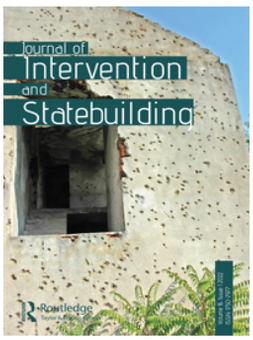

Journal of Intervention and Statebuilding

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/risb20

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To cite this article: Simeon Gready (2021): The Case for Transformative Reparations: In Pursuit of Structural Socio-Economic Reform in Post-Conflict Societies, Journal of Intervention and Statebuilding, DOI: 10.1080/17502977.2020.1852833

To link to this article: https://doi.org/10.1080/17502977.2020.1852833

Published online: 04 Feb 2021.

JOURNAL OF INTERVENTION AND STATEBUILDING
https://doi.org/10.1080/17502977.2020.1852833

Routledge
Taylor & Francis Group

The Case for Transformative Reparations: In Pursuit of Structural Socio-Economic Reform in Post-Conflict Societies

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ABSTRACT

This article evaluates the pillar of reparations within transitional justice and contributes to debates about the significance of structural socio-economic reform in post-conflict societies. Drawing on the experiences of South Africa and Tunisia, I argue that transitional justice must advocate a praxis of transformative reparations. Transformative reparations, working alongside complementary mechanisms within a long-term transitional justice agenda, can help to enable the transformation of groups, communities, and regions out of generational cycles of poverty, discrimination, and exclusion. Those engaged and active in such processes are thus afforded the resources and centrally positioned to (self-)empower the renegotiation of power relations that facilitated past and ongoing structural socio-economic violations.

KEYWORDS

Transitional justice; reparations; socio-economic rights; structural violence; South Africa; Tunisia

Introduction

Transitional justice is, in many aspects, a field still in evolution. This article will trace the extent to which it has evolved, and what more it must do, through the following inquiry: how can reparations, as a 'pillar' of transitional justice, move beyond individual redress to pursue structural socio-economic reform in post-conflict societies? As a recent and interdisciplinary field within the broader liberal peacebuilding framework, transitional justice is rooted in the politics of transitions, having emerged in the 1980s in response to the complexities and practical dilemmas of ongoing 'transitions to democracy' (Arthur 2009, 324). It is, as such, often faced with what might be termed disorganised societies – that is, societies with shifting balances of power as well as deep inequalities and widespread poverty (Martin 2015, 809; Yepes 2009, 630).

By examining the tensions between corrective and distributive justice, I argue that reparations must adopt a transformative approach in order to pursue structural socio-economic reform on a collective level in post-conflict societies. This tension can be plainly expressed through the following predicament (Yepes 2009, 627): should a post-conflict 'disorganised society', with very limited resources, use the available funds to prioritise the compensation of one victim who was tortured, or the building of ten houses for families who were not victims of specifically heinous crimes but desperately

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need shelter, as a consequence of the conflict? It is, in short, a tension of philosophical, legal, and practical significance concerning policy prioritisation and often unwinnable, dichotomic dilemmas. Critically, transformative reparations cannot, and should not, pursue such structural socio-economic reform alone: there is a need for integral coherency between mechanisms of transitional justice, and coherency with the purposefully distinct duty of the state to development and social services. This, in turn, requires a fundamental reorientation of transitional justice wherein its temporal mandate is expanded so that it takes form as a long-term, victim-centred, and context-specific process. In building this argument, I undertake a study of 'field evolution' so as to examine how transitional justice might have progressively and practically learnt from the past, understood the various key concepts, and adapted to new contexts. The pillar of reparations within the cases of South Africa and Tunisia are comparatively analysed so as to evaluate how, if at all, these transitional justice processes of the 1990s and 2010s respectively approached the complex issues of structural socio-economic reform.

It is necessary, firstly, to clarify a few key concepts here. In principle, transitional justice is defined as a set of policies that aims to come to terms with the legacy of large-scale human rights violations, so as to ensure accountability, serve justice, achieve reconciliation, and guarantee non-recurrence (OHCHR 2014, 5). In practice, however, it encompasses 'a multitude of discrete, though overlapping, and often conflicting themes' (Clark 2008, 191). In promoting a more transformative transitional justice framework, I have left the scope of 'structural socio-economic reform' quite wide. Socio-economic rights broadly comprise the following: the redistribution of wealth, resources, and power towards the alleviation of inequality and poverty; to that end, access to education, health, food, water, housing, work and other economic and social rights essential to human dignity (CESR 2018). Dignity 'evokes the individual's claim to be treated with respect and to have one's intrinsic worth recognised' (Young 2008, 133). Structural violence, on the other hand, is the manifestation of unequal power relations, such as the structural arrangements of society that determine the working of market forces and lead to unequal life chances, thus harming individuals and collectives by preventing them from meeting their basic needs (McGill 2019, 12; Sobham 2010, 3). The reform of such structures requires the renegotiation, or redistribution, of power relations between the collective victim and perpetrator or beneficiary groups.

This article takes the following structure: firstly, while conducting a study on the debates surrounding the qualification of reparations, I will amplify three central debates, all of which take form in the wider framework of socio-economic rights and transitional justice. That is, the differentiation between individual and collective reparations, and consequent tension between corrective and distributive justice; the place and purpose of reparations within transitional justice vis-à-vis truth commissions and institutional reform; and the place and purpose of reparations outside the remit of transitional justice vis-à-vis social services and development objectives. Thereafter, I will introduce and evaluate the respective reparations programmes of South Africa and Tunisia by discussing the extent of field evolution apparent between them, with particular reference to the realities of their transitions, process of victim definition, prioritisation of reparations and political instrumentalisation of transitional justice. Finally, I will consider the implications of this comparative evaluation and assess the case for transformative reparations within the central debates and framework outlined above, with emphasis on the emerging literatures on transformative justice.

Reparations in transitional justice

Due in part to its rapid formulation, transitional justice suffers from a lack of theoretical and conceptual clarity (Clark and Palmer 2012). This concern directly inhibits the pillar of reparations. Under international law, reparations can take form as restitution, compensation, rehabilitation, and satisfaction through the guarantee of non-recurrence (de Greiff 2006a, 452). In practice, Hamber (2009, 95) contends that reparations entail acts of restoring that which was lost, giving back something that is equivalent to what was lost, or making amends for what was done. Further, they imply a structured or procedurally just manner of restoring victims of gross human rights abuses to the state they were in before the harm was caused. With regard to central transitional justice objectives, reparations are a key component of initially backwards-looking corrective justice, in that they refer to the duty of the state to recognise and rectify unjust harms done to specific victims (ICTJ 2011). Under this interpretation, reparations are convincingly argued to hold a basic paradox (Laplante 2015, 540–541): how do you repair the harm suffered by a parent that has lost a child, or the harm suffered by a victim of torture? Reparations, in short, are fundamentally asked to repair the irreparable. Furthermore, in unequal societies, is it desirable to 'restore' victims to pre-conflict situations of poverty, discrimination, and exclusion? As such, to return to Hamber (2009, 98), all objects or acts of reparations hold some level of symbolic meaning, in that they are intended to represent or indirectly express something abstract or invisible, to 'make up' for a loss or abuse.

An important differentiation to acknowledge regarding reparations is that of individual and collective distribution. Both de Greiff (2006a) and Hamber (2006) advocate a 'narrow' conception of reparations: that is, reparations refer to attempts to provide benefits directly to 'recognised' victims of certain types of crimes. Once-off compensation payments, the building of memorials, and official apologies all fall under the umbrella of direct benefits to specified victims of specified crimes. This is a design that is consistent with the template heavy 'toolkit' approach to transitional justice, which is to be uncritically imposed on any transitional context (Clark and Palmer 2012, 6). By taking such a strict position on reparations from the outset, the multi-layered justice aims held by the many different types of victims, motivated by a great diversity of gross human rights abuses suffered, are not accommodated. This approach, however, has dominated the conceptual landscape of transitional justice, and as such, reparations policies thus far have concentrated on a limited catalogue of civil and political rights.

In contrast, the root causes of armed conflict, or resistance to authoritarian rule, are often populated by issues of a socio-economic nature – indeed, they are frequently the most influential (OHCHR 2014). Justice through individual, corrective reparations of a largely symbolic nature cannot cover the wider framework of socio-economic crimes and abuses that led to and were likely exacerbated through the preceding period of conflict or authoritarian rule. Transitional justice has traditionally ignored or sidelined socio-economic rights within its prescribed mechanisms (Cahill-Ripley 2014). This is largely due to the manner in which it has mirrored the legalistic bias of the human rights discipline, which sees civil and political rights as more justiciable in a court of law. Ultimately, the difficulty in ascribing responsibility to individuals for socio-economic crimes does not sit comfortably with transitional justice's efforts at upholding a global accountability norm, such that specific acts of violence are of greater interest over

chronic structural violence and unequal social relations (Aboueldahab 2017, 14; Gready and Robins 2014, 342). This arguably exposes the naivety with which transitional justice has performed within transitional complexities: when faced with a conflict to peace transition, the positive tasks of aiding national recovery and expediting the eventual removal of the underlying causes of conflict often necessitates a direct focus on socio-economic rights.

Part of the issue resides in the generally accepted definition of transitional justice. As that which is designed to address 'large-scale' abuses, there is often a lack of understanding of the distinctions between structural and direct violence, as well as civil and political and socio-economic abuses. For example, direct civil and political crimes such as forced disappearances or torture fall easily into the category of 'large-scale' abuses that are individually justiciable. The widespread and systematic razing of crops or destruction of houses, hospitals, water and sanitation supply systems constitute examples of socio-economic abuses of regions, groups, or communities, which may also fall into the category of 'direct' violations – yet are not considered grave enough, or ably justiciable, to warrant attention within transitional justice (Cahill-Ripley 2014). Thereafter, more structurally constituted socio-economic abuses, such as corruption, are treated as 'little more than useful context in which to understand the perpetration of physical violence' (Sharp 2012, 782). These structural abuses serve to enforce entrenched and continued inequalities throughout the transitional period and beyond, which should bring transitional justice's singular focus on 'large-scale' abuses into disrepute.

In what capacity can reparations contribute to a more effective focus on socio-economic rights within the transitional justice process? This is to ask whether there might be a causal relationship between reparations and socio-economic reform. To this end, it is necessary to consider collective reparations, defined as 'forms of distribution of public goods or services that are designed for the benefit of all members of a [victimised] region, group, or community, rather than for specific individual victims' (Szoke-Burke 2015, 486). Where the symbolism of individual reparations lies in the recognition of civil violations of specific victims, collective reparations recognises that conflict or periods of authoritarian rule enable injustices on a regional, group, or community level. As such, the scope of collective reparations lends itself to the more indirect benefits of forward-looking distributive justice, which refers to the redistribution of wealth, resources, and power after their structurally violent manipulation both before and during the conflict. This infers an underlying tension between corrective and distributive justice, most acutely, to reiterate, outlined by Yepes (2009, 626–627): 'there is a tension between the state duty to repair those whose civil rights have been severely injured … and the state obligation to fulfil socio-economic rights, especially for those economically disadvantaged and discriminated'. This tension is exacerbated in practical transitional settings, where resources are limited, and the balances of power post-conflict remain unstable. As is examined after a comparative study of the South African and Tunisian experience, however, we might consider how collective reparations address the task of national recovery and aim for the eventual removal of the underlying causes of conflict is in this form, or so I will detail, that reparations have a 'transformative' potential.

There are two further aspects to briefly consider before the following evaluation. Firstly, within transitional justice, the mechanisms of truth commissions and institutional reform are often considered more effective means of prioritising socio-economic rights. While truth commissions aim to enhance accountability concerning violations of the

past, institutional reform consists of restructuring state institutions or vetting sectors or members of the previous regime that may have collaborated or contributed to the various rights violations (de Greiff 2011). Both processes can contribute to structural socio-economic change by exposing and removing abusers from positions of power. Crucially, however, Gready and Robins (2014, 347) regard reparations as a key mechanism to assist, or even lead, processes such as truth commissions or institutional reform towards socio-economic justice, which marks a debate I will return to later in the article.

Finally, the relationship between transitional justice and social services, or development, must also be considered. Social services have the obligation to fulfil the minimum material conditions so that all its citizens may live with dignity, in that their socio-economic rights have been delivered (Yepes 2009, 635). While reparations have in the first place a focus on past abuses ('correcting' an injustice) and are in that way at least partly backwards-looking, the provision of social services and development have their focus on the present and the future. These services, therefore, have a hand in distributive justice, to the extent that there is a danger of a 'blurred line' between the development policies of the state and the distributive attempts of reparations. In short, there is further tension between collectively distributed transformative reparations (response to past socio-economic injustices, with forward-looking outcomes, for *victims)* and development (the minimum material conditions that *citizens* deserve anyway). Once again, I will return to this issue after a discussion of the field evolution within the case studies at hand.

Field evolution

Despite its short history, it is necessary to consider the ways in which transitional justice has progressively and practically learnt from the past, understood the key concepts which have come to define it, and adapted to new contexts. This process lends itself to a comparative approach between South Africa and Tunisia. In the first instance, where this article conducts a temporal critique of transitional justice, the timeframe in which each transitional justice process operated is important: the South African Truth and Reconciliation Commission (TRC) began its operations in 1995 and handed over its final report in 2003, and was thereafter considered a model for future truth commissions worldwide (Boraine 2000). In Tunisia, the Instance Vérité et Dignité (IVD) opened its doors in 2014, until the then-ruling party Nidaa Tounès announced it would be suspending legislative activities to enforce the closure of the commission in 2018 (Abderrahmen 2018). As short-term institutions, encompassing the mandate of transitional justice objectives, the reparations policy processes of each case are worth investigating alongside one another to examine what instances, if any, of field evolution occurred within transitional justice; that is, how have conceptual understandings within transitional justice evolved between the two cases at hand, and how much further must it go?

Transitions of rupture and negotiation

In the immediate aftermath of apartheid, the TRC centred on 'reconciliation' as a key objective (Clark 2008). This objective emerged out of political compromise: the TRC was a 'third option', given the risk of renewal of conflict if the newly elected African National Congress (ANC) had operationalised mass trials and prosecutions, or the

apartheid state security establishment had attempted to enforce a blanket amnesty (Boraine 2000, 142–148). This third option contained a conditional amnesty whereby those guilty of crimes under apartheid could be pardoned if they could prove, via full disclosure, that their acts were politically motivated.

Regarding the key objective of reconciliation, Mamdani (2002, 34) argues that a consequence of this 'third option' was that the TRC prioritised a *political* reconciliation rather than a *social* reconciliation. That is, as the emphasis was placed on individual perpetrators and their attempts at registering amnesty rather than the legal regime of apartheid, the scope of reconciliation was focused on individual members of a fractured political elite as opposed to the relationship between the state, beneficiaries, and long-victimised communities. The TRC made formal acknowledgement of apartheid as a 'crime against humanity', but this was merely lip-service. Ultimately, the commission's mandate only considered violations perpetrated on an individual level in the timeframe of 1960–94. This issue lies parallel to the civil and political versus socio-economic rights debate: perpetrators enacted direct civil and political violations, for which they could be held accountable; the broader white minority of the country, however, benefited socially and economically, thus indirectly contributing towards socio-economic abuses enforced upon the non-white majority.

On the other hand, Aboueldahab (2017) argues that the case of Tunisia, alongside Egypt, Libya, and Yemen, has provided transitional justice with its strongest challenge yet. It was a Tunisian, in fact, that instigated the Arab Spring revolutions, when, in 2010, street vendor Mohamed Bouazizi immolated himself in an expression of frustration and anger at state repression and his economic plight (Fraihat 2016). His actions were a gesture tied to 'the philosophy of life: that of dignity, freedom, humanism, and human rights', and led to nationwide protests united under the slogan of 'freedom, jobs, and dignity' (Jdey 2012, 71). Tunisia's authoritarian President Zine El Abidine Ben Ali was deposed on 14 January 2011 after four weeks of protest. While Tunisia might appear a complete overhaul of the authoritarian regime, Aboueldahab (2017, 133) argues that it is too simplistic to characterise Tunisia's transition as a revolution without negotiation. Rather, Tunisia experienced a non-paradigmatic transition, in that it did not encounter a straightforward shift from violent dictatorship to liberal democracy. The transition, led through revolution, was at once both ruptured and negotiated, as oppressive state institutions remained intact while only the upper echelons of state power were removed.

Defining victims in transitional settings

In consideration of the fact that the two case studies at hand underwent their transitional processes almost two decades apart, an issue of significance here is the definition of 'victim'. In South Africa, the process of defining the victims of apartheid, as developed through official state mechanisms, mirrored the individualisation of perpetrators highlighted above: 'direct survivors, family members and/or dependent of someone who had suffered a politically motivated gross violation of human rights associated with a killing, abduction, torture or severe ill-treatment' (Hamber 2009, 29). This understanding explicitly designated gross violations of human rights as that associated with killing, abduction, torture, or severe ill-treatment, all of which falls under the banner of civil and political abuses. In short, this constitutes a remarkably narrow definition of who

was fundamentally victimised under the apartheid regime (Ntsebeza 2004, 203). Those that suffered through the 'normal, everyday, banal and mundane violent reality of apartheid' (Wilson 2001, 208), namely socio-economic violations, were deemed out of the purview of the TRC. Within the TRC, the Committee on Reparations and Rehabilitation (CRR) was mandated to create a reparations policy to assist those defined as victims of apartheid. The reparations policy that was developed, therefore, was implemented on a largely individual basis, which, in any case, fell woefully short of any substantive effect (Colvin 2006, 188). 'Urgent Interim Reparations' (UIR) granted 16,000 individuals once-off payments that ranged from R2000 (roughly US$250 at the time) to R6000 (US$790) between 1998 and 2001, while a further 19,000 individual victims would receive R30000 (US$4900) as a once-off payment in 2003, ignoring the 6-year pay structure recommended by the CRR (Crawford-Pinnerup 2000, 51; Hamber 2007, 257).

As part of their recommendations, submitted in 1997, the CRR did make reference to the need for 'community rehabilitation', which hinted at socio-economic reforms in health, education, and housing, as well as the need for institutional reform in sectors such as the judiciary, media, security forces, business, education, and correctional services (Burton 2004, 37; Colvin 2006, 196). These recommendations, however, received scant recognition. For instance, then-ANC President Thabo Mbeki mentioned community rehabilitation at the closure of the TRC in 2003 without definition of what it would practically appear as and without follow up in policy (Hamber 2006, 573). Excluded and disenfranchised communities were not formally recognised as places of victimisation during apartheid, and thus any recommendation for reparations on a collective level was not seriously considered.

Another type of reparations that entered the domestic debate was labelled 'apartheid reparations'. In 2002, the Khulumani Victim Support Group, a civil society organisation, filed an international lawsuit in the New York Eastern District Court against 21 multinational corporations and leading international banks that had helped to 'prop up' the apartheid state (Hamber 2007, 257). This approach framed the reparations question between victims and socio-economic beneficiaries, rather than between victims and civil–political perpetrators. The ANC government, however, insisted on the dismissal of the lawsuit in favour of dealing with the reparations issue internally. Furthermore, the ANC waived the possibility of a wealth tax (which would have positioned itself along racial lines) as well as substantive business sector contributions (261).

On the other hand, Tunisia arguably exemplifies a case of field evolution in the extent of civil society involvement and influence within the final drafting of transitional justice policy. In South Africa, newly-formed victim groups (Khulumani, for example, was formed in 1995), were not afforded the agency to influence state-led definitions relating to key terms before the establishment of the TRC and, though certainly not through lack of effort, were unable to effect macro-level policy direction on deep-rooted issues such as reparations in the years that followed (Madlingozi 2010). In Tunisia, however, the Ministry of Human Rights and Transitional Justice was formed in 2012 with the objective of fostering a process of national consultation that could contribute to the drafting of a transitional justice law. Critically, the technical committee that was designed to organise the process of 'National Dialogue' included representatives from five different coalitions of civil society organisations, mostly formed in the politically expanding post-Ben Ali environment, alongside national and international actors (Andrieu 2016, 281–282;

Preysing 2015, 108–109). In short, the National Dialogue process can be understood as a clear attempt to engage civil society and promote a participatory approach to transitional justice that was largely missing from the South African case. This is not to suggest that it was a faultless endeavour: some Tunisian victim-survivors still felt marginalised, for example, by the inability of civil society actors to represent their experiences, and those that did not belong to any network or association were excluded (Andrieu et al. 2015, 6; Andrieu 2016, 282). That said, the National Dialogue is credited with directly serving to expand the contested discursive field on the definition of 'victimhood' in Tunisia.

When the IVD was finally established in December 2014, under a four-year term, the mandate included 'economic crimes and corruption', as a structural abuse, for the first time in a transitional justice setting. Furthermore, the definition of victim included 'any region that has been systematically marginalised and excluded' (Andrieu 2016, 283), which was, once again, a point of innovation within the field of transitional justice, thus encapsulating some sense of field evolution. Promisingly, it was a form of transitional justice that appeared to consider local contexts by attempting to consult its citizenry, and by acknowledging the validity of collective reparations, thereby addressing the root causes that led to the revolution.

Prioritisation of reparations

The negotiated focus on conditional amnesty within the TRC directed the spotlight upon two committees, namely the Committee on Human Rights Violations (CHRV) and the Amnesty Committee (AC). While the CHRV invited victims forward to testify and outline the gross human rights violations they had suffered, the AC took in applications of perpetrators wishing to apply for amnesty in exchange for truthful and public accounts of their crimes (Colvin 2006, 176). Given the emphasis on amnesty and truth, reparations were of a secondary focus. This was reflective of the much-heralded South African constitution-making process, which preceded the TRC: in the interim constitution, reparations appeared only once, serving the purpose of a rhetorical function ('there is a need for reparations') without legal character, while in the final constitution, 'reparations' was omitted entirely (179). Within the TRC, the CRR held no public hearings and was thus contingent on the truths discovered through the CHRV and the AC (Hamber 2009, 128). Though beyond the scope of this article, the uncovering of truth at the TRC was partial at best (see, for example, Gready 2011; Mamdani 2002; Stanley 2001), such that any formulation of reparations based off that truth was similarly partial.

In Tunisia, however, reparations were considered the centralised pillar of the transitional justice process (Andrieu 2016). This was at the insistence of influential trade unions such as the Union Générale Tunisienne du Travail (UGTT), and Ennahda, the democratic Islamist party that won the first free elections in 2011. It could be argued that this was reflective of the increasing importance with which reparations had been held, certainly from the mid-2000s onwards. Indeed, only in 2014 did influential bodies such as the United Nations (UN) assign greater importance to reparations as a dimension of transitional justice (McGill 2019, 18). While the TRC was innovative for its time, despite its flaws, the marginalisation of reparations was not considered the great structural limitation it is seen as today. Over a decade later, in the immediate aftermath of the Tunisian

revolution, reparations were recognised for the centralised role they could play in transitional justice settings.

Political instrumentalisation of transitional justice

One further point of comparison between South Africa and Tunisia is that both of their transitional justice processes were characterised by a high degree of official state decision-making and implementation, otherwise known as a top-down process. As a top-down endeavour, the ANC in South Africa chose to prioritise reconciliation through means of truth-telling and amnesty. Despite the attempted involvement of civil society groups like Khulumani, reparations remained de-prioritised. Moreover, while the recommendations made by the CRR included reference to socio-economic concerns, the process through which the CRR functioned (without its own hearings) and the way in which their recommendations were handled by the sitting government contributed to a narrow and inflexible debate on the transitional justice mechanism (Colvin 2006, 205). Critically, even TRC-defined victims were left wholly unsatisfied with the reparations of a transitional justice process that, with a preferential focus on amnesty, was 'perpetrator-friendly' (Hamber 2009, 134). It is significant that, 17 years after the final report of the TRC, socio-economic issues such as land reform, unemployment, and basic social service provision (such as water and sanitation, consistent electricity, and housing) are the largest concerns of the South African electorate (Clark 2019; Evans 2019b, 38; Ndinga-Kanga, van der Merwe, and Hartford 2020).

Similarly, while reparations were centralised in Tunisia, it too was heavily politicised. For example, decrees issued by Ennahda in 2011 immediately granted amnesty to all political prisoners since 1989 and, secondly, as part of a rehabilitation effort, recruited the beneficiaries of this amnesty into the public sector, along with financial compensation. As the majority of those targeted and arrested by the Ben Ali regime were Islamists who aligned themselves with the ideology of Ennahda, these reparations were seen as a way for the then-ruling party to reward their supporters and place them in positions of influence, rather than a form of legal entitlement for victims of gross human rights abuses (Andrieu 2016, 271). Much of the discontent was premised on the fact that amnestied prisoners were seemingly prioritised in the job market over unemployed youths and graduates, who arguably led and sustained the revolution for socio-economic rights (Preysing 2015, 144).

While civil society organisations were able to influence the formal transitional justice mandate, events such as the competitive 2014 political elections were the manifestation of a ruptured and partly-negotiated transition that was marked by a pervasive and ultimately well-founded fear of a resurgence of the old regime. The election saw a peaceful handover of power from Ennahda to the secularist Nidaa Tounès political party; to the dismay of the revolutionaries, the personnel within Nidaa Tounès were many of those that had been associated with the Ben Ali era, and thus represented the rapid return to the political scene of the old guard (Andrieu 2016, 280). Nidaa Tounès, thereafter, endeavoured to instrumentalise transitional justice and socio-economic unrest for political gain. The type of socio-economic reform indicated by the inclusion of economic crimes instead resulted in policies such as the 'Economic Reconciliation' bill passed in 2017, which granted amnesty to businessmen accused of corruption under Ben Ali's regime (Guellali

2017). This bill turned corrupt civil servants into victims, as some would have their fines compensated in a manner similar to reparations, while they were allowed to return to the political and economic fold under the pretences of injecting cash flow back into the economy. Finally, Nidaa Tounès ensured that the mandate of the IVD, which ended in May 2018, would not be extended, thus removing the possibility of further attempts for justice from the pre-revolution era.

With regard to reparations, the struggle is ongoing: around the time of the IVD's closure, concerned civil society activists protested for greater transparency on the key decisions relating to the list of individual and collective beneficiaries. Then, after the publication of the final report in 2019, the IVD, without support from the Tunisian government, unsuccessfully demanded financial compensation from France as well as the International Monetary Fund and the World Bank that would have helped to activate the aptly-named Dignity Fund for reparations payouts (Belhassine 2018, 2019). While the new Head of State Kaïes Saïed has cautiously provided reason for hope with regard to the activation of the Dignity Fund, it remains clear that the possibility of deeply structural transformative change, led initially through reparations, is precariously tied to the shifting balances of political power.

The case for transformative reparations

The conceptual underpinning of this article, discussed earlier, can be divided into three debates: the differentiation between individual and collective reparations, and consequent tension between corrective and distributive justice; the place and purpose of reparations within transitional justice vis-à-vis truth commissions and institutional reform; and the place and purpose of reparations outside the remit of transitional justice vis-à-vis social services and development objectives. These debates take form in the wider framework of socio-economic rights and transitional justice.

The reorientation of transitional justice

Recent scholarship advocates for the 'foregrounding' of socio-economic rights within transitional justice, such that it may pursue a 'deeper' form of justice after conflict (Arbour 2007, 20; Cahill-Ripley 2014, 193). The pragmatic requirement of the field, here, is to move away from its limited focus on the individualisation of guilt.

In pursuit of a deeper justice, the case studies at hand demonstrate a need for transitional justice to consider its temporal mandate. Sandoval (2014, 186) writes that 'transitional justice mechanisms and processes continue to be thought of as extraordinary mechanisms that are only needed for a few years, after which, the work is done'. This, in her words, is a 'tremendous error', as it implies that transitional justice, as well as the transition itself, takes form as a fixed interregnum period with a distinct end. Additionally, it implies that transitional justice effectively bridges a violent or repressive past towards a peaceful and democratic future, which problematically obscures the continuity of violence and repression (Balint, Lasslett, and Macdonald 2017). The post-conflict continuation of structural violence and repression is evident in both South Africa and Tunisia, be it driven along deeply-rooted racial, regional, or religious lines; where these

structures remain, it cannot be unequivocally stated that these states have moved beyond the transitional period.

While transitional justice is conventionally conceptualised through templates of technical institutional responses, with specific start and end points aiming towards preconceived outcomes, greater effectiveness and long-term impact would be found by treating it as a *process*. This would imply that 'the outcome [of the transitional justice process] is uncertain but the undertaking is valued in itself' (McAdams 2011, 312). Furthermore, it would allow transitional justice more flexibility to deal with context-specific non-paradigmatic transitions, which are marked by considerable complexities and not a neat path from authoritarianism to liberal democracy (Carothers 2002, 15). The consensus that democracy should be among the final ends of transitional justice must also then be questioned; rather, democracy is served over time by 'empirically observable impulses' that animate the search for deeper justice (McAdams 2011, 312).

Where transitional justice is treated as a political process, it is embedded within the transitional lens of conflict to peace, as opposed to a separate entity to the transition. As part of a political transition, it must be recognised that transitional justice is vulnerable to political manipulation or instrumentalisation for strategic gain (Loyle and Davenport 2016). A commonality across both case studies of this paper, and since the emergence of transitional justice, is that it is often conceptualised and delivered as a top-down process. Thus, we cannot assume that transitional justice is inherently a moral good or a positive process; rather, it is a set of negotiations between certain actors, the outcome of which is the manifestation of the ability of those actors to determine what justice looks like in that context, at the expense of other actors (Jones and Bernath 2018). As far as possible, transitional justice needs to emphasise local agency and resources, encourage bottom-up leadership and participation in policy decisions, and challenge unequal and intersecting power relationships as well as structures of exclusion (Gready and Robins 2014). This, in all, would constitute a more transformative transitional justice agenda.

Transformative reparations

What role, and in what form, is there for reparations in the reorientation of transitional justice towards socio-economic justice? Laplante (2015, 568) advocates for a pluralist approach to reparations, which necessarily means different results for different intended beneficiaries. A pluralist approach to reparations is activated by a participatory process where the 'positionality' of the victims is prioritised so that they can influence what they perceive is necessary to repair. This is in line with a long-term, bottom-up transitional justice process that emphasises local agency and resources. Such inclusion, moreover, is argued to help build resilient social contracts and sustain peace, where resilience can in addition disconnect the exclusionary past from the future (Kastner 2020; Zahar and McCandless 2020). Nonetheless, a correlated, and critical, realisation of this broader approach is that individual reparations for violations of certain civil and political rights may still be necessary and appropriate in some instances. I do not wish to diminish the importance of rectifying civil and political violations in post-conflict settings, but rather create space in the currently rigid set of transitional justice mechanisms to consider the process of structural socio-economic reform where the many different types of victims

clearly demand. Indeed, the UIR in South Africa were necessary for those with critical financial needs as a result of civil violations on an individual level. The limitations of the UIR were not in principle but in implementation, given that the payments were delayed and paltry.

The important caveat regarding individual reparations is as follows: transitional justice, as has been established, is most often asked to work in gravely unequal societies. As such, the economic chasm separating classes has been institutionalised for generations, long before exacerbating policies such as apartheid or neoliberal reforms. Thus, the principle of restitution (returning victims to the situation they were in before the crime occurred), often preserves the conditions of poverty, social exclusion, and discrimination that made many poor citizens vulnerable to further socio-economic rights violations during the period of conflict or authoritarianism (Yepes 2009). This is especially true where once-off financial payments amount to little more than symbolic acknowledgement of harms suffered, as was the case with the UIR. Individual reparations, in short, can perpetuate structural vulnerabilities in enormously unequal societies and does not contribute to the post-conflict task of removing the underlying root causes of the conflict. As Doxtader and Villa-Vicencio (2004, xviii) affirm, 'once-off payments matter little if they are not accompanied by measures that allow recipients to build a better future'.

This necessitates a closer look at transformative reparations. These reparations do not try to repair the irreparable or restore victims to their previous situations of poverty, discrimination, and exclusion, but rather 'transform' their circumstance of deeply-entrenched socio-economic inequality which is unjust anyway and often a root cause of the conflict (Yepes 2009). This is more effectively delivered on a collective level, given the depth of inequality and poverty prevalent in these transitional settings. The renegotiation of power between collective victim and perpetrator or beneficiary groups may effectively challenge the conditions that enabled or sustained past violations, thereby affording areas of structural victimisation a new opportunity for a different future. Weber (2018, 106) argues that transformative reparations thus move beyond material assistance (or individual redress), instead focusing on training and support (including psychological), education, community building, and sector reform, to strengthen the capacities and respect the agency (and dignity) of victims to the endpoint of empowering themselves rather than relying on the state. This is ably encapsulated by Khulumani members in South Africa (as cited in Madlingozi 2010, 213): 'we do not want to be the recipients of services provided by government, when we are capable of providing these services ourselves once the necessary resources have been allocated to us'. Similarly, in Tunisia, some participating citizens purposefully rejected the term 'victim', seeing it as a passive role while they understood themselves to be activists and militants, fighting for their own justice (Andrieu et al. 2015, 5).

By entailing both backwards and forward-looking elements, transformative reparations thus propose a harmonisation between the imperatives of corrective and distributive justice. It represents, in turn, one of the 'empirically observable impulses' that contribute to democracy over time as multitudes of self-empowered actors are able to challenge the power structures that enabled socio-economic violations, presenting a springboard to further pursue socio-economic reform. It is imperative to emphasise, with the two given case studies in mind, that a reparations programme with a transformative agenda needs to consider and centralise what the intended recipients want and need,

with a multi-functional focus on both process and outcome (Evans and Wilkins 2019). Transformative reparations are in that way fully dependent on local context. It is worth noting, in fact, that Khulumani, along with other civil society organisations, are still very much active and engaging with the 'unfinished and incomplete' work of the TRC. From their bottom-up perspective, the commission cannot be historicised as the main mechanism of a transition period that can only be completed, unequivocally, by achieving socio-economic transformation via 'participatory democracy, redistributive measures and inclusive economic development' (Brankovic et al. 2020, 160–161). The Khulumani Apartheid Reparation Database is, in fact, an outcome of this continued engagement (Madlingozi 2010). There is, still now, a clear entry point for a praxis of transformative reparations to assist in this process, particularly in relation to both the ideals of redistributive measures and inclusive economic development – the question, of course, is how this might be done. Therein lies the central difficulty of the transformative reparations approach, given its own current lack of conceptual clarity or 'fairly consistent vagueness' (McAuliffe 2017). One of the core reasons for the difficulties in answering this question, however, is because, particularly on the African continent, a fully developed praxis of transformative reparations has not been attempted. A group of civil society actors, including Khulumani members, are at least clear on the very first starting block: 'the expanded form of transitional justice we advocate … is informed by people-driven transformation efforts based on local knowledge and solutions' (Brankovic et al. 2020, 167).

That said, once more we may draw lessons from the case of Tunisia. While it certainly does not constitute a fully developed praxis of transformative reparations given the class and regional divides that still contribute to embedded levels of structural inequality, Ketelaars (2018) outlines a transformative dimension of the IVD that is worth noting. Through public outreach and education efforts, the Women's Committee of the IVD directly and indirectly engaged with female victims so as to provide easy access to and participation in the transitional justice process. Ultimately, through a support system that included both local and international NGOs, female participation in the IVD increased from 5 to 23 per cent between the end of 2015 and mid-2016 (419). This endeavour was purposefully an acknowledgement of and reaction to the specific context of the past that Tunisia is attempting to grapple; that is, the gendered impact of socio-economic rights violations and corruption, as well as recognition of the fact that women played a very visible role in the revolution, for which they paid a very high price (422; Lamont and Pannwits 2016). Of course, it must be recognised that the pursuit of transformative gender justice outcomes by the Women's Committee was ultimately selective, to a rather troubling extent (see Ketelaars 2018), and the experience did not lead to any tangible transformative reparations assurances, though this is merely reflective of the transitional justice process as a whole. However, given that the shortcomings of the pursuit of these transformative gender justice outcomes can be largely explained by instances of politicisation (426), it is certainly still worth acknowledging the basis of what worked with regard to *how* these transformative interventions could begin. The emphasis, in sum, is placed once more on the firm understanding and acknowledgement of context, via the use of local sources and knowledge as well as specialised committees designed to target specified outcomes (such as land reform or gender justice, for example).

Lastly, here, one overriding concern regarding the notion of transformative reparations is the limitation of state resources in transitional settings. An ambitious reparations

programme aimed at structural socio-economic reform risks overburdening transitional justice mechanisms, especially where, as in both case studies, the beneficiaries of past socio-economic injustices remain in positions of power (Szoke-Burke 2015, 475). Such a policy, furthermore, requires economic expertise on subjects such as land reform or gender justice. These limitations, however, do not warrant the dismissal of socio-economic rights from the reparations debate. Indeed, the reorientation of transitional justice as a long-term process gives more flexibility to expand the reparations mandate and include a wider field of (local) experts within, perhaps, a specialised socio-economic commission. Should the tension between corrective and distributive justice be too great due to limited resources, Yepes (2009, 640) argues that individual corrective reparations should be put aside – this, however, is dependent on contextual engagement and consultation with local populations. Finally, as the following subsections will expound, transformative reparations cannot work alone to pursue structural socio-economic reform, both within and outside the remit of transitional justice.

Integral and developmental coherence

The limitations listed above note that challenges facing structural socio-economic reform are especially pronounced where beneficiaries of past socio-economic injustices remain in power. This was the case in both South Africa, where whites currently own nearly three-fourths of privately-owned agricultural land (Fairbanks 2018), and Tunisia, where the 2014 election victory of Nidaa Tounès enabled the return of many political and business personalities linked with the Ben Ali era.

This reality gives credence to the recognition that transformative reparations must work alongside truth commissions and institutional reform in order to effect structural socio-economic reform. de Greiff (2006b, 10) states that any form of reparations programme must have internal coherence, in that the different benefits and components of the programmes (individual and collective) complement one another; and external coherence, in that the reparations programme complements other transitional justice mechanisms.

Therefore, to balance the mandate of transformative reparations, other transitional justice mechanisms must similarly maintain a commitment to structural socio-economic reform. Indeed, the swift emergence of scholarly literature on holistic transformative justice (see Evans 2018, 2019a; Gready and Robins 2019) demonstrates such a necessity. This is not the place for an intensive study of this possibility; however, in brief, Arbour (2007, 14) argues, 'truth commissions lend themselves particularly well to the investigation and protection of socio-economic rights'. A transformative approach within truth commissions would not only help expose socio-economic violations of the past, but also highlight potential communities or regions that deserve to benefit from transformative reparations, and the present needs of these groups.

Institutional reform, as outlined earlier, is well-positioned to effect structural socio-economic reform: it is a forward-looking mechanism directly aimed at guaranteeing the non-repetition of conflict and breaking down the structures of power that previously facilitated and promoted gross violations. The reforming of state institutions, through processes such as vetting, can trigger important structural

changes; however, it is a lengthy endeavour with potential results only perceived in the mid to long-term (OHCHR 2014, 57). This provides further impetus to widen the mandate of transitional justice itself. Coherency between institutional reform and transformative reparations ensures that collective victim and perpetrator or beneficiary groups may renegotiate the power relations necessary for structural reform.

Elsewhere, Weber (2018, 90) writes, 'the transformation of structural inequalities would require reparations to go beyond corrective justice, instead including aspects of distributive justice, for example through development measures and social services'. This is to imply that transformative reparations, encapsulating a harmony of corrective and distributive justice, can work alongside development objectives or social service targets. Nonetheless, it is important to distinguish between the broader purview of transformative reparations and the provision of social services: a firm and convincing warning in view of an expanded notion of transitional justice argues that it is dangerous to popularise a process whereby communities have to 'bleed first' before receiving basic social services (Firchow 2013). Indeed, states may problematically blur the line in order to provide victims with social services as a form of reparations that they ordinarily deserve as citizens. The division must be clearly stipulated so that the rights of the victims to reparations are preserved (Yepes 2009, 635).

An example of how to achieve this is through making use of the symbolic dimension (for example: memorials, plaques, days of acknowledgment, official ceremonies) that is implicit to all reparations programmes. This is, indeed, one of the clear differences between reparations and social services, where the delivery of reparations serves as recognition that the victim or group or community of victims suffered a violation of their rights; in that way, reparations also serve as an attempt on behalf of the state to reconcile itself with the victim-survivors (Yepes 2009, 635). The pressure on the state to maintain the distinction between reparations and social services must come both from below, within the country in question, and from the myriad of international NGOs that are now often involved in each national transitional justice process. Transnational organisations like the African Union, for example, may use their regional influence in these instances as well. The field of transitional justice is now at the point whereby national processes are closely monitored, scrutinised, and publicised – thus, larger organisations can and must play their part in holding states to account so that the distinct rights to reparations *and* to social services are realised for long-suffering communities and regions.

Additionally, whilst their differences must be appreciated, a broader mandate of transitional justice should serve 'as a springboard for the systemic anchoring of socio-economic rights in the political, legal, and social structures of societies in transition' (Arbour 2007, 26). The strongest foundation for this springboard is through a transformative approach to transitional justice, and to reparations within that. The reason for this is that state policies to reduce poverty and alleviate inequality are logically aligned with the efforts of transformative reparations for victims. Thus, transformative reparations stress the need for coherence between social services, development policies, and transitional justice mechanisms aimed at structural socio-economic reform, while keeping the distinctions clear (Yepes 2009, 642).

Conclusion

In view of current transitional justice ideals, McAdams (2011, 311) asserts that 'our hands are tied before we begin; we are unlikely to realise our aspirations fully; and the ghosts of the past may return to haunt us'. The point here is that there is no quick fix to the complexities of a transitional state. Indeed, in its current template as a 'top-down' temporary toolkit, transitional justice rather appears a means to consolidate power and maintain structures of abuse, discrimination, and exclusion. As such, transitional justice requires a fundamental reorientation so that it may pursue a 'deeper' justice; that is, transparently, the pursuit of structural socio-economic reform in profoundly unequal post-conflict societies.

This article has sought to evaluate how reparations might move beyond individual redress to pursue structural socio-economic reform in post-conflict societies. To that end, I have reflected on the experiences of South Africa and Tunisia as two cases along the transitional justice timeline, so as to analyse the ways in which the field has progressively learnt from the past, understood the various key concepts, and adapted to new contexts. It is instructive to note that some processes of field evolution are apparent, namely the involvement of civil society in drafting transitional justice law, which widened the constitution of who was to be considered a 'victim', the prioritisation of reparations within the transitional justice mandate, and the inclusion of 'economic crimes' under its purview. Indeed, recent scholarship has highlighted the ways in which the South African state has failed to realise the socio-economic transformation that was promised in its 1996 Constitution, while in Tunisia, processes like the participatory National Dialogue have enabled the state and citizens to craft an increasingly resilient national social contract (Mahmoud and Súilleabháin 2020; Ndinga-Kanga, van der Merwe, and Hartford 2020). Despite gradual evidence of field evolution, there is a need for transitional justice to evolve much further, in the manner of a transformative reorientation.

Specifically, while critically positioning 'victims', both individually and collectively as well as their multi-layered wants and needs, at the centre of the debate in each context, a transformative approach to reparations can help transitional justice pursue structural socio-economic reform in post-conflict societies. Transformative reparations necessarily operate in coherence with truth commissions and institutional reform, while providing an effective springboard to further development policies and social services by presenting a harmonisation of corrective and distributive justice. If properly realised, which requires the engagement of local knowledge and expertise as the very first step, this approach can help to enable the transformation of communities, regions, and peoples such that they may be afforded the resources to challenge and renegotiate the power structures that ground them in generational cycles of socio-economic abuse and exclusion. Ultimately, for states in the long and complex process of transition, the root causes of conflict may be fundamentally disturbed, and the guarantees of non-recurrence may be fully realised.

Acknowledgement

I would like to thank Phil Clark and Paul Gready as well as the two anonymous reviewers for their valuable comments.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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