp. 131-132) has shown that processes of devolution or decentralisation go hand in hand with efforts to the neoliberal individuation and responsabilisation of individuals. She argues that neoliberal governance 'stresses the devolution of authority as part of its formal antipathy to centralized state power and as part of its problem solving achieved by stakeholders.' This constitutes a tactic in which 'large scale problems such as recessions, financial-capital crises, unemployment [...] are sent down the pipeline to small and weak units unable to cope with them technically politically or financially.' The result is that neoliberal reforms are set in motion 'through incentivization, rather than mandate.' Choosing the example of the American university system Brown shows that the devolving of responsibility of employee benefits to individual departments incentivised them (under the logic of cost savings) to employ larger numbers of part-time staff with no employee benefits rather than full time staff with the security of employment, health insurance, and so on. In combination with entrepreneurial apparatuses aimed at manufacturing competition, the role of devolution is thus to facilitate 'both the practice and the legitimacy of responsabilization.'

Ron-Balsera's analysis shows that decentralisation policies in Rwanda's education sector could have been taken directly from the neoliberal devolution manual.

Decentralisation has widened geographic and socioeconomic inequalities, because local governments remain under-resourced:

many rural districts lack the economic base to raise sufficient revenues, while fiscal decentralisation is progressing slowly with allocations to local government being insufficient to meet recurrent needs, the latter including, for example, teacher salaries. (Ron-Balsera, 2011, p. 281)

Ron-Balsera demonstrates that this has facilitated processes of responsabilisation insofar as individuals have had been forced to take responsibility for their own education (and their family's education), by seeking private provision, for example. The decentralisation of education has meant that 'social burdens are shifted to individuals under the promise of participation and empowerment, which in practice represents the acceptance of responsibility and requires actuarial schemes of decision-making.' (ibid)

Decentralisation thus makes up one component of a set of processes designed to ensure the commandment of human rights, 'never again' is marked by the recasting of the state's functions under the auspices of the neoliberal commandment 'not to govern too much.' On the one hand, dismantling the 'intrusive' state is designed to prevent the efficient administration of genocide. On the other hand, the reformulation of the state along neoliberal lines is designed to prevent the 'docility' of the population, by creating state structures designed to induce them to take hold of their own agency. As the decentralisation policy document states 'decentralization will be geared towards economic, political and managerial/administrative empowerment and reconciliation of the people of Rwanda.' (MoLGSA, Republic of Rwanda, 2001, p. 8) Importantly, agency is conceived economically, reflecting a central tenet of neoliberal

governance: the mobilisation of individuals as economic subject empowered to use their freedom and agency as competitors in a market place.

With its emphasis on individualised command responsibility, the narrative ‘truth’ created by ICTR reinforces and reproduces these lines of argumentation, and thus supports a variation of the neoliberal critique of totalitarianism. As I noted in chapter 1, one aspect of neoliberal governmentality has been the reimagining of Nazism not as a result of the deeply imbedded socioeconomic crisis of capitalism which had occurred in the inter-war period, but as a direct product of central planning (Foucault, 2010, pp. 109-110). The success of this critique was to render a totalitarian equivalence between Keynesianism, Communism and Nazism. In summary, it managed to link central planning to totalitarianism as ‘the ‘totalitarian’ risk of a new protagonism of the state to the detriment of ‘civil society’ along the example of Nazism or Communism.’ (Cicarelli, 2008, p. 316)

In chapter 2, I showed how this criticism has translated into a slightly different critique of ‘third world’ developmentalism. This critique was largely made by the new humanitarian organisations such as *Medicines Sans Frontières* (MSF), who, as Jessica Whyte (2014, p. 221) points out, among other things would share the neoliberals’ tendency to conflate ‘various different political regimes in a single critique of totalitarianism.’ But a critique based on the homogenisation of ‘third world’ political regimes was more formally developed by organisations such as MSF’s short-lived neoliberal, rights-based think tank *Libertés Sans Frontières* (LSF). LSF was set up under the auspices of reshaping discourses around the global south so that the ‘totalitarian’ tendency of corrupt ‘third world’ governments replaced ideas about the legacy of colonialism and global socio-economic policy, as the functional tool for analysing persistent poverty in the ‘third world.’

The goal of this thinking was to delegitimise any project that made any kind of global redistribution of wealth thinkable and to foreground the importance of good governance as the solution to persistent poverty. Significantly, human rights abuse became the signifier for an improper, corrupt state apparatus (Mutua, 2001). The respective missions of neoliberalism and humanitarian intervention thus converge as the global south is encouraged to adopt (neo)liberal governmental models, which are purportedly more capable of respecting human rights (ibid). The success of this strategy has been undoubtedly assisted by the demise of communism and the left following the Cold War. Indeed, in the hegemonic liberal age which followed 1989, the 'global south' is persistently recast in this image in discourses of development and global governance. As Meister (2011, p. 31), puts it, 'human rights are on the agenda because the idea of revolution [...] is not.'

Individual Responsibility and Human Rights

As such, it is important to highlight how this accusatory narrative is bolstered by the ICTR's coupling of individual responsibility with human rights as the matrix through which the Rwandan experience is read. Churned through the discursive machinery of the ICTR, the events of 1994 are constructed within a framework that seeks to demonstrate criminal liability for human rights abuses. Utilising the frameworks provided by 'crimes against humanity' and 'genocide,' the ICTR thus gives particular events a legal referent such as extermination or inhumane acts. In this way, the genocide, to a degree, is abstracted as a series of horrific and violent events that are given equivalences by their categorisation as particular kinds of crimes. Not only does this supply the language with which it is possible for the ICTR to talk about Rwanda, but, in doing so, it also elevates the horrors of physical violence to a place of primacy; investigating its brutality precedes all else.

The ICTR thus engenders 'effects of invisibility,' as a result of its formulation of direct causation, which has the tendency to 'background structural factors in favour of more obvious concerns about physical violence.' (Miller, 2008, p. 273). As a matrix for narrating violence human rights struggles to move beyond the 'phenomenal' experience of events such as those in Rwanda. The narrative 'crystallises around our horror at the inhuman act rather than, for example, the unjust international distribution of wealth.' (Meister, 2011, p. 47) As Žižek (2008, p. 1) would argue, the phenomenon of physical violence or 'subjective' violence, is foregrounded at the expense of seeing the Objective violence which 'sustains the very zero-level standard against which we perceive something as subjectively violent.' Through this discourse of rights, violence is thus perceived from the level of the subjective, as 'performed by a clearly identifiable agent,' (ibid.) leaving the objective violences which support and contribute to it without a proper interrogation.

It is in this way that the ICTR conveys a critique of totalitarianism as an ethical imperative in the name of Victim. For the image of suffering is recast as a problem of freedom to be addressed against the state. In other words, human rights discourse takes instances of physical violence and elevates governmental repression as *the cause of the conflict*: it is simply a case of a bad regime, whose intrusive state apparatus was destined to end in the killing of its population. As I showed earlier, such imagery enables the denunciation of Rwanda's state (via its officials) as one which not only makes genocide possible, but is *the* decisive figure in its carrying out.

This can lead to over simplistic generalisations about the motives for state evil. In particular, the cause of the genocide is often chalked up as an 'ethnic problem' based on the genocidal ideology of the state. This foregrounding of the genocidal state is prevalent in the post-genocide RPF government's attempts to expiate 'genocide

ideology' from Rwanda. This has relied on the presentation of a genocide narrative which foregrounds the racialisation of colonial experience as the foundation of post-colonial Rwanda and, as such, of the genocide. Hintjens (2008, p. 15) rehearses this narrative thusly: 'the colonizers created pseudo-racial, later ethnic identities [...] For the RPF, the evils of genocide can be traced back directly to these European colonial divide-and-rule strategies and the racial ideology they imported.'

This is no doubt supported by the narrative of the ICTR, which foregrounds the question of ethnicity over other factors. Never is this more apparent than in the media trial of Ferdinand Nahimana, Jean Bosco Barayagwiza and Hassan Ngeze. The nature of this trial was to try the defendants for their responsibility in producing 'state' propaganda which stoked up these 'ancient hatreds' in the years leading up to the genocide. Importantly, the defendants' responsibility for the genocide is paired with their ability to proliferate ideas about race tied specifically to Rwanda's postcolonial history (*Judgement in The Prosecutor vs. Ferdinand Nahimana, Jean Bosco Barayagwiza, Hassand Ngeze*, 2003, p. 3). By connecting the present directly to the racial underpinnings of the state, the trial foregrounds ethnicity as the principle which dominates Rwandan history and societal organisation. It thus reinforces a narrative in which the causality of the Rwanda Genocide sits no further than the genocidal ideology of Rwanda's postcolonial state.

As such, it is easy to see how the ICTR's narrative falls into creating the trope of the 'savage' state, of which Makuu Mutua (2001, p. 3) is so scathing. The past is articulated as a moral tale of a totalitarian, 'savage' culture using the apparatus of the state in order to coerce individuals into doing evil. The question of race, that is, of Hutu violence against Tutsis is therefore resolved as the racialised genocidal ideology of a savage government, which, as per the analyses of Hintjens (1999, p. 241) and Verwimp

(2000), can garner comparisons to the totalitarian apparatuses of the Nazi State. But this reading forgets the other factors which have animated and organised Rwandan society such as questions of class (Newbury, 1998, p. 19). Moreover, it forgets that 'ethnic conflict is not automatic, it is a response to certain conditions,' (Ibid., p. 13) and thus enables us to turn a blind eye to structural, socio-economic forces and actors.

This is not to say that racial divisions did not come to play a dynamic role in the genocide; by definition they must. Rather, it is an attempt to acknowledge that the foregrounding of ethnicity presents an incomplete picture, one which is resistant to incorporating localised socio-economic causes and the antagonisms of global socioeconomic actors. Indeed, it places an emphasis on human rights as a 'local' problem, which, as Meister (2011, p. 47) laments, takes 'the global causes of human suffering off the agenda.' As such, the next task entails rendering these hidden structures and actors visible; it is precisely to fill in the absences which have been covered over by the ICTR's operation on history, in order to precisely show the narratives 'constructedness.'

In this sense, the latter point remains true to my methodological convictions in regards to genealogy, which proposes to disturb 'what was previously considered immobile; it fragments what was thought unified.' (Foucault, 1984, p. 82) For Foucault (2004, p. 10), genealogy is the process of unearthing hitherto silenced 'historical knowledges, to set them free, or in other words to enable them to oppose and struggle against the coercion of a unitary, formal, and scientific theoretical discourse.' The aim of this analysis will be to counterpoise the unitary coherence of the ICTR's narrative with socio-economic knowledges that demonstrate the constructedness of the ICTR's 'truth' as the product of an accusatory narrative of responsibility, which functions as a specific operation on history.

Invisibilities: Neoliberalism and the Global Economy

Isaac Kamola (2007) has responded to the foreclosure of Rwanda's history by offering an analysis of the genocide in the light of Louis Althusser's work on structural causality, which animates precisely the role of socio-economic factors and actors in the genocide. Indeed, in terms uncomfortable for those who gleefully initiate Rwanda's neoliberalisation, Kamola (*ibid.*, p. 573) shows 'how what is commonly understood as a local 'ethnic conflict' can simultaneously be described as an over-determined symptom of a particularly violent neoliberal restructuring of the global capitalist economy.' The benefit of referring to structural causality is first in recognising that the genocide has no root cause, but is the product of 'a unique set of overlapping, intersecting and irreducible contradictions at multiple registers, which are organised under a particular global mode of production.' (*ibid.* p. 575) Resultantly, the advantage of Kamola's analysis is that it is attentive to economic causes without resorting to economic determinism. For these reasons his analysis is worth outlining here.

In the first case, Kamola demonstrates that it is important to understand that global economics played a substantial role in the genocide. The accumulation of land and wealth by northern Hutu elites (and not Hutus as a whole) was due to Habyarimana's 'planned liberalisation' where 'wealthy farmers bought up land owned by small-scale farmers at such a pace that, by the mid-1980s, nearly 26% of the population was landless.' (*ibid.*, pp. 581-582) This at the expense of the general population. Importantly, this accumulation was largely precipitated by the global flows of capital which had encouraged the global coffee boom of the '70s and '80s and provided high international export prices. During this period, it was not ethnicity which animated Rwandan politics and its antagonisms but, as Newbury (1998) would agree, issues of class and regionalism, organised around the control of the coffee industry.

Nevertheless, it would not be long before Rwanda would discover the volatility and violence of global markets. By '1986 global over-production of coffee began driving prices down. Between 1986 and 1987 Rwanda's sales of coffee plummeted from 14 billion RwF to five billion RwF. As a result, the government started to accrue considerable debt.' (Kamola, 2007, p. 583) Resultantly, the World Bank, in its new disciplinary role, proscribed a Structural Adjustment Program (SAP) for Rwanda, ordering the usual economic shock therapy, including 'trade liberalisation, currency devaluation, lifting agricultural subsidies, privatising state enterprises and reducing the number of civil servants.' (ibid., p. 584) Habyarimana's government agreed in an attempt to boost coffee exports in the global economy, and rapidly devalued the currency and creating 'massive inflation, a collapse of real earnings and dramatic price increases for consumer goods.' (ibid)

This problem was compounded by Rwanda's position in the International Coffee Agreement (ICA), which had, since the 1960s, regulated global coffee markets with quota and price regulations. It had been designed to 'consolidate the coffee economy in the hands of the USA,' and Western Europe; the USA received 400 votes compared to Rwanda's 6.' (ibid., p. 580) By 1989 these 'big players' of the coffee economy wanted to end the ICA in favour market liberalisation. The resulting fears that the ICA would collapse meant that mass sell offs began and coffee was devalued to a third of its price by the time quotas had ended (ibid., p. 584). These global forces devastated Rwanda, and 'state-owned enterprises went bankrupt, health and education services collapsed, child malnutrition surged and malaria cases increased by 21%.' (ibid.) This measure along with the SAP had created a situation, which disproportionately affected Hutus who occupied jobs in the now collapsed public sector (ibid.).

Economic turmoil was compounded by the Ugandan and US backed invasion led by the Tutsi RPF, which quickly turned into an ongoing civil war (ibid., p. 585). At the same time, Rwanda became dependent on aid from foreign governments, which was increasingly linked to potentially destabilising conditions. The legalisation of opposition parties and a move away from single party rule, paved the way for a new party, *Coalition pour la Défense de la République* (CDR), which centred on a right-wing extremist faction of Hutu elites, to articulate Rwanda's growing crisis in terms of ethnic divisions. As Kamola (ibid.) argues:

Within this climate of growing insecurity, northern Hutu elites turned towards ethnicity to rearticulate the 'Tutsi' as including the RPF, Tutsis living within Rwanda, all opposition parties and moderate Hutus. Tutsi, in other words, came to mean a common enemy which was everywhere, both inside and outside Rwanda.

The CDR garnered support by stoking up of ethnic tensions, to induce fear and undermine the Habyarimana government, which 'was increasingly seen by radicalised Hutus as too moderate in its treatment of the "Tutsi" enemy.' (ibid.)

While ethnicity was undoubtedly a factor in the genocide, Kamola's research is a reminder that it should be seen as part of an interconnected web of overlapping and contradictory forces and actors. Importantly, Kamola's narrative demonstrates that the structural violences of the global neoliberal economy, which caused socio-economic crises in Rwanda, undoubtedly precipitated the physical violence of 1994 as a dynamic force upon the situation. Moreover, it is just one example of the disciplinary role performed by international financial institutions, whose conditional financial aid provides opportunities to radically transform poorer societies. The global relations of the economy, obfuscated from the narrative of the recent past, are like a silent actor, hidden by narratives which 'chastise violence out right,' supplying 'a mystification

which collaborates in rendering invisible the fundamental forms of social violence.’
(Žižek, 2008, p. 174)

This being the case, one of the most powerful effects of the pairing of individual responsibility and human rights discourse, has been the effacement of global neoliberal policies as a major contributing factor to the genocide. By focusing on physical violence only caused by those in authority, the larger picture is lost. If the ICTR creates *the* historical narrative of the Rwandan Genocide, it is pre-disposed to producing a history which cannot take these structural violences into account. Subsequently, the effacement of the socioeconomic has allowed proponents to continue restructuring Rwanda in a neoliberal image without questioning its complicity in Rwanda’s history of violence. In other words, it perpetuates the hypocrisy of global neoliberal governance, which, ‘while combating *subjective violence*, commit[s] *systemic violence* that generates the very phenomena they abhor.’ (ibid.)

The New Rwanda: Expulsion and the Founding Myth

So far, the analysis has demonstrated the ICTR produces an accusatory narrative, in which the leaders of a totalitarian regime perpetuated the rights abuses; where the mass engagement in violence is explained by the agency of the officials of a state structure, which cultivated the unquestioning obedience of the populace. Through this process difference is made: the individuals who stand as metonyms for the regime – and its state apparatus – are articulated as Rwandan society’s other. This othering receives its potency through an act of sacrificial violence. Here, the power of the ICTR is its ability to ‘concretise’ this narrative with the symbolic closure enacted through an act of expulsion in the form of criminal sanctions. In other words, the ICTR’s importance to Rwanda is its ability to ‘link a real result – conviction of the guilty – to

establishing a moral truth about the past.’ (Meister, 2011, p. 260) This expulsion, by othering those truly responsible from society as a whole, provides a spatial and temporal consistency of ‘the community’ reconciled against its past. As Girard (2003 [1978], p. 102) would have it the community – Rwandan society – thus becomes present to itself via the mediation of its scapegoat such that an ‘inside and an outside, a before and after,’ appears.

Girard was always keen to underscore that sacrificial violence was powerful insofar as it established a founding myth, where expelled scapegoats furnish ‘communities with their sense of collective identity.’ (Kearney, 1999, p. 252) The community’s polarisation against the scapegoat is definitional, it provides the referent against which the community defines itself. It is this difference (us/them, present/past), which the community must therefore continue to vigilantly legislate and protect. I want to make a similar argument about the ICTR and Rwandan society, where the ICTR stands as a resolution to the crisis, one which retrospectively provides the co-ordinates for Rwanda’s understanding of good and evil.

On this front, it is worth referring to Meister’s discussion around the construction of truth and responsibility offered by Nuremberg for German ‘society’. Immediately after Germany’s defeat, Meister (2011, p. 165) argues:

There was only individual responsibility prosecuted at the Nuremberg trials and their successors [...] Germany’s collective responsibility for Hitler comes *after* Nuremberg and is the *product* of the atrocities revealed there. This responsibility does not take the form of accepting guilt for what happened in the past but, instead, of upholding the *truth*, which from now on is always *about* the past.

While Meister’s point may uphold the human rights mythology of Nuremberg, it recognises the central purpose of the ICTR. By utilising individual criminal

responsibility, Nuremburg provides a temporal break which recasts the community as the upholders of a truth produced by the particular construction of the past. German society, Meister contends, is re-founded and re-defined by the cause of 'never again.' It is compelled to ensure the past remains so, that it never intrudes on the present. Thus Germany is defined by an opposition to the ideology of Nazism as a kind of 'pre-history', which it is not guilty for, but is nevertheless burdened by, through the activity of ensuring 'never again.'

In the same way, the ICTR provides a temporal break, a kind of closure that demands the active vigilance of society against its potential unravelling. This is not straightforward, mind. The ICTR's narrative posits that the savage state is responsible for the widespread victimisation of the Rwandan society, whose members are now positioned against the state as the *reconciled victims of savage totalitarianism*. This becomes the spatial and temporal consistency of 'the community' against its past. The potential problem here is that the community's shared identification with the Victim (one who is always 'helpless, hapless' (Mutua, 2001, p. 3)), denotes *passivity* on the part of the population. This is incompatible with the *activity* of ensuring 'never again.' In order to resolve this problem, a notion of shared victimisation is, to some extent, also historicised and superseded. The figure of the Victim is a kernel of communal identification that demands victimisation is always a thing of the past. It is the basis of a new kind of agency that might be constructed in the following way: 'we were all victims of this savage state, we must all now ensure that we are never again victims of this kind of savagery.'

Importantly, the history constructed by the ICTR is not absolute, but a selective production that serves the neoliberal project of post-genocide Rwanda. By presenting a history in which the totalitarian state is the primary protagonist of the genocide, it

becomes possible to mobilise neoliberalism as an idealised model for a Rwandan society. Here, 'never again' is revealed as the ethical veil for a political project designed to secure 'non-intrusive' state apparatuses that encourage free economic activity and the neoliberalised virtue of individual agency. For, as I have already shown, 'never again' can only be achieved through the dynamic restructuring of the state (decentralisation and economic liberalisation) and a fundamental reconstruction of Rwandan citizens as subjects with agency (to combat obedience). In this sense, the ICTR is responsible for a kind of founding legitimacy of these transformations, demanding them under the auspices of the definitional commandment, 'never again'.

This process of expulsion is an 'ontogenetic' device, which functions at the subjective level. For Odysseos (2010, p. 757), (neo)liberal ontogenesis can be achieved through a rhetorical denunciation of the wounds of the past. In this way, the ICTR provides not only a narrative structure but one that is designed to encourage particular subjective transformations. It compels Rwandan society to secure themselves against the totalitarian past, encouraging them to take up the neoliberal future and become individualised, active beings. It thus eases the transition towards a neoliberal society, by positioning it as a necessary safeguard against the reoccurrence of the past.

NGO's, Survivor's and Outreach Projects: Transformations at the level of subjectivity

The possibility of subjective transformation is premised on the capacity of the ICTR to 'be able to infiltrate through national borders; spread within communities, groups, and individuals; and be felt as a necessary ingredient for them to be reconciled.' (Kamatali, 2003, p. 120) For Girard, this process would be as spontaneous as the deferral of the crisis onto a scapegoat itself – a moment of pure unmediated transformation. I argue, on the other hand, the process of deferral and expulsion is mediated through

discourses, institutions and practices of power. The pressing problem, then, is to show how the practices of power which induce the population to engage with the ICTR in order to affect this transformation.

As Victor Peskin (2005, p. 951) argues, the relationship between the population of Rwanda and the ICTR was one which needed to be cultivated in order for reconciliation to take place: 'the Tribunal's goal of reconciliation depends on bridging the geographical chasm to help make the complex courtroom process transparent and comprehensible to everyday Rwandans.' And yet, among the criticisms of the ICTR, the intractable distance between the tribunal and Rwandan society has been a recurring theme. The reasons for this are threefold. Firstly, the geographical distance of the ICTR from Rwanda, based in nearby Tanzania (Barria & Roper, 2005, p. 363). In addition, the limited capacities of the courtroom: 'Without the benefit of a significant number of Rwandans to attend and witness remote genocide trials, a sense of the court's presence in the lives of the average Rwandan citizen was doubtless impaired.' (Peskin, 2005, p. 951) Finally, some like Kamatali argue that this problem is compounded by the lack of accountability to Rwanda, it being created by the UN, funded by the UN, and sharing – at times – a fractious relationship with Rwanda's national judiciary (Kamatali, 2003, p. 120).

Bridging this gap has been a source of consternation and criticism both in Rwanda in academic circles. This does not reflect well on institutionalised efforts to reach the population of Rwanda, including the various mass media efforts, and the creation of an outreach programme and centre in Kigali (See: Dieng, 2011, pp. 409-411). For Peskin (2005, p. 953), these efforts have been something of an afterthought, and have failed to create awareness amongst ordinary Rwandans. Kamatali (2003, p. 120) has also noted this lack of general awareness: 'rare are Rwandans who know who has been

arrested, who has been found guilty of what, who has been sentenced [...] This reality can even be found among judges, lawyers, and intellectuals in general in Rwanda.’ While there is only time to briefly touch on it, undoubtedly, it has been this distance which has justified the Rwandan government’s creation of Gaçaça courts several years after the ICTR was put in motion. Gaçaça is a kind of neo-traditional justice initiative which, in taking place inside communities, is undoubtedly a more diffuse process. This is especially true since the Rwandan government requires mandatory attendance to the courts.

That said, there was a limited set of engagements between NGOs and the ICTR, which it is worth reflecting upon. The relationship between them is probably best understood as a semi-formal relation rather than a fully integrated programme. As Dieng (2011, p. 410) points out, the ICTR:

established close relations with NGOs and civil rights organizations in Rwanda. These organizations are invited to attend seminars and conferences organized by the ICTR [...] where they are briefed on the status of the Tribunal’s work and its achievements.

Understanding this relation will be best served through a closer examination of the work of these NGOs and the specific practices they are engaged in which enmesh Rwandans into the processes of the ICTR.

Most visible in this respect was IBUKA, an umbrella organisation for 15 smaller survivors’ groups, which are organised around specific kinds of Victims. The association of Student Survivors (AERG), for example, specialises in working with students who were survivors of the genocide. This ‘federation’ of organisations was at the forefront of efforts to connect victims to transitional justice efforts following the genocide. Before looking at IBUKA’s activities in detail, however, it is worth gesturing towards

their use of the term 'survivor', which is used in place of the Victim their literature (IBUKA, 2010; 2011). I want to suggest this is perhaps coincidental but also strategically useful for the neoliberal future of Rwanda. For against the category of Victim, as passive figure, the notion of 'survivor', as in one who is resilient, suggests a more active figure. It describes both someone who has been victimised and their overcoming of this fate. The term 'survivor' thus serves of a term of empowerment, standing for one who has overcome and now has the possibility of exercising freedom and agency.

The term survivor marks the subtle historicisation of the Victim, which provides Rwandan society with its mandate to ensure 'never again' (rather than simply to ensure a cessation). It emphasises a temporal break, which both historicises victimhood whilst pointing to its trace in the present, one that must never be forgotten. Importantly, it also replaces the passivity of the 'Victim' with agency as the starting point from which a neoliberal subjectivity can be cultivated. 'Survivor' suggests a figure who is hardy, who can mobilise their own resources in order to adapt to fate. Given that under neoliberalism the subject is the responsabilised manager of her own life risks (Dardot & Laval, 2013, p. 279), 'survivor' is undoubtedly a useful term of self-reference for a particularly neoliberal future, where one must adapt to – and overcome – adversity. It provides a framework for the self as 'exquisitely supple, mobile and plastic.' (Mirowski, 2013, p. 116)

Encouraging individuals to think of themselves as 'survivors' rather than 'Victims' thus has an ontogenetic function: it facilitates a preliminary maturation or rehabilitation of Victim subjectivities that may, incidental or not, serve Rwanda's neoliberal future. Going further, one might even think of 'survivor' as the operative term which makes the connection between the post-genocide activity of ensuring 'never again' and the neoliberal articulation of this mission, that is, to become an active, economic subject

(*homo aëconomicus*) in order to ensure 'never again'. In other words, the identitarian label, 'survivor', is where two parallel meanings of agency find a meeting point. For it is the term that enables processes of neoliberal subjectivation to be cast as an ethical activity of post-genocide subjects, as a process which must be continually exercised in order to constantly dispel a reoccurrence of the past. It is only through these processes of neoliberal subjectivation that the totalitarian tendency of the savage state can be contained.

But while the term survivor is a useful semantic difference for the production of neoliberal subjectivities endowed with agency, it is important to point out that IBUKA's work is typical of NGO work with Victims, which was outlined in the previous chapter. IBUKA began after becoming aware of several issues where the ICTR was concerned. Issues of concern included 'inefficient judicial staff (due to lack of training and insufficient infrastructure), document theft, (unwanted editing of dossiers and corruption amongst judicial staff), threats to survivor and witness security, and lack of judicial assistance for Genocide survivors.' (IBUKA, 2011) These issues demanded an intervention which would result in the multi-faceted *Projet des Parajuristes*. Many parts of this project foreshadow NGO work which is now formally integrated within the apparatus of transitional justice (*ibid.*).

Two aspects of this project are worth noting because of their resonance with regard to the kinds of NGO work with Victims outlined in the previous chapter. The first relates to the production of Victim subjectivity. One of the first problems IBUKA came up against was that Victims had a lack of knowledge about their rights (*ibid.*). Those who had been identified by IBUKA as victims of the genocide were unaware of their status as human rights Victims, and, conversely, that they were – and remain – subjects of rights or at least, as Odysseos (2010, p. 758) would say, 'rights-holders in waiting' in

the new (neo)liberal order. In response to this problem a key aspect of IBUKA's *Projet des Parajuristes* was to provide Victims with basic training on human rights and peace culture, as well on the national laws that specifically pertained to 'genocide' and 'crimes against humanity' committed in Rwanda from 1990 (IBUKA, 2011).

IBUKA's work thus attempts to construct rights for, and through, the very people whose human rights have been violated. This work is premised on the need, first of all, to identify subjects as Victims by relating their particular biography to the Rwandan genocide as a whole and, by implication, to the genocide as it is constructed and understood through the legal categories generated by human rights. More, there is a concerted effort to ground this understanding of Victimhood at the subjective level. For the programme is not aimed at the level of mere abstraction for the purposes of evidence in a criminal investigation. Rather, it is designed to educate or foster in Victims an understanding of the self both as victims of human rights abuse, and, conversely as subjects of human rights.

This practice constitutes a form of what Odysseos (2010, pp. 760-761) would call 'epistemic ontogenesis,' or a process of ontological maturation which, through educational projects, transforms Victims into (neo)liberal subjects. Epistemic ontogenesis, 'operates at the level of community and the individual simultaneously. It provides analysis and produces 'truth' so that the individual can understand itself and so that the community can reflect on how it is constituted by moral subjects.' By teaching Victims about themselves as rights holders, the educational aspect of *Projet du Parajuristes*, aims to develop subjects of rights by transforming their self-understanding as individualised subjects endowed with freedom and agency.

For Victims, the subjectivation of the self as a subject of rights is constructed through an oppositional relationship to their own personal past. The past, now submitted to the discourse of human rights as a form knowledge, becomes the oppositional referent against which the individual can understand themselves as a subject. This epistemic ontogenetic device, enables a 'passionate denunciation of the wounds of the [past].' (ibid., p.761) Importantly, for the individuals in question, this is not a case of constructing the self against the abstract denunciation of a distant event, but of constructing the self against the deeply personal and highly individual wounds of the past.

Interestingly, this form of epistemic ontogenesis, produced through personal and individualised knowledges, is connected, via the work of IBUKA, to the broader social construction of the past offered by the ICTR. For the other major problem identified by IBUKA (2011) was that victims had 'little or no financial means to pursue legal redress; Lack of information about when trials and judgments would take place; Lack of advocacy skills and of trained advocates.' IBUKA identified precisely the problem of connecting the population, and particularly Victims, to the processes of the ICTR. In response, IBUKA provided judicial advocacy; appealed for lawyers to act or represent survivors in court; and worked with the ICTR to provide testimony and evidence exhibits as required (ibid.). In short, IBUKA saw its work as one of engagement, of getting victims to actively participate in the processes of the ICTR, and, conversely, getting the ICTR to work with and respond to Victims.

Framing this in Girardian terms, IBUKA's project attempted to ensure that the community's becoming 'present to itself, as mediated via the [scapegoat],' (McKenna, 1992, p. 69) was a subjectivating process, which encouraged Victims to see themselves, through their own experiences, against the 'leaders and architects' of the

genocide in the dichotomy created by the expulsive process of the ICTR. For IBUKA's service users, the accusatory narrative was made up of a dense set of interconnections between personal accounts of victimisation – now rendered as accounts of rights abuse – and the broader narrative of blame and responsibility. Through these processes of enmeshment, IBUKA attempted to ensure that the personal wounds of Victims became the foundation upon which a denunciation of the past could take place.

The ways in which the tribunal frames and constructs these personal experiences of the genocide is of paramount importance. For the service users of organisations like IBUKA, their own personal experiences are given a very particular causation through the emphasis put on individual responsibility and guilt through the ICTR. As I showed earlier, the apportionment of individual responsibility for the genocide comes with an implicit critique of the state. I also showed how, conversely, this also constructs the image of the vast swathes of *génocidaires* as passive agents, merely obeying the orders of the architects. Those Victims who engaged with the ICTR via IBUKA had their own individual experiences entangled in moralising tale about the dangers of corrupt governments and populations who aren't encouraged to utilise their reason, freedom and agency. Against a state that would not respect their freedom they must construct themselves as free. Against the 'cultural problem' of unquestioningly obeying of orders, they must resolve to free themselves and take responsibility for themselves and their actions. In neoliberal Rwanda such injunctions are delineated in economic terms under the commandment to become economic subjects.

In this respect, IBUKA's work with Victims recalls the neoliberalisation of NGOs as a governmental technology, a tool through which the population can be governed. By providing a service which 'enmeshes' Victims in the processes of the ICTR in order to

produce a kind of neoliberal ontogenesis, it is precisely this governance function which IBUKA provides, for global governance institutions like the UN. In the wake of such catastrophic events IBUKA resolves both to orient the population toward the ICTR, and to provide them with a lexicon that serves the new (neo)liberal framework. The work of IBUKA is thus designed to 'govern' individuals by adapting them to their new social order.

NGOS and the Entrepreneurialisation of the Victim

Given the neoliberal character of Rwanda's transition, it is perhaps unsurprising that these very same NGOs have happily begun projects which are designed, as per the previous chapter, to 'maturate' Victims into self-sufficient, neoliberal subjects. Indeed, an interesting development which has occurred since the rebuilding of Rwanda has gotten underway is the growing number of projects designed not to assist Victims with justice issues, but rather to make them more entrepreneurial and self-sustaining. For example, The Survivors Fund (SURF) and the Association of Student Survivors (AERG), have set up the *Youth Entrepreneurship Training Programme*, which is designed to provide entrepreneurship skills to genocide survivors. Since 2012 the programme has taken on 150 students per year (Survivors Fund, 2014).

The framing of this programme is interesting in the sense that it outlines the increase in the private sector as a possible problem for survivors. As the blurb for the programme points out 'with a burgeoning private sector and improvements in its economy Rwanda offers increasing opportunity, but competition for jobs and business creation remains fierce.' (ibid.) As such, the problem for Victims in Rwanda is that they are not adequately prepared for an economy where they are expected to compete with other individuals for jobs and skills. The fundamental implication here is not that

the economy is failing these individuals, but that they are failing to meet the requirements which would allow them to properly function in the economy.

AERG's perspective, then, obviously makes concessions to neoliberal assumptions about the proper place of subjects in the economy. But more, it reflects a particularly neoliberal attitude towards social justice. Dardot and Laval have shown that one of the key factors in the hegemonic rise of neoliberal governmentality has been the rearticulation of the left as it has embraced the neoliberal paradigm. Part of this shift has been a reimagining of social justice, which abandons more wide-ranging goals such as equitable redistribution of land and wealth, even the less ambitious goal of full employment. Social justice for the new left embraces 'competition over solidarity; readiness to seize opportunities to succeed,' as 'the main foundations of social justice.' (Dardot & Laval, 2013, p. 187)

This project also individualises failure, a neoliberal manoeuvre traced and developed by Mirowski. For Mirowski (2013, p. 118), the emergence of terms like 'chav' and 'trailer trash' are not as names for functional economic categories, rather 'they serve as a narrative placeholder for people who refuse to remake themselves into someone the market would validate.' In other words, they don't denote the category of those disenfranchised by an uneven economic structure, but those who refuse to properly equip themselves for a life exposed to markets. The same can be said, albeit in a more benevolent language, of these genocide survivors. The discourse around their economic situation is not that it directly emerged from a general event born out of an economic crisis (Storey, 2001). Rather, the event itself becomes 'economic' insofar as it has left them with unable to properly conduct themselves as economic beings. The result is that, rather than prompting wider questions about the economy itself, the

entrepreneurial deficiency of survivors is brought into focus, as something which, with the help of NGOs, they must take responsibility for.

Resultantly, the task of NGOs is to take the Victim, now articulated as a survivor, and to make her a hardier, self-sufficient being in the risk-ridden world of competition. The Victim cannot remain 'hapless' and expect to survive, for the subject 'cannot be passive but must move strategically in a world rife with risk.' (Mirowski, 2013, p. 96) the Victim must be transformed into the entrepreneurial self. Subsequently the assistance issued by NGOs is designed to make the Victim an economic subject; an entrepreneur-of-the self. As the programme boasts: 'The rationale behind YETP is to help those most in need to obtain skills for jobs, in both job-readiness training and in entrepreneurship, so that young survivors become economically active, self-sufficient and provide for their dependants.' (Survivors Fund, 2014)

Moreover, the programme becomes a rehearsal of the new neoliberal economy, which they are certain to enter. In fact, part of the programme is run as a competition:

After following an intensive and quality training programme, students present their business plans, and winners are provided with micro-finance loans to start up new enterprises. Others will be better skilled and prepared for employment. (ibid.)

This might wryly be seen as a means of embedding the economic logic of competition within the programme itself, and as a preparation for survivors as they are integrated into the market place. Indeed, it is preparation for a world in which 'the failed should accept the verdict of the market without complaint or pleas for help.' (Mirowski, 2013, p. 96) The possibility of being deemed a market failure (they don't win this entrepreneurial competition) is softened by the knowledge that they are at least well

versed in the entrepreneurial skills they need to make it in the Rwandan economy. Consolation indeed!

The Successes and Failures of the ICTR

I have tried to show that as well as being directly implicated in these practises, the apparatus of transitional justice serves to prefigure and legitimise them. At its centre, I argue, is an act of sacrificial violence that is put to work in and through the ICTR. Importantly, this mechanism is constructed, mobilised and practised through the co-agency of power knowledge. As such, it provides Rwanda's neoliberal transition with a foundational legitimacy by furnishing it with a particular history or founding myth, by operating upon and ultimately constructing a definitive history of the genocide. By violently expelling those it considers responsible for the genocide, the ICTR also constructs a narrative about the state – both its agents and its structures – that legitimises a neoliberal project as the surest means of upholding the human rights imperative 'never again.' At the same time, the history that is constructed around this act of sacrificial is partial, conveniently obfuscating the culpability of global, socio-economic, and distinctly neoliberal processes in the conflict.

Whilst the ICTR itself was limited in terms of its 'affective' scope, the utilisation of NGOs engaged Rwandan society in practices designed to ensure that the individualising logic of human rights is brought to bear on subjectivity. Through practices of epistemological ontogenesis, for example, individuals were taught to understand themselves as Victims of evil in the past, but also as rights-holders in waiting endowed with freedom and agency. This provides a legitimacy to processes of neoliberalisation, particularly where decentralisation is concerned. Here, an implicit equivalence is given between the traditional more expansive freedoms of classical

liberalism and the realities of neoliberalism where freedom is purely an economic activity. More, the same NGOs involved in the production of the Victim also become facilitators of this new economic reality. Providing opportunities for survivors to gain entrepreneurial skills and to take responsibility for themselves, these NGOs are engaged in processes of individuation and ontogenetic maturation, designed to help subjects realise themselves as an enterprise.

If the experiment of transitional justice in Rwanda is part of the apparatus' *strategic elaboration*, that is, part of its continual processes of engagement, reflection and refinement, then this subjective element is perhaps one of its greatest lessons. The problem of 'outreach' has been remedied by the increasing presence of NGO's as a formalised intermediary between these mechanisms and the population at large. But the ICTR has also been a lesson in imposing large top-down mechanisms of transitional justice, which sit at a distance from the societies which they propose to serve. Indeed, the need to find more effective affective processes has sparked moves towards 'grassroots' transitional justice epitomised by Kieran McEvoy and Lorna McGregor in their volume, *Transitional Justice from Below* (2008).

Nevertheless, the ICTR exposed the weaknesses of retributive mechanisms, which do not immediately demand interactions with the population at large; they are prone to creating the feeling of distance, not least because their processes are handled by officials in small courtrooms away from 'the masses', who have no stake in deciding what happens there. The question is whether other mechanisms such as truth commissions can remedy this problem; whether they are able to grab hold of societies with subtler affective processes, which are less likely to be met with resistance. It is with this in mind that the thesis proceeds to the next case study.

05

| NEOLIBERAL SOUTH AFRICA AND THE TRC |

Expulsion, Forgiving/Forgetting, and the Neoliberal Future

This chapter is concerned with South Africa's Truth and Reconciliation Commission (SATRC or, simply TRC) as the centrepiece of its transition from the apartheid to the post-apartheid state. It will explore how the TRC contributed to the transition, not just as the movement from a state of conflict to peace, but also as a movement towards a neoliberal society. It will argue that the TRC is best understood as a mechanism of expulsion that attempted to reconstitute the symbolic boundaries of South Africa in order to accommodate all sides of the conflict as citizens of the 'rainbow nation.' This expulsion constructed a narrative, which reified apartheid as the agent responsible for the conflict; a scapegoat for the violence of the past which must be expelled from the social body. Such a process enabled South African society to be constituted as a 'community', in the Girardian sense, in its opposition to apartheid as an *actant*¹⁸ endowed with agency.

The success of this strategy, it will be argued, is multifaceted. On the one hand, this chapter will demonstrate that the TRC's success hinged on its recourse to human rights

¹⁸ This term and its precise meaning will be elucidated in the course of the chapter.

discourse as the primary matrix for constructing a narrative of apartheid. Such a move provided a careful reshaping of the past, which suited the needs not only of a peaceful transition, but one with a decidedly neoliberal inflection. On the other hand, it will show that the TRC's success also rested on its participatory practices, which required victims and perpetrators to testify to apartheid's effect on their own lives. The chapter will argue that the requirement of participation ensured that constructing and expelling a scapegoat became a subjective process, which structured the past through individual experience. Finally, then, this chapter will consider how this subjective process was also a kind of (neo)liberal ontogenesis, a process of subjectivation, which prepared South Africans to function as citizens of the post-apartheid state.

Marikana: Locating the 'Neoliberalness' of the Neoliberal Transition

First, though, I want to begin by identifying the neoliberal nature of South Africa's transition, using the case of the Marikana Massacre to locate its contours. In August 2012 South Africa witnessed some of the most brutal state-sanctioned violence since the fall of apartheid in 1994. The Marikana Massacre was the bloody crescendo of an ongoing labour dispute at a platinum mine in Marikana – a town in South Africa's 'platinum belt' located in the North-west of the country – owned by International Precious Metals Conglomerate, Lonmin. The massacre was precipitated by ongoing demands for wage increases by the miners who were unhappy with extremely low remuneration for dangerous work in poor conditions. Increasingly disillusioned with formalised approaches to labour disputes, which the miners saw as being hampered by the close relationship between the African National Congress (ANC) backed National Union of Mineworkers (NUM) and Lonmin, the miners staged a wildcat strike.

The ANC led government's response to the strikes was brutal. On August 16 2014, the police shot live ammunition at the strikers gathered outside the Lonmin Mine, killing 34 people. The South African Police had initially claimed that shots were fired in self-defence as a response to gunfire coming from the assembled strikers (News 24, 2012). But as Vishwas Satgar (2012, p. 34) points out, 'media and academic reports confirmed that most of the 34 miners were shot in the back while fleeing from the police.' The brutality with which the South African Police quelled the strikers was matched by the farcical response of South Africa's judicial system, which saw fit to charge the surviving strikers with the murder of their colleagues, in spite of the fact that the victims were clearly shot by armed police officers (ibid.). Unsurprisingly, these draconian measures didn't halt but exasperated the problem. By October the BBC (2012) reported that 'about 75,000 miners [were] on strike in the gold and platinum sectors, most of them illegally.'

Both the strikes and the government's response represent an extraordinary shift in the relationship between the ruling 'tripartite alliance' – made up of the ANC, the South African Communist Party (SACP), and the Confederation of South African Trade Unions (COSATU)¹⁹ – and the marginalised black and 'coloured' South Africans, which these organisations represented in the anti-apartheid struggle. The decision of the strikers to stage illegal wildcat strikes indicates a decreasing faith in the current union institutions to secure the interests of the workforce. That the strikes in other mines following Marikana were also illegal wildcat strikes gives credence to this notion. Furthermore, the violent response of the ANC-led government indicates that the conditions upon which this demographic could reasonably expect support from the 'tripartite alliance' had shifted considerably. Given the collusion between the police

¹⁹ Of which the NUM is a member.

force, Lonmin and the NUM at Marikana,²⁰ the discrepancy between the interests of capital and the interests of workers is at the crux of at least one such condition.

In the immediate aftermath of Marikana, Jacob Zuma attended a one-day European Union South Africa Summit, where he addressed the so-called 'global community' regarding the massacre. I want to take two pertinent quotes publicly delivered by Zuma during the course of this summit, which, when juxtaposed, I believe crystallise the central paradox of the current situation which post-apartheid South Africa -finds itself in. First: 'Certainly we regarded the incident of Marikana as an unfortunate one. Nobody expected such an event.' (quoted in Kotch, 2012) Second: 'Certainly, if such a situation happens, it must bring concern, particularly to investors [...] I believe that the manner in which we have swiftly attended to the situation, and we are now in full control—that must give comfort to investors.' (quoted in Melvin, 2012)

What do Zuma's remarks say about the Marikana miners' strike in the context of South Africa's current political situation? Firstly, the move to reassure investors of the swift (and incredibly violent) response to the strike is emblematic of a neoliberal governmentality which has developed in the post-apartheid era. For the long oppressed black and 'coloured' segments of South Africa's population, the end of apartheid signalled by the election of Nelson Mandela to the presidency in 1994 heralded fresh optimism and opportunities to deliver an expansive vision of equality. As a black majority government was finally realised, the promises of the redistribution of land and wealth made in the ANC's 1955 Freedom Charter must have seemed palpable for the first time. But while political emancipation had been won, the

²⁰ For details see the report of the Government's Marikana commission of enquiry (2014, pp. 532-545)

repercussions of having to make concessions in the realm of the economy would have far reaching consequences.

As Klein (2007, p. 202) points out, when it came to negotiating the terms of the transition, the ANC were 'outmanoeuvred' on economic matters and 'caught in a new kind of web, one made of arcane rules and regulations, all designed to confine and constrain the power of elected leaders.' The result of this web was a series of economic reforms emphasising fiscal discipline, the privatisation of the reserve bank and key industries, and market deregulation designed to attract foreign investment. Redistributing land was dealt a severe blow with the decision to protect existing property rights through an initiative 'based on a willing seller, willing buyer principle and on market values,' which guaranteed that land would only be distributed through voluntary exchanges (Muiu, 2008, p. 156). To make matters worse, by 1996 the ANC government had published their *Growth, Employment and Redistribution (GEAR)* macroeconomic strategy. This strategy encouraged increasingly flexible labour, internationally competitive tax regimes that incentivised private investment, amongst other things (Department of Finance [DoF], Republic of South Africa, 1996).

Moreover, post-apartheid economic policies have enabled the financialisation of South Africa. As South African economist, Rex McKenzie (2013, p. 7), points out 'by 1994 barriers to entry to the financial sector were lifted and in 1995, South Africa abolished its dual exchange rate system, unified the rand exchange rates and removed capital controls on non-residents.' These changes 'were the main legal and regulatory foundation stones in the advance of financialisation in South Africa.' As I have shown, processes of financialisation and the strategic uses of debt have supported and continue to be an integral part of various neoliberal projects since the 'great turn.' Just as Lazzarato (2012, p. 22) contends that the project of neoliberalism is marked by a

move in which finance has 'become integral to every sector of the economy,' so McKenzie (2013, p. 9) argues that in South Africa 'finance and the financial sector now encroach on almost all aspects of economic activity.' Zuma's move to reassure international investors certainly speaks directly to this new reality.

South Africa's post-apartheid economic policy has also emphasised the production of entrepreneurial subjects, developing practices designed to constitute individuals as *homo oeconomicus*. Dinah Rajak (2008, p. 301) provides much insight into South Africa's rationale. She argues that South Africa has been caught in up in a:

[...] collective devotion to enterprise development, both small and large. This dedication to the spirit of entrepreneurialism – which projects the implicit message that 'everyone can be a businessman in the new South Africa' – is substantiated in the provision of SME training and support programmes that occupy a central position in development planning in both the public and corporate sectors.

Indeed, quasi-state agencies such as *Khula Enterprise Finance Limited*, created as part of the GEAR policy package (DoF, Republic of South Africa, 1996, p. 14), were set up in order to support to small start-ups and increase entrepreneurial activity. They were designed to give individuals the skills and tools to start up their own businesses and become entrepreneurs. As such, an individual's engagement with such agencies might be seen as part of a neoliberal injunction to invest in their own human capital.

For Rajak (2008 pp. 304-306), one of the markers of neoliberal South Africa has been the increased involvement of private companies in development. This is particularly true in the platinum belt where development is practised through corporate social responsibility projects in the form of community partnerships. Importantly, these partnerships are delivered with the twin imperatives of sustainability and self-empowerment through enterprise, providing loans for small enterprises and

entrepreneurship training programmes among other initiatives. Distancing themselves from 'dependency culture' the aim 'within this model of 'empowerment through enterprise' is the creation of a new class of empowered, entrepreneurial and self-sufficient citizens.' (ibid., p. 304) As a result, development has become a corporate endeavour designed to empower individuals to take responsibility for alleviating their own poverty through entrepreneurial activities. These kinds of practices are an iteration of the neoliberal conception of social justice, which emphasises 'competition over solidarity [...] and individual responsibility.' (Dardot & Laval, 2013, p. 187)

Arguing that, to date, these economic reforms have been ineffective would be to give short-shrift to critics of South Africa's post-apartheid government. In truth, they have been nothing short of disastrous, and have done nothing to ameliorate the legacy of apartheid-era racial subjugation. The demographic data presented by Patrick Bond (2000, p. 19) demonstrates this point: '95 per cent of the poor are black 'African,' and 4 per cent are 'coloured' (mixed race), with people from the white and Indian race categories comprising less than 1 per cent of the poor.' By 2011, the Institute for Justice and Reconciliation's *Transformation Audit* found that post-apartheid economic policy has exacerbated inequality, and that 'large and increasing income disparities bear a strong racial footprint.' (Finn, Murray, & Wegner, 2011, p. 73) By the same year, land reform policies had managed to redistribute only 7.2% of white owned agricultural land to black South Africans, well below the target of 30%. (O'Laughlin, et al., 2013, p. 8)

As McKenzie argues, the demands of flexible labour forwarded in the GEAR plan have also contributed to precarious and poorly waged labour, particularly in the mining sector (McKenzie, 2013, p. 6). From this perspective, it is unsurprising that the striking Marikana Miners were resorting to finance in order to top up their low incomes – the

result being that many Lonmin workers have reportedly been giving up 50% of their incomes to pay back debts (ibid., p. 17).

In a climate in which Black South African workers have been let down by their apartheid era political and economic representatives, the miners' decision to stage wildcat strikes should be considered unsurprising. Given the serious concessions it has made to capital, nor can one expect to be surprised by the government's authoritarian and wholly heavy-handed defence of Lonmin's interests. This being the case, how should Zuma's total surprise at the Marikana situation be understood, so long as one assumes that it constitutes more than a cynical lie? What is this surprise, given the political and economic trajectory of South Africa since the fall of Apartheid?

One might argue that Zuma's position is one which readily conforms to the neoliberal governmentality that is particular to the context of South Africa. As I noted in the previous chapter, Brown (2015, p. 129) has shown that the term governance provides a framework in which the potentially antagonistic socio-economic stratification wrought by capitalism is veiled by transforming economic relations into a scenario where stakeholders co-operate to solve technically defined problems. While COSATU's role as *part of the post-apartheid government* is an idiosyncrasy particular to South Africa's neoliberal governmentality where trade unions have a stronger presence than others,²¹ it also signals precisely this technocratic turn. As part of South Africa's neoliberal government COSATU and its members become *stakeholders* in the development, maintenance and smooth-running of the post-apartheid economy. As such, the possibility of wildcat strikes goes beyond a political imaginary which posits not only that there is no contradiction between capital and labour, but does so on the

²¹ Such as the United States where union representation is very weak.

basis that there is no real distinction between them; they are all stakeholders in the provision of solutions.

On the other hand, I want to argue that the racialised character of South Africa's socio-economic striations is 'managed' by the ongoing belief in what Desmond Tutu (1999, p. 25) described as the miraculous period of peaceful transition, and the optimism created around the construction of South Africa as a racially integrated, 'rainbow nation'. Indeed, the transition provides a foundation of post-apartheid society in which 'evil' is relegated to the past, clearing the way for a new political imaginary which appears to have 'overcome' the contradictions of the past, even if, as I have shown, this overcoming is merely a veil. In this sense, Zuma's surprise also comes from the use of the miraculous transition as a reference point that sustains belief in South Africa as a unified, non-racial society, reconciled to its neoliberal, 'stakeholder' framework. It is thus a case of understanding how the TRC facilitates this foundation – under what conditions and in what practices does the TRC provide an end to evil that legitimates the neoliberal project of the post-apartheid state?

A Strange Kind of Victory: The stakes of South Africa's transition

First, however, it is important to understand the stakes of the transition in which the TRC was conceived. Doing so requires a brief investigation into the mechanics of both apartheid and its downfall. In this respect, South African academic, Harold Wolpe's political economy of apartheid (1972) is a useful starting point, sketching out as it does the socio-economic structure of the apartheid era. For Wolpe, apartheid begins following the election of the National Party in 1948, and their subsequent socio-economic project of consolidating African and settler economies into one capitalist economy. This necessitated the development of apartheid policy – designed to

maintain the exploitation of cheap African labour – which consisted of more rigidly imposing segregation policies to secure white supremacy through continued economic dominance (ibid., p 425).

In Wolpe's analysis part of the mechanism of white control in this changing economy was the movement of political discourse from the 'racial inferiority' of natives to the incompatibility of 'settler' and 'native' national cultures (ibid., 429). In other words, the shift to apartheid was accompanied by a shift from a biological to a cultural racism, which has long been critiqued by academics in critical race studies (See: Balibar, 2007). Here, the segregation of ethnic groups came to be arranged around a question of nationality, and the discourse of 'separate development.' One of the major policies thus became the resettlement of Africans in segregated 'homelands', which resulted in the merciless exploitation of cheap African migrant labour in the plentiful borders between African townships and 'white lands' (Wolpe, 1972, p. 429).

The system was so brutally racialised that class divisions too, were soon organised racially. As Mueni Wa Muiu (2008, p. 108) points out, apartheid's success 'resulted from class alliances between [...] white workers, commercial farmers, industrial entrepreneurs, and the emerging Afrikaner petty bourgeoisie. This alliance was based on the social, economic, and political rewards of apartheid.' The rewards of black subjugation were thus shared amongst the white population, through the creation of well-paid industrial labour and social security administered through the state, subsidies for white farmers, and high levels of social mobility for white South Africans. The interests of the white population were safeguarded by the coercive apparatuses of the state, particularly the South African Police (SAP) and the South African Defence Force (SADF), which brutally secured white dominance through force (ibid.).

Against the apartheid state, black South Africans organised resistance around several movements, such as the Pan African Congress (PAC) and the Anzalian People's organisation (AZAPO). Most prominently, however, black resistance to apartheid was structured around the ANC and the Freedom Charter it drafted in 1955. While strategies of resistance to apartheid had initially been non-violent, the 1960 Sharpeville massacre and the subsequent banning of both the PAC and the ANC led both organisations to advocate for – and engage in – a violent struggle for liberation. By the Eighties the broad strategy of the struggle, outlined by ANC president Oliver Tambo (1985), was to make South Africa ungovernable with the revolutionary goal 'of the seizure of power by the people and the building of a new society,' based on the principles of the freedom charter.

Muiu (2008, pp.127-128) argues that by the early Nineties the combination of armed resistance by black South Africans and a crippling economic crisis compounded by international sanctions forced the ruling National Party to negotiate the end of apartheid. The ANC, led by its president, Oliver Tambo, were also prepared to negotiate with the National Party, 'so long as these aimed at transforming the system into a non-racial democracy.' (ibid., p.127) Victory over the white minority was thus a negotiated settlement with the ruling Afrikaners rather than an all-out triumph for the black majority, who would have to deal with the continuing legacy of the apartheid era economic and military force. On the one hand, as George Frederickson (1997, pp. 147-148) puts it 'the entrenchment of market capitalism and the recognition of most existing white property rights was the price that had to be paid to open up the political system to Africans.' On the other hand, the continuing power of the SAP and the SADF would preclude attempts to deal with the past in a way which might have exacerbated the Afrikaner majority. Alex Boraine (2000, p. 143) notes that 'the strength of the right

wing and state military and security forces was a major factor that informed choices at the negotiating table.'

The main contour of the transition, then, was to create a new South African political imaginary of the rainbow nation, conditioned by two key imperatives. The first was to reconcile the white and black South African population by 'reaching a consensus that apartheid was an evil that must never be repeated,' (Meister, 2011, p. 51) *in a way which did not exacerbate the militarily backed Afrikaners*. Secondly, the economic concessions given to the Afrikaners would mean that political compromise of democratic reform would have to take precedence over the struggles against capitalist exploitation and settler colonialism. The transition would thus 'have to enact the backward looking logic of *having won* that could supersede the forward-looking goal of winning.' (ibid.) Quite simply, the task of transition was to create a narrative of having won the struggle(s) against capitalist exploitation and settler colonialism, which outmoded the desire to continue the struggle in the absence of a decisive military and economic victory.

The TRC was itself a compromise designed to address the difficulties associated with a criminal tribunal. As former president of South Africa, Thabo Mbeki, reminds us, 'had there been a threat of Nuremberg-style trials over members of the apartheid security establishment we would never have undergone the peaceful change.' (quoted in Boraine, 2000, p. 143) Nevertheless, achieving the ambitions – and managing the difficulties – of the new political imaginary implied by the negotiated transition could only be accomplished by the Truth and Reconciliation process itself. As Meister (2011, p. 51) points out, such a feat would require nothing less than the TRC '[...] representing its own process as a substitute for the logic of revolutionary struggle.' Simply put, the idea of reconciliation needed to – and, indeed, would – supersede military victory.

A Revolutionary Truth Commission

The 'miracle' of the TRC was also celebrated as a new model of transitional justice by scholars and practitioners alike. Of course, truth commissions predate South Africa, occurring since the early 1980's mostly in Latin American contexts such as Bolivia (1982), Argentina (1983), Uruguay (1985), and Chile (1990). But these earlier models have often '[...] come to represent "a justice compromised."' (Moon, 2008, p. 5) Underpinning this assertion is the idealisation of criminal prosecutions a kind of 'full' justice. In this formulation, knowing the truth about the past becomes a kind of minimum requirement of transitional justice, which, although served by the use of criminal trials, can be mobilised in the eventuality that prosecutions are not possible. The Athens Institute conference report by Henkin (1989, pp. 4-5) provides a reminder of this point. There, she argues that 'even in situations where pardon or clemency might be appropriate there should be no compromising of the obligation to discover and acknowledge the truth.'

From this perspective, as Minow (2000, p. 237) argues, truth commissions only become an important alternative in the absence of criminal justice. They have often been conceived as a kind of minimal transitional justice of the last resort, the least a transitional government should do in the absence of criminal sanctions. Part of this discursive formulation owes much to the preeminent status of the IMT at Nuremberg, both within transitional justice and the human rights movement more generally. Nevertheless, it is perhaps also down to the composition of earlier truth commissions, which were designed only to collect a historical record of the past; nothing more and nothing less. For example, the truth commission in Argentina was primarily an investigatory mechanism, which sought to outline the history of disappearances (Moon, 2008, p. 24). Furthermore, the subordination of truth commissions to the

perceived 'full justice' of criminal prosecutions was not helped by a case like Argentina, where the revelations of the truth commission served as the catalyst for 'a number of prosecutions of high-ranking military officers.' (ibid.)

One of the problems was that early truth commissions lacked a legitimate and realisable claim to broader concepts and goals such as reconciliation. Although some present at the Aspen conference, such as Zalaquett (1989, p. 31), would go as far as to say that when the truth isn't known 'it makes national unity and reconciliation more difficult,' this is far from a full invocation of an intrinsic relationship between the two. Indeed, it would only be following the Chilean National Commission for Truth and Reconciliation (1990), some two years after the Aspen Institute conference, that the narrative of 'truth and reconciliation' was explicitly invoked by such an investigation.' (Moon, 2008, p. 25). Where Pinochet's self-imposed military amnesty had precluded the opportunity for prosecutions, 'the discourse of reconciliation was mobilised,' in order to justify the commission, such that "reconciliation' rather than 'retribution' was the central organizing trope.' (ibid.)

But it is South Africa rather than Chile that constituted a paradigm shift in this respect. As Moon (ibid., p. 1) notes, 'the TRC is the indisputable *locus classicus* to which innumerable subsequent instances of reconciliation politics have referred and it constitutes the analytical lens through which many cases prior to South Africa have been viewed and reviewed.' As of 2008, following the SATRC 'the number of truth commissions in existence has more than doubled.' (ibid., p. 4) One of the immediate effects of the TRC was the crystallisation of 'Truth vs. Justice' as one of the central organising principles of the apparatus. Following South Africa, 'truth' was no longer conceived as a minimum requirement, but as a category of transitional justice (with

the truth commission as its specific mechanism), which could stand up against criminal justice in its own right.

In 2000, a volume titled *Truth V. Justice* edited by Robert Rotberg and Dennis Thompson, deals precisely with this shift in the wake of South Africa. With contributions from well-known transitional justice scholars such as Minow and Boraine, it reflects the various competing theories that support the use of truth commissions as a feasible alternative to criminal trials. It is no coincidence that most – if not all – of these contributions use South Africa as a way of articulating this alternative. The introduction to the volume by Rotberg (2000, p. 4), recognises this fact: ‘a book examining the nature of truth commissions must focus largely on the [SATRC as the] new standard-setting model of the practice.’ There isn’t sufficient space here to elucidate all of the arguments, but reference to at least a few of these contributions should enable this thesis to understand the novelties of the South African TRC, which precipitated this paradigm shift.

What positioned South Africa as the *locus classicus* of truth commissions is located in its ‘mandate and *procedures*,’ which, Rotberg (ibid.) predicted, would ‘become the starting point for all future truth commissions.’ In other words, words that may please a good Foucauldian, the TRC’s innovative *practices* gave it such a preeminent position within the apparatus. Perhaps most important on this front was the South African TRC’s amnesty provision, which constituted something of a radical break with previous mechanisms, and a dynamic innovation that has done much to raise the credibility of South Africa. Previous truth commissions like those in Latin America were shaped by blanket amnesty arrangements, which precluded the possibility of trying those involved with the previous regime. These earlier arrangements failed to hold rights-abusers accountable for their misdeeds and contributed to the early apprehension

around truth commissions. As Elizabeth Kiss (2000, p. 74) explains, such arrangements constituted something of an 'Achilles heel' for truth commissions.

In sharp contrast, the innovation in South Africa was to make amnesty 'individual' rather than 'collective.' The procedural mechanism for the South African TRC stipulated that individuals would have to make applications for amnesty, which required the full disclosure of their crimes before the commission in publicly held amnesty hearings. The other condition of the amnesty process was that the applicants' crimes had to be concretely linked to a political objective, that is, the act had to be legitimately connected to apartheid. As Moon (2008, p. 41) notes, this meant that amnesty could only be granted if the applicant committed it 'as a member of a known political party or employee of the state.' This criterion will become crucial as the chapter progresses, but for now it is enough to note that it provided an additional hurdle for amnesty applicants. Critically, these criteria seemed to offer a solution to the problem of accountability. The decision to make amnesty 'conditional on full, public disclosure by perpetrators,' constituted nothing less than 'an innovative attempt to establish mechanisms of accountability.' (Kiss, 2000, pp. 75-76) One of the perceived benefits of this model has been the required participation of human rights abusers in the process. As Boraine (2000, pp. 149-150) states, 'if reconciliation was to become a reality [...] both victim and perpetrator had to be encouraged to participate in the life and work of the TRC.'

Boraine's observation is revealing for another reason. For the TRC's success – what sets it apart from its predecessors – is predicated on a set of practices which encourage the participation of South Africa's public, whether they be perpetrators, victims or citizens. Indeed, while perpetrators participated in the amnesty hearings, this was mirrored by Victim participation in the processes of the human rights violation

committee. Victims were invited to tell their stories through testimonies, which were to be recorded by a team of statement takers. A large number of 'representative'²² Victims were then invited to participate in public hearings, which took place in small communities across South Africa, ensuring 'that people everywhere could access the Commission with relative ease.' (South African Truth and Reconciliation Commission [SATRC], 1998a, p. 137) Gearoid Millar (2011a, pp. 520-521) has shown how this shift forms the basis of a decisive break from previous iterations of truth commissions. Where the early truth commission in Latin America were concerned with *truth seeking* by creating a historical record of the past, Millar argues the TRC signalled a shift to a new paradigm of *truth telling*, premised on the public performance of individual testimonies.

For proponents such as Kiss (2000, p. 74) this constituted a key defence of truth commissions. Criminal trials, Kiss argues, are determined by juridical procedures, which don't require the confession of perpetrators, but do require victims to go through 'constant interruption and aggressive cross-examinations.' In demanding the inverse through victim hearings and conditional amnesties, the TRC proposed an alternative which foregrounded 'truth-recovery.' Quite simply, in encouraging these forms of participation, it could 'reconstruct a much more complete picture of human rights violations than [...] through efforts to prosecute individual perpetrators.' (ibid.)

Most innovative of all, however, was the appeal to a kind of 'mass participation' of the public, which marked a break from previous commissions which 'dared not hear testimony in public.' (Rotberg, 2000, p. 5) In South Africa, the majority of amnesty hearings, as well a representative selection of victim testimonies, were given in public.

²² Representative, not only in terms of the patterns of abuse that took place in particular areas, but also of the groups, gender, races and ages of those who experienced abuse.

Furthermore, many public hearings were broadcasted on TV and radio, so that ‘widely disseminated verbatim accounts became the content of an ongoing national drama.’ (ibid.) The benefit of this move was that ‘truth could thus be affirmed by individuals across the land [...] in this way, the new society was able to begin continuously reconstructing itself.’ (Ibid., p.6) Similarly, Minow (2000, p. 248) points out that ‘broadcasting on television and radio may enable the audience to share in the process of acknowledgement, mourning and sympathetic listening.’ As a matter of public record, digital copies of the transcripts of the TRC’s public hearings, as well as a full copy of the TRC report, continue to be available on the TRC website, for the public to access at their convenience.²³

In other words, it is not so much the concept of reconciliation in itself – as complex and ill-defined that term may continue to be – as it is a series of practical innovations, which would provide truth commissions with a quasi-judicial framework that could rival that of criminal trials. These innovations make TRC the ‘*locus classicus*’ for contemporary truth commissions. Thus while authors like Minow are keen to mobilise concepts like trauma and healing, and Tutu is keen to use the quasi-religious language of forgiveness, these concepts are indebted to the innovative practices of the TRC. For such terms could only be successfully mobilised on the basis of an institutional framework that responds to critiques that truth commissions represent a ‘justice compromised’. As such, for the term reconciliation to appear more than a merely rhetorical device, the TRC developed procedural mechanisms designed to confront the issue of accountability and to encourage participation from victims, perpetrators and the wider public.

²³ Although one could also question the universality of internet access in South Africa. Indeed, it gives cause to interrogate to what extent the records are made for a national or international audience.

How do these 'innovative practices' provide a framework for reconciliation? Or, how does the institutional body of the TRC produce (in theory at least) a reconciliation? Quite simply, the process of 'reconciliation' revolves around its ability to use individual testimony to produce a shared national narrative. Some commentators have often attempted to link the processes of the TRC to an individualised notion of trauma and healing. For Minow (2000, p. 241), the TRC provided an opportunity for Victims to hear 'narratives of violence in the name of truth [which] can promote healing for individuals.' This assumption was no doubt one of the TRC's ambitions, but it risks misunderstanding the TRC by foregrounding individual healing over the national priority of reconciliation. It is important to resist this temptation and focus on how the production of narrative provides a reconciliation process, which supports the TRC's state-building pretensions. For as former anti-apartheid activist, Albie Sachs (quoted in Boraine, Levy, & Scheffer, 1994, p. p. 146), declared, the TRC was 'what we have spent our whole lives waiting for [...] it is the creation of a nation.'

Nevertheless, the concepts of 'trauma' and 'healing' constitute a logic that justifies the use of narrative for South Africa's post-conflict society as a whole, as much as it does for individual citizens. As Moon (2009, p.82) suggests:

[T]he TRC projected an anthropomorphic image of the nation, constituting it as an individual person with a single body and psyche rather than as a set of individuals whose (personal) wounds had social consequences. The TRC thus made the nation as a whole appear to be amenable to the application of therapeutic assumptions (denial, healing, catharsis, closure) and technologies (truth-telling, confession).

Tutu (1995) clarified this point by declaring that the TRC was 'part of the process of the healing of our nation, of our people, all of us.' The justification for constructing national narratives, thus rests on a 'psychologised' understanding of the nation, with

an assumption that post-conflict societies 'are "traumatized" and require therapeutic management if conflict is to be ameliorated.' (Moon, 2009, p. 72) National healing is thus predicated on the notion that the production of a shared narrative can provide a kind of symbolic closure, 'where the trauma is no longer seen as unfinished business,' (Hamber and Wilson, 2002, p. 5) for the state as a whole. As such, what Tutu articulated was the sense in which, for South Africa, the healing potential of narratives could be as true for the nation as it could be for the individual.

But while this process might be understood as a national objective, it still relies upon – in fact demands – individual participation in order to function. It requires victims and perpetrators alike to construct this narrative through 'truth-telling'. In other words, a national narrative is only produced through victim and amnesty hearings, which contribute to a shared knowledge of the past by collecting (or constructing) the truth of the conflict as a matter of national healing. As Brandon Hamber and Richard Wilson (ibid.) argue, the TRC was a:

[...] country-wide process of revealing and confirming past wrongs
[...] to facilitate a common and shared memory, and in doing so
create a sense of unity and reconciliation. By having this shared
memory of the past, and a common identity as a traumatised people,
the country can, at least ideally, move on.

Importantly, then, the project of national healing is one which simultaneously straddles the experience of individual citizens and the nation as a collective entity. It must make use of individual experience to create a knowledge of apartheid which enables a process of symbolic closure.

The TRC and the Retrospective Operation of Undifferentiation

I want to argue that this process of narrative production and symbolic closure, that is, of 'healing', centres upon a process of expulsion akin to the Girardian structure of sacrifice I have outlined. Central to this process is the use of testimonies to generate a narrative which constitutes and expels 'apartheid' itself as a *figurative* scapegoat, capable of redrawing the symbolic boundaries of South Africa. Importantly, even with this theoretical modification the analysis remains close to Girard (2005 [1972], p. 18) who did not mind whether scapegoats were '[...] actual or figurative, animate or inanimate,' so long as they fulfilled two criteria. First, the scapegoat 'must be perceived [...] as a creature truly responsible for all the disorders and ailments of the community.' (Girard, 1996, p. 11) Second, the expulsion of the scapegoat must be 'incapable of propagating further [violence].' (Girard, 2005 [1972], p. 18) Interestingly, this latter point already strikes a chord with the needs of the TRC, which was forced to navigate a course that did not ignite the fragile situation *vis-à-vis* the SAP and the SADF, as well as militant black activists.

The pressing task is to understand how the TRC constitutes apartheid as South Africa's figurative scapegoat; how does apartheid come to be reified as an entity, which can be understood as responsible for the crisis and expelled without the fear or further violence? This process is multi-faceted and takes place through overlapping and intertwined practices. The first of these, I argue, coincides with the production of a singular shared narrative of the past, which transitional justice scholars and practitioners see as so vital to the 'healing' process. Importantly, this production of narrative is as much about creating a shared, authoritative – and in many senses statist – definition of apartheid, as it is about constructing a narrative of the past.

On this front, I emphasise the crucial role of discourse in mediating between individual experience and national narrative. In particular, I stress that the TRC's mobilisation of human rights as its primary discourse provides a frame of reference which mediates and authorises these experiences as part of this national narrative. This is not a case of *interpreting* individual experience so much as *constituting them* as objects of knowledge. Indeed, referring to her own Foucauldian framework, Moon (2008, p. 49) argues that 'discursive practices *constitute* their objects of enquiry rather than the object of enquiry being *prior* to the discourses that 'contain' them.' Taking this point and transposing it to the context of South Africa Moon argues that, for the TRC, individuals and their experiences are a kind of raw information that can only be made sense of in their interaction with the discursive framework of human rights, which authorises and constitute particular individual experiences as knowledge.

Moon (ibid.) has demonstrated how the legal codification of human rights abuses was instrumentalised by the TRC in order to constitute individual experiences as human rights violations. The TRC used this legal framework as a 'coding frame', capable of systematically ordering events in a taxonomy of violations, in order to quantify and attribute human right abuses. Each experience was organised into one of four categories, 'Killing', 'Torture', 'Severe Ill-Treatment' and 'abduction', and then into further sub-categories, providing a more detailed assessment of the experience. In using this taxonomic practice, the TRC could constitute individual testimonies as human rights abuses, but only so long as the described experience met a particular category of human rights violation.

In rendering experience through the framework of human rights, the TRC gave every testimony an equivalence through which they could be grouped into patterns of abuse. As Moon (ibid., p. 82) notes, the activity of the statement-taking process reflected an

emphasis on 'the production of an account commensurate with the TRC's overarching narrative of violence, within which accounts of gross violations of human rights were deemed relevant.' In doing so, one of the effects of the TRC was to (re)configure 'apartheid' as the signifier for a series of rights abuses. By providing the framework, which validated and constructed the experiences of perpetrators and victims, human rights became the only discursive regime in which the truth about the past could be disclosed. As a consequence, the history of apartheid became a history of human rights abuse.

Importantly, then, individual experiences were collected as statements and testimonies in order to supply the overarching narrative of the TRC with a 'localised' knowledge of apartheid. Each statement and public testimony established one of many facets of apartheid as a history of physical violence, which blighted the lives of South Africans. In a sense, the TRC knitted these experiences together to create a narrative of apartheid defined by physical violence. It is in this sense that Andrea Lollini (2006, p. 125) should be understood when he contends that, "in short, all, victims and torturers alike [...] had to participate in the construction of the 'collective truth', saying 'the same thing', creating homology of the visions of the past.' It is perhaps more precise, however, to adjust the last clause of Lollini's argument to say that the TRC created homology of the visions of apartheid.

Human rights provided a discursive constraint with a number of important effects upon on the definition of apartheid as constituted by the TRC. In the first instance, the legal basis of human rights provided the TRC with a definitional framework that included certain events but ignored others that could not be readily submitted to the individualising logic of legally defined perpetrators and Victims. Nagy (2004, p. 13) grasps this argument when she laments that 'the TRC felt itself unable to treat

institutionalized racism, which affected some 32 million people *as groups*, as a gross violation.’ The effect, she argues, was that the TRC was constrained by its mandated definition of gross violations, which created a narrow definition of victimhood. For example, the decision to treat arson as a case of severe ill-treatment attests to the definitional power of rights. Nagy (ibid.) argues that ‘whereas the destruction of a person’s home through an individual act of arson was seen to fit within the mandate, the TRC did not include the loss of home through forced removals, which affected some 3.5 million people *as groups*.’

As an overarching framework, rights discourse defined which events constituted acts of apartheid. But its definitional power, however, also subjected the narrative of apartheid to other effects that are less immediately obvious. On this front, it is particularly important to emphasise that the TRC was mandated to investigate human rights abuses from all sides – ANC abuses as well as the controversially titled ‘black-on-black’ violence. As a result, all sides of the struggle were equally denigrated as rights-abusers providing a uniformity of moral condemnation for each violent act. This had the effect of rendering all violence with a formalised equivalence, which did not recognise the disparities between the then-ruling white British and Afrikaners and the subjugated African and ‘Coloured’ population.

The example of Gregory Beck, an apartheid-era policeman who testified as a victim of apartheid violence, is a case in point. Beck’s position in the police force puts him in a particular position with regards to the apartheid era, as part of the South African government’s oppressive apparatuses. Nevertheless, the violent attack that left him disfigured constituted a human rights violation which lends his suffering an ethical equivalence with those victimised by the police. Boraine, presiding over the hearing, articulates this equivalence in his opening address to the hearing:

[...] the Commission is mandated by the Act to receive all who are victims of violence or human rights violations, I want you to know that you are welcome and that we are very grateful to you that you have come to tell your story, because all these stories are part of the whole fabric of South Africa which we are trying to unravel. (Speaking at the *Victim Hearing of Gregory Edmund Beck*, 1996)

Boraine's assertion that these stories make up the fabric of South Africa attests to the ethical equivalence lent to suffering across the political spectrum. Rather than underlining the critical role of the police force in the subjugation of black and coloured South Africans, Beck's story contributes to the (re)articulation of apartheid as a signifier, not of legally enforced racial subjugation, but the proliferation of rights abuses committed by some beings against others.

Moreover, this equivalence, which relativises all violence as equally terrible, is bolstered through the technicalities of the amnesty process, which placed several caveats on its formal absolution of amnesty applications. In particular, amnesty could only be granted if the applicant's crimes conformed to the parameters of a political objective. This discursive construction of a political objective renders a particular picture of 'political violence'. A political objective could only be seen in the following formulations: the act being commanded, planned or committed by a supporter or member of a publicly known political organisation; or, a member of the state or of the security forces of the state, but – and this is crucial – only insofar as 'the act in question must have been committed with the objective of countering or otherwise resisting the said struggle.' (SATRC, 1998a, pp. 82-83) This undoubtedly complicated the historical construction of 'apartheid', which took place through the TRC.

It is important to note that there were similar limits on granting of 'victim status'. In order to qualify as a victim, the crime would also need to meet the criteria of a political objective. As in noted in Volume 7 of the SATRC report (2003), victims' statements

were turned down because the matter fell outside the mandate period, or because the matter could not be proved to be politically motivated.’

Consequently, human rights violations could only be considered part of ‘apartheid’ in if they could be connected to formal structures of political organisations and party politics. Moon (2008, p.54) usefully articulates the effect of these discursive structures.

She argues that their utility was:

to synthesise divergent testimonies about the past around the narration of related violations and to construct human rights violations as occurring within a ‘political context’ [...] that is as occurring within the framework of party political violence.

This is further compounded by the use of just war theory, and international humanitarian law to orientate a working definition of human rights violations, referenced in volume one of the SATRC report (1998a, pp. 73-75). As the volume makes clear, these principles were used to make a distinction between the legitimate killing of armed combatants, whose deaths could not be considered human rights violations, and ‘protected persons’ whose killing was not legitimate and therefore constituted a rights violation.

The TRC thus unwittingly composed apartheid as the signifier for a structure of a civil war fought between a number of more or less equally balanced sides that proliferated violations. There was a concerted shift away from grasping apartheid as a *societal form* in which racialised subjugation permeated the matter of everyday life. Here, the omission of seemingly ‘non-political’ acts of violence forecloses the possibility of fully understanding apartheid. Because the TRC claimed to construct a narrative of the past by denying the recognition of what is defined as ‘non-political’, the TRC inadvertently claimed that the violence of apartheid only ever really existed as a civil war between

partisans with clear political objectives. The tight remit of the TRC thus rendered non-political acts as incomprehensible, perhaps as incomprehensible acts of racism, but not as acts of apartheid.

Human rights discourse thus provides a framework where, as Badiou (2001, p. 9) predicts, 'politics is subordinated to ethics.' The self-evidence of human suffering is elevated to the detriment of the political circumstances in which that violence took place. Indeed, this ethical disposition is readily mobilised in predictable de-politicising form in the SATRC report (1998a, p. 65) released as the commission began finishing its work, which argued that 'the Commission was obliged by statute to deal even-handedly with all victims [...] in so doing, it acknowledged the tragedy of human suffering wherever it occurred.' By displacing politics with an ethics whose moral imperative is the denunciation of violence, this particular construction of apartheid obeys the contours of the transition. It provides a narrative in which the burden of responsibility is no longer placed on white Afrikaners as the architects and beneficiaries of oppression by transforming apartheid into a partisan conflict in which neither side could make absolute claims to ethical superiority. Indeed, the ethical disposition of human rights demands the confessional of the ANC's 'taintedness' as much as it does of the National Party and the repressive apparatuses of the state.

Girard's fundamental claim about social crisis is that it is, in the end, a process of undifferentiation – the effacement of structures of difference. In *Violence and Difference*, Andrew Mckenna (1992, p. 63) elaborates on the relationships between undifferentiation and violence in Girard's work, arguing that 'every crisis [...] is ultimately a crisis of difference, that is, a crisis of order and meaning in terms of the difference between good and bad.' It is easy to see how the TRC enacts a discursive operation, which retrospectively undifferentiates apartheid, by replacing the political

framework of liberation with the ethical framework of non-violence. In effect, the TRC encouraged South Africa to view its past, not as systematic, asymmetric state oppression and the righteous struggle of an oppressed minority, but as the proliferation of human rights violations, which taints, and thus undifferentiates good (the ANC) from the bad (the NP, SAP and SADF).

As I have noted, the effects of undifferentiation can be ameliorated by deferring to a third term – a scapegoat, which is deemed responsible for the crisis and whose expulsion restores difference. The selection and immolation of a scapegoat provide a new logic of difference substantiated in the ‘distance’ between the scapegoat and the community. If, as I argue, the ‘miracle’ of the TRC rests on the deferral of responsibility to apartheid as South Africa’s figurative scapegoat, then these values are confirmed through the new opposition between apartheid (bad) and the new multi-cultural community of South Africa (good). This invites this analysis to move towards the next question: How does this process of deferral take place, or, how is ‘apartheid’ constituted as an entity with its own agency that makes it responsible for itself?

Amnesty as Deferral/Apartheid as Scapegoat

So far, I have outlined how the ‘body’ of apartheid, came to be constructed as a partisan conflict which proliferated human rights. What remains is to demonstrate how this body was animated with agency. The analysis is yet to ascertain the conditions upon which, or, rather, the operation that transformed, this ‘sign’ into a figurative entity, which could be ‘scapegoated’ by the community. The next task is thus to locate the specific operation in which apartheid came to be reified as a kind of meta-agent, a maleficent entity whose expulsion redraws the symbolic boundaries of South African nationhood.

The operation which animated 'apartheid' as a figurative scapegoat, I suggest, took place in the amnesty process, which, in making decisions about who could and couldn't be granted amnesty, also determined the responsibility for apartheid within the TRC's narrative. To recapitulate for a moment, the amnesty provision required a perpetrator to demonstrate that they were working in the service of a political objective coextensive with apartheid. Nevertheless, that their testimony constituted a localised instance of apartheid was only resolutely determined through the committee's decision to grant amnesty or not. If the TRC was an investigation into the 'truth' of apartheid, then this formal cleaving has important consequences. Political acts that qualified for amnesty could be verified as 'truth' and constituted as acts of apartheid. Conversely, acts that didn't qualify for amnesty were seemingly random acts of violence could only be formally interpreted as 'ordinary crimes' for which individuals were criminally responsible for their actions. In this way, without recourse to a special criminal tribunal the TRC thus cleaved some acts away from others.

Importantly, the symbolic tying together of amnesty and 'acts of apartheid' provides some ambiguity where responsibility is concerned, for it implies that individual criminal responsibility for an act of apartheid is not appropriate. Measured against the use of ordinary criminal proceedings in cases which could not be understood as a political act (an act of apartheid), a different picture of responsibility appears in cases where amnesty could be granted. By both defining apartheid and denying individual criminal responsibility, the amnesty procedure begins a shift in the very question of responsibility itself. In this respect, I agree with Cristina Demaria's (2007, p. 65) argument that:

Truth is [...] why; and why is because there was a war. Somehow, the very truth which should lead us back to reconciliation is based on a

denial of responsibility: only conflict [...] can be guilty; and this in order that the nation and its citizens be freed of guilt.'

The amnesty framework thus begins to animate apartheid as a figurative entity which bears responsibility for itself.

That perpetrators had to fully confess their crimes complicates this picture in the sense that it demands an admission of their guilt. That is, by its very nature the amnesty provision demands that perpetrators tell the commission about *their crime(s)*. To navigating this difficulty, I once again agree with Demaria (ibid., p. 66) who argues that the question of responsibility is, for South Africa, a double movement that can be described in the following terms:

With the TRC South Africa forces the guilty ones to step out of their anonymity: it isolates them and calls them by their names; but then, in order not to punish them all, it traces back their actions to a disincarnated set of values, to a disembodied manipulating actant.

Demaria's choice to use the term actant here is also useful. Actant is a term used in structuralist narratology and does not describe a character *per se*, but a structural element, which must be operative in order for the narrative to function. For example, in a fantasy novel 'good' and 'evil' are often the actants, which need to be operative (as adversaries) in order for the narrative to proceed.

For Demaria, where the narrative of apartheid is concerned, apartheid itself takes the position of 'evil', an actant, which, beyond the perpetrators themselves, structures their acts. In this way, amnesty bears a remarkable similarity to the concept of forgiveness forwarded by Paul Ricoeur (2004, p. 490). Following Hannah Arendt, Ricoeur argues that forgiveness hinges on 'separating the agent from the action,' an 'intimate disassociation' which unbinds the subject from the actions of the past. In

other words, forgiveness requires being able to make a differentiation between the perpetrator and their crime. The granting of amnesty provides a subtle modification of this process. For it makes this 'intimate disassociation' only to redirect responsibility from the agent towards apartheid as the actant.

The act of amnesty becomes an act of scission, which cuts the act away from the perpetrator, defining a third term which can be understood as responsible for the crisis. It 'others' apartheid through a process of reification that uses the testimonies of perpetrators to demonstrate its malign influence over the social body. Such a deferral is excellently summarised by McKenna in a discussion of Girard's theology. For Girard, McKenna (1992, p. 113) argues, 'the ruse of the devil is to persuade us that he does exist in person, substantially, whereby the evil that people do is expelled, projected outside them and into the agency of an incorrigibly ill will that is the alien rival of human good will.'

Here the requirement that an act served a concrete political objective provides a 'discursive knot' which ties together a plethora of acts committed by a multitude of actors across a large social milieu. The 'political objective' provides a framework in which these acts can be tied together, such that they can be understood as the result of an evil structure of 'political conflict' which pitted some beings against others. In this sense, the political objective clause plausibly connects apartheid, now reified as an actant, to the violent crisis, which blighted South Africa.

Though this logic is articulated through the formalism of the TRC's procedural mechanisms, it also animates the content of the hearings. Indeed, it is well articulated by an example Cristina Demaria uses in her essay on the TRC. It concerns the testimony of Evelyn Zwini, an African woman who describes her own personal history of being

beaten, tortured and shot. Demaria rightly highlights the following passage from Zweni's account: 'I am grateful that yes this reconciliation must happen. But there is one thing I will never forgive and that's apartheid, apartheid I don't even want to see it anywhere I go (cited in Demaria, 2007, p.61). Zweni can forgive the individuals involved in her own particular 'case history', but cannot forgive apartheid. In making this remark, Zweni's testimony highlights precisely the sense in which true guilt, the highest responsibility, can only be attributed to apartheid itself.

This also gives a new inflection to a public hearing at Heideveld in April 1996, convened to hear the case of Henry Kwisomba's killing. Bringing the hearing to a close, Desmond Tutu points out that 'whatever we may say about the people who committed atrocities (and we know that atrocities were committed on all sides of the struggle), we can keep remembering that they too, are God's children.' (speaking at the *Victim Hearing of Henry Kwisomba*, 1996) The phrasing here reflects the equivalence of all human rights violations regardless of the political backdrop. But this equivalence is given only insofar as it performs the function of 'separating the act from the agent,' (Ricoeur, 2004, p. 490) so that the real guilt lies with the conflict itself. Referring back to McKenna's quip about Girard's theology, Tutu makes an assumption about the 'human good will' of perpetrators as 'God's children'. They become redeemable insofar as their evil can be explained by apartheid as an incorrigibly ill will – the corrupting influence that gives these acts a higher causation.

Symbolic Closure/Symbolic Expulsion: Purity and Disease

Under the pseudo-psychological auspices of South Africa's national trauma, the TRC's production of a narrative of the past is to be understood as the means of providing a moment of healing for the nation. Indeed, Moon (2009, p. 83) points out that the efficacy of the TRC rests, in fact, on a set of broad medical terms such as diagnosis and

treatment. The past was thus understood as the cause of symptoms such as suffering and trauma, and the TRC became the proscribed 'intervention' design to heal the nation. In this way, 'the political implication of this medical register was that once properly diagnosed and treated by the TRC, South Africa's sickness might heal, and the nation restored to health.' (ibid.) In other words, truth became a cure, or, as it was commonly put, 'revealing is healing'. How should this metaphor of trauma and healing, of illness and cure, be understood in the context of the expulsive process which is being forwarded by this analysis? What relationship does closure have to the TRC's expulsion of South Africa's scapegoat?

Interestingly, the metaphor of infection or disease is a concept as familiar to Girard as it is to the TRC. For Girard (2005 [1972], p. 31), the nature of violence can be described with recourse to the word 'contagion' as a metaphor, which expresses its danger to the social body. Violence is unstable – volatile – in so far as it always has the potential to proliferate across the social body: 'the slightest outbreak of violence can bring about a catastrophic escalation.' In contrast, the moment in which a community unanimously chooses and expels its scapegoat is one in which, Girard insists, 'an infection is in fact being checked.' Such a proposition relies on some classical anthropological ideas, such as those expounded by Mary Douglas in *Purity and Danger* (1966), which assumes that the role of ritual is to 'purify' a community from 'pollution', a metaphor for a crisis within the social order. In other words, the process of expulsion must also be thought of as synonymous with the process of social purification and 'healing'.

It is precisely this logic which is described by Zweni in her victim hearing: 'if you don't take the pass[sic] out of - out of a wound, that would will never heal. We understand that this pass[sic] has to be taken out of this heal - this wound for it to heal.' (*Victim Hearing of Nomakula Evelyn Zweni*, 1996) The TRC provides the possibility of *expelling*

the puss from the wound. But it is perhaps more accurately defined by Simon Stacey (1999), who describes amnesty applicants as South Africa's diseased limbs:

What is so interesting about amnesty is that when it is granted, a diseased limb is rendered whole, and is re-incorporated into the body of the New South Africa [...] Saved limbs are grafted back onto the body of the new South Africa with which they have been shown to be compatible; unsavable limbs are dis-membered, not re-membered as part of this body.

Stacey's metaphor is a reminder that each amnesty applicant at one stage risked amputation from the South African social body. It is also a reminder of the 'miracle' of the TRC, which can remove disease from the limb and reincorporate it into the body of the nation. But Stacey's *aide-memoir* also provides an accurate metaphor for apartheid's status as an actant: a disease which needs removing from the social body. Such a metaphor thus begins to describe the expulsive process of the TRC.

Amnesty becomes a ritual of purification, where the deferral of responsibility is also to expel the pus from the wound; each successful amnesty application constitutes an act of expulsion, which removes the contaminant of apartheid from perpetrators. But there is also a simultaneous movement in the opposite direction. For this process also rests on the successful composition of apartheid as an agent, which can be understood as bearing responsibility for the crisis. It relies on a process where South Africa's new social body is constituted in its opposition to apartheid's figurative body as its scapegoat. This series of 'micro-expulsions' is important only in so far as it leads to the completion of apartheid's figurative body. The TRC's expulsive process is thus one in which the intermingling of two dis-membered bodies, South Africa and Apartheid, must be separated, reconstructed, and made whole.

Nevertheless, Apartheid's expulsion should not be conceptualised as a slow death by a thousand cuts, but as a single *coup de grâce*, which can only be properly enacted when the South African social body is constituted in its opposition to the figurative body of apartheid *made whole*. Such a moment is offered by the completion and release of volume 7 of the SATRC report (2003), which provides a definitive understanding of apartheid's malign influence over the entire social body, through the publication of its victim and amnesty findings. As the introduction to this final volume makes clear:

This volume is a tribute to the victims of Apartheid and a living monument to those who sacrificed so much in order that we could all enjoy the fruits of democracy [...] Their stories symbolize the greater experience and suffering of our people [...]

The release of the report signals the moment of closure by historicising the past such that the trauma can be 'laid to rest.' (Moon, 2009, p. 84) Symbolic closure thus returns as the TRC's decisive conceptual metaphor. While amnesties provided the necessary scission which separated South Africa from its scapegoat, apartheid's proper moment of expulsion arrives as the completion of South Africa's narrative, which is also the construction of a shared national history of the past. Such a construction functions as the symbolic consignment of apartheid's figurative body to the past.

A Neoliberal Miracle

Any benefit of this expulsive mechanism is, first and foremost, located in its bid to redraw the symbolic boundaries of South Africa with minimal disruption to the significant constraints placed on the transition by the negotiated settlement. It attempted to achieve this by polarising the community as a whole against apartheid as the evil of the past. Importantly, it did so by utilising human rights concepts in order

to redefine the meaning of apartheid. As a result, apartheid no longer signified a primarily political situation of oppression and struggle but the ethical problem of a violent partisan conflict. Dealing with the past thus only required the minimal denouncement of apartheid as the evil of physical violence. Indeed, Meister (2011, p. 69) laments that the TRC's project was one of 'reducing the scope of social injustice to pain and the scope of political evil to cruelty' as an attempt to persuade 'the beneficiaries and the perpetrators of apartheid that the past was evil.' This has significant consequences for the production of South Africa's new political imaginary, particularly its neoliberal inflection.

In the first case, this shift in the definition of apartheid meant that the South African 'community' came to be formulated in opposition to physical cruelty. In other words, the denunciation of the past avoided the denunciation of socio-economic structures of inequality in favour of an ethical disavowal of the very struggles which were designed to combat that structure. Meister (*ibid.*) has observed that, broadly speaking, 'the cost of achieving consensus that the past is evil is to agree, also, that the evil is past.' This analysis is an agreement in as much as the TRC's trajectory is to produce a picture of the past and to expel it in order to confine it to the past. Whilst consensus was created around the evil of physical violence, apartheid's structural inequalities escaped the TRC's definitional project and were allowed to continue without meaningful interrogation.

Given that the struggles against apartheid were waged precisely against its structure of socio-economic exploitation, the TRC must be understood as a conscious attempt to veil those normally hidden structures of violence, which the liberation movement had already revealed. The liberation movement's exposing of those structures is reversed or spirited away by the TRC's construction of a figurative scapegoat out of an

orgy of spectacular violence. A crucial aspect of this operation is the designation of 'Victim' given to the suffering body rearticulates the very notion of victimhood itself. Meister (2011, p. 25) notes that 'victims [of socio-economic exploitation] are generally a larger and more lasting group than those who were victims of the physical cruelties inflicted.' By transforming the very category of victim from the former to the latter, questions of economic exploitation are silenced all together. The result is that the TRC constrains and conceals in order that it 'continues, rather than transcends, the counterrevolutionary project to the extent that victims of the old regime let its beneficiaries keep their gains.' (ibid.)

Meister's thesis is a strong one, which resonates with the analysis forwarded so far. Nevertheless, Meister might be accused of inattentiveness at this particular juncture. Without being more specific about the transformation of South Africa, that is, without being precise about how the transition enables the white population to keep their wealth, it is difficult to understand how the TRC attends to these transformations in their specificity. For Meister, the post-apartheid trajectory is a continuation of past structures of injustice rarely implying much more than gaining universal suffrage at the expense of continuing socio-economic exploitation.

The problem is that, contra Meister's analysis, South Africa's transition entails a number substantial changes to its economic model, and not simply continuities. As I showed earlier, the transition moves South Africa from racialised capitalism, in which 'white', 'coloured' and 'black' were the operative categories of accumulation, redistribution and exploitation, to a neoliberal economy in which all individuals are expected to play according to the rules of a universalised economic competition. An economy not orientated around the question of race but of transforming all individuals into small enterprises, of making 'a social fabric in which precisely the basic units would

have the form of the enterprise.’ (Foucault, 2010, p. 148) This transformation is crucial, even if one can agree with Meister that it has allowed (even exacerbated) inequality, largely along racial lines. I argue that it requires specific practices of de-collectivisation in order to encourage individual responsibility and competitive behaviour. It is important to demonstrate, then, how the TRC was attentive to the specifics of this transformation.

Here, once again the TRC’s recourse to human rights discourse is at the crux of the matter. In particular, human rights discourse provides the TRC with a means of dissolving more collectivised and communitarian forms of social belonging and solidarity, in favour of acknowledging and valorising the individual as the privileged locus of understanding *vis-à-vis* apartheid. The TRC sustains a narrative in which apartheid is understood as violence, not of white against black, but a multi-directional contagion, in which violence is deracialised and, as such, everywhere. The obfuscating effect of this rewrite notwithstanding, apartheid is presented as a crisis with the potential to affect everyone, *as individual bodies*. It thus disassembles battle lines and identities of collective association by constructing a past such that the TRC becomes a denunciation (via expulsion) of violence against individuals – all individuals. In doing so, the TRC begins to sketch out the conditions for a future in which collective identity is no longer relevant, in so far as society becomes the open plane of universalised competition.

Importantly, this is not an abstract ‘disembodied’ practice, but functions at the subjective level thanks to the TRC’s participatory practices. Practices like the victim hearings, for example, are important because they address suffering bodies as individual Victims, providing its own kind of validation. As Meister (2011, p. 64) argues, ‘the moral victory available to the victims of torture and atrocity is produced by the

telling of their story in a way that makes readable the body in pain.' Importantly, this moral victory should also be understood as a form of subjectivation in the Foucauldian sense; it is a practice with profoundly ontogenetic qualities.

In chapter 3 I showed that one of Foucault's concerns was with the relationship between truth, subjectivity and power, particularly as it is knotted together in the Christian practice of confession. For Foucault (1998 [1979], pp. 58-59), 'the truthful confession was inscribed at the very heart of the procedures of individualization by power.' Moon (2008, p. 510) has used this insight to argue that the TRC's emphasis on testimony, both for victims and perpetrators, enacts this process of subjectivation: 'perpetrators appear to collude in their own subjection as perpetrators by performing a public ritual of confession to the TRC – as indeed do victims collude in their own subjection as victims by 'bearing witness' to suffering.' This process, where one's life experiences are given a particular meaning in the wider context of South Africa, is also one in which individuals are incited to understand themselves as the subject of this context. Individuals, for example, are transformed into *Victims through their interaction with the TRC*. Their subjectivity is successfully produced insofar as their truth avowal also provides a means through which the TRC provides a structure to their experience and their understanding of the past according to the discourses of human rights.

Meister (2011, p. 64) is dubious about the elevation of human rights violations over other discursive forms, asking finally 'to what extent should intentionally inflicted pain, especially physical pain, be privileged over other forms of political discourse?' Meister's doubt becomes justifiable when the TRC is understood as a form that is concerned with the production of subjectivities. For the political effect of these forms of subjectivation is precisely one of political de-activation and individualisation. It

attempts, at least, to disassemble other forms of prior subjectivity by asserting that the individual's own experience of suffering and pain is the privileged position through which to understand, and so expel, the past.

The *Victim Hearing of Gerald Thebe* (1996) is an interesting example of this process. Thebe's hearing focused on his 'severe ill-treatment'²⁴ after organising students to political action, and subsequently being arrested and tortured. Thebe's story is interesting in so far as there is a tension between the revolutionary aims of his political activities and the focus on the violent events that took place as a consequence of them. At the beginning of the hearing Thebe provides this information as context for his 'victimisation': 'We went to address the students of the South African Student Movement that they must join ANC and leave the country and go abroad, go and be trained as soldiers.' Thebe's political activities resulted in arrest, detention and torture. The context is intimately linked to this history of apartheid as a history of oppression and struggle. It denotes, from Thebe at least, an active, political subjectivity.

What is interesting is that, in order to make a truth avowal about this event, Thebe is compelled to speak about what happened as an experience of violence against his body: 'They use to tie me to the chairs and they were kicking me in my stomach, hitting me with metal irons. For three weeks were being interrogated.' (ibid.) But its demand to speak in a certain way is perhaps best highlighted by the line of questioning by the TRC committee, which isolates torture, still a potentially political problem, into the banal question of understanding precisely the damage to the integrity of the victim's body:

DR RANDERA: You also mentioned that you were hit with an iron bar on your head.

²⁴ The official category given to his experience via human rights law.

MR THEBE: On the head ja, at Compol building.

DR RANDERA: That's all I want to ask.

DR BORAINÉ: Are there any other questions?

MS SOOKA: I notice from your statement you said that the beating lasted for four weeks, did they kick you and beat you up every single day?

MR THEBE: Ja they were beating us every day.

MS SOOKA: And did they do anything else to you?

[...]

MS SOOKA: Apart from the tablets that you take you say because of your nervous condition, in terms of your body were there any lasting after effects? (ibid.)

Thebe's interaction with the TRC only validates his experience, one which is obviously political, as an individual experience of suffering. The TRC does not ask Thebe to address himself as a political subject of the liberation movement, or to understand his experience in political terms, but rather through the de-politicising and individualising logic of human rights. It is thus the initiating phase in an ontogenetic process, which functions by transforming a revolutionary liberation subject into a body in pain.

The political expediency of the TRC's form of subjective political de-activation can be seen in the logic of the 'reconciled' victim that Meister draws out. For Meister (2011, p. 53), the term victim connotes both the Victim drawn from human rights discourse as well as the victim primarily of economic exploitation, who are separated by the prefix 'reconciled', in the case of the former, and 'unreconciled' in the case of the latter. For Meister, then, the individual that consents to the individualising logic of human rights is understood as a 'reconciled victim', who accepts their only victory as 'moral victory over apartheid.' In other words, their validation as a human rights victims through the recognition of their suffering bodies, is intended to 'reverse the

logic of consciousness-raising through which exploited individuals may become revolutionaries.’ (ibid.)

One of the priorities of neoliberal governments has been the process of decollectivisation, which have long been emphasised by ordo-liberals such as Wilhelm Röpke, who argue that the market economy needed to be defended ‘against the lethal poison of collectivism.’ (Dardot & Laval, 2013, p. 93) Indeed, the implementation of neoliberal policies in the West lead by Margaret Thatcher’s conservative government has shown that decollectivisation violently destroys the economic and political base of the working class through the drastic reduction of trade union power. Such strategies took their aim at the collectivised *economic relations* between workers and businesses²⁵ as part of a greater strategy of creating ‘generalised competition, including in the order of subjectivity.’ (ibid., p. 157) The TRC, however, takes aim at the *primarily political relations* of black South Africans, as organised through the ANC and other parties, and attempts to disassemble them by subjectivating individuals as Victims. This must be viewed as part of a preparatory strategy of individualisation that takes the sting out of a politically active, collectivised population, in order to make way for the individualising economic strategies of post-apartheid neoliberalism.

Reparations: Individualised compensation for the reconfigured Victim

A quick and final word should be said about the TRC’s controversial reparations practice, which belies how unthinkable the project of egalitarian redistribution has become. The TRC recommended that victims of human rights violations be granted ‘a financial payment to acknowledge the suffering caused by a gross human rights

²⁵ In the sense that the political battles between unions and the Thatcher government were fought over the very constitution of the economic relations as collectivised by trade unions.

violation.’ (SATRC, 1998b) While, to be fair to the commission, their recommendations include more far reaching redistributive reparations, these have been side-stepped by the increasingly neoliberal ANC government. In the end, Reparations of \$3900 per person were eventually pledged by the ANC government of Thabo Mbeki in 2003 (Thompson, 2003). These reparation arrangements undoubtedly reflect the neoliberal rationality of post-apartheid South Africa.

Avoiding the question of exploitation, the TRC’s reparation program bolsters the sacrificial practice of national closure by ensuring that the forward-looking aspect of socio-economic justice is supplanted by a reparations policy designed to provide compensation to the individual victims of human rights violations. As Miller (2008, P. 278) argues ‘the focus on reparations makes structural factors doubly invisible, as they are not only backgrounded in the project as a whole but also reduced to a singular definition for resolution.’ Such reparations make economic questions reducible to a compensation scheme, emulating a process of litigation, which serves to mediate a complaint between a Victim and the state. The South African government admitted as much when they argued that reparations become a kind of settlement in lieu of criminal justice. By this logic, reparations should be paid ‘because the amnesty process means they lose the right to claim damages from perpetrators who are given amnesty.’ (SATRC, 1998b)

Such an emphasis on individual reparations for physical, rather than socio-economic, suffering, reflects and reinforces the principles of South Africa’s new neoliberal society. It follows a neoliberal logic in which ‘social crises [are] perceived as individual crises,’ (Dardot & Laval, 2013, p. 277) and where the past is thus measured in financial and legal terms as damages to be paid to an individual. The problem, therefore, must not be managed by any egalitarian ambition aimed at social redistribution of land and

wealth, but as an individual matter between the state and the 'citizen-consumer'. This individualised and 'economised' vision of the past reaches into the South Africa's neoliberal future; reparations prefigure a system in which risk becomes 'privatised' as an individual financial and legal (but never political) concern to be dealt with through mechanisms of private insurance and compensation.

A Fragile Miracle and an Ambivalent Future

As I bring this chapter to a close, I am struck by my ambivalence towards the 'miracle' of 'transition.' On the one hand, its spectacular remaking of apartheid as a figurative scapegoat skilfully validates those who suffered some of the worst of apartheid's excesses in a way which avoids the question of economic redistribution. Indeed, research conducted by Brandon Hamber, Dineo Nageng and Gabrielle O'Malley (2000) seems to indicate that human rights did become the prevailing language with which they spoke about apartheid. In 2000, the authors interviewed 20 victims who had interacted with the TRC to gauge their opinions on various aspects. It is striking that those interviewed foreground their own individual narrative, even when criticising the TRC: 'I'm still waiting for that help from them and people's perceptions haven't changed about me [...] I'm sure I could have spared myself the pain of talking about my life.' (quoted in *ibid.*, p. 29)

On the other hand, I am also struck by the fragility of a miracle which can veil a dynamic structure of injustice that exasperates the problems of apartheid only for so long. Time has exposed such fragilities. Events like Marikana compel me to agree with Meister (2011, p. 71) that 'the moral victory is eroding (along with the multi-racial consensus it produced).' Such events demonstrate that, at any rate, the consensus that 'the evil is past' may struggle to hold under South African's new neoliberal governmentality.

For the South African neoliberal project continues the racialised aspect of apartheid's socio-economic inequality (both in terms of land and income),²⁶ whilst recasting it in a new guise that emphasises individualised forms of risk, competition, and entrepreneurship, and sees South Africans as investors in their own human capital.

And yet, as Meister (*ibid.*) argues, the TRC's failings have yet to properly transmit to transitional justice practitioners. In a report commissioned by the ICTJ, Eduardo Gonzalez and Howard Varney (2013, p. 13) continue to promote truth commissions insofar as they 'assist divided societies to overcome a culture of silence and distrust,' through processes which use testimonies to 'provide victims with recognition.' As one of the latest in the ICTJ's literature on truth commissions, this suggests that truth commissions are now firmly engrained as a legitimate practice of transitional justice. It suggests that the rationale of truth commissions continues to be relevant in contemporary transitions, which may be eased with recourse processes of figurative expulsion that support processes of political (parliamentary democracy) and economic (neoliberal) liberalisation.

Nevertheless, in the twenty years since the South African TRC there have been movements and transformations in the structure of truth commissions which have responded to normative critiques of their weaknesses. In particular, the persistent argument that truth commissions fail to deliver justice and foster impunity has never been fully resolved, even if South Africa convinced practitioners like the ICTJ that truth commission could be effective. The final chapter of this thesis, therefore, must look at these developments, and particularly the defining shift towards 'mixed-mode' or 'toolkit' approaches to transitional justice that attempt to situate special tribunals and

²⁶ Rather than rehearse the argument here, I refer the reader to the introductory section of this chapter for an overview

truth commissions alongside each other. It must question how processes of expulsion are enacted through complimentary mechanisms, whilst understanding the effect of this move in fostering the particularly neoliberal transformations that transitional societies continue to experience.

06

| TRUTH AND JUSTICE IN SIERRA LEONE |

Assemblages of Expulsion and the Future of Transitional Justice

This final chapter will reflect on the arguments developed throughout the course of the thesis, by presenting them in a more contemporary context that serves as a challenge to the work presented thus far. Most significantly, the chapter forwards its arguments in the context of a new paradigm for transitional justice in which truth commissions and criminal trials are deployed together. The chapter will provide an account of transitional justice's use of sacrificial violence following the apparatus' turn away from single mechanism to a 'mixed-mode' approach that deploys a range of measures. Using Sierra Leone as a case study, it will show how these mechanisms produce a moment of sacrificial violence. Here, rather than assert the separation of mechanisms and their functions, the chapter aims to show how they function as an 'assemblage' held together by their mutually supportive roles in turning Sierra Leone's post-conflict society towards the immolation of particular scapegoats, as a foundation for the neoliberal project Sierra Leone has undertaken following the conflict.

Here, my use of the term 'assemblage' is juxtaposed with 'apparatus' in order to emphasise the shift signified by the hitherto heterodox practice of (re)deploying particular mechanisms of transitional justice in new, combinational forms. Rather,

than simply describing a 'one-off', the deployment of the term 'assemblage' is designed to attend to the new paradigm represented by Sierra Leone, one defined by a greater fluidity that comes with assembling and combining different mechanisms in order to achieve strategic goals according to particular transitional needs. In order to begin, then, it is first necessary to provide some context in which this 'mixed-mode' or 'assemblage' paradigm emerged.

In 2006 Naomi Roht-Arriaza and Javier Mariezcurrena's edited volume, *Transitional Justice in the 21st Century: Beyond Truth Vs Justice*, brought together transitional justice scholars and practitioners in order to mull over the current state of transitional justice. In an introductory chapter, Roht-Arriaza (2006, p. 8) provided an overview *vis-à-vis* transitional justice after the turn of the century: '[a]s the new millennium began, there was an increasing consensus that in the wake of massive human rights and humanitarian law violations some transitional justice measures were needed.'

This consensus was co-emergent with greater integration of transitional justice into networks of global (neoliberal) governance. Indeed, by the new millennium, governments:

[...] had international observers, missions, administrators and advisors present, and these people generally urged attention to transitional justice issues. Their concerns dovetailed with those of international banks and aid agencies, which had discovered that increased attention to the rule of law was a likely prerequisite to economic development. (ibid.)

Transitional Justice had arrived not only as a 'global project' (Nagy, 2008, p. 275) but one which was integrated within the larger neoliberal remit propounded by the projects of Peacebuilding and Development, themselves encompassing a similar array of actors.

This volume marked a shift from the earlier work of the Aspen Institute (1989) and Kritz (1995), which intended to outline – and, in a sense, justify – the core philosophical underpinnings, normative discourse, and strategic goals of the field. Rather, the major objective of this volume was to critically reflect on the practises that achieve these goals. Crucially, its starting point was the observation that this millennial consensus was accompanied by something of a shift in regards to the ‘how’ of transitional justice: ‘two major trends – the increasing use of investigative or “truth and reconciliation” commissions and the use of international and transnational trials – came together by the beginning of the new millennium.’ (Roht-Arriaza, 2006, p. 8) Where early transitional justice had been marked by the binary opposition between trials and truth commissions, the so-called truth versus justice debate, Roht-Arriaza and Mariezcurrena’s volume was dedicated to the dissolution of this opposition.

This shift serves as an example of Foucault’s concept of functional overdetermination and strategic elaboration, a dual process in which each effect of a *dispositif* calls for the evaluation and reworking of the apparatus in future (Foucault, 1980, p. 195). That this is a dynamic process of practical elaboration can be evinced from Roht-Arriaza’s (2006, p. 14) conclusion that the evolution of transitional justice comes down to ‘determined people, faced with a window of opportunity [who] looked to other places for ideas, borrowed from their successes and learned from their failures [...] to create something unique to their time and place.’²⁷

Indeed, Roht-Arriaza points out that this shift has been particularly influenced by the critiques of ‘stand-alone’ trials and truth commissions outlined in the previous two case studies. Criminal tribunals were evaluated positively on two counts. Firstly, they

²⁷ Although Foucault would emphasise the structural aspects of this process rather than focusing on individuals per se.

provided a 'confrontation of evidence and witnesses that would create an unimpeachable factual record,' and, secondly, they were recognised for their ability to individualise responsibility in order to avoid stigmatising entire populations (ibid., p. 6). In this sense, the consensus reached around the success of tribunals was down to the very attributes that constitute it as the quasi-Girardian mechanism that this thesis has been forwarding. Nevertheless, the problem with criminal tribunals was not only their slow progress, but, more importantly, their distance 'both literal and figurative,' which 'made them seem remote from the target societies [...] It was doubtful whether the populations of the Balkans or Rwanda accepted the facts established.' (ibid., p. 7) In other words, if transitional justice, in the end, is concerned with subjective transformation, then criminal tribunals, taken on their own, were not effective on this front.

Conversely, truth commissions could be frustrating affairs. On the one hand, the quasi-religious tone of forgiveness seemed to overplay the utility of truth commissions, and 'the model of short-term catharsis,' was disputed (ibid., p. 5). Nevertheless, the most difficult reality was that the accountability propositioned by the South African TRC, namely truth for amnesty, had not been as comprehensive as was initially hoped: 'almost no high ranking officials of the apartheid government came forward to ask for amnesty, and the courts were unwilling to pursue cases, even well-founded ones, against those who disdained the offer of amnesty for truth.' (ibid.) It is not too far of a speculative leap to suggest that what was missing was a form of criminal justice, which could have provided the accountability – or at least the leverage to coerce the cooperation of the apartheid leadership – to attend to this problem.

The shift to a 'mixed-mode' approach or package of measures, then, represents the strategic elaboration of the apparatus in the face of critiques formulated in response

to the 'lived' experiences of transitional justice. At a theoretical level, Roht-Arriaza (ibid., p. 8) argues, these practical developments necessitated a shift towards an 'ecological model', which understood that 'only by interweaving, sequencing and accommodating multiple pathways to justice could some kind of larger justice in fact emerge.' In other words, the major shift was to make the concepts of truth complimentary parts of transitional justice's whole, rather than its central schism. Transitional justice, conceived as an ecology, thus required a holistic approach to practice, which saw the potential for complementarity where oppositions, at a theoretical level at least, had once been constructed.

On a practical level, this 'new phenomenon' was marked by 'the simultaneous existence of a number of different mechanisms aimed at transitional justice. Truth commissions were now often seen as complements to criminal investigations. A number of them have coexisted with ongoing criminal investigations.' (ibid., p. 9) Transitional justice, it was argued, was best thought of as a 'package of measures.' (ibid., p. 8) This reflects the normative logic of the ICTJ (2009), who continue to advocate using this 'package' or 'toolbox' methodology: 'After two decades of practice, experience suggests that to be effective transitional justice should include several measures that complement one another. For no single measure is as effective on its own as when combined with others.'

This iteration of transitional justice represents one of the most central transformations of the apparatus, which provides it with a new kind of depoliticising discourse. In earlier chapters I outlined one of Wendy Brown's central arguments regarding the role of the term 'governance'. Using a technocratic lexicon, Brown (2015, p. 129) argues, the term governance veils and eases the differential and deeply political stratification of classes and races produced by the economic mode of production. Here, the tensions

are hidden behind an inclusive discourse that attempts to produce businesses, workers and the like as 'stakeholders' in the solution to a technocratic problem. In a similar way, a discourse which increasingly refers to transitional justice as a toolbox or an 'ecology' that responds with 'package of measures' and 'solutions' is designed to obfuscate political stakes in post-conflict contexts. Utilising a technical lexicon, the apparatus insists that its mechanisms are measurable instruments that respond to the depoliticised problems of 'justice' and 'peace'. The 'ecological' framework is particularly crucial, insisting on a conceptualisation of transitional justice as natural, serving both to imply transitional justice is the 'natural' consequence at the end of conflicts, and to signify the disavowal of tensions between different approaches, which now work together 'naturally'.

This model also presents a new challenge for the theoretical framework of this thesis. The previous case studies explored the use of single mechanisms, showing that an obfuscated logic of sacrificial violence is central to them.²⁸ Conversely, the use of two or more mechanisms presents a new paradigm in which this sacrificial logic is to be located. It is thus a question of understanding how these mechanisms might be jointly implicated in sacrificial violence. In order to meet this challenge, the chapter intends to explore the case of Sierra Leone and its 'twin mechanisms', the Special Court for Sierra Leone (SCSL) and the Sierra Leone Truth and Reconciliation Commission (SLTRC), as a paradigmatic example of this new approach. Being one of the first contexts to take up this mixed mode approach, Sierra Leone represents an important foundation in terms of future recourse to this model.

²⁸ This, even in Rwanda, where the use of the *Gacaça* courts emerged later out of the failures of the ICTR and the national judicial system.

The aim of this chapter will be to demonstrate that this particular transitional justice 'operation' is best understood as an 'assemblage' where mechanisms are combined and implicated in a singular act of sacrificial violence. Indeed, the concern is not to evaluate how one process may help or hinder the other, nor to throw into sharp focus the possible tensions in their interactions. Rather, it is to show that such an assemblage is thinkable because the mechanisms, though different, occupy the same spatial and temporal terrain with a shared conceptual, discursive and strategic disposition. They take their co-ordinates from the constitutive assumptions of transitional justice in order to deal with the problem of Sierra Leone's transition.

It is thus a case of outlining how the SCSL and SLTRC, relying on these shared assumptions, produce and expel a scapegoat who bears responsibility for Sierra Leone's conflicted past. Following Girard, the chapter will show that this act of sacrificial violence provides a new social unity through a collective denunciation of the past. Importantly, it will demonstrate that this expulsion relies on the production of an accusatory narrative of responsibility, which plausibly demonstrates that the scapegoat bears responsibility for the conflict. Such a narrative, I argue, is achieved by demonstrating the 'scapegoats' individual criminal responsibility for the past. This, only inasmuch as the past is read as a history of pervasive human rights abuse. The chapter will stress that the strength of Sierra Leone's transitional assemblage is that its 'labour' is divided between each institutional site, in order that one augments the other in order to strengthen the whole. Each mechanism, it will be argued, takes responsibility for different parts of the sacrificial process.

Finally, the chapter will emphasise the value of this assemblage with regards to the socio-political context of its neoliberal transition, characterised by the re-engineering of the state with 'the official function of [...] creating market situations and forming

individuals adapted to market logics.’ (Dardot & Laval, 2013, p. 148) The chapter will demonstrate that the narrative construction of a scapegoat constitutes a kind of history of the conflict that facilitates the neoliberal contours of the transition. As such it will argue that the assemblage provides a way of strategically dealing with the past, via a process of expulsion that serves this process of ‘neoliberalisation’. It will emphasise that the subjective enmeshment of the population provides what, following Odysseos (2010), I have called neoliberal ontogenesis, which brings individual subjectivities to ‘maturation’; the assemblage adapts subjects to the neoliberal environment constructed in the course of Sierra Leone’s transition.

Sierra Leone and Neoliberalism: A Brief History of the Transition

First, however, it is a case of understanding the history of Sierra Leone’s conflict, which includes not only its antecedents but also the neoliberal transition thereafter. On this front, it is important to recognise the political context in which Sierra Leone’s civil war is popularly understood. The conflict in Sierra Leone occurred just as the New Wars theory had become ascendant in both policy and academic debates, especially in the fields of conflict Studies, security studies, and development (Cramer, 2002). These theories seemed to respond to a notable increase in the number of intrastate conflicts as a new phenomenon which needed to be conceptualised differently from the classical concept on inter-state conflict.

As Edward Newman (2004, p. 175) points out, the prominent characteristic of the New Wars theory is a conceptual shift that emphasises the increase in civilian casualties, the increasingly ethnic character of conflict, and state failure. Most of all, however, new wars theory reconceptualises war as a primarily economic activity insofar as ‘economic motives and greed [become] the primary underlying driving forces of

violent conflict.’ (ibid., p. 177) In regards to Sierra Leone, this has led to a popular and particularly pernicious narrative, which argues that the greed of rebels was the root cause of the conflict. Forwarded famously by Paul Collier (2000), head of research at the World Bank, the greed hypothesis posits that individuals motivated by the accumulation of wealth are the driver of contemporary conflicts. From this perspective, Sierra Leone’s conflict was thus driven by the competing desire for private accumulation through the diamond industry. These theories have a very particular neoliberal genealogy, and Collier’s position at the World Bank should be noted.

In an article titled *Homo Economicus Goes to War*, Christopher Cramer (2002) shows that by the end of the Cold War, neoclassical economics began to permeate the social sciences including conflict studies. Cramer demonstrates that the result of this encroachment was that the causes of conflict came to be articulated through distinctly neoliberal ideas. Neoliberalism posits a market in which individuals must compete as enterprises. To increase their competitive advantage, individuals invest in their own human capital and take opportunities that may lead to greater accumulation. In the same way, Cramer (ibid., p. 1847) argues, the ‘new’ theories of war posit that rebels are competitive, market beings. The result is that, ‘Conflict, civil war, or insurrection is then an investment or resource allocation designed to raise the probability of toppling the government or of drawing monopoly profits, from the loot or instant taxation of primary commodities.’ As Newman (2004, p. 177), shows violence is conceptualised as an entrepreneurial activity motivated by profit.

These theories appear to simplistically reduce the dynamics of war to a pure economism starkly reminiscent of that described by Brown (2015). War becomes an economic activity, where individuals seek to maximise their resources through conflict. But given that neoliberal thought, and especially that of Gary Becker (see: Foucault,

2010, pp. 223-230), has attempted to reduce all human behaviour to economic logics, their popularity is understandable. Support from Collier and the World Bank's research unit, is unsurprising given the neoliberal economic assumptions upon which the organisation operates. As an extension on neoliberal governmentality, new wars theories serve an important role because they displace inequality with greed. As Cramer (2002, p. 1848) puts it 'neoclassical economic explanations of conflict offer a corrective to the assumption that inequality produces resistance and conflict.'

Nevertheless, where Sierra Leone is concerned this conceptual framework problematic. As I aim to show, the history of Sierra Leone's civil war and its transition might be better understood in different economic terms, and particularly in light of the neoliberal economic interventions of institutions like the IMF. Indeed, the antecedents of Sierra Leone's conflict can be placed in the context the 'great turn' highlighted by Dardot and Laval (2013, pp. 148-155), where the ascension of neoliberal policies in the West was accompanied by a new disciplinary role for international financial institutions now empowered to induce developing countries to follow suit. In other words, debt and structural adjustment, as tactics of neoliberal governmentality, all play an important part in the key antecedents to the conflict.

It is first necessary, however, to outline Sierra Leone's political history under the one-party rule of Siaka Stevens's All People's Congress (APC). In 1967 Siaka Stevens and the APC seized power on the basis of a highly contested election result. Following the withdrawal of the Sierra Leonean People's Party (SLPP) from elections in 1973, the state was effectively managed by the APC in a single party system. The basis of this administration was a kind of crony capitalism, where 'politicians, powerful chiefs in the diamond-rich chiefdoms, and Lebanese traders made a fortune.' (Zack-Williams, 1999, p. 148) As a result of the combination of global market fluctuations such as the oil

shocks of the late 1970s, along with rapacious elite enrichment, and the diminishing tax revenues coming from an increasingly informal economy 'the ordinary Sierra Leonean standard of living continued to decline.' (ibid.) In efforts to continue social spending the government of Sierra Leone began using finance from external agencies such as the IMF in an attempt to keep up social spending.

However, this arrangement was quickly transformed into a form of neoliberal discipline by the IMF and it wasn't long before credit was only issued in return for the 'rationalisation' of the economy based on neoliberal economic policies. Structural adjustment programmes began in 1986, when Steven's successor, Joseph Momoh, agreed the first long-term Structural Adjustment Facility (SAF) with the IMF. In return for credit, Sierra Leone had to remove subsidies on essential commodities such as petrol and rice; deregulate rice imports; institute a market-determined exchange rate, and so on (ibid., p. 30). The result was soaring commodity prices and intensive devaluation of the currency, which resulted in 'the intensification of poverty, which by now was no longer confined to the urban and rural masses.' (ibid.) The effects of structural adjustment resulted in the 'pauperisation of the mass of the Sierra Leonean people.' (ibid.)

A more precise understanding of the effect of the IMF's conditional credit on the people of Sierra Leone can be understood with recourse to Ankie Hoogvelt's (1987, p. 80) open letter to the managing director of the IMF, which appeared in the *African Review of Political Economy* in 1987. In it she makes several arguments regarding the effects of the IMF on Sierra Leoneans. First, she argues, the devaluation of the currency by up to 80% meant that 'Practically overnight the petty savings of millions [...] had vanished. It was, the people said, as if 'tiefs' had come in the night, 'all de money gone.' Secondly she shows how following the interventions of the IMF, the prices of simple

food commodities like rice, sugar, as well as others like chicken had more than doubled in a 7-month period. Combined with stagnant wages, she argues, this meant immiserating not only the poorest but also civil servants, whose wages could no longer support their subsistence needs (ibid., pp. 82-83).

As Hoogvelt (ibid., p. 85) points out, this attempt at neoliberalisation was decisional rather than inevitable and the repayment of debts might have been achieved by other means, such as seizing and redistributing the assets of 'those who are (well)-known to have robbed the nation.' Indeed, the decisional nature of the IMF programme is supported by Earl Conteh-Morgan (2006, p. 98), who, citing economist John Weeks (1992), argues that the IMF and the World Bank had misdiagnosed the problem as internal to Sierra Leone without considering external fluctuations from the world market and particularly the oil shocks of the 1970s. The result was that, 'since adverse external developments were beyond Sierra Leone's control, IMF austerity measures tended to aggravate rather than alleviate the country's economic problems.'

The civil war might be understood as a response to these increasingly desperate conditions, beginning when the Revolutionary United Front (RUF) took up armed resistance against the State. As Paul Richards (2003, p. 9) notes, taking their political bearings from the left, the RUF were heavily influenced by 'orthodox Marxism, radical Pan Africanism and the populism of the Green Book of Col. Guddafi[sic].' Attempting to mobilise popular support around egalitarian ends, the RUF articulated a desire for public services and universal access to water, food and healthcare. As they would say in their pamphlet, the RUF (1995) promised 'no more master, no more slave,' in an obvious nod to the Hegelian dialectic, which heavily influenced Marx. As such, 'the RUF sought a broad coalition of the déclassé elements in society,' with the aim of overthrowing the single party rule of the APC (Zack-Williams, 1999, p. 148).

While critics of the RUF's programme such as Ibrahim Abdullah (1998) question the intellectual coherence of their project, it is clear that the civil war stemmed from the growing unrest caused by the economic woes which were worsened by structural adjustment. Conteh-Morgan (2006, p. 100) has shown that one of the fault lines was the cuts to educational spending imposed by international financial institutions. Here, the lack of educational subsidies stopped individuals from attending school. In the end, 'the number of children and youth not engaged in active learning swelled all over the country. In the urban areas, non-attendance and loss of jobs were strongly related to violent protests.' The changes to the economy created widespread unrest, particularly amongst the young men of Sierra Leone.

Furthermore, at the behest of the IMF the Sierra Leonean government attempted to 'regularise' the mining industry by putting it under the control of private investors (ibid.). The operation required the Sierra Leonean Army to remove around 30,000 illicit miners. The result of this operation was decisive; it:

disrupted the clandestine diamond economy and laid the foundation for civil war because the young miners who were displaced from the clandestine economy now suffered severe economic deprivation which galvanized some of them into action against the government and the SLA [...] Some of the young miners later collaborated with the Revolutionary United Front (RUF) in its war against the Sierra Leone government. (ibid.)

The beginning of the conflict, then, might be understood as a violent, but nevertheless political, response to both the crony capitalism of the state and the disciplinary measures of the international financial institutions, which, in attempting to set Sierra Leone on its own neoliberal project, had caused rapid deterioration.

The conflict began when the RUF (re)entered Sierra Leone from Liberia, supported by Charles Taylor's National Patriotic Front of Liberia (NPFL). This invasion was the catalyst for a protracted conflict with multiple antagonists, which would continue for a decade. As Zack-Williams (1999, p. 149) notes, by 1992 Sierra Leone's president, Joseph Saidu Momoh, was overthrown by a group of disenfranchised military officers and replaced by Valentine Strasser with a new military government under the name of National Provisional Ruling Council (NPRC). During this time, the use of child soldiers had become commonplace on both sides of the conflict such that 'the phenomenon of child soldiers soon became a hallmark of the civil war.' (ibid., p. 154) The period also saw the RUF emboldened through a successful strategy of guerrilla tactics. By 1995, the RUF had established bush camps in every part of the country.

To stave off the RUF the NPRC drafted in private military contractors from the Isle of Man and a South African firm, Executive Outcomes (EO) (Richards, 2003, p. 16). Under pressure and without a peace accord in place with the RUF, elections were held which gave power to Ahmad Kabbah of the SLPP. Rather than focus on the RUF, the International Community were keen to focus on the problem as largely one of bad governance, meaning that 'the international community opted for elections before peace, thus excluding the RUF from democratic politics.' (ibid.) Such a plan no doubt exacerbated rather than remedied the ongoing conflict in the country. Kabbah attempted to reach a peace agreement. He created a national coalition government, which included all major parties, and entered negotiations with Sankoh and the RUF. The RUF 'called for power sharing with the new Government with the expectation that 'a people's budget' would be implemented to include free and compulsory education, affordable housing, clean water and a sewage system in every village.' (Zack-Williams, 1999, p. 151) The RUF also demanded the withdrawal of all foreign troops. The

negotiations broke down when Kabbah refused these requests and offered instead a truth commission modelled on the contemporaneous process in South Africa. Nevertheless, these measures did not bring about an end to the conflict.

Kabbah's short reign added to the complexity of the problem, simply because he distrusted his own army, which harboured split loyalties between APC and the NPRC (Richards, 2003, p. 16). As a result, Kabbah began to rely on a Civil Defence Force (CDF), also called 'the Kamajors', led by Samuel Hinga Norman, in order to fight the RUF insurgency. As Zack-Williams (1999, p. 152) points out, the army saw the CDF as undermining the army's role to defend the constitution and hold the monopoly of violence. On the other hand, the CDF saw the army as corrupt and ineffective, not helped by the presence of *sobel*s, army officers who would partake in looting at night. The disciplinary techniques of international financial institutions would also continue to have a dynamic effect on the conflict. Indeed, tensions between the government and the army rose as the government cut rice subsidies for the army at the behest of the IMF. The result was another coup and the establishment of the Armed Forces Revolutionary Council: 'with little prospect of any international recognition, the junta allied itself with its old enemy, the RUF. Disoriented cadres streamed in from the bush, happy to escape further raids by the CDF.' (Richards, 2003, p. 17)

Attempting to bring an end to this increasingly complex and confusing situation was the Economic Community of West African State Monitoring Group (ECOMOG), whose Nigerian troops drove out the AFRC after a deadline for the election of a civilian government had passed. In the aftermath the Kabbah government was restored to power, and after some fighting a brief interlude occurred in 1999 with the Lomé peace agreement, which set the ground for a truth commission with a blanket amnesty for all senior leaders in the various forces set out above. The RUF entered into a power

sharing agreement with Kabbah's administration taking on senior cabinet positions. Sankoh was given the position of vice president.

But the cessation of hostilities was short lived, as Sankoh 'became convinced the government was terminally weak.' (ibid., p. 18) As a result, the bloody conflict continued, with the RUF taking a group of UN soldiers hostage, and firing on civilians after a protest took place at Sankoh's house in the capital. The RUF retreated from Freetown. This was the last convulsion of a long conflict, which had significantly depleted the RUF. A series of ceasefire accords were reached in 2000 and 2001. 'Demobilization of the majority of RUF, AFRC and CDF combatants then followed. A total of some 45,000 fighters had completed disarmament by the end of 2001.' (ibid.) By February 2002 the conflict was brought to an end, with elections taking place in May. These returned Kabbah's government for another term, and signalled the beginnings of Sierra Leone's transition both in terms of its transitional justice assemblage, and its process of renewed and more substantive neoliberalisation.

The latter began as early as 2001 with the publication of the *Interim Poverty Reduction Strategy*, in partnership with the IMF. The paper continued the pre-conflict neoliberal turn, emphasising the use of fiscal and monetary policies designed to ensure macro-economic stability, including the liberalisation of trade tariffs, and privatisation of public services (Government of the Republic of Sierra Leone, 2001, pp. 29-32). This was complimented by the introduction of micro-credit schemes to encourage small enterprises and a role for the state in facilitating 'the provision of basic management skills for micro-enterprises.' (ibid., p. 31) The paper signalled a neoliberal role for the state; no longer the provider of public services, but the facilitator of marketised competition integrated into the global economy. As such the document is

characteristic of a neoliberal project of, which assigns the state 'the official function of supervisor of the rules of competition.' (Dardot & Laval, 2013, p. 148)

In September 2001 the IMF backed the strategy with a Poverty Reduction and Growth Facility (PRGF), providing the government with US\$169 million worth of loans (IMF, 2001). As Michael Barrat and Martha Finnemore (2004, p. 62) point out, the PRGF is essentially a re-branding exercise for what is essentially the same structural adjustment programmes used since the eighties. Indeed, the practice remains distinctly disciplinary in its own right; the need to access aid means that deviation from neoliberal norms would be incredibly difficult for Sierra Leone. Moreover, it is not just a case of dealing with the IMF, but the institutional standing of the IMF whose confidence in the domestic economies of its credit recipients undoubtedly has a strong impact on other creditors, such as other (predominantly rich) domestic governments, ratings agencies, and the like. This being the case, through disciplinary financial practices, states like Sierra Leone are 'placed under the control of the international financial community, bodies of experts and ratings agencies.' (Dardot & Laval, 2013, p. 218)

By 2004, microcredit and microfinance institutions had become central to the realisation of Sierra Leone's poverty reduction strategies and its 'Sweet Salone' vision. Indeed, the Governor of the Bank of Sierra Leone, J.D Rogers (2004, p. 6) announced that Sierra Leone had prioritised 'micro financing as an appropriate vehicle for alleviating poverty both at the rural and urban levels,' and created the *National Micro Finance Policy Framework*. To date, the micro-finance market has remained vibrant with several micro-finance institutions, such as BRAC, Hope Micro, and Pro-Credit Bank. Organisations like BRAC, for example, see their role as creating loans and saving products adapted to 'meet the unique needs of people living in poverty.' It sells itself

as a 'holistic approach to development, by helping to build livelihoods, boost consumption, and improve access to a range of social services.' (BRAC, 2015)

Microcredit provides a distilled expression of neoliberalism. By creating financial markets that provide small loans, insurance and savings products to the rural and urban poor, microfinance aims to use debt 'to encourage "bottom-up" self-help and individual entrepreneurship activities of its own poor rural inhabitants.' (Bateman, 2012, p. 588) In this way, microfinance provides a distinctly neoliberal attempt at poverty reduction. By 'emphasising individual entrepreneurship over all other forms [...] the microfinance concept has strong political/ideological serviceability to the prevailing neoliberal/globalisation model.' (Bateman & Chang, 2009, p. 6) For microfinance consumers it thus formulates a version of social justice where 'competition over solidarity, readiness to seize opportunities to succeed, and individual responsibility,' are the highest virtues (Dardot & Laval, 2013, p. 187). In other words, microfinance represents a targeted market solution; a series of products designed to assist individuals to become 'owners' and 'holders of capital'. In post-conflict Sierra Leone, victims thus become shareholders (Hudon & Seibel, 2007, p. 5) who navigate their own way out of poverty through entrepreneurial activities.

For impoverished Sierra Leoneans their subjectivation as neoliberal *homo oeconomicus* has resulted in particular kinds of cultural phenomena that provide a snapshot of post conflict Sierra Leone. A special edition of *Africa Today*, edited by Aisha Fofana Ibrahim and Susan Sheplar based on everyday life in Sierra Leone, sketches out some of these practices. In the introduction, for example, Ibrahim and Sheplar (2011, p. viii) point to the reuse of the UN's blue tarpaulins as make shift homes and businesses:

The blue tarpaulins used by international agencies such as the UNHCR quickly became the main material used for the construction of panbody, makeshift homes and businesses [...] [t]hese structures are mobile homes that can be dismantled quickly, should the need arise.

Amassed from the debris of the conflict and responsive to (one can assume) needs based on the fluctuations of competitive markets, the panbody represent a glimpse of neoliberal Sierra Leone. If neoliberalism demands the flexibility, adaptability and resilience of a subject entirely at the mercy of the needs of 'the market', the adaptable, mobile home or business (emphasised by the flexible materiality of tarpaulin) represented by the panbody provides an obvious example.

If Sierra Leone's transition has been a neoliberal one, how does transitional justice relate to this neoliberal turn; what is the relationship between them? In the first case, it is a question of understanding both the SCSL and the SLTRC as two parts of a whole, as a transitional justice assemblage. Secondly, it is a case of demonstrating how this assemblage contributes to processes of neoliberalisation. This I suggest is twofold. On the one hand, it is the construction of a narrative figured around an act of expulsion – both the narrative and the choice of victim that it engenders serve as a kind of operation on the history of the conflict, which legitimise the new neoliberal order. On the other hand, this narrative is tied up with forms of subjective capture designed to produce individuals that are amenable to Sierra Leone's neoliberal future. The first port of call, then, is to understand how to read the multi-mechanism approach in Sierra Leone.

Mixed-Mode Mechanisms: A New Transitional Justice Assemblage

The decision to use a multiple mechanism approach in Sierra Leone takes place on two slightly different timelines that converge in 2003, when both the SCSL and the SLTRC

began their work. It is fair to say that the simultaneous existence of these mechanisms owes more to chance than it does to a particularly 'strategic' elaboration of transitional justice. Indeed, the original plan, written into the Lomé agreement, was for a single truth commission with blanket amnesties given to all combatants in the conflict. The Lomé Accord (1999) stated that: 'A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence [...] get a clear picture of the past in order to facilitate genuine healing and reconciliation.'

Nevertheless, following the formal end to the conflict, Sierra Leone continued to experience fighting. In 2000, the amnesty agreement which effectively pardoned all combatants appeared to be in doubt. According to William Schabas (2004a, pp. 153-154), the RUF's renegeing on the Lomé agreement enabled Kabbah's government to write to the UN Security Council and request a tribunal to try the RUF's leadership. By 2002 the UN and the government of Sierra Leone had agreed a statute for the Special Court of Sierra Leone, which would 'prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.' (UN Security Council, 2000) More than simply the RUF, the court would try the leaders of all of the conflict's major parties.

Far from negating the delayed truth commission,²⁹ the 'Security Council subsequently referred to the complementary role of the Truth and Reconciliation Commission within the overall context of post-conflict justice in Sierra Leone.' (Schabas, 2004b, p. 4) By 2003, Sierra Leone housed two transitional justice mechanisms operating simultaneously. I want to concur with this assessment of the two institutions'

²⁹ The SLTRC didn't commence its operations until 2003

complementarity, and to take up Roht-Arriaza's reference to an ecology of practice. It is important to acknowledge, however, that Sierra Leone's transitional justice undertaking not the perfect unfolding of a preconceived strategy. The production of the assemblage of was as much about the interaction between transitional justice and the context of Sierra Leone as it was about grappling with the debates between transitional justice scholars and practitioners on questions precisely such as truth vs. justice.

An example of this tussle can be found in the signing of the Lomé agreement, where, as William Schabas (2003, p. 1036) points out, 'the Special Representative of the Secretary General of the United Nations, Francis Okelo, formulated a reservation to the amnesty provision, insisting that it could not apply to crimes against humanity and war crimes.' His reservation remains in written form on the agreement next to his signature. On the one hand, in its own right this provide an example of the continuing transitional justice debate between amnesties in the name of truth and criminal justice, as they are brought to bear on situations like Sierra Leone. On the other hand, As Elizabeth Evenson (2004, p. 737) has pointed out, Okelo's reservation was used to revisit the amnesty clause and to pave the way for the SCSL. As such, the dynamics of these debates remained important in the decisions that led to a dual-mechanism transitional justice assemblage.

This recalls Foucault's (1980, p. 195) point about apparatuses: their practices and their effects can be intentional or unintentional, and can enter into resonance or contradiction with others. This complicated unfolding can 'call for a re-adjustment or a re-working of the heterogeneous elements that surface at various points.' In the same way, the resonances and the difficulties of Sierra Leone's transitional justice assemblage are such that the question of 'mixed-mode' approaches to transitional

justice is opened up by both the possibilities and the failings of the relationship between the SCSL and the SLTRC. In other words, regardless of the slightly haphazard formation of this assemblage, the possibilities that it opens up as a paradigm shift make it important case study to analyse in regards to this more fluid approach.

In spite of the difficulties and disjunctions encountered in the interaction between the mechanisms of Sierra Leone's transition, the legitimacy of viewing them as an assemblage should be judged by the relative success of the experiment. Sierra Leone's approach was met with a flurry of work from academics and practitioners, evaluating the possibility of using the model for future transitional justice projects. Indeed, William Schabas (2004c, p. 1088), a commissioner on the board of the SLTRC, makes the point that, 'This unprecedented experiment revealed some of the tensions that may exist between the two approaches. Yet, it also demonstrated the feasibility of the simultaneous operation of an international court and a truth commission.' As Alexander Dulkalkis (2011, p. 433) points out in his survey on the literature around Sierra Leone, transitional justice proponents thus began 'from the assumption that the two institutions complement each other and treat difficulties as technical problems [... and] do not seriously engage the possibility that there may exist deeper constraints on the relationship.'

Important disjunctions remain. In particular, the different remits of their respective investigations might be jarring. While the truth commission was able to investigate the conflict from its beginnings in 1991, the SCSL could only investigate from November 1996, a decision taken so as not to overburden the prosecutors (Schocken, 2002, p. 445). Furthermore, because the SLTRC had jurisdiction to investigate the causes of the conflict, its mandate was effectively to explore anything that it deemed relevant in this regard. As such, in spite of their overlaps, these different timeframes provide a slightly

piecemeal approach to their interaction, and one that forecloses the possibility that the SLTRC might serve as an investigatory arm of the SCSL. Furthermore, there was no real co-ordinated approach between the two institutions at the level of their mandates, investigations and resources. This occasionally brought conflict, most obviously around problems of allowing defendants at the trial to also make testimonies at public hearings, for example Kamajor leader, Samuel Hinga Norman.³⁰

How it is possible to talk about these mechanisms as an 'assemblage'? Doing so would no doubt trouble the many proponents of the toolbox approach, who rely on making a demarcation between different mechanisms by highlighting their separate functions. As I have noted, their perspective obfuscates the political function of transitional justice by insisting that it provides multiple 'technocratic' instruments through which it is possible to address the increasingly de-politicised process of peacebuilding. Indeed, for those who Meister (2011, p. 293) argues think that 'once we have arrived at humanitarianism nothing can come next,' the compartmentalisation of different mechanisms obfuscates the intrinsically political decisions about responsibility by forwarding transitional justice as an administrative process that pushes post-conflict countries to 'the end of history.' In contrast, through the term assemblage, I hope to reaffirm the political underpinnings of transitional justice by emphasising their joint labour in producing a moment of sacrificial violence that lays a foundation for a particular kind of future.

To orient the discussion, I remind the reader of the arguments made by Roht-Arriaza (2006) that emphasise the emergence of the 'mixed-mode' approach in response to critiques of individual mechanisms deployed on their own. These emphasised that the

³⁰ Schabas has given a full account of this in one of his essays (2004c, pp. 1092-1098).

strength of truth commissions was in producing narratives with and through the public. Their weakness, on the other hand, was the ongoing impunity of rights abusers who would not be punished for their crimes. Their complementarity is thus founded on the assumption that trials provide accountability through punishment and TRC's provide narratives constructed with the participation of the public. Similarly, my argument is premised on the assumption that this articulation of their respective roles points in the right direction where the division of labour for producing an act of expulsion is concerned.

In this schema, the SCSL is the provider of sacrificial violence *par excellence*; by ascertaining guilt and delimiting punishment, the court finds those 'most responsible' and expels them from the social body. On the other hand, the SLTRC's jurisdiction over both the whole conflict and its historical context provides a way of producing a greater 'truth' about the responsibility of those on trial at the SCSL in regards to their responsibility for the conflict as a whole. Furthermore, the SLTRC provides a public platform through which to construct and disseminate this truth that outmodes the limits of a criminal court. In Girardian terms, then, I argue that the SCSL provides the moment of expulsion while the SLTRC is responsible for publicly constructing and disseminating the accusatory narrative through which individuals are discursively responsabilised for the crisis affecting the social body.

My interest in the SCSL, therefore, is not so much its ability to produce what I have been calling an accusatory narrative. Rather, my interest is contained purely to its sacrificial violence. The SLTRC thus performs the majority of the work here. An objection might be raised at this point. Indeed, it is important to point out that the juridical co-ordinates of trial constitute a field of possibilities in regards to who might be deemed responsible for the crisis. Moreover, the act of criminal prosecution only

constitutes an act of expulsion in as much as punishment is meted out only when the indictees have met a threshold or veracity in regards to these juridical co-ordinates. These factors make it tempting to isolate the SCSL as involved in its own, isolated production of a narrative of responsibility, rather than as part of an assemblage, which shares this responsibility.

Nevertheless, I argue the SCSL must be set in the context of Sierra Leone's transitional justice assemblage as a whole. In particular, it is important to point out the shared normative assumptions of the two institutions, which construct a shared discursive terrain where the process of selecting and expelling a scapegoat is concerned. In this sense, they both articulate a narrative of the past with recourse to human rights and with an emphasis on individualised responsibility for the leaders of various factions. This analysis takes the view that the SLTRC's decision to publish the names of those they found to be 'most responsible' as a recognition of the 'interlinkedness' of the two mechanisms, especially as many of those listed were indicted by the SCSL. This move, incidentally, brings Sierra Leone into proximity with the case of Peru, where the truth commission provided support for the court by recommending a list of names of those who should be indicted (ICTJ, 2016).

The timelines of the two mechanisms may also helpfully orient this discussion. On the one hand, the SLTRC began its preliminary investigations in March 2002 and presented its report to President Kabbah in October 2004. On the other hand, the SCSL only began its trial proceedings in June 2004, and made its first conviction in 2007, its final conviction was of Charles Taylor following his failed appeal in 2013. This being the case, it is not unreasonable to suggest the following timeline. First, through its various practices of public participation, the SLTRC produces and disseminates a narrative of individual responsibility for the conflict, which is presented in the SLTRC report. This

process is then extended through the formal rigours of a criminal trial and its juridical rules, which confirm, according to the thresholds of criminal guilt, the responsibility of individuals for the crisis. The SCSL's prosecution of the individuals it finds criminally responsible constitutes a final act of verification and expulsion.

In order to approach an analysis in the terms outlined above, this chapter will first demonstrate how the SLTRC provided a narrative of responsibility. The chapter will then proceed to explore the relationship between the SLTRC's construction of responsibility and its relationship to the distinctly neoliberal transition that Sierra Leone has undertaken. Finally, the analysis will show how the Special Court completes this process, by offering a moment in which a practice of expulsion takes place.

Making a Neoliberal Narrative: The Sierra Leone Truth and Reconciliation Commission

The SLTRC was brought into being as the result of the 1999 Lomé Peace Agreement with a broad remit:

to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone [...] to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.
(Government of the Republic of Sierra Leone, 2000)

Rosalind Shaw (2005) has pointed out that the SLTRC implicitly relied on the same kind of assumptions about narrative, trauma and healing that the South African experience had leant on. Like South Africa, the SLTRC was mandated to 'get a clear picture of the past in order to facilitate genuine healing and reconciliation.' (*Lomé Peace Accord*, 1999) As such, it is important to emphasise the SLTRC's continuity with other truth

commissions inasmuch as it makes the assumption that the production of a national narrative of the conflict can provide some kind of 'symbolic closure', which enables the nation to move on.

Since South Africa, Millar (2011b, p. 180) has argued, Truth Commissions have become more likely to follow a certain format defined by 'performances of truth telling.' Indeed, the focus of the SLTRC was thus to use truth-telling practices as a device for creating an authoritative narrative of the past, based on an assumed understanding of the conflict as the widespread abuse of human rights. In a similar vein to South Africa's TRC, the SLTRC focused on the use of public testimony informed by a statement taking phase for perpetrators, victims and witnesses in order to construct a narrative of the conflict. Like South Africa, these hearings were conducted across the various regions of Sierra Leone. As the report points out, the commission spent one week in each district and they were held in 'district headquarter towns, in appropriate venues such as school buildings or community centres.' (Sierra Leone Truth and Reconciliation Commission [SLTRC], 2004a, p. 180)

Like South Africa before it then, the purpose of the SLTRC was to produce a narrative of the past, which relied on mass participation through the public hearings. This enabled not only large amounts of people to participate by giving their own testimonies, but also to 'bear witness' to the past in their own communities where the hearings were held. Moreover, with the help of various NGOs and the media, the SLTRC conducted various sensitisation campaigns before and during every phase of the commission's work to encourage engagement and participation with its work. Its report was also widely disseminated, with an additional video version and versions written for children (ibid, pp. 161-162).

Unlike South Africa, however, Sierra Leone's TRC did not deliver the kind of individualised amnesty process, which enabled the former to procure statements from perpetrators in return for amnesty. In its stead, the SLTRC had a subpoena power to call individuals to testify. This dramatically transforms the purpose of the SLTRC, however. Consequently, it meant that, unlike South Africa, the SLTRC did not develop a practice capable of performing acts of 'scission' that cleaved crimes from their actors and deferred responsibility a reified actant. In other words, the SLTRC had no teeth where sacrificial violence was concerned. Rather, perpetrators were invited to give their testimony for the sake of the truth, rather than for the benefits of amnesty.

These hearings were supported by three other kinds of hearings which largely served to provide a context in which the conflict could be placed. Firstly, there were institutional hearings designed to attend to the role of 'specific civil society institutions or state structures that warrant particular scrutiny for their role in inflicting, legitimising or ignoring abuses.' (ibid, p. 233) Secondly, there were thematic hearings which allowed '[...] the Commission to address patterns of abuse and broader social analysis regarding the enabling background conditions.'(ibid.) The commission held hearings around several themes, including 'governance', 'Issues of corruption', 'women and girls', and 'children and youths'. Finally, the SLTRC held hearings pertaining to events, singled out as significant in the course of the conflict. The purpose of these hearings was to 'consider whether particular events served an especially catalytic role in the history of human rights abuse in Sierra Leone.' (ibid.) As with the individual hearings, these hearings were also used to construct a narrative of Sierra Leone's conflict, and the testimonies they extracted were considered in the presentation of the Commission's findings in its final report.

These latter hearings, and especially the thematic hearings, were driven by NGOs who not only set out their terms, but populated them with narrative. The thematic hearings were informed by a report made by the Campaign for Good Governance (CGG) and another commissioned by the Ford Foundation. It is not too far of a cognitive leap to suggest that themes such as 'governance' emerge from the findings of these initial reports. While the content of these reports isn't readily available, what is clear is that they 'assisted the Commission in developing some of the themes that constituted its research agenda.' (ibid., p. 146) In the case of the latter, the thematic hearings themselves were made up largely of submissions by NGOs and other organisations such as the CGG. The CCG, and the National Forum for Human Rights, provided submissions in the governance hearings.

As a result, the narrative of Sierra Leone's conflict is prefigured and shaped largely by organisations whose expertise affords them the pastoral power to do so. In chapter 3 I showed how NGOs govern through the power relations engendered by expertise. Governing is thus practiced as a kind of pastoral power to care for the flock through knowledge; 'through codes of practice, statistical data and empirical findings, assessment tests developed by organisations.' (Sokhi-Bulley, 2011, p. 259) In other words, knowledge empowers experts to make decisions and recommendations in matters deemed relevant to their expertise. While I have already shown how human rights constitutes a decisive and disciplinary expertise, it is important to emphasise that other expertise such as that on 'governance' plays an important role in the SLTRC's narrative. I will return to this issue later, but for now it is enough to remind the reader of the argument relating to NGOs and the practice of governing.

All the information that was elicited from both the statement taking phase and the various hearings was then synthesised by the commission into the three volume SLTRC

Report, *Witness to Truth*. The report is, above all, a comprehensive narrative of the conflict, which includes a list of named victims. As with the previous case study my interest in the construction of this narrative is not so much what people say about what happened to them, but on the discursive constraints placed on the sayable and the doable, and the way in which this gives shape to the narrative. I aim to show that the SLTRC recourse to the discursive co-ordinates of transitional justice delineate a narrative of the conflict largely as a crisis of human rights abuse and violations of international humanitarian law. Furthermore, I will demonstrate that it delineates a narrative of individual responsibility such that high ranking officials are named as those most responsible for these crimes. As such, it is a case of outlining how the SLTRC's practices constitute this narrative, beginning with the statement-taking phase, which provides a crucial role in the process as a whole.

The public hearings for victims, perpetrators and witnesses were informed by a statement taking phase, which began in December 2002 and involved the use of trained statement takers deployed across every part of Sierra Leone. Statement takers were given a three-day training workshops delivered by a combination of commission staff, UN staff, and NGO groups (SLTRC, 2004a, p. 166). The training was comprised of three modules that covered: the aims and mandate of the commission; an overview of human rights issues, and, finally, special interview techniques designed to support women and girls, victims of sexual violence, children and ex-combatants. As the report points out, the statement takers were trained with recourse to exercises and roleplaying (ibid.). The training thus 'disciplined' statement takers to embark on a uniform process, which was nevertheless attentive to the needs of specific groups. In order to ensure uniformity, statement takers were also given a manual to keep with them, and were regularly subject to performance reviews and appraisals (ibid.).

The statement taking process lasted for a total of 4 months and collected 7,706 statements from individuals. It was designed to extract statements from those who were victims or perpetrators of human rights violations. Thus, like South Africa, the underlying assumptions which determine the main co-ordinates as what 'counts' as an 'authentic' experience of the conflict were prefigured by human rights law. In particular, the form reified individuals according to four categories of possible experience, as a *victim*, a *witness*, a *perpetrator* to human rights abuse or those making a statement *on behalf of others* (ibid., p. 164). While one person was not limited to a single category, these categories nevertheless established what counted as a 'victim', a 'perpetrator', or a 'witness', articulated strictly in accordance with human rights law (ibid., pp. 184-190).

The data was recorded and then coded by picking out victims, perpetrators and violations from the statements in order to construct a database which logged the data by violation, rather than by the individuals giving the statement. The SLTRC generated data with recourse to models created by Patrick Ball and the HURIDOCS team that function according to the general principle of recording 'who did what to whom and where' for each violation (Ball et al., 1994). Following its coding, it was entered into the SLTRC's database where it could be used, amongst other things, to choose which individual experiences would be heard in public. These were selected not only on to be representative of the demographic make-up of Sierra Leone, but also of the human rights abuses committed in the course conflict (SLTRC, 2004a, p. 181). In as much as the data recorded through the statement taking phase created a set of data from which representative testimonies could be selected and 'performed' in the hearings phase, the human rights framework through which it is constructed becomes

important. It delineates which experiences, ideas and images are representative of the conflict as a whole.

Human rights and Neoliberal Undifferentiation

One effect of this framework is that the articulation of Sierra Leone's conflict through the framework of human rights informs a narrative of what Neil Cooper (2005, p. 464) calls 'New Barbarism'. New Barbarism, Cooper has argued, can be 'characterized by its description of conflict as explicable simply by reference to the narcissism of violence.' As such, it provides an account of the conflict that emphasises 'a focus on state collapse, the inhuman and nihilistic nature of warfare, the absence of ideology,' and so on. The key here is that the hearings provided an account of the conflict as simply the sum of the atrocities committed by all factions involved in the conflict, including the RUF, the CDF, and the Sierra Leonean Army. Here, the knowledge proffered through the statement taking and hearing phases offered evidence of mass violence and brutality meted out by all sides of the conflict, providing proof of the senseless barbarity of Sierra Leone's past.

While the conflict in Sierra Leone was undoubtedly brutal, it was also political. But by conceptualising the conflict through human rights the narrative of the past becomes 'chaotic' in the sense that the (un)ethical equivalence given to all factions denigrates them equally as proliferators the various forms of human rights abuse recognised by the SLTRC. In a theme that has no doubt become familiar throughout the course of this thesis, it is important to emphasise that foregrounding acts of physical violence often has the effect of 'flattening' out complex and explicitly political situations through the spectacularisation of suffering, which demands the absolute ethical rejection of violence. What is often then cast aside is the political stakes of the situation in favour

of an ethics that responds only to the image of a body which suffers as the result of physical violence. In Badiou's now familiar words (2001, p. 9), 'politics is subordinated to ethics.'

This is exacerbated by the way the TRC addressed the conflicts combatants, who, as Judith Renner (2015, p. 1119-1120) has argued, like other actors in the conflict were 'interpellated', or as in my own framework, subjectivated as Victims, perpetrators and witnesses, rather than addressed as the members of any particular group as such. The result was that the TRC disciplined (wittingly or unwittingly) the statements of combatants according to the need to establish the facts regarding human rights abuse. In this way the SLTRC not only attempted to replace 'the politically charged and polarised identities of the past, it also potentially neutralised the political claims related to these identities and replaced them.' (ibid., p. 1121)

The testimony of RUF combatant Morie Feika is a case in point. Introduced as an RUF combatant, he is prompted to speak in the way demanded by the TRC's mandate:

Commissioner Professor Kamara: You told us your story as somebody who joined the RUF; you did not commit any atrocities. Did you fight?

[...]

Commissioner Mrs Jow: Did you commit any atrocities?

Morie: I don't think I have done anything bad to anybody.

Commissioner Mrs Jow: I am sure you saw something bad being done to people.

Morie: Yes, I had seen a lot of bad things. I never was there when those things happened [...] (SLTRC, 2004c, p. 229)

The tension between self-identification a fighter and being addressed as a perpetrator is apparent in the paradox of Feika's simultaneous seeing a lot of bad things (as a fighter) and not being there (as a perpetrator) when they happened. Importantly, the

result is that broader questions regarding the conflict, either in terms of the organisational stakes, or regarding why individuals joined such seemingly brutal groups were subordinated to the SLTRC's structural need to make combatants speak in certain ways, that get to the truth of the conflict, as a matter of physical violence.

Through the production of testimony, then, it was possible for the SLTRC report to affirm its findings that all sides of the conflict 'not only disrespected the international laws and conventions of war, but also intentionally flouted the laws and customs that [...] have lent structure to Sierra Leonean communities, culture and society.' (SLTRC, 2004b, p. 34) The testimony of individuals, either combatants or civilians, served the function of evidence that 'proved' the SLTRC's major finding that conflict was essentially 'self-destructive' in character (ibid). Nothing crystallises the depoliticising consequences of human rights more than the verdict of self-destruction, which dispels the political stakes of the conflict in the face of the dissembled present. The purpose of the conflict is backgrounded appearing pointless in the face of its own self-destructiveness. Self-destruction is forwarded as the negation of any particular political position.

This narrative provided two key functions. Firstly, human rights provided a discourse through which the undifferentiating power of violence was constructed. As Girard (2005 [1972], p. 54) argues, the primary property of violence or crisis is the removal of distinctions or differences beginning with the basic inside/outside, enmity and friendship distinction that constitutes a community. A sacrificial crisis is thus a crisis of difference; a crisis affecting the cultural order, where 'coherent thinking collapses [...] all associative forms are dissolved.' In this framework the process of undifferentiation cannot be discerned from the 'inside', where the political stakes between factions can be seen, but from the 'outside' (ibid., p. 168), where Girard can exert his own

framework of mimetic violence over the situation. In the same way, human rights provided Sierra Leone with a framework that attests to the 'becoming-sameness' of each faction.

Secondly, the discursive production of undifferentiation had a certain political value in terms of the neoliberal transition. This, I suggest, hinges on the construction of the conflict as barbaric violence and chaos around the figure of the Victim. In the previous chapter, I outlined Meister's differentiation between socio-economic victims and human rights victims (2011, p. 25), in order to show that the TRC constituted a political operation which transformed the question of apartheid from the former to the latter. In the same way, the SLTRC provides a narrative in which avoids problem of inequality, and especially the violence of global finance facilitated by international financial institutions. The result is that the question of egalitarian justice is no longer relevant. Instead, the problem of Sierra Leone's conflict is articulated through truth-telling which produces certain kind of victim who speak in a way that 'makes readable the body in pain.' (ibid., p. 64)

That said, it is important to recognise that the SLTRC is the site of some novelty in this regard; it did try, in fact, to gesture to the root causes of the conflict largely through the information collected in the governance hearing. Importantly, while the major component of the truth commission was related to 'truth-telling' performed by individuals, this aspect was largely provided by the expert testimonies of NGOs like the Campaign for Good Governance (CGG). There is an epistemological problem sewn into the heart of this differentiation. While individuals were placed in the discursive regime of human rights in order to tell their stories, the expertise of NGOs (like the CGG) enabled them to take control of the discursive frameworks in which the cause of the

conflict was constructed. The latter were not interrogated³¹ about the theoretical assumptions and critical tools sitting at the foundation of their expertise, nor the ways in which they draw conclusions about the past. As such, particular expertise dynamically shaped the terrain upon which the past is constructed, whilst, at the same time, the potentially political disposition of these expertise was left unquestioned.

The result is the SLTRC's uncritical taking up of a 'governance' discourse. The CGG's submission to the SLTRC emphasised that the over-centralisation of political power, the failures of the judicial system and, above all, corruption had been at the root of the conflict (SLTRC, 2004c, p. 15). These kinds of claims were unchallenged in submissions by others like the Forum for Human Rights. As a result of these submissions, the SLTRC found that 'greed, corruption and bad governance had led to institutional collapse, through the weakening of the Army, the police, the judiciary and the civil service. The entire economy was undermined by grave mismanagement.' (SLTRC, 2004b, p. 30) In the absence of engaging with a plurality of perspectives, these claims became unquestioningly incorporated into the narrative the SLTRC told about Sierra Leone. This is not without political implications.

As one might expect, the term 'governance' is strategically useful Sierra Leone's post-war neoliberal project. Reverting to Brown's observation (2015, p. 127), governance provides a paradigm in which the organisation of society is no longer seen as a political problem but as 'a field of management of administration.' Here, neoliberal economics becomes the integral quasi-scientific (and thus depoliticised) knowledge of governing. Downplaying questions of inequality, governance emphasises the idea that individuals become stakeholders in the technocratic running and management of the economy;

³¹ Especially not in the transcripts.

the questions of politics, power and the socio-economic striations of classes and races disappear from view (ibid., p. 129). Describing the past with recourse to 'governance', then, allows the SLTRC to incorporate a critique of the 'totalitarian state' and avoid questioning the place of economic structures in the conflict, and, particularly, the economic re-structuration taking place at the time.

Indeed, by placing emphasis on issues like corruption and mismanagement as the cause of conflict, the question of the past never concerns how economic *structures* themselves as the cause of problems like poverty, but is deflected onto their mismanagement by greedy elites. By blaming 'bad governance' Sierra Leone's conflict is understood to be caused by the governance of the socio-economic system rather than the system itself. It is a subtle differentiation that allows capitalist modes of production to continue, reconfigured in the neoliberal image. For the conflict is never connected to the structural violences of postcolonial capitalism, nor to neoliberalisation through practices of structural adjustment. The role of reorganising the mines, which, Conteh-Morgan (2006) argues, led to the disenfranchisement of young men who would become rebels, is never even mentioned. Indeed, mines become a symptom of the conflict rather than placed in the line of causality. As the SLTRC report (2004b, p. 107) points out 'the exploitation of diamonds did not cause the conflict in Sierra Leone, but different fighting factions did target diamond areas for purposes of supporting their war efforts.'

For Sierra Leone, the relation between *this past* and the future crystallises in the SLTRC's recommendations regarding governance: 'real economic development is not possible, when corruption and bad governance are the order of the day. They result in the massive reduction of the national cake. Both local and international investments go elsewhere.' (ibid., p. 160) This is an indicator that the real challenge of post-conflict

Sierra Leone is to utilise good governance to create a society in which respect for the laws of market competition are cultivated and can be properly managed by the state. Inasmuch as transitional justice is responsible for ‘radically differentiating a new regime in relation to what actions were taken by its predecessor,’ (Miller, 2008, p. 268) the narrative of the conflict embraces a well-governed neoliberal regime as a remedy to fight off the bad governance of the past. It can be no real surprise, then, that Sierra Leone has unquestioningly (re)embarked upon a neoliberal project, framed in terms of good governance. It supplies a term which moralises the imperative to put the governance of the state under ‘the supervision of the international financial community, ratings agencies and other “experts”’ (Dardot & Laval, 2013, p. 219), radically subjugating democracy to the logic of the enterprise.

This is guaranteed by the articulation of victimhood around human rights, which emphasises the violent, barbaric end result over any prior claims to socio-economic injustice. The problem of governance becomes a nebulous backdrop for the *real* crime of human rights abuse. In the end, the SLTRC produces a narrative that acts like a neoliberal parable, which helpfully sidesteps the question of inequality and socio-economic justice altogether. If the problem is that an inefficient, corrupt, and dysfunctional state eventually proliferated human rights abuse, then the guarantor of the human rights imperative, ‘never again’, becomes the reformation the state based on neoliberal principles. Perversely, the guarantor of human rights becomes an economically rational state whose only function is the production of competition and enterprise.

To secure this image, the SLTRC attempts to nullify any recourse to socio-economic concepts of victimhood by grounding its concept of victimisation in the individual experience of physical suffering and rejecting other forms of victimhood organised

around other terms of reference. Indeed, as Meister (2011, p. 28) argues, 'The rule of law in the aftermath of evil is expressly meant to decollectivize both injury and responsibility and to redescribe systemic violence as a series of individual crimes.' The SLTRC attempts to subjectivate Victims (and perpetrators for that matter) under the individualising conditions of human rights. Such a practice not only has a function of disbanding collective associations, but also a political efficacy where a distinctly neoliberal project is concerned. For neoliberal governmentality seeks to disband collective identities in order to initiate a competitive market system, where individuals can be encouraged to understand themselves as the primary and only unit of society, that is, as individual enterprises. The next task is to understand how the attempt at de-collectivisation is made at the level of the subject.

In the previous chapter, I showed how truth-telling is a governmental technique, designed to induce certain kinds of subjectivation, that constrains individuals to understand their experiences through the discourse of human rights, following an injunction to identify themselves as victims of human rights abuses. The result of this practice was the individualisation and political de-activation of subjects necessary for the implantation of South Africa's post-apartheid neoliberalisation. In the same way, I want to now argue that through practices of public testimony, the SLTRC 're-describes and rearticulates human beings (to themselves),' (Odysseos, 2010, p. 757) according to the same human rights framework. Through truth-telling, the SLTRC delineates highly individualised terms in which harm or injury can be expressed, playing into a neoliberal paradigm in which 'all forms of social crisis [are] perceived as individual crises.' (Dardot & Laval, 2013, p. 277)

A particularly poignant example of this process comes in the form of an interaction between a Victim and the commission regarding the very nature of the SLTRC. When

a Victim asks the commissioners about the work of the SLTRC, particularly regarding its efficacy, and the supposed benefits for those who testify before it, commissioner Torto answers: 'the assistance you will get is psychological, we sympathized with what happened to you and we very much understand your plight.' (SLTRC, 2004c, p. 51) I pick out this brief discussion because Torto's remarks describe the harm which transitional justice recognises as an individual rather than a collective one, by setting out the terms in which the individual's own sense of victimhood should be constructed. Harm is only expressible when it is a matter of the physical violence and the resulting psychological trauma of victims.

Moreover, Torto asserts that The SLTRC functions as a mechanism for overcoming psychological pain, only if the individual is willing to speak as a subject of it. Providing a psychological frame of reference for the harm, Torto reassures Abu Bakarr Baloster Saccoh, the victim of an RUF attack that testifying will provide a psychological benefit: 'I am very impressed with the testimony you made, as you rightly said, you were reluctant at first, I am sure that as you have testified, your psychological burden will ease.' (SLTRC, 2004c, p. 22) The SLTRC articulates Victims like Abu Bakkarr to themselves as the subjects of an individualised psychological trauma resulting from the conflict. Notably, Abu Bakkarr's case is one with a particularly neoliberal bent – his victimisation is largely the result of loss of private property and displacement due to an arson attack on his home. The connection between the loss of private property and psychological trauma sums up perfectly the neoliberal assumptions underlying the SLTRC; the problem of conflict is 'privatised', relating primarily to one's private space and its connection to the 'soul'.

What is important is that the SLTRC connects a psychologised form of individualisation to a kind of individual responsibility for one's own therapeutic management that

conveniently serves the aims of the commission. Victims must take responsibility for their trauma by testifying before the commission and, in doing so, also serve the narrative needs of the commission. The SLTRC, therefore, reflects Nikolas Rose's (1999, p. 261) point about the practice of psychologisation and its relation to governmentality. For Rose, the power of psychotherapeutic discourses is 'their capacity to offer means by which the regulation of selves—by others and by ourselves—can be made consonant with contemporary political principles, moral ideals, and constitutional exigencies.' In this way, Psychologisation has been fundamental to the 'fabrication of an autonomous self as a key term in analyses of social ills and cures.' (ibid., pp. 220-221) The implication is that the psychological-self is constructed as an entirely autonomous being given to the neoliberal injunction to take control of their life through 'a series of decisions and efforts that come down exclusively to the individual.' (Dardot & Laval, 2013, p. 275)

It is perhaps unsurprising that this form psychological individualisation is implicated in other forms of 'responsibilisation' that are characteristic of neoliberal societies. Rosalind Shaw (2007, p. 201) has used ethnographic research to show that many 'people who testified had done so because of their expectations that the TRC, the government or the international community would help them rebuild their lives.' Shaw shows that requests for assistance were met by the commissioners with a mixture of impotent empathy to impatience, lying as they did outside of their remit. The unenthusiastic response of the commissioners to these requests reinforces the new neoliberal reality in which the subject is entirely on their own; the subject becomes 'exposed in all areas of his life to vital risks from which he cannot extricate himself, their management being a matter of strictly private decisions.' (Dardot & Laval, 2013, p. 275)

A poignant example of this tension can be found in a brief exchange between commissioner Torto and a human rights victim called Hawa Sheriff:

Hawa: My greatest problem for now is that I do not have money to take my daughter to hospital.

[...]

Torto: The government has the micro-credit and I want to believe Lokomasama benefited from it. I want you to explore that avenue to improve your condition.

Hawa: I only heard about the micro-credit. I was not privileged to get it because am a returnee there, not an indigene. In any case, I don't think I will ever access the micro-credit because it is not being fairly distributed.

[...]

Torto: Thank you. I will encourage you to continue your search for better medical treatment for your daughter. (SLTRC, 2004c, pp. 46-47)

It is interesting that the commission attempts to adapt individuals to an economic logic in which they become entirely responsible for their own healthcare, and, in this case, the healthcare of their dependents. It acts as a kind of neoliberal 'micro-practice'. Here, the SLTRC alludes to a reality in which social goods like healthcare become the responsibility of the individual.

Command Responsibility: Constructing the Scapegoat

If this individualising construction of victimhood is part of a construction of 'undifferentiation', then this analysis must still cover more terrain. What is yet to be described is the process of 'redifferentiation' where an act of sacrificial violence reconstructs the social body by creating a new logic of difference between the population as a whole (the community) and perpetrators who are most responsible for the crisis which has befallen Sierra Leone. As such, it is first a case of understanding

how the SLTRC constructs an accusatory narrative which facilitates the belief that a handful of individuals are responsible for the crisis.

In the case of the SLTRC, human rights discourse becomes a useful discursive framework in order to construct a 'scapegoat'. Indeed, if human rights delimit the terms of victimhood in the image of the individual suffering body, then this also constructs the 'harm' for which something or someone must be responsible. In this case, the legal concept of human rights violations is combined with a rationality of command responsibility, a long standing precedent in human rights law, which goes back to the Nuremberg trials, and which emphasises the liability of commanders for their troops (Owen, 2006). These assumptions delineate the conflict as a crisis of human rights abuse for which high ranking officials of all the major factions are most responsible.

In this way, the SLTRC is also designed to build a case against the individual leaders of the conflict's various factions in terms of their role in human rights abuse. The SLTRC report (2004a, p. 155) makes it clear that the commission saw its role as providing this service:

[T]he Commission made several findings concerning the responsibility of the respective factions and certain individuals. These findings were based on empirical evidence linking the perpetrators to the violations [...] The Commission published the names of all the leaders of the respective factions in its Findings chapter. The Commission holds all these leaders accountable for the violations and abuses that were committed by members of their respective factions.

In doing so, the SLTRC provides support to the Girardian process of expulsion in two ways. Firstly, it provides a narrative of individual responsibility that has been constructed and disseminated in a public forum. In other words, individual

responsibility isn't adjudged solely in the limited confines of a courtroom but in a public and quasi-judicial forum. Secondly, by borrowing from the legalism of criminal proceedings, that is, the notion of command responsibility, the SLTRC produces a narrative of individual responsibility that is entirely compatible with the Special Court.

This body of evidence is compiled, on the one hand, through the manipulation of the data, which was compiled as a result of the statement taking process. Indeed, it allowed the commission to make findings with respect to the various factions' crimes. For example, it enabled the SLTRC to find that 'the RUF was responsible for more violations than any other faction during the period 1991 to 2000: 60.5% (24,353 out of 40,242) of all violations were attributed to the RUF.' (SLTRC, 2004b, p. 38) While this process provided hard evidence of factional responsibility, it was also supported by attempts to establish command responsibility in the hearings process. One example, of many, is in the hearing of Sheku Kpasiwai, where the commission tried to establish the command responsibility of Samuel Hinga Norma for the abuses of the Kamajors:

KPASIWAI: Those were the people that gave us instructions to go to the war front. Those two people. Hinga Norman and Moinina Fofanah. Moinina Fofanah was the War Director.

Leader of Evidence: Who was of the highest in rank- Hinga Norman or Moinina Fofanah?

KPASIWAI: Hinga Norman.

Leader of Evidence: And did you ever meet Kondowai?

KPASIWAI: Yes, he initiated me into the Society.

Leader of Evidence: What was his rank compared to Moinina Fofanah and Hinga Norman?

KPASIWAI: Norman was the highest in rank. (SLTRC, 2004c, p. 1047)

In this sense, statistical data provided quantitative evidence of the crimes, while the hearing process attempted to provide qualitative evidence of the various factional leaders' command responsibility for the crimes.

It is probably unsurprising to the reader that many of those the commission find most responsible, including Foday Sankoh, Sam Bockarie, Issa Sessay, Samuel Hinga Norman, Moinina Fofana, Brima Kamara, and John Paul Koroma (SLTRC, 2004b, pp. 38-83), were indicted by the Special Court. The SLTRC went as far as to implicate Charles Taylor and the NPFL in the conflict. The commission found that Taylor brought 2000 NPFL troops into Sierra Leone to support the RUF: 'In the Commission's view the NPFL faction, under the indisputable overall command of Charles Taylor, was chiefly responsible for the bulk of the abuse inflicted on the civilian populations of Pujehun and Kailahun Districts,' between 1991 and 1992 (ibid., p. 86). Given that the Special Court's biggest 'scalp' was Taylor, it is important to stress the importance of the SLTRC's decision to concretely connect him to the conflict.

There are obviously advantages to delineating responsibility according to this formula, both in a purely pragmatic sense and in terms of political expediency. In a conflict scenario characterised by widespread and visceral crimes,³² responsibility becomes a much easier question when it is constituted through the notion of command responsibility, in order that a few individuals are understood as responsible for the crimes of the many (Schocken, 2002). In response, the SLTRC produces a narrative in which, *the leaders* of all sides were responsible for creating a crisis of human rights and humanitarian law. On the one hand, this is a purely pragmatic gesture: it alleviates the obvious pressures that would be put on the SCSL or the Sierra Leonean judiciary if it was a case of trying every individual perpetrator for their crimes. But it also speaks to a pragmatic attempt at less tangible goals such as reconciliation. For it expresses a

³² including in excess of 400,000 people thought to have been subjected to enforced amputations

version of responsibility that allows the vast majority of perpetrators to be differentiated from their leaders and to open the door for reconciliation on that basis.

But the more politically significant effect comes through the individualisation of guilt that is possible only once the situation becomes a legal problem of human rights abuses and individual criminal responsibility. Slightly rearranging a point made by Meister (2011, p. 27), once justice is about 'a narrow class of victims (those who suffered physical torment),' those who are responsible become reducible to 'a narrow class of perpetrators.' In this case, the production of the community's other, its scapegoat, is conditioned by discourses which individualise responsibility over structural causation and more abstract processes. Certainly, this is pragmatic; the criminal punishment of individuals is a much easier and politically palatable proposition than identifying and addressing the local crystallisation of often global structures of violence and inequality that are less tangible. But, in doing so, these structures are omitted and escape from a share in the blame.

While the SLTRC creates a narrative of responsibility, the sacrificial violence of Sierra Leone's transitional justice assemblage is located in the Special Court, which takes this narrative and 'completes' it by finalising the absolute difference between the community and its other. This analysis turns to the SCSL now.

A Mode of Expulsion: The Special Court of Sierra Leone

In a sign of the increasing recognition of transitional justice, the Special Court marked the first time that an ad hoc international tribunal was developed in a partnership between the Government of Sierra Leone and the UN, rather than imposed by the UN Security Council. It was also the first ad-hoc tribunal to be held in the 'theatre' of the

conflict, that is, inside the country in question. With a temporal jurisdiction beginning from 1996, the SCSL had a *ratione materiae* jurisdiction over crimes against humanity, war crimes, and other serious violations of international humanitarian law. In contrast with the Rwandan experience, however, the crime of genocide was not considered relevant (Schocken, 2002, p. 436). It also took the innovative decision to include some crimes under Sierra Leone's national jurisdiction. However, as Charles Jalloh (2011, p. 403) argues, in reality the latter jurisdiction became something of an irrelevance: '[w]hatever law was to be used, the Court was to focus on prosecuting the top echelon responsible for the atrocities [...] in Sierra Leone.' As a result, the most relevant body of law remained international law.

Nevertheless, the SCSL had a striking resemblance to its progenitors in Rwanda and Yugoslavia. As Celina Schocken (2002, p. 446) points out, the wording of the SCSL's jurisdiction in the UN Security Council resolution is nearly identical to that of the International Criminal Tribunals for Rwanda and for the Former Yugoslavia respectively. Importantly this meant that the SCSL continued with the terms already set out by the SLTRC, and thus had jurisdiction over the persons 'most responsible', or those who bear the greatest responsibility for abuses of human rights.

The articulation of greatest responsibility is a helpful jurisdictional limitation in as much as it makes a distinction between the upper echelons of command responsibility and ordinary perpetrators. As Jalloh (2011, p. 418) points out 'the widespread nature of the crimes [...] and the large number of persons involved in their commission might have initially appeared overwhelming.' The differentiation between those most responsible and ordinary combatants is clarified by SCSL prosecutor David Crane who, in his opening statement in the trial of Sesay, Kallon and Gboa, suggests 'Each of these indictees is responsible for the criminal acts of his subordinates.' (*the Prosecutor of the*

Special Court Vs. Issa Hassan Sesay, Morris Kallon, Augustine Gbao, 2004, p. 25) Like the SLTRC, individual responsibility is articulated as command responsibility. The efficiency of such a move has been summarised by Crane who suggested that it reduced the number of individuals it considered to indict from 30,000 to 20 (2005, pp. 511-512).

By March 2003, and with these juridical parameters set, the SCSL indicted leaders from the major factions involved in the conflict in the temporal jurisdiction of the Court, namely the AFRC, the RUF and the CDF (the Kamajors), as well as Charles Taylor whose NPFL was also involved in the conflict. The charges brought against the accused were numerous and included 'murder', 'unlawful killings', 'extermination', 'rape', 'sexual slavery', 'violence to life', 'terrorising the civil population', 'collective punishments', 'mutilation', 'pillage', and 'the use of child soldiers'. In the end, as Jalloh (2011, pp. 404-405) notes, the SCSL was organised around four trials, three clustered around each faction, with a separate trial for Taylor. It is important to point out that this might be a suggestive way of organising the tribunal, unlike the IMT at Nuremburg the organisations themselves were not indicted. The composition of the trials thus organises the indictees into groups whilst maintaining the fact that criminal responsibility was wholly individualised (ibid.).

Of those belonging to the 'faction trials', 8 indictees were given a full trial by the Special Court. In 2007 the Special Court began to reach its verdicts, starting with the trial of the CDF leaders. All nine of the accused, including Charles Taylor, were found guilty of crimes against humanity, war crimes and other serious breaches of international humanitarian law. They were all punished with long prison sentences that ranged between 20 and 50 years. It is worth mentioning that the RUF's Foday Sankoh and Sam Bockarie, the CDF's Samuel Hinga Norman, and the AFRC's Johnny Paul Koroma, were

never tried because they had either died or disappeared and could not be brought before the court. While all those above were named by the SLTRC the fact that they were never tried constitutes one of the most unfortunate disjunctions between the SLTRC and the SCSL and one that it is difficult to remedy without a greater coordination between the two that many were calling for.³³

My interest in the SCSL is the way in which the act of criminal prosecution continues and finalises the process of othering these individuals from the community as a whole. While the SLTRC constructed a narrative of individual responsibility the SCSL's role is, in essence, to prove beyond reasonable doubt the criminal responsibility of individuals, according to the rules and procedures of evidence which delineates the threshold at which guilt can be apportioned. There is obviously a tension here between on the one hand a juridical process, which by no means guarantees the guilt of any particular individual, and the absolute need to find someone responsible, to other them, and to expel them. The SCSL is marked by moments in which the tensions between constructing this difference through the precise juridical procedures, and the need to find someone responsible, that is, to produce a sacrificial moment, rises to the surface.

For example, in many of Crane's opening speeches he makes reference to the role of ordinary Sierra Leoneans who, as witnesses, 'stepped forward [to] slay the beast of impunity with the righteous sword of the law.' (*The Prosecutor of the Special Court Vs. Issa Hassan Sesay, Morris Kallon, Augustine Gbao*, 2004, p. 30) Notwithstanding Crane's flamboyance, the construction of the problem of criminal responsibility around ending impunity poses a difficult juridical problem. This is well observed by

³³ Thinking through these difficulties has become a common task within the field of transitional justice. For example, Dukalskis (2011) presents normative frameworks for the interactions between trials and truth commissions.

Kallon's defence lawyer, Raymond Brown. I quote Brown's objection to Crane's language at length because it locates precisely this problem. He argues:

And as for impunity it seems to me that it has been the practice of almost every prosecutor at a moment as significant as this to want to think about the transcended[sic] values that bring us here [...] But there is something troubling about talking about impunity by it self[sic] because it invites us to say, "Well there clearly were," and this Court is judicially noticed "wide-scale humanitarian violations in Sierra Leone during the period of this conflict and someone must pay," and the phrase "beast of impunity" invites us to say, "Well we must find someone who can pay [...]" (ibid., p. 72)

The objection identifies that the prosecutorial drive to end 'impunity', a common theme of the human rights movement, completely ignores the possibility that the processes of the trial allow for an outcome in which no-one might be found guilty and punished. In other words, what Crane's speech betrays is a creeping assumption of guilt, or at least that the SCSL process must find someone responsible, and, following that, someone must be punished.

Crane's speech thus exposes the contradiction between the necessity of punishing someone, and the need to do so through a vehicle that, in Brown's words, insists upon the 'continued adherence to the rule of law and the burden of this Prosecution and their obligation to prove [their] case.' (ibid.) Crane's flamboyantly articulated desire to 'end impunity' points to the real efficacy of the SCSL, which comes in its ability to mete out guilt and punishment. There is a subtle but definite slippage here, where the emphasis is not on a process in which evidence is deliberated in order to judge the guilt or innocence of the defendants, but rather a device to punish *someone*. In other words, it provides a logic in which someone can be punished, because what is required is precisely that someone must be punished. This tension directs the analysis to the Girardian function of the SCSL.

In verifying guilt and sentencing those responsible to punishment, the SCSL provides a moment of sacrificial violence that finalises the difference between the 'community' and its 'scapegoat', to use Girardian terminology, with a spatial and temporal permanence. First, spatially, in as much as the community is defined against one who has been othered by the legal ritual of trial and just punishment. As such, what is particularly fitting is that all of those convicted are, according to Jalloh (2011, p. 409) currently serving their sentences outside of Sierra Leone, in Mpanga prison in Rwanda. The dissimulated and metaphorical space opened up between the community and its scapegoat is also given a geographical dimension insofar as the metaphorical expulsion performed by successful prosecution and detention is underpinned by the literal location of those accused outside of the Sierra Leonean social body. Second, temporally insofar as the expelled other represents an evil that is past, the now purified community finds the present as a new horizon on which its future can be constructed. The moment of expulsion, therefore, is definitional in the terms Girard (2003 [1978], p. 102) set forth: 'the community seems to emerge from it [...] there can be something like an inside and an outside.'

The New Normal: Transformations and Consistencies for Transitional Justice

Sierra Leone's transition represents the coming together of two normative shifts across a number of interrelated fields. Firstly, it represents a shift in the articulation of transitional justice, which recognises that a number of mechanisms must be deployed in order to address the dilemmas of a (neoliberal) transition. Moreover, as something of a grand experiment it also locates and validates the possibility of the simultaneous existence of truth commissions and criminal courts. Now that the International

Criminal Court (ICC) has an increasingly international jurisdiction³⁴ it is unlikely that stand alone truth commissions like that of South Africa will be permissible. Indeed, the *Rome Statute for the International Criminal Court* (2002) is clear that the ICC has the power to prosecute individuals for crimes where states within its jurisdiction are unable or unwilling to do so. As such, it affirms the dominance of retributive justice and assures that the 'package of measures' approach to transitional justice is a normative practice, at least for the time being.

Secondly, it represents the normalisation of 'new wars' discourses as the dominant framework for understanding the dynamics of conflict and their amelioration. What is particularly interesting here is the shift from a more ideologically driven perspective of conflict, to a kind of neoliberal economism, which understands the various actors as entrepreneurs. The former, most vigorously outlined by Third Worldism, saw conflict as a liberation struggle in which the socio-economically marginalised became agents of their own liberation. The latter sees those very same people as *homo oeconomicus* determined to promulgate permanent warfare to satisfy their own desire for wealth accumulation (Newman, 2004). By emphasising human rights violations over other factors, Sierra Leone's transitional justice assemblage bolsters this conceptualisation by muting questions of socio-economic injustice and ideology.

In spite of the shifting terrain, Sierra Leone also demonstrates two consistencies that go to the heart of this thesis. First, it demonstrates that sacrificial violence remains central to the practice of transitional justice. In many senses, it represents a kind of strategic elaboration of this process refracted through a similar logic as that of the new business models advocated by Peter Drucker. Drucker (2001) predicted that

³⁴ There are notable exceptions, which includes the United States, Israel, China, Saudi Arabia, the UAE and Bahrain.

corporations would become decentralised, and more reliant on outsourcing, so that any one organisation relies on others to complete and produce many tasks that would have been completed 'in house.' Similarly, Sierra Leone's assemblage demonstrates that different functional components of the sacrificial act could be completed by different mechanisms. Most obviously, the division of processes designed to construct a narrative of the conflict and practices of sacrificial violence between the SLTRC and the Special Court.

I have tried to show that this practice reflects a new reality for transitional justice in which, to paraphrase Nagy (2008), the question is no longer on of whether something should be done, but how it should be done. At a time when the apparatus has been integrated into the practices of institutions like the UN and the World Bank, the compartmentalisation of different mechanisms to different tasks obfuscates fundamentally political mechanisms with recourse to an administrative or management framework, where a tool box of solutions can be rolled out with measurable impacts. Against this technocratic discourse I have attempted to reassert the fundamentally political stakes of transitional justice by showing how these mechanisms are implicated in a single act of sacrificial violence that is eminently political.

This leads to the second point: the case of Sierra Leone also demonstrates an ongoing relationship between processes of neoliberalisation that seem to take place following the end of conflicts and the transitional justice mechanisms that also attend to these contexts. This continues to be oriented around the story that transitional justice mechanisms tell about the past. By focusing on human rights, Sierra Leone's transitional assemblage transforms a social crisis into the individualised problem of rights abuse, which is given primacy over more structural. This is bolstered by the

novelty of attempting to deal with the legacy of the 'economic' through the neoliberal framework of governance, which wards off questions about socio-economic structures of violence by reducing them to the problem of corruption, nepotism and greed. As such, the practice of violently expelling individuals it deems to be responsible for the crisis provides a definition of evil, which lays the foundation for a neoliberal project in which the responsibilised individual wards off more collective notions of both the past and the future, and good governance defines the neoliberal solution to the human rights imperative of 'never again'.

On this front, I also affirm that the individualising drive of human rights is an operation unfolding in the order of subjectivity. By reframing the problem of collective violence in the individualised framework of psychological trauma, the SLTRC interacts with victims and perpetrators in ways which attempt to rearticulate individuals to themselves, providing frameworks that suit the individualising needs of Sierra Leone's neoliberal project. Furthermore, facing up to the constrained political environment that surrounds it, particularly in the area of health, the interactions between commissioners and victims articulated the implications of neoliberal subjectivity for Sierra Leone, asking individuals to take responsibility for their own life risks, their health, and those of their family, in response to questions about the SLTRC's role in helping victims.

Having brought these arguments together in the case of Sierra Leone it is possible to begin reflecting on the arguments which have been made throughout the course of this thesis. In particular, the thesis has picked out some practices, structures and trajectories of transitional justice, which have implications for the current state of the apparatus. The reflections that follow must take these into account. Furthermore, this thesis has given a critique of transitional justice, which poses important questions

about how transitional justice should be articulated in future. While a comprehensive undertaking of this question would, no doubt, be a thesis in its own right, there is, nevertheless, an opportunity to think about different kinds of alternative practice. These considerations will now be taken up in the conclusion.

CONCLUSION

| ANOTHER TRANSITIONAL JUSTICE? |

A theme running through the work of those such as Brown (2015), Mirowski (2013) *et al.*, who are currently engaged in academic research on neoliberalism, is the tension between its global ubiquity, its remarkable flexibility, and its localised diversity. One can agree with Brown (and others) that neoliberal rationality has remarkably transformed the state, subjectivity, and politics, all now defined by the logic of economised competition. It is possible to see how the neoliberal project is now guaranteed by the transformation of the state into a firm, constrained by institutions like the IMF and the World Bank, by credit ratings agencies, and by the seemingly inescapable logic of neoliberal economy itself, to universalise the law of competition, and to make as many areas of human life as possible conform to the logic of the market.

That being said, one must also respect the remarkable plasticity of neoliberal governmentality that makes, remakes and transforms any number of state apparatuses in different guises according to its logic. For example, there is a remarkable difference between the strength of trade unions in various countries; they are a much larger presence in South Africa than in the United States. Nevertheless, the presence of trade unions (such as COSATU) in South Africa's tripartite alliance, does not point to the recognition of class politics at the heart of South Africa's state. Rather, it

constitutes the remaking of trade unions into a 'stakeholder' in the smooth running of South Africa's neoliberal, post-apartheid economy. As Brown (2015, p. 129) insists, the language of stakeholders subtly but radically disassembles class politics by disavowing the different political stakes and positions created by the structural stratifications in the economy and society.

At the same time, human rights, is also marked by a similar kind of tension. For its proponents, the human rights movement is not the monolithic enterprise of globalised universality, but a means of articulating new kinds of political resistance. As Odysseos and Anna Selmeczi (2015, p. 1035) argue, the 'power of human rights often hinges on their modes and processes of subjectification, for example in inciting subjectivities that enable new languages and new claims for resistance against dispossession and oppression.' Needing both a particular context in which rights can be claimed, and the novelty of a new political movement emerging from those claims, what Odysseos and Selmeczi's formulation posits is the expression of rights as both locally differentiated and potentially radical according to the particulars of the context.

Nevertheless, human rights, cannot be disassociated from the universality and ubiquity of its governmental instrumentalisation. For human rights, particularly articulated through a kind of military humanitarianism, has also achieved a hegemonic status as the moral and ethical underpinning of neoliberal globalisation. As Douzinas (2003, p. 173) has argued:

Human rights and human(itarian)ism supply the values, which allow the merging of the positivism of power and the morality of justice. The moral order provides legitimacy to a new configuration of power relations, which applies to the whole globe, leaving no region, state or group beyond its reach.

Douzinas' point is that the so-called universality of civil and political rights has come to be policed by an international order that has accepted and legislated for them. In this new order, human rights discourse has provided the new '*justa causa*,' to be policed by military intervention if necessary. Douzinas might point out, the legitimacy of the latter claim is questionable, and assertions that it serves as useful a cover for socio-economic interests make an important challenge to the governmental use of human rights. Nevertheless, though diverse and differentiated, human rights and neoliberalism have both found themselves 'policing' global order.

It is interesting then, that transitional societies constitute at least one nodal point which brings them together as elements of the current paradigm of globalisation. Military humanitarianism has sometimes found itself deployed within the very crisis that exists prior to liminal time of transition; Côte D'Ivoire, and Sierra Leone are but two obvious examples. But if military humanitarianism has been evoked in interventions designed to bring an end to violence, the formidable figure of human rights has more often been given a platform in the transitional moment that takes place immediately after. In the transitional context, whether the transition from a totalitarian regime, the end of a conflict, or something that sits uneasily between the two, human rights has been the primary discourse through which the past has been articulated and the future has been imagined. Via the apparatus of transitional justice, the image of suffering bodies, constituted as human rights abuses, becomes the foundational antithesis of a future social imaginary where a rights-respecting society is enjoined with the so-called 'international community'.

Furthermore, the transitional context also marks a liminal space of uncertainty, which provides strategic opportunities for the extension of neoliberal governmentality into new territory. One of the real insights of Klein (2007) is to locate the concept of 'crisis'

as one of neoliberalism's many hallmarks. For Klein, one of the markers of processes of neoliberalisation is the strategic utilisation of a social crisis, a disaster, against which neoliberal rationalities could be presented and adopted as a solution. Certainly the moments after the stammering, spluttering end of 'totalitarian' regimes and the dissembling, destructive fall-out of conflict, have been utilised as possibilities for processes of neoliberalisation. Through structural adjustment plans, development activities, microfinance, and localised NGO work, neoliberal governmentality has been rolled out at the subjective, social, and governmental levels.

Importantly, neoliberalism and human rights not only meet in the face of these disasters, but are, in fact, woven together through the apparatus of transitional justice, which deploys the latter in order to prefigure and support the imposition of the former. This will be better understood with a summary of my argument, which will lead to the very heart of the relationship between the two. I have tried to show that the central mechanisms of transitional justice, trials and truth commissions, constitute practices of sacrificial violence designed to construct and expel evil, in order to provide a foundational moment for a new *polis* after the crisis. Though scarcely recognisable as such to its proponents, this final act of violence constructs the symbolic imaginary of a new society in its opposition, both spatial and temporal, to immolated 'scapegoats' who may be real or figurative, but are, nevertheless, the embodiment of a particular version of evil.

Rather than being, as Girard would have it, the moment which gives birth to a new socio-political imaginary, I have tried to demonstrate that the foundation provided by sacrificial violence is not an origin so much as it is the victory of one political project over others. In this sense, my thesis has stayed true to the genealogical principle that has underpinned it; it rejects the notion of an origin even where Girard is determined

to provide one. My argument is that transitional justice serves a neoliberal governmentality that has become all but hegemonic. The thesis has demonstrated that through sacrificial violence transitional justice provides a foundation for a new polis built along neoliberal lines. The question of 'how' has been the subject of intense scrutiny, which require further unpacking, however.

This critical theory of transitional justice provides a way of thinking about 'dealing with the past' that wrests it from an implicit tendency to present human rights as a 'natural' response to disaster. Rather, what it shows is that recourse to human rights is decisional, and that, as a result, the decision about who is deemed responsible for the past – unwittingly or otherwise – supports a particular kind of political project. Such decisions are guided by various actors but especially NGOs, whose expertise afford them the power to dynamically shape the framework through which the past is constructed and to make decisions on the question of responsibility.

That said, I emphasise that those working in transitional justice are not part of some global neoliberal cabal, although some may be actively signed up to the neoliberal project (even if they would avoid that particular nomenclature). Rather, what I have tried to show is that transitional justice (and human rights more broadly) constitute a kind of disciplinary knowledge that shares a number of assumptions with neoliberal governmentality, especially a commitment to individualism. Above all, transitional justice accepts and does not challenge the impositions of the international order and fits its discipline, both in terms of its philosophical disposition and its practice, around the 'realism' provided by a now globalised neoliberal governmentality. This, even if it is veiled under the idea of liberal democracy, which, in any case, Brown (2015) has shown to have been transformed and remade by the neoliberal logic of economisation.

And this points towards to precisely how transitional justice as a governmental rationality in its own right, serves the rationality of neoliberalism.

Sacrificial Violence constitutes a symbolic break with a certain notion of evil provided by human rights. By articulating evil in the image of the body in pain, transitional justice narrates disaster through a lexicon that avoids coming into friction with the coming neoliberal society. Subtly but radically de-politicising questions of socio-economic violence, and the social stratification of land and wealth, transitional justice utilises a foundational expulsion to historicise and dislocate a social crisis into the past. In doing so, it creates a history which can ably cast neoliberal governmentality as the solution to evil and disaster. Mechanisms of sacrificial violence, whether a truth commission, tribunal or an assemblage, thus violently produce the moment in which the immediate past is transformed into history and the neoliberal imaginary can be imposed upon the present.

The success of this strategy relies on the way in which the apparatus simultaneously reaches down into the level of subjectivity, both realising and realised by the production of an idealised subject. Utilising the techniques and practises of Saviours, transitional justice dislodges and disassembles prior lexicons, identities and subjectivities by producing individuals as Victims of the past, reducing them to an individualised, hapless kernel that can be more readily appropriated by the apparatuses of the neoliberal state and induced to take hold of their (economically defined) freedom. For the subject, then, the practice of sacrificial violence is designed to create an understanding of the self, defined by their relation to evil. Sacrificial violence marks a liminal process, one in which individuals are defined as Victims only for this victimisation to be historicised by the violent expulsion of evil. This liminal manoeuvre provides a temporality to the subject's relation to themselves that dislocates the past,

placing them in the new horizon of what comes after. There, reduced to their suffering body, they await the restoration of their dignity, only realisable through the injunction to become an entrepreneur of the self.

At the heart of this process, I argue, is the 'positivity' of power in a Foucauldian sense. Foucault argued that power was not primarily oppressive but a productive force, creating knowledge, subjectivities, and domains of reality. The lure of transitional justice is not so much that it 'disciplines' individuals, but rather that it provides a framework which recognises and valorises their suffering, naming it in a discourse that promises some kind of redress under the name of truth or justice. The reality of its power thus poses a challenge for those who are critical of the relationship between transitional justice and neoliberal governmentality and processes of neoliberalisation. Are there other forms of recognition, subjectivation, and, above all, justice, that confront both the past and the neoliberal future? How can these be self-organising as opposed to imposed by experts? I will reflect on these crucial questions in due course, but for now it is important to unpack the more immediate challenges presented by my thinking thus far.

In particular, just as neoliberalism is marked by a tension between the global and the local, it is important to stress that transitional justice is also defined by this tension. On this front I want to highlight a few salient points. First, if a similar kind of sacrificial process exists in all transitional justice's major mechanisms, then why is there a need for different mechanisms at all? Simply put, transitional justice is not the uncomplicated unfolding of knowledge practice on a smooth surface, but the result of frictions, deviations, and detours that must take place in order for transitional justice to stabilise itself in its surroundings. In other words, the multiplicity of mechanisms

reflects the challenges and obstacles faced by the apparatus and the knowledges which have gone into producing a multiplicity of mechanisms to overcome them.

My analysis has emphasised that the challenge of transitional justice has been to find ways of enacting a process of sacrificial violence in the face of the different realities it has encountered. Transitional justice is shaped by differing political realities, as well as the knowledges gained through careful evaluation and perfection of particular models by transitional scholars and practitioners. In South Africa, for example, the TRC was the result of pressures exerted on the post-apartheid government by the military. As was pointed out by Thabo Mbeki (cited by Boraine, 2000, p. 143), if South Africa had undergone Nuremberg style trials the peaceful transition would have failed. The TRC thus took the idea of a truth commission and substantially reimagined it, finding an effective form of sacrificial violence in doing so. Similarly, Sierra Leone's transitional justice assemblage was the disjointed response to multiple pressures, notably the tension between the demands of reconciling factions and the international community's recent turn to more retributive forms of transitional justice.

Secondly, and perhaps more importantly, the decisions made about the question of responsibility and the historical narratives that undergird them should not be understood as the monolithic imposition of a global discourse producing the same result across space and time. Each context has its own specificity refracted through the lens of human rights as well as other associated discourses. There is, for example, a substantive difference between the histories constructed by transitional justice in Rwanda and South Africa, which goes beyond the specific type of mechanism deployed in each context.

In Rwanda transitional justice addressed the brutal catastrophe of genocide, using the framework of human rights to provide a legal response to the political programme of mass violence directed against Tutsis and sympathetic Hutus. The language of rights, which focuses on the phenomenal, imperceptibly lays itself over the event, giving it a name (genocide) and recognising those who suffered under it. The juridical response of the ICTR focused on the individual responsibility of the government leaders, mobilising a critique of the totalitarian state and its ability to mobilise ancient racial hatreds. As such, the narrative produced by transitional justice provides an opportunity to 'neoliberalise' the state under the guise of dismantling the totalitarian state apparatus, so mercilessly exploited by the government leaders. In this framework, the mass mobilisation of the population against its undesirable members is the result of a totalitarian regime that subdues and controls the population and which must be dismantled in order to ensure the human rights imperative of 'never again'.

This narrative employs a human rights framework that omits Rwanda's socio-economic history, focusing instead on the racialised nature of the event implied by the legal term genocide. What this ignores is the role of the violence of global capital flows, particularly in regards to the coffee industry and the structural adjustment program of the IMF, which culminated in a large scale socio-economic crisis. This crisis provided an opportunity for a racist political project to take hold, but emphasising its role provides another account of agency and causality where the genocidal mobilisation of the population is concerned. Where the ICTR's narrative emphasises the docility of a generalised Victim, this narrative might evoke the figure of desperation and anger turned towards racist, violent ends. Incorporating the socio-economic here, might

imply a different, redistributive role for the state, which is at odds with the individualising and responsabilising practices of neoliberalism.

Conversely, South Africa's TRC was confronted by a system of socio-economic exploitation pitted against a political project that promised communitarian and egalitarian forms of justice to be enacted following the dismantling of apartheid. Thus, the challenge for post-apartheid South Africa was to address the past in such a way as to satiate the anti-apartheid movement, whilst transforming their claims for justice into something amenable to the neoliberal constraints of the transition: the production of a shared national narrative that provided some sense of a moral victory over apartheid, without having to meet the egalitarian demands of justice made by the anti-apartheid movement. Using the lexicon of human rights, The TRC provided a means of overcoming the binary oppositions of the apartheid era by transforming the definition of victimhood from socio-economic exploitation to physical suffering that crossed the racial divide. Unlike Rwanda, the emphasis here was the demobilisation, and de-politicisation of an active and legitimate communitarian politics. The individualising logic of rights was designed to supplant and dissemble this politics to ameliorate the transition from a racialised form of Keynesian capitalism to neoliberal capitalism, where under the moniker of the 'rainbow nation' everyone is welcomed so long as they submit to becoming an individual enterprise.

Finally, there is also the development of the knowledges and practices of transitional justice over time, which are reconfigured in response to the unfolding of the apparatus in its various contexts. On this front I highlight the way in which Sierra Leone's transitional assemblage attempts to incorporate the socio-economic into a narrative of Sierra Leone's civil war. As I have shown, the backdrop provided is one in which questions of socio-economic injustice are formulated through the language of bad

governance and corruption. In other words, the SLTRC does not attend to the violences of the global and local socio-economic system itself, but rather the violences resulting from its improper (for which one might read 'totalitarian') distortion. The result is that neoliberal governmentality can be positioned as the antidote because a more efficient and better run version of the capitalist economy becomes the only remedy deemed necessary.

Recourse to the term neoliberalism provides some sharp and important insights regarding the future of transitional justice. In the introduction to this thesis, I pointed to the fact that there was a small but increasing willingness to introduce socio-economic concerns to the field of transitional justice. Indeed, in 2008 Miller (2008, p. 291) expressed her hope that 'the literature and institutions of transitional justice are, like their 'parent' field of human rights, beginning the process of coming to terms with the past invisibility of economic questions in their midst.' If, however, the SLTRC represents an attempt to explore socio-economic issues (Nagy, 2008, p. 279), then it demonstrates that navigating this process will be fraught with difficulty, and deserves careful consideration. The conceptual framework of neoliberalism has highlighted some of the dangers in being unclear when scholars and practitioners make reference to the 'socio-economic' as a nebulous concept.

After all, neoliberals are perfectly capable of naming and constructing a critique of socio-economic issues and their relationship to conflicts. The last 30 years have been defined by the emergence of the 'new left' in Europe; a set of supposedly 'left wing' projects that, having abandoned the idea of substantive economic redistribution, address socio-economic issues within the constraints of grim, neoliberal 'realism' as articulated by the famous mantra of Thatcherism: 'there is no alternative'. Similarly, veiled in the language of governance, corruption, as well as in the 'new wars' discourse

used to delegitimise the political perspective of the RUF, Sierra Leone demonstrates how a neoliberal version of the relation between socio-economic crisis and mass violence can be articulated by transitional justice. As such, it is incumbent on transitional justice scholars and practitioners who want to get to grips with this issue to be precise about the way in which socio-economic issues are conceptualised in order to avoid falling into the trap of allowing neoliberal rationalities to go largely unchallenged. Only by taking this precaution does it become possible to begin thinking about another kind of transitional justice.

This nicely points to the question of how one might approach transitional justice in a way which resists the neoliberal paradigm for which it seems to be put into service. To put it another way, is there a way of articulating a form of transitional justice that productively puts the past to work in service of a broader horizon of the future, or at least to resist the neoliberal construction of the past and the future? It is this admittedly broad question that I wish to reflect upon now and bring this thesis to its conclusion. Reflecting on two alternative practices, I hope to provide some new ways of thinking about how another transitional justice might look. That is not to say that the practices arrive here ready-made and transposable to all manner of transitional contexts. Rather, what I outline here provides some flickers of light that might be appropriated and turned towards other transitional justice contexts.

Revisiting the Past through the Law: The Khulumani Group in South Africa

The Khulumani Support Group, or simply the Khulumani Group, started in the aftermath of apartheid and supported the work of the Truth and Reconciliation Commission. It has since grown critical of the TRC and of the ANC led government's lack of movement of social justice issues, and is now involved in a wide range of

activities including providing psycho-social support, supporting active forms of citizenship, and is determined to shake-off the figure of the Victim, by ‘turning victims into victors.’ (Khulumani Group, 2015) This mission statement speaks directly to Meister’s critique of the TRC, in which the claiming of human rights victimhood enabled the anti-apartheid struggle to take a moral victory over apartheid in place of the political one. Realising the hollowness of this moral victory, the Khulumani Group reasserts a broader goal of victory situated beyond the figure of the Victim. There are two aspects of the Khulumani Group’s work that I would like to draw attention to, because they have important consequences for thinking about how the closure enforced by the sacrificial mechanisms of transitional justice might be reopened.

Firstly, it is a question of how the Khulumani Group organises itself. Tshepo Madlingoza’s writings (2010, p. 221) on the group are useful here. Noting the constellation of power relations particular to NGOs Madlingoza juxtaposes the organisation against the term NGO, arguing, that ‘the structure of a typical NGO is hierarchical, with policies and other decisions being drawn up by the salaried staff members or board of directors of the organization and/or donors.’ The Khulumani Group is not an NGO, but a membership group that:

[...] is sustained by the people; its decisions are made by the people not by a clique or whoever [...] when it comes to decision-making it is directed by its constitution and the people. The leadership is elected by the people. It begins democracy from the local level. (Khulumani Group member quoted in *ibid.*)

Open to victims of apartheid who are ‘self-identified’ rather than certified by an NGO or the TRC, the organisation thus avoids the trap of a governmentality of expertise, using its board not to direct policy but to ensure that decisions about membership, policy, activities and practices are decided, organised and run by its members.

The Khulumani Group's choice to make a clear demarcation between itself and typical NGOs sends a political signal that is important in terms of thinking about how 'civil society' might mediate between transitional justice mechanisms and those who are expected to take part in them. Rejecting the neoliberal organisational format of the NGO where 'stakeholders' are individualised as 'Victims' who must be induced to speak – and to be remedied – in certain ways, the Khulumani Group treats individuals as members who must shape the ways in which the organisation conducts itself. In a sense, it resists and reverses the dissembling, individualising logic of the TRC by positing itself as a 'self-reliant collective movement,' (Ibid., p. 220) that is political at its heart. The organisation thus reflects its member's desire to overcome their victimisation through activities that go beyond the narrow, individualising scope of human rights victimhood and to level a critique of the socio-economic character of Apartheid.

This is reflected in the creation of the Khulumani Group's *Charter for Redress*, which was inspired by the ANC's Freedom Charter and designed through the engagement and decision making of its members. Importantly the charter makes a decisive move to turn victimhood into an agency designed to address the wide-ranging legacy of apartheid and the neoliberal post-apartheid state:

The Charter identifies the fact that reconciliation has a price – the price is the cost of redressing the terrible wrongs done to individuals and communities across South Africa. The Charter provides a checklist for all South Africans to explore what it is that victims and survivors require if they are to experience a sense of justice and to become restored to active participation in the ongoing construction of a society that benefits and includes all its citizens, not only the 45% who presently live above Minimal Living Standards. (Khulumani Group, 2007 cited in *ibid.*, p. 217)

Avoiding the tendency to narrow the harm simply to human rights abuses, the Khulumani Group recognise that justice for apartheid is wide-ranging, extends beyond the dominant vision of victimhood and legal redress, and is largely yet to come.

And this brings me to one of the Khulumani Group's activities that pushes precisely in this direction, performing a form of transitional justice that exists outside of 'the state' but that is simultaneously committed to and enacted through the legal forms of redress, and which highlights the socio-economic exploitation at the core of the apartheid system. In 2002, following the disappointment of the TRC reparations programme the Khulumani Group launched lawsuits against 20 commercial enterprises, including the banking corporations Barclay's and Citigroup and the mining company Rio Tinto. The law suits were filed in America and off the back of a successful lawsuit by Burmese villagers against Unocal, a petroleum company, for the use of forced labour in the construction of the Yadana gas pipeline. Having successfully sued the corporation the plaintiffs were granted 'substantial assistance via funds for programs to improve living conditions, health care, and education.' (Chambers, 2005, p. 14)

The case successfully utilised a US tort law, the Alien Tort Claims Act (ACTA) of 1789, originally designed to provide redress for piracy, which enables foreign nationals to seek redress through US courts for torts in breach of the law of nations or a treaty of the United States. Similarly, the Khulumani Group attempted to utilise ACTA on behalf of its members, in order sue various corporations for their role in apartheid. Their legal claim was that 'the corporate defendants aided and abetted the South African government in the human rights abuses it perpetrated under the system of apartheid.' (ibid., p. 15) The claims against the corporations totalled \$400 Billion in damages (Bashyam, 2008). Although ultimately unsuccessful, this political activity, decided by

and carried out by its members, constitutes what I want to call an *act of transitional justice*, which, with its connotations of agency makes a useful juxtaposition with *the mechanisms* of the apparatus. This act consists of a parasitic 'reopening' of the question of justice, which takes place after the closure originally wrought by the TRC.

This act of transitional justice reopens the question of justice in the sense that it resists by refusing to accept the terms upon which the TRC provided its closure. Most of all, it criticises the TRC's failure to seize upon the egalitarian principles forwarded by those engaged in the anti-apartheid struggle. As such, the act is almost parasitic; it exists as a result of – and not as a substitute for – the failings of the initial mechanism of transitional justice (the TRC). Importantly, its act of reopening is also one that brings the socio-economic nature of apartheid into sharp focus, whilst recognising the redistributive constraints and failures of the anti-apartheid movement's conversion to a neoliberal government. It thus reflects the actions of a self-reliant collective movement that finds ways of highlighting and seeks justice for the socio-economic legacy of apartheid, which is yet to be addressed.

Sadly, the tort brought against these companies was unsuccessful, and some commentators wonder whether ACTA remains a viable option for groups seeking redress for the actions of corporations against the violation of human rights (Chambers, 2005). However, I want to emphasise the claim's symbolic function, reopening the question of justice by highlighting the failures of both the TRC and the neoliberal post-apartheid state. It points towards both what has been disavowed by the TRC in the name of reconciliation and what has been disavowed by the neoliberal state in the name of economic competence and growth driven development. Indeed, if the process of the TRC is designed to construct apartheid around a certain concept of human rights, the actions of the Khulumani Group attempt to disrupt that symbolic

logic, by forwarding another vision of apartheid that goes beyond the TRC's minimal and limited conception. Even in failure, this symbolic power remains the kernel around which a new politics might be organised.

Greek Truth Committee on Debt: A New Truth Commission?

If the Khulumani Group has shown what might be possible through the seizure of agency to provide parallel and parasitic acts of transitional justice, then it might also be worth drawing attention to another vision of transitional justice that, while different to the current state of the apparatus, remains institutionally driven. My coordinates here are taken from recent events in Greece, and the establishment of the Greek Debt Truth Commission in 2015. First, though, some context is necessary.

The recent Greek crisis has shown Europe, or those willing to see it at least, the strategic function (and disciplinary power) of debt. Lazzarato (2012) has discussed the uncomfortable relationship between neoliberal governmentality and financialisation, whereby debt creates economic, legal and subjective frameworks for the strategic control, and 'adjustment' of states and individuals according to neoliberal economic logics. The analysis showed that the economic crash of 2008 formed the basis of a renewed interest on the part of Western governments, private banks, and international financial institutions in the strategic use of debt to enact neoliberal reforms. In particular, it shows that through the debts incurred by bank bailouts, Greece has been strong-armed into following an economic plan that involved wide-ranging privatisation, the increase in the working week, a reduction in pensions and a huge loss of public sector jobs (*ibid.*, pp. 116-117).

In the three years that followed the English publication of Lazzarato's analysis, the situation in Greece has come to occupy the focal point for both proponents and opponents of the neoliberal austerity plan(s) that have been put into action in countries all over Europe. On the one hand, the election of the left wing anti-austerity party, SYRIZA, brought with it a renewed hope of a well-articulated alternative to austerity coming predominantly from the left. Armed with the media-friendly image and economic acumen of its finance minister, Yanis Varoufakis, SYRIZA seemed to herald a viable alternative to the further entrenchment of neoliberal governmentality in Europe.

In the end, the electoral victory of SYRIZA has been a fascinating (and disheartening for many) case study in the imperviousness of neoliberal rationalities to democratic demands that attempt to pierce its omnipresent economism. Indeed, the current situation in Greece has shown that the economic imperatives of debt have confronted and defeated the democratic mandate of SYRIZA, both in terms of the parliamentary election and the referendum victory where the people voted *oxi* (no) to the terms of the bailout package. Flying in the face of democracy, the pretence of debt has been used to implement a series of neoliberal reforms of the Greek state, on the grounds of honouring debts, and through fiscal responsibility, discipline and deficit reduction.

Nevertheless, there are glimmers of light in this altogether troubling case study, and particularly where transitional justice is concerned. In particular, I want to draw attention to one of the mechanisms SYRIZA formulated in order to respond to the political instrumentalisation of debt. Following the election of SYRIZA in the Greek Parliamentary elections of 2015, the Hellenic parliament made the decision to establish 'The Truth Committee on Public Debt' (TCPD) (Sometimes translated as the

'Greek Debt Truth Commission')³⁵ to be headed up by Eric Toussaint, in charge of the scientific co-ordination of the committee and Sofia Sakorafa, in charge of co-ordinating with the European Parliament and international organisations. I am interested in the way in which it serves as a potential model for new practices of transitional justices that respond to the critiques of the apparatus' 'invisibilities' in regards to socio-economic issues.

In many respects, the TCPD obeys the normative rules of other truth commissions, being an investigative body established by the national government of the day, and designed to deal with the past through an investigation and construction of truth. Indeed, like an ordinary truth commission the TCPD has a set temporality of investigation, and mandate. Covering the period from 1990-2015, the committee will investigate:

The irregularities, violations of the constitution or the law and/or other improprieties occurred with respect of the contracting and/or build-up of the debt [...] Determine whether and if so which part of the debt can be deemed illegitimate, illegal, odious or unsustainable; Assess the impact of the conditionality measures under the economic adjustment programme on the human rights and welfare of all people living in Greece. (Truth Committee on the Greek Public Debt [TCPD], 2015a)

Furthermore, the techniques of its investigation include those which would be familiar to those who work with truth commissions. For example, the committee's investigation includes the public testimony by various witnesses and authorities, as well as scouring through documentation pertaining to Greece's public debt including official documents, contracts, treaties, as well official statistics, and so on (TCPD,

³⁵ The English appeal website run with support from the Hellenic Parliament, for example, calls it the Greek Debt Truth Commission (Greektruthcommission.org, 2015).

2015b, p. 9). Moreover, like a traditional truth commission the TCPD has a juridical focus; its investigation is around questions of law and legality with regards to the past.

However, it is important to emphasise that the legal terms upon which the TCPD is structured differ greatly to that of a typical truth commission. Its main focus is an examination of the legalities of Greece's public debt; it is designed to investigate the legitimacy of the Greek debt in general and to identify which parts of the debt fall under certain categories of illegitimacy. As such, the TCPD attempts to discover which parts of the debt are illegitimate, illegal, odious or unsustainable as the basis of the way in which it 'formulates arguments and traces the legal foundations concerning the cancellation of the debt.' (TCPD, 2015b, p. 8) In this sense, the TCPD is the kind of activity that Lazzarato may approve of. For Lazzarato (2012, p. 40) the structure of debt creates a hierarchical power relation between creditor and debtor. Here the activities, and the possible horizons of the latter are constrained by the former as a condition upon which someone is made 'capable of honouring their debt.' This hierarchy, Lazzarato argues, has been generalised across, individuals, organisations and states. Conversely, setting itself against the political power of debt, the TCPD approaches this hierarchy by formulating arguments that point to precise moments where the creditor's domination of the debtor becomes visible and, therefore, vulnerable.

That being said, 3 of the TCPD's 4 categories of debt are intended to delegitimise the terms of the Greek bailout on the basis of the different ways in which they violate human rights, both in the traditional civil and political terms of transitional justice and the less familiar socioeconomic rights. In this way, debt is considered 'illegitimate' in so far as it included policy prescriptions that violate national laws or human rights standards; 'odious' inasmuch as 'was incurred in violation of democratic principles (including consent, participation, transparency and accountability) [...] and whose

effect is to deny people their fundamental civil, political, economic, social and cultural rights;’ finally, it is considered ‘unsustainable’ when it ‘cannot be serviced without seriously impairing the ability or capacity of the Government of the borrower State to fulfil its basic human rights obligations, such as those relating to healthcare, education, water and sanitation and adequate housing,’ and so on (TCPD, 2015b, p. 10).

In this way, the TCPD attempts to draw a relationship between the socio-economic damage wrought by the political use of debt and the violation of human rights. Furthermore, rather than simply nodding to this relation at strategic points throughout the report, it remains a key focus with its own chapter. The TCPD addresses a specific context, the terms of the public debt, that perhaps differ from the contexts in which transitional justice usually operates; it does not speak directly to the needs of a transitional society coming out of a period of mass violence.³⁶ However, the structure of the TCPD’s findings is of interest to the post-conflict context of transitional justice, and one which provides a useful way of thinking about how another model of the truth commission might operate.

In the chapter titled ‘the Impact of the “Bailout Programme” on Human Rights’, the TCPD discusses the impact of various loan agreements on several human rights, including the rights to work, to health and to education, social security and so on. But it also discusses the violation of civil and political rights including freedoms of expression and assembly, resulting from the violent response by the Greek government to those protesting the violation of their socio-economic rights. Civil and political violations included: ‘prohibiting public meetings, repressing with excessive force peaceful demonstrations, making pre-emptive arrests, questioning minors, and

³⁶ Even if one could think of the SYRIZA moment as a possible and failed transition away from austerity and neoliberalism.

torturing antifascist protesters.’ (ibid., p. 40) What is interesting then, is that there is a relationship drawn between the initial violations of socio-economic rights and the subsequent recourse to physical violence and the violation of civil and political rights by the state, even if this historical narrative could be highlighted more forcefully in the TCPD report.

If one of the functions of a truth commission is the production of a narrative about the past, then the TCPD provides a new a way of approaching that narrative within a rights framework, but that also finds a different way of expressing the ‘socio-economic’. Where current transitional justice practices like Sierra Leone might refer to the ‘socio-economic’ as a context entirely separated from the crisis of mass violence articulated through human rights, the TCPD report brings them into a non-hierarchical relation with each other, by presenting them as different forms of rights violation (socio-economic as well as civil and political rights) that are implied by (and interconnected with) each other. As such, it disrupts the current hierarchy of transitional justice, which foregrounds the suffering body at the expense of issues of the structural violence caused by the political production of certain socio-economic relations.

Moreover, one could also understand the TCPD as an accusatory narrative of responsibility, which identifies and lays the blame on particular culprits. Indeed, the following chapter attempts to ascertain the legal responsibility of various parties involved in the crisis and begins thus: ‘Greece bears primary responsibility for violations exposed in Chapter 6, but such violations also constitute a breach of human rights obligations of the different Lenders since they imposed such measures to Greece.’ (ibid., p. 45) The chapter is careful to avoid clunky relationships between say IFIs and the Greek state’s violation of civil and political rights, but it does show the

various loan agreements with parties such as EU member states, EU institutions and the IMF.

As an example, the report argues that the 'IMF is required to refrain from steps that would undermine the possibility of a borrowing State complying with its own national and international human rights obligations.' (ibid., p. 47) In imposing certain conditions upon credit lent to Greece, the IMF has thus broken its obligations in international law. In this way, by showing the responsibility of various parties for the violation of human rights during the crisis, the TCPD provides a narrative that encompasses a broader picture that includes what would normally be veiled or made invisible by the usual practices of transitional justice. The TCPD is useful in the sense that it provides a form of truth commission, a form of narrative creation, which holds the door open for broader questions of justice. To be certain, this proposition pertains not only to creating another kind of truth commission, but could form the basis of another kind of transitional justice, one that supersedes the limitations of the current state of the apparatus.

The End of a Sacrificial Institution?

On that note, it is worth pointing out that the potential strength of this shift is the way in which it might completely rearticulate the relationship between transitional justice and sacrificial violence (in its present form). Presently, through juridical and quasi-judicial institutions, transitional justice has set about imposing a legal framework in order to address the past. Using the language of human rights these institutions have focused on the expulsion of real or figurative (but always symbolic) scapegoats under the rationality and expertise of the law. Veiled by the apparent ethical suspension of politics by human rights, the political nature of these decisions, indeed, the very

political nature of the law remains hidden. Transitional justice thus coalesces around the ethical figure of the suffering body both articulated and generalised by the apparatus. As such, the sacrificial violence of current transitional justice mechanisms is partial but always capable of providing a discrete and 'complete' form of redress for its own version of the past.

With the TCPD, on the other hand, a narrative is constructed around the violation of socio-economic rights within a broad political context that takes the power and disciplinary character of the global neoliberalism into account. As such, the narrative of responsibility it traces is in excess of the largely symbolic redress offered by the expulsion of human rights violators (real or figurative) in current transitional justice practices. Such practices ring hollow in the face of this broader concept of 'evil'. In this way, justice is no longer a juridical question able to be answered by trials and truth commissions but becomes a political question, which it might – but, in any case, should – have always been. If this framework has lessons for transitional justice, then what does it mean for justice in transition? What does the TCPD say about the possibility of (re)articulating the question of justice for transitional societies in general?

The implication, here, is that the question of justice must be articulated around a project that questions and confronts the various structural, socio-economic and, in particular, political stakes that concern an existence in common. In naming these issues and the actors within a narrative of the past, the horizon of justice is one that moves the very concept of 'never again' beyond the production of legal remedy and the fetishised memory of physical suffering. Rather, the promise of 'never again' whilst necessarily remembering this suffering, must also consider finding a way of living in common that wards off the inequality, the socio-economic suffering and the despair that both contributes to the conflicts addressed by transitional justice, and continues

under the neoliberal governmentality made possible, in part, by the narrow remit of the apparatus. Faced with this broader horizon, justice in transition becomes a political project and not a legal one.

Above all, then, 'justice' might no longer be a case of expelling individuals or figurative entities, it is perhaps a question of casting off the various state, and, even, the global techniques, practices and apparatuses, which produce inequality, precariousness and despair. In this moment beyond 'the end of history', such projects have struggled to catch fire. As Brown (2015, pp. 220-221) laments, the Left 'knows what is wrong with this world but cannot articulate a road out or viable global alternative [...] where thinkers and actors have been willing to pose such questions, answers have been thin.' The sheer enormity the globalised and disciplinary nature of neoliberal rationality, provides an incredibly large set of challenges. Indeed, the failure of SYRIZA and, as such, the TCPD, in the face of the Greek crisis showed the limits of the Left's current thinking in the face of contemporary neoliberalism.

Nevertheless, by creating narratives that jar with processes of neoliberalisation, the TCPD and the Khulumani Group provide useful materials, mechanisms and techniques that may be taken up by another kind of transitional justice. They provide a transitional justice that could potentially set about 'puncturing common neoliberal sense,' (ibid., p.222) by relating its post-transitional imposition, intensification or completion, to the horrors of a past set in motion by the inequitable distribution of resources, which will never be resolved by neoliberal rationalities. Its ability to finally puncture this sense is not down to the intervention itself, but to a political project that sets about capturing and instrumentalising this narrative to articulate new forms of political engagement. In this sense, far from the monotheistic violence that marks the victory of the neoliberal project, another transitional justice should mark only the beginning; it

should formulate an analysis that unfolds onto a broader horizon. It is but a tiny flicker of light set against the dull and torrid march of neoliberal rationality; one can only hope it will be seen.

BIBLIOGRAPHY

- Abdullah, I., 1998. Bush Path to Destruction: Origin and Character of the Revolutionary United Front/Sierra Leone. *Journal of Modern African Studies*, 36(2), pp. 203-235.
- Agamben, G., 2008 [1993]. Beyond Human Rights. *Open*, 15, pp. 90-95.
- Agamben, G., 2009. *What is An Apparatus?*. Stanford: Stanford University Press.
- Albon, M., 1995. Project on Justice In Times of Transition: Report of the Project's Inaugural Meeting. In: N. J. Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, D.C: United States Institute of Peace Press, pp. 42-54.
- Allen, T. & Styan, D., 2000. A Right to Interfere: Bernard Kouchner and the New Humanitarianism. *Journal of International Development*, 12(6), pp. 825-842.
- Alvarez, J., 1999. Crimes of States/Crimes of Hate: Lessons from Rwanda. *Yale Journal of International Law*, 24(2), pp. 365-483.
- Andrieu, K., 2010a. Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm. *Security Dialogue*, 41(5), pp. 537-558.
- Andrieu, K., 2010b. *Transitional Justice: a New Discipline in Human Rights*. [Online] Available at: http://www.massviolence.org/PdfVersion?id_article=359 [Accessed 7 February 2013].
- Andrieu, K., 2014. Political Liberalism after Mass Violence: John Rawls and a 'Theory' of Transitional Justice. In: S. Buckley-Zistel, T. Kaloma Beck, C. Braun & F. Meith (eds.), *Transitional Justice Theories*. New York and Oxon: Routledge, pp. 85-104.
- Annan, K., 2015. *Truth Commissions and Peace Processes: International Experiences and Challenges for Colombia, March 2, Bagota, Columbia*. [Online] Available at: <http://kofiannanfoundation.org/newsroom/speeches/2015/02/truth-commissions-and-peace-processes> [Accessed 2 March 2015].
- Anon., 2012. Business in Rwanda: Africa's Singapore?. *the Economist*, 25 February. [Online] Available at: <http://www.economist.com/node/21548263> [Accessed 12 September 2014]
- Ansoms, A. & Rostagno, D., 2012. Rwanda's Vision 2020 Halfway Through: What the Eye does not See. *Review of African Political Economy*, 39(133), pp. 427-450.
- Arendt, H., 1962. *The Origins of Totalitarianism*. Cleveland, OH: Meridian.
- Arthur, P., 2009. How "Transitions" Reshaped Human Rights: A Conceptual History of Human Rights. *Human Rights Quarterly*, 31(2), pp. 321-367.

- Aspen Institute, 1989. *State Crimes: Punishment or Pardon?*. Queenstown: Aspen Institute
- Backer, D., 2003. Civil Society and Transitional Justice: Possibilities, Patterns, Prospects. *Journal of Human Rights*, 2(3), pp. 297-313.
- Badiou, A., 2001. *Ethics: An Essay on the Understanding of Evil*. London: Verso.
- Balibar, E., 2007. Is there a 'neo-racism'? In: D. G. Tania, et al. (eds.) *Race and racialization: Essential readings*. Toronto: Canadian Scholars' Press, pp. 83-88.
- Ball et al., P., 1994. *A Definition of Database Design Standards for Human Rights Agencies*, Washington: American Association for the Advancement of Science.
- Barrat, M. & Finnemore, M., 2004. *Rules for the World: International Organizations in Global Politics*. Ithaca: Cornell University Press.
- Barria, L. & Roper, S., 2005. How Effective are International Criminal Tribunals? An Analysis of the ICTY and ICTR. *International Journal of Human Rights*, 9(30), pp. 349-368.
- Bashyam, S., 2008. Knowledge or Purpose? The Khulumani Litigation and the Standard for Aiding and Abetting Liability under the Alien Tort Claims Act. *Cardozo Law Review*, 30(1), pp. 245-275.
- Bateman, M., 2012. The Role of Microfinance in Contemporary Rural Development Finance Policy and Practice: Imposing Neoliberalism as 'Best Practice'. *Journal of Agrarian Change*, 12(4), pp. 587-600.
- Bateman, M. & Chang, H.-J., 2009. *The Microfinance Illusion..* [Online] Available at: <http://dx.doi.org/10.2139/ssrn.2385174> [Accessed 16 October 2015].
- BBC News, 2012. *South African mine owner Amplats fires 12,000 workers*. [Online] Available at: <http://www.bbc.co.uk/news/world-africa-19848915> [Accessed 1 May 2014].
- Bell, C., 2009. Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'. *International Journal of Transitional Justice*, 3(1), pp. 5-27.
- Bell, C. & Keenan, J., 2004. Human Rights Nongovernmental Organizations and the Problems of Transition. *Human Rights Quarterly*, 26 (2), pp. 330-374.
- Benomar, J., 1995. Justice after Transitions. In: N. J. Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, D.C: United States Institute of Peace Press, pp. 32-41.
- Bisset, A., 2012. *Truth Commissions and Criminal Courts*. Cambridge: Cambridge University Press.

- Blake, C., 1998. Economic Reform and Democratization in Argentina and Uruguay: The Tortoise and the Hare Revisited. *Journal of Interamerican studies and World Affairs*, 40(3), pp. 1-26.
- Bond, P., 2000. *Elite Transition: From Apartheid to Neoliberalism in South Africa*. London: Pluto Press.
- Boraine, A., 2000. Truth and Reconciliation in South Africa: The Third Way. In: R. I. Rotberg & D. Thompson (eds.), *Truth v. Justice: the Morlaity of Truth Commissions*. Princeton: Princeton University Press, pp. 141-157.
- Boraine, A., Levy, J. & Scheffer, R., 1994. *Dealing with the Past: Truth and Reconciliation in South Africa*. Rondebosch: Institute for a Democratic Alternative in South Africa.
- Boudreaux, K., 2007. The Business of Reconciliation: Entrepreneurship and Commerical Activity in Post Conflict Rwanda. *Economic Affairs*, 27(2), pp. 6-13.
- Boudreaux, K. & Ahluwalia, P., 2008. Cautiously Optimistic: Economic Liberalisation and Reconciliation in Rwanda's Coffee Sector. *Denver Journal of International Law and Policy*, 37(2), pp. 147-200.
- BRAC, 2015. *BRAC Microfinance Programme*. [Online] Available at: <http://microfinance.brac.net/> [Accessed 1 July 2015].
- Brahm, E., 2007. Transitional Justice, Civil Society and the Development of the Rule of Law in Post-Conflict Societies. *International Journal of Not-for-Profit Law*, 9(4), pp. 62-72.
- Brown, W., 2004. The Most We Can Hope For: Human Rights and the Politics of Fatalism. *South Atlantic Quarterly*, 103(2/3), pp. 451-463.
- Brown, W., 2015. *Undoing the Demos: Neoliberalism's Stealth Revolution*. New York: Zone Books.
- Bundschuh, T., 2015. Enabling Transitional Justice, Restoring Capabilities: The Imperative of Participation and Normative Integrity. *International Journal of Transitional Justice*, 9(1), pp. 10-32.
- Bussolini, J., 2010. What is a Dispositive?. *Foucault Studies*, Issue 10, pp. 85-107.
- Campbell, K., 2014. Reassembling International Justice: the Making of 'the Social' in International Law and Transitional Justice. *The International Journal of Transitional Justice*, 8(1), pp. 53-74.
- Chambers, R., 2005. The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses. *Human Rights Briefing*, 13(1), pp. 14-36.
- Chandler, D. C., 2001. The Road to Military Humanitariianism: How the Human Rights NGOs shaped a New Humanitarian Agenda. *Human Rights Quarterly*, 23(3), pp. 678-700.

- Charnovitz, S., 1996. Two Centuries of Participation: NGOs and International Governance. *Michigan Journal of International Law*, 18(2), pp. 183-285.
- Chu, J., 2009. *Rwanda Rising: A New Model of Economic Development*. [Online] Available at: <http://www.fastcompany.com/magazine/134/special-report-rwanda-rising.html> [Accessed 12 September 2014].
- Cicarelli, R., 2008. Reframing Political Freedom in the Analytics of Governmentality. *Law and Critique*, 19(3), pp. 307-327.
- Collier, P., 2000. Doing Well Out of War: An Economic Perspective. In: M. Berdal & D. Malone (eds.), *Greed and Grievance: Economic Agendas in Civil Wars*. Lynne Rienner : Boulder & London, pp. 91-112.
- Conteh-Morgan, E., 2006. Globalization, State Failure and Collective Violence: the Case of Sierra Leone. *International Journal of Peace Studies*, 11(2), pp. 87-103.
- Cooper, N., 2005. Picking out the Pieces of the Liberal Peaces: Representations of Conflict Economies and the Implications for Policy. *Security Dialogue*, 36(4), pp. 463-478.
- Cramer, C., 2002. When Homo Economicus Goes to War: *Methodological Individualism, Rational Choice, and the Political Economy of War*, 20(11), pp. 1845-1864.
- Crane, D., 2005. Terrorists, Warlords and Thugs. *American University International Law Review*, 21(4), pp. 505-516.
- Crocker, D., 1999. Civil Society and Transitional Justice. In: R. Fullinwider (ed.), *Civil Society, Democracy, and Civic Renewal*. Lanham MD: Rowman and Littlefield.
- Dardot, P. & Laval, C., 2013. *The New Way of the World: On Neoliberal Society*. London and New York: Verso.
- Davey, E., 2011. Famine, Aid, and Ideology: The Political Activism of Médecins sans Frontières in the 1980s. *French Historical Studies*, 34(3), pp. 529-558.
- David, R. & Choi, S., 2006. Forgiveness and Transitional Justice in the Czech Republic. *Journal of Conflict Resolution*, 50(3), pp. 339-367.
- de Greiff, P., 2010. *Transitional Justice, Security and Development*, Washington: World Bank.
- Dean, M., 1994. *Critical and Effective Histories*. London and New York: Routledge.
- Deleuze, G., 2006. *Foucault*. London and New York: Continuum.
- Demaria, C., 2007. Reconciliation and Forgiving: The Power of Happy Memory. In: C. Goh & B. McGuirk (eds.), *Happiness and Post-Conflict*. Nottingham: Critical, Cultural and Communication Press, pp. 55-75.

- Department of Finance, Republic of South Africa, 1996. *Growth, Employment and Redistribution a Strategy*. [Online]
Available at: <http://www.treasury.gov.za/publications/other/gear/all.pdf>
[Accessed 20 November 2014].
- Dieng, A., 2011. Capacity-Building Efforts of the ICTR: A Different Kind of Legacy. *Northwestern Journal of International Human Rights*, 9(3), pp. 403-422.
- Dillon, M., 2004. The Security of Governance. In: W. Larner & W. Walters (eds.), *Global Governmentality: Governing International Spaces*. Oxon: Routledge, pp. 76-94.
- Douglas, M., 1966. *Purity and Danger*. London and New York: Routledge.
- Douzinas, C., 2000. *The End of Human Rights*. Oxford: Hart Publishing.
- Douzinas, C., 2003. Humanity, Military Humanism and the New Moral Order. *Economy and Society*, 32(2), pp. 159-183.
- Drucker, P., 2001. Will the Corporation Survive? Yes, but not as we know it. *The Economist*, 1 November.
- Duffield, M., 2001. *Global Governance and the New Wars: The Merging of Development and Security*. London and New York: Zed Books.
- Duffield, M., 2007. *Development, Security and Unending War: Governing the World of Peoples*. Cambridge: Polity Press.
- Dukalskis, A., 2011. Interactions in Transition: How Truth Commissions and Trials Compliment or Constrain Eachother. *International Studies Review*, 13(3), pp. 432-451.
- Duménil, G. & Lévy, D., 2011. *The Crisis of Neoliberalism*. Harvard University Press: Cambridge, MA.
- Durkheim, E., 2008 [1912]. *The Elementary Forms of Religious Life*. Oxford: Oxford Paperbacks.
- Elster, J., 2004. *Closing the Book: Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press.
- Evenson, E., 2004. Truth and Justice in Sierra Leone: Co-ordination Between Commission and Court. *Columbia International Law Review*, 104(3), pp. 730-767.
- Fearon, J. D., 2008. The Rise of Emergency Relief Aid. In: *Humanitarianism in Question: Politics, Power, Ethics*. Ithaca: Cornell University Press, pp. 49-72.
- Ferencz, B., 1998. International Criminal Courts: the Legacy of Nuremberg. *Pace International Law Review*, 10(1), pp. 204-228.
- Finn, A., Murray, L. & Wegner, E., 2011. Policies for reducing income inequality and poverty in South Africa. In: J. Hofmeyr (ed.), *Transformation Audit 2011: From Inequality to Inclusive Growth*. Cape Town: Institute for Justice and Reconciliation, pp. 70-82.

- Fischer, K., 2009. The Influence of Neoliberals in Chile before, during, and after Pinochet. In: P. Mirowski & D. Plehwe (eds.), *The Road from Mont Pelerin: the Making of the Neoliberal Thought Collective*. Cambridge, MA and London: Harvard University Press, pp. 305-346.
- Forestier, P., 1985. Les impostures du tiers-mondisme. *Paris Match*, 22 February.
- Foucault, M., 1977. The Political Function of the Intellectual. *Radical Philosophy*, 17, pp. 12-14.
- Foucault, M., 1978. *Discipline and Punish*. London: Penguin Books.
- Foucault, M., 1980. *Power/Knowledge: Selected Interviews and Other Writings*. New York: Vintage.
- Foucault, M., 1982. The Subject and Power. *Critical Inquiry*, 8(4), pp. 777-795.
- Foucault, M., 1984. Nietzsche, Genealogy, History. In: P. Rainbow (ed.), *The Foucault Reader*. New York: Pantheon Books, pp. 76-100.
- Foucault, M., 1998 [1979]. *The History of Sexuality: The Will to Knowledge*. London: Penguin Books.
- Foucault, M., 2002a [1972]. *The Archaeology of Knowledge*. London and New York: Routledge.
- Foucault, M., 2002b [1970]. *The Order of Things*. London and New York: Routledge.
- Foucault, M., 2003 [1963]. *The Birth of the Clinic*. London and New York: Routledge.
- Foucault, M., 2004. *Society Must Be Defended: Lectures at the Collège de France, 1975-1976*. London: Penguin.
- Foucault, M., 2009. *Security, Territory, Population: Lectures at the Collège de France 1977-1978*. New York: Palgrave Macmillan.
- Foucault, M., 2010. *The Birth of Biopolitics: Lectures at the Collège de France 1978-1979*. New York: Palgrave Macmillan.
- Fourlas, G., 2015. No Future without Transition: A Critique of Liberal Peace. *International Journal of Transitional Justice*, 9(1), pp. 109-126.
- Fredrickson, G. M., 1997. *The Comparative Imagination: On the History of Racism, Nationalism and Social Movements*. Berkeley: University of California Press.
- Fukuyama, F., 1989. The End of History and the Last Man. *National Affairs*, 16, pp. 3-18.
- Gallimore, T., 2007. The Legacy of the International Criminal Tribunal for Rwanda and its Contributions to National Reconciliation in Rwanda. *New England Journal of International and Comparative Law*, 14(2), pp. 239-266.
- Gans, E., 1993. *Original Thinking: Elements of Generative Anthropology*. Stanford, CA: Stanford University Press.

- Garcia-Godos, J. & Sriram, C. L., 2013. Introduction. In: C. L. Sriram, J. Garcia-Godos, J. Herman & O. Martin-Ortega (eds.), *Transitional Justice and Peacekeeping on the Ground: victims and ex-combatants*. London and New York: Routledge, pp. 1-19.
- Gibson, J., 2002. Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa. *American Journal of Political Science*, 46(3), pp. 540-556.
- Girard, R., 1976. Differentiation and Undifferentiation in Lévi-Strauss and Current Critical Theory. *Contemporary Literature*, 17(3), pp. 404-429.
- Girard, R., 1986. *The Scapegoat*. Baltimore: John Hopkins University Press.
- Girard, R., 1996. *The Girard Reader*. New York: Crossroad Publishing Company.
- Girard, R., 2003 [1978]. *Things Hidden Since The Foundation of The World*. Stanford: Stanford University Press.
- Girard, R., 2005 [1972]. *Violence and the Sacred*. London: Continuum.
- Godwin Phelps, T., 2004. *Shattered Voices: Language, Violence and the Work of Truth Commissions*. Philadelphia: University of Pennsylvania Press.
- Gonzalez, E. & Varney, H., 2013. *Truth Seeking: Elements of an effective Truth Commission*, New York: International Centre for Transitional Justice.
- Gordon, C., 1991. Governmental Rationality: An Introduction. In: G. Burchell, C. Gordon & P. Miller (eds.), *The Foucault Effect: Studies in Governmentality*. Chicago: Chicago University Press, pp. 1-52.
- Government of the Republic of Sierra Leone, 2001. *Interim Poverty Reduction Strategy*. [Online]
Available at: <http://www.imf.org/external/np/prsp/2001/sle/01/063101.pdf>
[Accessed 1 May 2015].
- Government of the Republic of Sierra Leone, 2000. *Truth and Reconciliation Act*. [Online]
Available at: <http://www.sierra-leone.org/Laws/2000-4.pdf>
[Accessed 13 March 2015].
- Govier, T., 2002. *Forgiveness and Revenge*. London: Routledge.
- Gready, P., 2011. *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission*. Oxon: Routledge.
- Greektruthcommission.org, 2015. [Online]
Available at: <http://greekdebtruthcommission.org/>
[Accessed 1 October 2015].
- Greenwalt, K., 2000. Amnesty's Justice. In: R. I. Rotberg & D. Thompson (eds.), *Truth v. Justice: The Morality of Truth Commissions*. Princeton: Princeton University Press, pp. 189-210.

- Hamber, B., Nageng, D. & O'Malley, G., 2000. "Telling it Like it is": Understanding the Truth and Reconciliation from the Perspective of Survivors. *Psychology in Society*, 26, pp. 18-42.
- Hamber, B. & Wilson, R., 2002. Symbolic Closure through Memory, Reparation and Revenge in Post-conflict Societies. *Research Papers*, paper 5. [Online] Available at: http://digitalcommons.uconn.edu/hri_papers/5 [Accessed 10 August 2013].
- Hanlon, J., 2005. Is the international community helping to recreate the preconditions for war in Sierra Leone? *The Round Table*, 94(381), pp. 459-472..
- Hayner, P., 2010. *Unspeakable Truths: Transitional Justice and the Challenges of Truth Commissions*. London: Routledge.
- Hazan, P., 2006. Measuring the impact of punishment and forgiveness: a framework for evaluating transitional justice. *International Review of the Red Cross*, 88(861), pp. 19-47.
- Henkin, A. H., 1989. Conference Report. In: *State Crimes: Punishment or Pardon?* Queenstown: The Aspen Institute, pp. 1-9.
- Hintjens, H. M., 1999. Explaining the 1994 Genocide in Rwanda. *The Journal of Modern African Studies*, 37(2), pp. 241-286.
- Hintjens, H. M., 2008. Post-genocide identity politics in Rwanda. *Ethnicities*, 8(1), pp. 5-41.
- Hobbes, T., 2005 [1651]. *Leviathan*. London and New York: Continuum.
- Hoogvelt, A., 1987. The Crime of Conditionality: An Open Letter to the Managing Director of the IMF. *Review of African Political Economy*, 14(38), pp. 80-85.
- Hudon, M. & Seibel, H. D., 2007. Microfinance in post-disaster and post-conflict situations: turning victims into shareholders (2007). *Savings and Development*, 31(1), pp. 5-22.
- Human Rights Watch, 1993. *Prosecute Now! Helsinki Watch Releases Eight Cases For War Crimes Tribunal on Former Yugoslavia*. [Online] Available at: www.hrw.org/legacy/reports/1993/yugoslavia [Accessed 10 January 2014].
- Human Rights Watch, 1995. *War Crimes Trials in the Former Yugoslavia*. [Online] Available at: <http://www.hrw.org/legacy/reports/1995/yugoslavia/> [Accessed 10 January 2014].
- Human Rights Watch, 2014. *Our Research Methodology*. [Online] Available at: <http://www.hrw.org/node/75141#1> [Accessed 10 January 2014].
- Ibrahim, A. F. & Sheplar, S., 2011. Introduction: Everyday Life in Postwar Sierra Leone. *Africa Today*, 58(2), pp. v-xii.

- IBUKA, 2010. *Newsletter 1*. [Online]
Available at: <http://survivors-fund.org.uk/wp-content/uploads/2011/11/IBUKA-Newsletter-2010.pdf>
[Accessed 1 August 2014].
- IBUKA, 2011. *Justice Returned to Genocide Survivors*. [Online]
Available at: <http://survivors-fund.org.uk/wp-content/uploads/2011/11/The-Justice-Project-of-IBUKA.pdf>
[Accessed 25 July 2014].
- ICTJ, 2009. *What is Transitional Justice?*. [Online]
Available at: <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>
[Accessed 1 March 2014].
- ICTJ, 2014. *About Us*. [Online]
Available at: <http://ictj.org/about>
[Accessed 14 April 2014].
- ICTJ, 2016. *Peru*. [Online]
Available at: <https://www.ictj.org/our-work/regions-and-countries/peru>
[Accessed 1 February 2016].
- Ignatieff, M., 1998. *Warrior's Honour: Ethnic War and the Modern Conscience*.
London: Macmillan.
- IMF, 2001. *Press Release: IMF Approves In Principle US\$169 Million Three-Year PRGF Arrangement for Sierra Leone*. [Online]
Available at:
http://www.imf.org/external/np/sec/pr/2001/pr0139.htm#P18_384
[Accessed 30 April 2015].
- International Crisis Group, 2001. *"Consensual Democracy" in Post-Genocide Rwanda*, Nairobi & Brussels: International Crisis Group.
- Jaeger, H.-M., 2010. UN Reform, Biopolitics and Global Governmentality.
International Theory, 2(1), pp. 50-86.
- Jalloh, C. C., 2011. Special Court for Sierra Leone: Achieving Justice?. *Michigan Journal of International Law*, 32(3), pp. 396-456.
- Jankélévitch, V., 2005. *Forgiveness*. Chicago: University of Chicago Press.
- Jaspers, K., 1947. *The Question of German Guilt*. New York: Dial Press.
- Judgement in the case of the Prosecutor vs. Jean Paul Akayesu*, 1998. ICTR-96-4-T.
[Online]
Available at:
<http://www.unict.org/Portals/0/Case%5CEnglish%5CAkayesu%5Cjudgement%5Cakay001.pdf>
[Accessed 1 August 2014].
- Judgement in the case of the Prosecutor vs. Clement Kayishema and Obed Ruzindana*, 1999. ICTR-1-95-T. [Online]

Available at: <http://www.ictrcaselaw.org/docs/doc25452.pdf>
[Accessed 28 July 2014].

Judgement in the case of the Prosecutor vs. Ferdinand Nahimana, Jean Bosco Barayagwiza, Hassand Ngeze, 2003. ICTR-99-52-T. [Online]
Available at: <http://www.ictrcaselaw.org/docs/doc40472.PDF>
[Accessed 28 July 2014].

Kamatali, J. M., 2003. The Challenge of Linking International Criminal Justice: the Case of the ICTR. *Leiden Journal of International Law*, 16(1), pp. 115-133.

Kamat, S., 2004. The Privatization of Public Interest: Theorizing NGO Discourse in the Neoliberal Era. *Review of International Political Economy*, 11(1), pp. 155-176.

Kamola, I., 2007. The global coffee economy and the production of genocide in Rwanda. *Third World Quarterly*, 28(3), pp. 571-592.

Kearney, R., 1999. Aliens and Others: Between Girard and Derrida. *Cultural Values*, 3(3), pp. 251-262.

Keen, D., 2003. Greedy elites, dwindling resources, alienated youths the anatomy of protracted violence in Sierra Leone. *Internationale Politik und Gesellschaft*, 2, pp. 67-92.

Khulumani Group, 2015. *About Us*. [Online]
Available at: <http://www.khulumani.net/khulumani/about-us.html>

Kim, H. & Sikkink, K., 2010. Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries. *International Studies Quarterly*, 54(4), pp. 939-963.

Kiss, E., 2000. Moral Ambition Eithin and Beyond Political Constraints: Reflections on Restorative Justice. In: R. I. Rotberg & D. Thompson (eds.), *Truth Vs. Justice: The Morality of Truth Commissions*. Princeton: Princeton University Press, pp. 68-98.

Klein, N., 2007. *The Shock Doctrine: The Rise of Disaster Capitalism*. London: Allen Lane.

Kotch, N., 2012. *Handling of Marikana should reassure investors — Zuma*. [Online]
Available at: <http://www.bdlive.co.za/business/2012/09/19/handling-of-marikana-should-reassure-investors--zuma>
[Accessed 12 January 2014].

Krabill, R., 2001. Symbiosis: mass media and the Truth and Reconciliation Commission of South Africa. *Media, Culture & Society*, 23(5), pp. 567-585.

Kritz, N. J. (ed.), 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, D.C: United States Institute of Peace Press.

Langlois, A. J., 2004. The Elusive Ontology of Human Rights. *Global Society*, July, 18(3), pp. 243-261.

- Langlois, A. J., 2005. The Narrative Metaphysics of Human Rights. *The International Journal of Human Rights*, 9(3), pp. 369-387.
- Laplante, L., 2009. Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes. *Virginia Journal of International Law*, 50(1), pp. 916-984.
- Laruelle, F., 2015. *General Theory of Victims*. Cambridge: Polity Press.
- Latour, B., 2010. *The Making of Law: An Ethnography of the Conseil d'Etat*. London: Polity.
- Laughland, J., 2008. *A History of Political Trials: from Charles I to Saddam Hussein*. Oxford: Peter Lang.
- Lazzarato, M., 2009. Neoliberalism in Action: Inequality, Insecurity and the Reconstitution of the Social. *Theory, Culture and Society*, 26(6), pp. 109-133.
- Lazzarato, M., 2012. *The Making of Indebted Man*. Los Angeles: Semiotext(e).
- Lazzarato, M., 2015. *Governing by Debt*. South Pasadena: Semiotext(e).
- Leader, N., 1998. Proliferating Principles or How to Sup with the Devil without getting Eaten. *International Journal of Human Rights*, 2(4), pp. 1-27.
- Lollini, A., 2006. The South African Truth and Reconciliation Commission: Establish a New Hypothesis Post Conflict Culture. In: C. Demaria & C. Wright (eds.), *Post-Conflict Cultures: Rituals of Representation*. London: Zolius Press, pp. 113-132.
- Lome Peace Accord*, 1999. [Online]
Available at:
http://peacemaker.un.org/sites/peacemaker.un.org/files/SL_990707_LomePeaceAgreement.pdf
[Accessed 27 February 2015].
- Madlingoza, T., 2010. On Transitional Justice Entrepreneurs and the Production of Victims. *Journal of Human Rights Practice*, 2(2), pp. 208-228.
- Magaziner, D. & Jacobs, S., 2013. Notes from Marikana, South Africa: The Platinum Miners' Strike, the Massacre, and the Struggle for Equivalence. *International Labor and Working-Class History*, 83, pp. 137-142.
- Malamud-Goti, J., 1989. Trying Violators of Human Rights. In: *State Crimes: Punishment or Pardon?* Queenstown: The Aspen Institute, pp. 71-88.
- Malley, R., 1999. The Third Worldist Moment. *Current History*, 98, pp. 359-369.
- Mamdani, M., 2001. *When Victims Become Killers*. Princeton: Princeton University Press.
- Mani, R., 2002. *Beyond Retribution: Seeking Justice in the Shadows of War*. Malden, MA: Polity Press.
- Mauss, M., 1954. *The Gift*. Cohen and West: London.
- McConnachie, K., 2004. *NGOs and Civil Society: The Essential Relationship*, s.l.: ICTJ.

- McEvoy, K. & McConnachie, K., 2013. Victims and Transitional Justice: Voice, Agency and Blame. *Social & Legal Studies*, 22(4), pp. 489-513.
- McEvoy, K. & McGregor, L., 2008. *Transitional Justice From Below: Grassroots Activism and the Struggle for Change*. Oxford: Hart Publishing.
- McKenna, A. J., 1992. *Violence and Difference: Girard, Derrida and Deconstruction*. Chicago: University of Illinois.
- McKenzie, R., 2013. *Financialization and Labor: what does Marikana tell us about inequality in South Africa*. s.l.:department of Economics, New School for Social Research.
- Meister, R., 2011. *After Evil: A politics of Human Rights*. New York: Columbia University Press.
- Melvin, D., 2012. *South African president reassures investors at EU summit following miner unrest*. [Online]
Available at:
http://www.thestar.com/news/world/2012/09/18/south_african_president_reassures_investors_at_eu_summit_following_miner_unrest.html
[Accessed 12 January 2014].
- Mersky, M., Ivanišević, B. & Huskey, E., 2010. *Assessing a Transitional Justice Approach for Kyrgyzstan*. [Online]
Available at: <http://www.ictj.org/ru/publication/assessing-transitional-justice-approach-kyrgyzstan-kyrgyzstan-mission-report-may-30-june>
[Accessed 10 January 2014].
- Millar, G., 2011a. Local Evaluations of Justice through Truth Telling in Sierra Leone: Postwar Needs and Transitional Justice. *Human Rights Review*, 12(4), pp. 515-535.
- Millar, G., 2011b. Between Western Theory and Local Practice: Cultural Impediments to Truth Telling in Sierra Leone. *Conflict Resolution Quarterly*, 29(2), pp. 177-199.
- Millar, G., 2015. Performative memory and Truth-Telling and Provocation in Sierra Leone. *Memory Studies*, 8(2), pp. 242-254.
- Miller, Z., 2008. Effects of Invisibility: In Search of the 'Economic' in Transitional Justice. *The International Journal of Transitional Justice*, 2(3), pp. 266-291.
- Ministry of Finance and Economic Planning, Republic of Rwanda , 2000. *Vision 2020*, Kigali: Government of the Republic of Rwanda.
- Ministry of Local Government and Social Affairs, Republic of Rwanda, 2001. *National Decentralisation Policy*. [Online]
Available at:
http://www.kigalicity.gov.rw/IMG/pdf/National_Decentralization_Policy.pdf
f
[Accessed 12 September 2014].

- Minow, M., 2000. The Hope for Healing: What Can Truth Commissions Do?. In: R. I. Rotberg & D. Thompson (eds.), *Truth v. Justice: The Morality of Truth Commissions*. Princeton: Princeton University Press, pp. 235-260.
- Mirowski, P., 2013. *Never let a Serious Crisis Go to Waste: How Neoliberalism Survived the Financial Meltdown*. London and New York: Verso.
- Moon, C., 2008. *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission*. Plymouth: Lexington Books.
- Moon, C., 2009. Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation. *Journal of Human Rights*, 8(1), pp. 71-91.
- Morduch, J., 1998. *Does microfinance really help the poor?: New evidence from flagship programs in Bangladesh*, New York: Research Program in Development Studies, Woodrow School of Public and International Affairs.
- Moyn, S., 2012. *The Last Utopia: Human Rights in History*. Cambridge, MA: Harvard University Press.
- Moyn, S., 2014. *Human Rights and the Uses of History*. London: Verso.
- Mugubane, Z., 2004. The Revolution Betrayed? Globalization, Neoliberalism and the Post-Apartheid State. *The South Atlantic Quarterly*, pp. 657-671.
- Muiu, M. W., 2008. *The Pitfalls of Liberal Democracy and Late Nationalism in South Africa*. New York: Palgrave Macmillan.
- Mutua, M., 2001. Savages, Victims and Saviours: the Metaphor of Human Rights. *Harvard International Law Journal*, 24(1), pp. 201-245.
- Mutua, M., 2015. What is the Future of Transitional Justice?. *International Journal of Transitional Justice*, 9(1), pp. 1-9.
- Nagy, R., 2002. Reconciliation in Post-Commission South Africa: Thick and Thin Accounts of Solidarity. *Canadian Journal of Political Science*, 35(2), pp. 323-346.
- Nagy, R., 2004. Violence, Amnesty and Transitional Law: "Private" Acts and "Public" Truth in South Africa.. *African Journal of Legal Studies*, 1(1), pp. 1-28.
- Nagy, R., 2008. Transitional Justice as Global Project: critical reflections. *Third World Quarterly*, 29(2), pp. 275-289.
- Neocosmos, M., 2011. Transition, Human Rights and Violence: rethinking a liberal political relationship in the African neo-colony. *Interface*, 3(2), pp. 359-399.
- Newbury, C., 1995. Background to Genocide: Rwanda. *Issue: A Journal of Opinion*, 23(2), pp. 12-17.
- Newbury, C., 1998. Ethnicity and the politics of history in Rwanda. *Africa Today*, 45(1), p. 19.

- Newman, E., 2004. The 'New Wars' Debate: A Historical Perspective is Needed. *Security Dialogue*, 35(2), pp. 173-189.
- News 24, 2012. *Residents Stunned by Marikana Violence*. [Online] Available at: <http://www.news24.com/SouthAfrica/News/Residents-stunned-by-Marikana-violence-20120817> [Accessed 1 January 2014].
- Norval, A. J., 2009. "No Reconciliation Without Redress": Articulating Political Demands in Post-Transitional South Africa. *Critical Discourse Studies*, 6(4), pp. 311-329.
- O'Donnell, T., 2005. Executioners, Bystanders and Victims: Collective Guilt, the Legacy of Denazification and the Birth of Twentieth-Century Transitional Justice. *Legal Studies*, 25(4), pp. 627-667.
- Odysseos, L., 2010. Human Rights, Liberal Ontogenesis and Freedom: Producing a Subject for Neoliberalism. *Millennium - Journal of International Studies*, 38(3), pp. 747-772.
- Odysseos, L. & Selmeczi, A., 2015. The Power of Human Rights/the Human Rights of Power: an Introduction. *Third World Quarterly*, pp. 1033-1040.
- Ohanyan, A., 2008. *NGOs, IGOs and the Network Mechanisms of Post-Conflict Governance in Microfinance*. New York: Palgrave Macmillan.
- Okafor, O. C. & Ngwaba, U., 2015. The International Criminal Court as a 'Transitional Justice' Mechanism in Africa: Some Critical Reflections. *International Journal of Transitional Justice*, 9(1), pp. 90-108.
- O'Laughlin, B., Bernstein, H., Cousins, B. & Peters, P., 2013. Introduction: Agrarian Change, Rural Poverty and Land Reform in South Africa since 1994. *Journal of Agrarian Change*, 13(1), pp. 1-15.
- Olsen, T., Payne, L. & Reiter, A., 2010. The Justice Balance: when Transitional Justice Improves Human Rights and Democracy. *Human Rights Quarterly*, 32(4), pp. 980-1007.
- Ong, A., 2007. Neoliberalism as a Mobile Technology. *Transactions of the Institute of British Geographers*, 32(1), pp. 3-8.
- Owen, J., 2006. *Nuremburg: Evil on Trial*. London: Headline Review.
- Paris, R., 1997. Peacebuilding and the Limits of Liberal Internationalism. *International Security*, 22(2), pp. 54-89.
- Peskin, V., 2005. Courting Rwanda: The Promises and Pitfalls of the ICTR outreach programme. *Journal of International Criminal Justice*, 3, pp. 950-961.
- Picketty, T., 2014. *Capital in the Twenty-First Century*. Cambridge, MA: Harvard University Press.

- PRIDE, 2002. *ExCombatant Views of the Truth and Reconciliation Commission and the Special Court in Sierra Leone*, Freetown: International Centre for Transitional Justice.
- Rajak, D., 2008. 'Uplift and Empower': the market, morality and corporate responsibility on South Africa's platinum belt. In: G. De Neve, P. Luetchford, J. Pratt & D. Wood (eds.), *Hidden Hands in the Market: Ethnographies of Fair Trade, Ethical Consumption, and Corporate Social Responsibility*. Bradford: Emerald Group Publishing Limited, pp. 297-324.
- Rancière, J., 2004. Who is the Subject of the Rights of Man. *South Atlantic Quarterly*, 103(2/3), pp. 297-310.
- Read, J., 2009. A Genealogy of Homo-Economicus: Neoliberalism and the Production of Subjectivity. *Foucault Studies*, 6, pp. 25-36.
- Renner, J., 2015. Producing the subjects of reconciliation: the making of Sierra Leoneans as victims and perpetrators of past human rights violations. *Third World Quarterly*, 36(6), pp. 1110-1128.
- Revolutionary United Front, 1995. *Footpath to Democracy*. [Online] Available at: <http://fas.org/irp/world/para/docs/footpaths.htm> [Accessed 1 May 2015].
- Reyntjens, F., 1996. Rwanda: Genocide and Beyond. *Journal of Refugee Studies*, 9(3), pp. 240-251.
- Rhodes, R., 1996. The New Governance: Governing Without Government. *Political Studies*, 44(4), pp. 652-667.
- Richards, P., 2003. *The Political Economy of Internal Conflict in Sierra Leone*, The Hague: Netherlands Institute of International relations.
- Ricoeur, P., 2004. *Memory, History, Forgetting*. Chicago: University of Chicago Press.
- Robertson, G., 2007. An End to Impunity. In: W. F. Schulz (ed.), *The Phenomenon of Torture: Readings and Commentary*. Philadelphia: University of Pennsylvania Press, pp. 311-313.
- Robinson, I., 2015. Truth Commissions and Anti-Corruption: Towards a Complementary Framework?. *International Journal of Transitional Justice*, 9(1), pp. 33-50.
- Rogers, J., 2004. *Micro Finance Programme Development Paper*. [Online] Available at: www.bsl.gov.sl/docs/Governor'sPresentationMicroFinance.doc [Accessed 5 May 2015].
- Roht-Arriaza, N., 2006. The New Landscape of Transitional Justice. In: N. Roht-Arriaza & J. Mariezcurrena (eds.), *Transitional Justice in the 21st Century: Beyond Truth versus Justice*. Cambridge: Cambridge University Press.

- Roht-Arriaza, N. & Mariezcurrena, J. (eds.), 2006. *Transitional Justice in the 21st Century: Beyond Truth Versus Justice*. Cambridge: Cambridge University Press.
- Rome Statute of the International Criminal Court*, 2002. [Online]
Available at: http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf
[Accessed 17 July 2015].
- Ron-Balsera, M., 2011. Does the Human Capital Discourse Help or Hinder the Right to Education: The Case of Girls Orphans and Vulnerable Children in Rwanda. *Journal of International Development*, 23(2), pp. 274-287.
- Rose, N., 1988. Calculable Minds and Manageable Individuals. *History of the Human Sciences*, 1(2), pp. 179-200.
- Rose, N., 1999. *Governing the Soul: the Shaping of the Private Self*. London: Free Association Books.
- Rotberg, R. I., 2000. Truth Commissions and the Provision of Truth, Justice and Reconciliation. In: R. I. Rotberg & D. Thompson (eds.), *Truth v. Justice: The Morality of Truth Commissions*. Princeton: Princeton University Press, pp. 3-21.
- Rotberg, R. I. & Thompson, D. (eds.), 2000. *Truth v. Justice: The Morality of Truth Commissions*. Princeton: Princeton University Press.
- Satgar, V., 2012. Beyond Marikana: The Post-Apartheid South African State. *Africa Spectrum*, 47(2-3), pp. 33-62.
- Schabas, W. A., 2003. The Relationship Between Truth Commissions and Criminal Courts: The Case of Sierra Leone. *Human Rights Quarterly*, 25(4), pp. 1035-1066.
- Schabas, W. A., 2004a. Amnesty, The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone. *UC Davies Journal of International Law and Policy*, 11(1), pp. 145-169.
- Schabas, W. A., 2004b. A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone. *Criminal Law Forum*, 15(1), pp. 3-54.
- Schabas, W. A., 2004c. Conjoined Twins of Transitional Justice: The Sierra Leone Truth Commission and the Special Court. *Journal of International Criminal Justice*, 2(4), pp. 1082-1099.
- Schocken, C., 2002. The Special Court for Sierra Leone: Overview and Recommendations. *Berkeley Journal of International Law*, 20(2), pp. 436-461.
- Sending, J. & Neumann, I. B., 2006. Governance to Governmentality: Analyzing NGOs, States, and Power. *International Studies Quarterly*, 50(3), p. 651-672.

- Sending, J. & Neumann, I. B., 2010. *Governing the Global Polity: Practice, Mentality, Rationality*. Ann Arbor: University of Michigan Press.
- Shaw, R., 2005. *Rethinking Truth and Reconciliation Commission: Lessons from Sierra Leone*, Washington: United State Institute of Peace.
- Shaw, R., 2007. Memory Frictions: Localising the Truth and Reconciliation Commission in Sierra Leone. *International Journal of Transitional Justice*, 1(2), pp. 183-207.
- Sierra Leone Truth and Reconciliation Commission, 2004a. *Witness to Truth: The Report of the Sierra Leone Truth and Reconciliation Commission, Volume 1*. [Online]
Available at: <http://www.sierraleonetr.com/index.php/view-the-final-report/download-table-of-contents>
[Accessed 2014 July 4].
- Sierra Leone Truth and Reconciliation Commission, 2004b. *Witness to Truth: the Report of the Sierra Leone Truth and Reconciliation Commission: Volume 2*. [Online]
Available at: <http://www.sierraleonetr.com/index.php/view-the-final-report/download-table-of-contents>
[Accessed 4 July 2014].
- Sierra Leone Truth and Reconciliation Commission, 2004c. *Witness to Truth: The Report of the Sierra Leone Truth and Reconciliation Commission, Appendix 3*. [Online]
Available at: <http://www.sierraleonetr.com/index.php/view-the-final-report/download-table-of-contents>
[Accessed 1 July 2014].
- Sokhi-Bulley, B., 2011. Government(ality) by Experts: Human Rights as Governance. *Law and Critique*, 22(3), pp. 251-271.
- South African Truth and Reconciliation Commission, 1998a. *TRC Report, Volume 1*. [Online]
Available at:
<http://www.justice.gov.za/trc/report/finalreport/Volume%201.pdf>
[Accessed 7 July 2014].
- South African Truth and Reconciliation Commission, 1998b. *Summary of Reparation and Rehabilitation Policy, including Proposals to be Considered by the President*. [Online]
Available at: <http://www.justice.gov.za/trc/reparations/summary.htm#why>
[Accessed 19 January 2015].
- South African Truth and Reconciliation Commission, 2003. *TRC Report Volume 7*. [Online]
Available at: <http://www.justice.gov.za/trc/report/finalreport/vol7.pdf>
[Accessed 7 July 2014].
- Spivak, G. C., 2005. Use and Abuse of Human Rights. *Boundary 2*, 32(1), pp. 131-189.

- Sriram, C. L., 2007. Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice. *Global Society*, 21(4), pp. 579-591.
- Sriram, C. L., Garcia-Godos, J., Herman, J. & Martin-Ortega, O. (eds.), 2013. *Transitional Justice and Peacebuilding on the Ground*. Oxon: Routledge.
- Stacey, S., 1999. A 'New South Africa': The South African Truth and Reconciliation Commission's Vexed Nation-Building Project. [Online]
Available at:
<http://wiredspace.wits.ac.za/bitstream/handle/10539/8083/HWS-393.pdf?sequence=1&isAllowed=y> [Accessed 12 February 2015]
- Stiglitz, J., 2013. *The Price of Inequality*. London: Penguin.
- Stiglitz, J., 2015. *The Great Divide*. London: Allen Lane.
- Stone, M., rua Wall, I. & Douzinas, C. (eds.), 2012. *New Critical Legal Thinking: Law and the Political*. Oxon and New York: Routledge.
- Storey, A., 1999. Economics and Ethnic Conflict: Structural Adjustment in Rwanda. *Development Policy Review*, 17(1), pp. 43-64.
- Storey, A., 2001. Structural Adjustment, State Power & Genocide: the World Bank and Rwanda. *Review of African Political Economy*, 89, pp. 365-385.
- Survivors Fund, 2014. *Skills for Jobs*. [Online]
Available at: <http://survivors-fund.org.uk/news/uncategorized/skills-for-jobs/>
[Accessed 25 July 2014].
- Tambling, J., 1990. *Confession: Sexuality, Sin, the Subject*. Manchester: Manchester University Press.
- Tambo, O., 1985. *Message by Oliver Tambo to the National Executive Committee of the African National Congress on the 73rd anniversary of ANC*. [Online]
Available at: <http://www.anc.org.za/show.php?id=4460>
[Accessed 5 January 2015]
- Truth Committee on Greek Public Debt, 2015a. *Terms of reference for the Hellenic Parliament's Truth Committee on Public Debt*. [Online]
Available at: <http://greekdebtruthcommission.org/wp/?p=54>
[Accessed August 1 2015]
- Truth Committee on Greek Public Debt, 2015b. *Preliminary Report*. [Online]
Available at: <http://cadtm.org/Preliminary-Report-of-the-Truth>
[Accessed August 1 2015].
- Teitel, R., 2000. *Transitional Justice*. New York: Oxford University Press.
- Teitel, R., 2003. Transitional Justice Genealogy. *Harvard Human Rights Journal*, 69(6), pp. 69-94.
- Teitel, R., 2014. *Globalizing Transitional Justice*. Oxford: Oxford University Press.

- Marikana Commission of Enquiry, 2014. *Heads of Argument of Evidence Leaders*. [Online]
Available at: <http://www.marikanacomm.org.za/docs/201411-HoA-EvidenceLeaders.pdf>
[Accessed 20 November 2014].
- The Prosecutor of the Special Court vs. Issa Hassan Sesay, Morris Kallon, Augustine Gbao* (2004) SCSL-04-15-T. [Online]
Available at: <http://www.rscsl.org/Documents/Transcripts/RUF/RUF-070504.pdf> [Accessed 25 July 2015]
- Theidon, K., 2006. Justice in Transition: The Micropolitics of Reconciliation in Postwar Peru. *Journal of Conflict Resolution*, 50(3), pp. 433-457.
- Thompson, G., 2003. South Africa to Pay \$3,900 to Each Family of Apartheid Victims. *the New York Times*, 16 April.
- Thomson, S., 2012. Peasant Perspectives on National Unity and Reconciliation: Building Peace or Promoting Division. In: m. Campioni & P. Noak (eds.), *Rwanda Fast Forward: Social, Economic, Military and Reconciliation Prospects*. London and New York: Palgrave Macmillan, pp. 96-110.
- Traore, M. et al., 2013. *Doing Business Report 2013*. [Online]
Available at:
http://www.doingbusiness.org/~/_media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB13-Chapters/DB13-CS-Rwanda.pdf
[Accessed 1 October 2014].
- Turner, C., 2013. Deconstructing Transitional Justice. *Law and Critique*, 24(2), pp. 193-209.
- Tutu, D., 1995. *Opening Adress to the Truth and Reconciliation Commission*. [Online]
Available at: <http://www.justice.gov.za/trc/media/pr/1995/p951216a.htm>
[Accessed 12 August 2013].
- Tutu, D., 1999. *No Future Without Forgiveness*. London: Random House.
- UN Secretary General, 1994. *Letter Dated 1 October 1994 from the Secretary General S/1994/1125*. [Online]
Available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_1994_1125.pdf
[Accessed 1 August 2014].
- UN Security Council, 1994. *UN Resolution 955*. [Online]
Available at:
<http://www.unict.org/Portals/0/English%5CLegal%5CResolutions%5CEnglish%5C955e.pdf>
[Accessed 1 September 2014].
- UN Security Council, 2000. *The Statute of the Special Court for Sierra Leone*. [Online]
Available at: <http://www.rscsl.org/Documents/scsl-statute.pdf>.
[Accessed 1 April 2015].

- UN Security Council, 2004. *The rule of law and transitional justice in conflict and post-conflict societies*, New York and Geneva: United Nations.
- United Nations, 2013 [1948]. *Universal Declaration of Human Rights*. [Online]
Available at: <http://www.un.org/en/documents/udhr/index.shtml>
[Accessed 28 Novemebr 2013].
- van der Merwe, H., Dewhirst, P. & Hamber, B., 1999. *Non-governmental organisations and the Truth and Reconciliation Commission: An impact assessment*. [Online]
Available at: www.csvr.org.za
[Accessed 14 January 2014].
- van Horn, R. & Mirowski, P., 2009. The Rise of the Chicago School of Economics and the Birth of Neoliberalism. In: P. Mirowski & D. Plehwe (eds.), *The Road from Mont Pelerin: The Making of the Neoliebral Thought Collective*. Cambridge, MA & London: Harvard University Press, pp. 139-180.
- Verwimp, P., 2000. Development ideology, the peasantry and genocide: Rwanda represented in Habyarimana's speeches. *Journal of Genocide Research*, 2(3), pp. 325-361.
- Verwimp, P., 2003. The political economy of coffee, dictatorship, and genocide. *European Journal of Political Economy*, 19, pp. 161-181.
- Victim Hearing of Gerald Thebe*, 1996. GO/0091. [Online]
Available at: <http://www.justice.gov.za/trc/hrvtrans/methodis/thebe.htm>
[Accessed 10 January 2015].
- Victim Hearing of Gregory Edmund Beck*, 1996. GO/O135. [Online]
Available at: <http://www.justice.gov.za/trc/hrvtrans/methodis/beck.htm>
[Accessed 17 December 2014].
- Victim Hearing of Henry Kwisomba*, 1996. CT/00603. [Online]
Available at: <http://www.justice.gov.za/trc/hrvtrans/heide/ct00603.htm>
[Accessed 17 December 2014].
- Victim Hearing of Nomakula Evelyn Zweni*, 1996. CT/00104. [Online]
Available at: <http://www.justice.gov.za/trc/hrvtrans/heide/ct00104.htm>
[Accessed 3 December 2014].
- Weeks, J., 1992. *Development strategy and the economy of Sierra Leone*. New York: St. Martin's Press.
- Weschler, L., 1989. Afterword. In: *State Crimes: Punishment or Pardon?* Queenstown: the Aspen Institute.
- Whyte, J., 2012. Human Rights: Confronting Governments?. In: M. Stone, C. Douzinas & I. rua Wall (eds.), *New Critical Legal Thinking: Law and the Political*. Oxon and New York: Routledge, pp. 11-31.
- Whyte, J., 2014. Is the Revolution Desirable? Michel Foucault on Revolution, Neoliberalism and Rights. In: B. Golding (ed.), *Re-Reading Foucault: On Law, Power and Rights*. Routledge: Londond and New York, pp. 207-227.

- Williams, M., Nagy, R. & Elster, J. (eds.), 2012. *Transitional Justice*. New York: New York University Press.
- Wilson, R., 2001. *The Politics of Truth and Reconciliation: Legitimising the Post-Apartheid State*. Cambridge: Cambridge University Press.
- Wink, W., 1986. *Unmasking the Powers*. Minneapolis: Fortress.
- Wink, W., 1992. *Engaging the Powers*. Minneapolis: Fortress.
- Winter, S., 2013. Towards a Unified Theory of Transitional Justice. *International Journal of Transitional Justice*, 7(2), pp. 224-244.
- Wolpe, H., 1972. Capitalism and cheap labour-power in South Africa: From segregation to apartheid. *Economy and Society*, 1(4), pp. 425-456.
- Wright, Q., 1946. The Nuremberg Trial. *Annals of the American Academy of Political and Social Science*, 246(1), pp. 72-80.
- Zack-Williams, A. B., 1990. Sierra Leone: Crisis and Despair. *Review of African Political Economy*, 17(49), pp. 22-33.
- Zack-Williams, A. B., 1999. Sierra Leone: the political economy of civil war, 1991-98. *Third World Quarterly*, 20(1), pp. 143-162.
- Zalaquett, J., 1989. Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints. In: *State Crimes: Punishment or Pardon?* Queenstown: The Aspen Institute, pp. 23-70.
- Zanotti, L., 2006. Taming Chaos: A Foucauldian View of UN Peacekeeping, Democracy and Normalization. *International Peacekeeping*, pp. 150-167.
- Zanotti, L., 2009. *Protecting humans, governing international disorder: Integrated UN peacekeeping and NGOs*. [Online]
Available at: <http://shur.luiss.it/files/2009/05/zanotti.pdf>
[Accessed 5 March 2013].
- Žižek, S., 2008. *Violence*. London: Profile Books.