

‘OMNUS ET SINGULATIM’: ESTABLISHING THE RELATIONSHIP BETWEEN TRANSITIONAL JUSTICE AND NEOLIBERALISM

ABSTRACT. First developed by human rights lawyers and activists, transitional justice emerged from the so-called third wave of democratisations in Latin America. Over the last 30 years, transitional justice has risen to become a ‘global project’ of global governance. Locating the emergence of transitional justice within the global rise of neoliberalism, this article shows that transitional justice serves an important function in regards to the particularly neoliberal contours of many transitions. Understanding this relation, the article argues, is best served with recourse to what Wendy Brown describes as neoliberalism’s practice of *omnus et singulatum*, a double process through which ‘communities’ are gathered together as stakeholders to take part in economic activities whilst simultaneously being individualised as ‘responsibilised’ and self-sufficient entrepreneurial units. Taking this concept, I argue that transitional justice also undertakes a process of *omnus et singulatum* that usefully prefigures and supports processes of neoliberalisation during ‘transition’. Transitional justice, it concludes, does the necessary work of bringing conflictual, traumatised, societies back together, whilst doing so on terms that do not threaten but instead prefigure the individualising demands made upon subjects at the sites of neoliberal transition.

KEYWORDS. Human rights; neoliberalism; subjectivity; transitional justice.

INTRODUCTION

First developed by human rights lawyers and activists, transitional justice began following the democratisations in Latin America as a series of experiments designed to address the human rights legacies of the authoritarian regimes that many countries emerged from. As Paige Arthur (2009, p. 324) notes, the field of transitional justice developed as ‘an

international web of individuals and institutions whose internal coherence is held together by common concepts, practical aims', that crystallised in the wake of these experiments and the later transitions from communism in Eastern Europe. Transitional Justice now denotes a range of mechanisms, including truth commissions, criminal trials, lustration, and so on, used to deal with human rights legacies in societies emerging from conflict or authoritarian rule. A 'global project' (Nagy 2008) of global governance, transitional justice is now intertwined with the peacebuilding initiatives of the United Nations (UN) and the World Bank, which advocate the use of transitional justice mechanisms in much of Latin America, Eastern Europe, Africa, and some parts of South-East Asia.

Much of the academic research on transitional justice can be described as 'normative', and seeks to investigate the relative merits of different approaches to transitional justice, in order to advocate various practices for the field. For example, early efforts by transitional justice scholars such as those gathered in the volumes edited by the Aspen Institute (1989) and Neil Kritz (1995), as well as later work by authors such as Ruti Teitel (2001), established transitional justice as a primarily legal phenomenon, which uses various juridical and quasi-judicial instruments to rectify a history of human rights abuses. Others have considered how certain mechanisms support transitions in different ways (Minow 2000; Laplante 2009), or how different mechanisms may work together to provide a more holistic approach (Roht-Arriaza & Mariezcurrena 2006; Dukalskis 2011). The academic field has done much to bring together the normative conceptual terrain of transitional justice both in theory and practice.

More recently, some scholars have taken a more critical perspective, questioning the assumptions that underlie transitional justice. Increasingly, these approaches have focused on the enduring relationship between transitional justice and the project of liberalism; as Zinaida Miller notes, 'in the vast majority of cases, transition occurs in conjunction with a project of economic and/or political liberalization' (Miller 2008, p. 270). Crucially, authors have

focused on how this relationship has left transitional justice unable to substantively contribute to discussions around the structural, socio-economic violences that are perpetrated before transitions and seem to continue under post-transitional regimes (Miller 2008; Nagy 2008; Franzki & Olarte 2014).

Adding to this emerging literature, I suggest that the relationship between transitional justice and what might be called ‘socio-economic issues’ could be better understood by turning towards the conceptual terrain provided by recent academic research on neoliberalism which has developed in an emerging field of critical neoliberalism studies (Brown 2015; Dardot & Laval 2013; Mirowski 2013). Locating the emergence of transitional justice within the global rise of neoliberalism, a shift that Pierre Dardot and Christian Laval (2013, pp. 147-153) have described as the ‘great turn’, this article argues that transitional justice serves an important function in regards to the particularly neoliberal contours of many transitions. The precise terms of their relationship, I argue, is best understood with recourse to Wendy Brown’s recent work on neoliberalism. In particular, the article shows that this relationship can be grasped with reference to what Brown (2015, pp. 125-130) describes as neoliberalism’s process of *omnis et singulatim*. A crucial aspect of neoliberalism’s smooth-running, the term denotes the double process through which people are ‘amassed’ as stakeholders taking part in economic activities whilst simultaneously being individualised as ‘responsibilised’ and self-sufficient entrepreneurial units.

Taking this concept, I argue that transitional justice also undertakes a process of *omnis et singulatim*, which productively supports the creation of neoliberal societies in transitional contexts. The analysis will show that transitional justice mechanisms bring societies together in the construction of shared truths about the past, which are not founded in any form of communitarian identification that conceptualises the past in collectivised or socio-economic terms. Rather, underpinned as it is by the lexicon of human rights law,

transitional justice simultaneously individualises the past by producing members of transitional societies as the individual victims of human rights abuses. I argue that transitional justice aims to create the same kind of ‘empty solidarity’ that defines the neoliberal project as a whole. Transitional justice, I conclude, does the necessary work of bringing conflictual, traumatised societies back together following periods of deep division, conflict and mistrust, whilst doing so on terms that do not threaten but instead prefigure the individualising demands made upon subjects at the sites of neoliberal transition.

WHAT IS NEOLIBERALISM?

Pierre Dardot and Christian Laval (2013, pp. 147-191) argue that following what they call the ‘great turn’ of the late seventies, neoliberalism now dominates not only national and international economic policies, but also forms of social, political and economic life across the globe. In this respect, neoliberalism is what Brown (2015, p. 20) has described as a ‘global phenomenon’. And yet, neoliberalism remains a slippery term, one misinterpreted by the political left and right alike. The political consequences of these misunderstandings have been well summarised by Philip Mirowski (2013, p. 27) who notes that neoliberalism is often derided and dismissed as a mere heckle screamed by conspiracy theorists and ‘addled denizens of the left’.

But if neoliberalism has been subject to some convenient misunderstandings, it is perhaps because it has been difficult to define. As Brown (2015, p. 20) points out, neoliberalism is often thought of as ‘a loose and shifting signifier’, and can simultaneously be thought of as ‘an economic policy, a modality of governance, and an order of reason’. Furthermore, as Brown (ibid.) notes, neoliberalism is ‘inconstant, differentiated, unsystematic, impure’, and able to accommodate itself to different geographical and historical locations. Certainly, this perspective is shared by Aihwa Ong (2007, p. 7), who, in

looking at the way in which neoliberalism has adapted itself in different parts of South-East Asia, concludes that it has a ‘promiscuous capacity to become entangled with diverse assemblages, thereby crystallizing political conditions and solutions’. As a result, getting to what is at the heart of neoliberalism can be a tricky task.

Nevertheless, articulating a definition for neoliberalism might be best achieved by returning to the now famous *Birth of Biopolitics* lectures of Michel Foucault (2010 [1979]), one of the first historical mappings of the concept, which has served as an important critical resource for many (Brown 2015; Mirowski 2013; Read 2009). For Foucault, neoliberalism is a social, economic, and political phenomenon best defined as a political rationality of government or a *governmentality*. Rather than the practical unfolding of theories in an economic domain that is isolated from the social, governmentality describes the mobilisation of economic theories through practices designed to produce particular societal norms, social relations, and subjective behaviours. As Foucault (1982, pp. 789-790) argued, governmentality 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 other words, neoliberal governmentality develops practices that encourage particular trajectories of thought, behaviours and actions, to produce subjectivities that are turned towards particular strategic ends.

Neoliberal governmentality can be understood, first and foremost, as a particular strand of economic thinking that attempted to rearticulate and reinvigorate the project of liberalism, which, by the beginning of the twentieth century, was under threat both from a series of large economic crises that increasingly delegitimised the principle of the market, and from the rise of more communitarian forms of economic organisation, such as trade unionism (Dardot & Laval 2013, pp. 28, 37, 96-97). As Dardot and Laval (*ibid.*, p. 50) successfully

illustrate, neoliberalism was first a project to articulate a ‘new’ or ‘neo’¹ liberalism, distinct from the ‘classical’ liberalism of the eighteenth and nineteenth century, which could recuperate and reinvigorate the concepts of individual liberty and the power of the market. The intellectual project of neoliberalism grew around two central transformations in the theory of classical liberal economics, which were designed to save the liberal project from its crisis.

Firstly, as Foucault (2010, pp. 131-132) has shown, a central tenet of neoliberalism is its reconceptualisation of the market, from a natural process of exchange, as in classical liberalism, to a constructed arena of competition. Where classical liberalism conceptualised the economy on the *laissez-faire* principle that markets were spaces that the state should keep entirely clear of, Foucault demonstrates that neoliberalism conceptualised the market as an artificial structure ‘with formal properties... that assured, and could assure, economic regulation through price mechanism’. The theorisation of competition as a constructed relation thus requires that markets be governed in order to function. Neoliberalism conceptualises the state as interventionist, if in a particular way: ‘Competition necessitates a constant intervention on the part of the state, not on the market, but on the conditions of the market’ (Read 2009, p. 28). The implication is that contemporary capitalism is not *laissez faire* and, as such, clarifies a long-held misnomer that neoliberalism is somehow concerned with ‘shrinking’ the state. Indeed, as Mirowski (2013, p. 57) argues, one should resist being enthralled by a narrative that ‘confuses the “marketization” of government functions with the

¹ Dardot and Laval (2013, pp. 40-55) show that the term ‘neo-liberalism’ was coined and deployed in the early part of the twentieth century by neoliberal intellectuals such as Louis Rougier and Gaëtan Pirou. The term ‘neo-liberalism’ eventually distinguished this body of thought from the ‘new’ liberalism, that is now mostly associated with the Keynesianism that dominated economic policy in the middle of the twentieth century.

shrinking of the state: if anything, bureaucracies become more unwieldy under neoliberal regimes’.

Neoliberalism thus proposes a conceptualisation of human freedom which is distinct from how it might be understood by ‘classical liberalism’. As Foucault (2010, p. 273) shows, classical liberalism posited a transcendental human subject, one who acts according to their interest ‘as a form of both immediately and absolutely *subjective will*’. The classical liberal project forwarded the individualism of interest and the agency of choices as a natural kind of freedom that exists prior to, and thus serves as, the basis of exchange. Neoliberalism, on the other hand, casts this same individual freedom not as a natural, *a priori* domain that the government must stay well away from, but the result of competitive markets that are constructed and maintained by the state. In short, where classical liberalism saw freedom as the precursor for ‘the market’, neoliberalism sees freedom as the result of the latter.

Secondly, neoliberalism aims to significantly restructure the subject as an economic being, *homo œconomicus*. As Foucault (2010, pp. 223-226) argues, neoliberalism posits that the functionality of the worker is subject to the whole range of human activity such that it was necessary to make all kinds of human activity subject to economic analysis, insofar as they produce material effects on *homo œconomicus* within the market place. Neoliberalism thus conceptualises *homo œconomicus* as a competitor within the market, who no longer simply earns a wage, but invests in their ‘human capital’. Every part of *homo œconomicus*’ life (education, job experience and even procreation, health, and so on) are articulated as investments, which can be collected, utilised and turned towards an economic advantage in competitive markets. As Brown (2015, p. 31) shows, neoliberalism ‘disseminates the *model of the market* to all domains and activities’, in order that ‘it configures human beings exhaustively as market actors’, even where, as Brown reminds us, ‘money is not at issue’.

Using these insights, I argue that neoliberalism denotes a modality of governing designed to remake subjectivity and social relations in the form of enterprises that are situated in a competitive market. This principle has defined the overarching strategy of neoliberal governments and institutions, since the rise of actual, existent neoliberalism following the great turn, which gained traction after the elections of Thatcher and Reagan in the UK and USA respectively (Dardot & Laval 2013, pp. 148-150). A more detailed history of this ‘turn’ will be provided in a later section of this article. For now, it is enough to note that neoliberal policies differ across different locales and temporalities, but have usually included practises of privatisation and economic deregulation, as well as the weakening of social security and, more recently, the further entrenching of market mechanisms by outsourcing state and public services to private companies (Brown 2015, p. 28).

The material effects of these policies have been critiqued largely by confronting neoliberalism’s virulent economism, which strives to transform everything into capital(s) that can be sublimated to its economic logic. As Brown argues, ‘when everything is capital, labour disappears as a category as does its collective form, class’ (Brown 2015, p. 38). Neoliberal logic dismantles the very rationale that upholds forms of social solidarity and paves the way for disassembling collectivised economic mechanisms including social security. On the one hand, the deleterious effects of neoliberalism in this regard have greatly contributed to the large increase in inequality over the last 40 years, identified by various highly regarded economists (Piketty 2014; Stiglitz 2013). On the other hand, the individualisation of economic activity has led to subjective effects: the neoliberal subject is ‘exposed in all areas of his life to vital risks from which he cannot extricate himself [...] To be a personal enterprise assumes living entirely in risk’ (Dardot & Laval 2013, p. 275). In this way, inequality, precarity and risk-taking, are the hallmarks of the neoliberal age.

OMNUS ET SINGULATIM: INTEGRATION AND INDIVIDUALISATION

So far, I have focused on the ways in which the production of neoliberal *homo oeconomicus* involves a process of individualisation, where the marketisation of existence transforms individuals into entrepreneurial units. Recent work by Brown, however, has shown that this tells only half of the story, and it is important to pay closer attention to some more of its lesser known normative valences. In particular, it is crucial to understand that the move in the direction of individualisation is also matched by a simultaneous and inverse movement, which is designed to ‘bring together’, that is, to integrate individuals into coherent ‘collective’ units that perform the socio-economic processes asked of neoliberal societies. In other words, neoliberalism is not simply concerned with the process of individualising subjects as enterprises, but also in productively gathering them together.

To describe this seemingly paradoxical movement of integration and individualisation, Brown draws from Foucault’s work on governmentality, taking the term ‘*omnes et singulatum*’ from his 1979 Tanner Lectures of the same name (Foucault 2000).² In her earlier work, Brown (2006, p. 79) argued that Foucault’s term described ‘the signature of modern governmentality’,³ redeploing it in her own analysis of ‘tolerance’ as a governmental discourse. In Brown’s work, *omnes et singulatum* describes the logic of governmentality in its broadest sense, an overarching rationality which manages populations by ‘[s]imultaneously totalising and individualising, amassing and distinguishing, and achieving each effect through its seeming opposite’. Nevertheless, for Brown, the term illuminates the ways in which governmentality works through specific practices. In this earlier work, it was deployed to describe the ways in which tolerance articulates a set of

² Foucault uses the spelling ‘Omnes’ rather than ‘Omnus’.

³ Although, interestingly, the phrase, *omnes et singulatum*, is not used within the lecture apart from its title, making it one of Foucault’s less developed terms.

governmental practice that can be used for ‘organizing and managing large and potentially unruly populations’ (Brown 2006, p. 79).

In *Undoing the Demos*, Brown takes a similar approach, redeploying the term to conceptualise a form of *omnis et singulatim* which is particular to neoliberal governmentality. In this schema, the latter, ‘*singulatim*’, refers to the specific forms of individualisation proper to the creation of the neoliberal subject as human capital which was substantively covered in the previous section. But at the same time, Brown argues, neoliberalism articulates its own, and to some extent, unique, practices of integration that are mobilised through the discourse of ‘governance’.

In order to make this argument, Brown (2015, p. 126) insists that one of the operative terms of neoliberalism is ‘good governance’. Here, governance replaces the outmoded ‘government’ and not only refers to the activities of the state but also a range of institutions, including businesses, as well as educational, profit, and non-profit organisations. Where the state is concerned, the implications of this shift are distinct. The state becomes simply one more site that must be administrated or ‘managed’. In doing so, governance ‘replaces the opposition or tension between government and the private sector (sovereign and market relations) with collaboration and complementarity’. In this sense, the opposition disappears as, like individuals, the state and corporations become enterprises that work together in order to administer and manage the functions of the state. As such, governance signals a hollowing out of these institutions and their approximation as similar forms.

When substituted for government, governance reduces public life ‘to problem solving and program implementation, a casting that brackets or eliminates politics, conflict and deliberation about common values or ends’ (ibid., p. 127). Questions and conflicts over ‘the good life’ are displaced by the necessity of consensus. Through the language of consensus, the power relations of neoliberalism are obscured – stakeholders replace classes, self-imposed

guidelines replace labour law, and so on. Ultimately ‘the emphasis placed on problem solving and consensus [...] downplays to the point of disavowing structural stratifications in economy and society that could produce different political stakes and positions’ (ibid., p. 129). As a result, the antagonisms around class, race, and gender are veiled by a discourse that emphasises stakeholder consultation, co-operation, and a multi-party approach that produces technocratic solutions to problems that have been cleaved away from any of their political implications.

Neoliberalism thus integrates individuals into socio-economic processes as stakeholders in the development of technical solutions to administratively defined problems. Crucially, integration does not mean the collectivisation of responsibility through social security or a substantive version of work-place democratisation. Rather, it acts as a positive valence, which is at the heart of neoliberalism’s double movement. Governance, in fact, persists with the neoliberal desire for individualisation by devolving authority to individual entrepreneurial units. Neoliberal governance:

[...] operates through isolating and entrepreneurialising individuals, through devolving authority [and] decision making, and the implementation of policies and norms of conduct. These are processes that make individuals and other small units in work places responsible for themselves, while binding them to the power and project of the whole. (ibid., p. 129)

In other words, neoliberalism brings individuals together to solve problems through individual efforts, individual risks and individual rewards. Neoliberalism, Brown concludes, is at once a process of ‘integration and individuation, cooperation without collectivization – neoliberal governance is a supreme instance of *omnis et singulatim*, the gathering and separating, amassing and isolating’ (ibid., pp. 129-130).

I want to argue that this double movement, which straddles and ameliorates the paradox between notions of individuality and collectivity is not only a key part of contemporary neoliberalism, but also crucial to understanding the function that transitional

justice provides to transitions that expand or further entrench neoliberal governmentalities. I want to argue, then, that transitional justice provides a kind of primordial production of *omnis et singulatim*, which serves the needs of neoliberal societies that require both processes of individualisation and their coming together as a coherent whole.

TRANSITIONAL JUSTICE AND NEOLIBERAL TRANSITION IN THEORY

Before doing so, it is first necessary to properly understand the connection between transitional justice and neoliberalism. This is no easy task: in normative debates neoliberalism has often been ignored by transitional justice scholars and practitioners. This is perhaps in part because of the pejorative connotations of the term I hinted at earlier. But it might also be because transitional justice has been preoccupied with terms like ‘liberalism’ and ‘liberal democracy’. This being the case, one might agree with Mirowski that if neoliberalism is a relevant concept then the problem of recognising and using it might be the result of ‘outsider confusion’, where the term comes to be obfuscated by other interrelated terms like classical liberalism, libertarianism, and (by implication) liberal democracy, that are sometimes even exhorted by committed neoliberals (Mirowski 2013, pp. 38-39).⁴

Certainly, one of the central assumptions of transitional justice has been that transition is usually shorthand for ‘liberal transition’. Normatively conceived, transitional justice is designed to deal with legacies of human rights abuse in order to assist with the transition to liberal democracy. This is often termed the backward- and forward-looking duality of transitional justice (Teitel 2000, p. 7), which, for its proponents, underpins its importance in realising a liberal, democratic future. For example, Ruti Teitel’s seminal *Transitional Justice*, one of the first attempts to normatively theorise the field, is explicit about the relationship between transitional justice and liberalism. Setting up the terms of her text, Teitel asks ‘what,

⁴ Compounding this issue, as Mirowski points out, committed neoliberals might themselves reject this label.

if any, is the relation between a state's repressive past and its prospects for creating a liberal order? What is law's potential for ushering in liberalization?' (ibid., p. 3). Authors such as Kora Andrieu (2010) and Rama Mani (2002, p. 151) have also noted the enduring relationship between transitional justice and transitions to liberal democracy, particularly now the former is integrated within peacebuilding operations.

In more critical literature too, neoliberalism has rarely made an appearance. Socio-economic issues that are prescient before, during and after transitions are much more likely to be articulated through the concepts of 'structural violence' and 'economic liberalisation'. Even Miller (2008), who has provided one of the field's most insightful and incisive critiques, opts not to deploy neoliberalism as part of her conceptual lexicon. Instead, Miller (2008, p. 268) problematises transitional justice as a 'definitional project' where 'conflict and transition are entrenched as stories of political and legal change and of physical violence rather than as tales of economic liberalization or structural violence'. Miller's point is that by relying on human rights discourses, transitional justice creates conceptual absences, which perpetuate socio-economic problems by avoiding a thorough analysis of their place in the past, present, and future of transitional societies. By ignoring economic questions, she concludes, transitional justice mechanisms 'make invisible both the economic causes of conflict and the effects of the post conflict economic situation on the possibility for renewed violence related to past grievances or current experiences of maldistribution' (ibid., p. 287).

A notable exception to the field's relative silence on neoliberalism has been offered by Frankzi and Orlarte (2014). For these authors, however, neoliberalism is not defined as a governmentality, and largely denotes an abstract set of economic policies associated with liberal transitions but situated outside of the disciplinary purview of transitional justice. Frankzi and Orlarte (2014, pp. 203-204) argue that transitional justice 'takes for granted the liberal separation of the political-institutional and the economic spheres', in order that

‘transitional justice as a field is seemingly reduced to the former’. For the authors, then, neoliberalism denotes a set of economic policies that, as in Miller’s account, are conceptually cleaved from transitional justice’s understanding of transition, thus constituting a conceptual invisibility that ‘sets bounds to the societal projects that can be envisioned through its discourse’.

In both of these cases, the relationship between transitional justice and the ‘socio-economic’ is defined in the negative; the perceived connection largely comes down to the former’s silence on the latter rather than any active, productive relation. This negative relation might be attributed to the conceptualisation of socio-economic issues as a set of abstract economic processes and changes, with only secondary effects on social relations and so on, that, according to Miller at least, may contribute to renewed violence. In doing so, a conceptual wedge is inserted between transitional justice and economic processes, as two different sets of governmental practices that take place in different and demarcated arenas, one socio-political and one economic, which cannot be easily implicated in each other, save for the effects of transitional justice’s own narrative omissions.

Referring to the conceptual terrain offered by critical neoliberalism studies might be more productive here. As the previous section showed, more than a set of abstract economic processes, neoliberalism denotes a modality of governing designed to remake subjectivity and, more generally, social relations in the form of enterprises competing in a market. In other words, the transformation of subjective and social relations is the primary function of neoliberalism, rather than a secondary result (even if we can agree with Miller that this secondary effect of renewed violence remains a danger). Without negating Miller’s argument with regards to the latter, the conceptual parameters of neoliberalism thus open up the possibility of a new critical framework that shows how transitional justice might more actively participate in, and prefigure, processes of neoliberalisation. Quite simply, if

neoliberalism is a project that takes aim at the social, then this locates a new point of critical analysis where a relation between transitional justice and the socio-economic might be investigated. It is certainly this perspective that this analysis aims to articulate.

Moreover, whilst transitional justice is normatively wedded to transitional outcomes compatible with liberal democracy, there are good theoretical grounds for insisting on the conceptual terms of neoliberalism instead. Brown (2015, p. 108) has shown how 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 [...] the state is remade from one founded in juridical sovereignty to one modelled on the firm’. This being the case, neoliberal governmentality dramatically reduces the very notion of democracy from political struggles over different and expansive conceptions of the good life to choices about how to run the state as a corporation. As such, in (neo)liberal democracies, democratic choices become consumer choices conditioned by ‘concerns with economic growth, competitive positioning, and credit rating’ (ibid., p. 110). Regardless of the creeping increase in inequality and precarity, what is seen to be good for citizens is the standing of the state according to the economic logics of international financial institutions (IFIs) and credit ratings agencies.

With this in mind, one can see that whilst ‘transition’ might normatively denote a transition to liberal democracy, this itself is conditioned by neoliberal imperatives. As such, the components of liberal democracy, classically understood as a parliamentary democracy and a market economy are not two separate but equal components of a liberal society. Rather, the neoliberalism framework shows that the latter envelopes and transforms the former according to its logic. This is especially a problem for transitions like those of Timor-Leste and Sierra Leone, where decisions about the economy are not the result of democratic decision making, but a set of neoliberal policies that must be implemented as a condition of

their International Monetary Fund (IMF) loans. In this sense, neoliberalism guides the breadth of possible democratic choices, subjecting it to the limitations accorded by its relentless economism.

TRANSITIONAL JUSTICE AND NEOLIBERALISM: A HISTORY

Neoliberalism's deleterious moulding of liberal democracy is an important consideration for transitional justice, not simply because it describes a current state of affairs to which the latter responds, but because the emergence of transitional justice is itself deeply embedded within the global turn towards, and consolidation of, neoliberalism. As I will now show, transitional justice emerged within the global, material unfolding of neoliberalism, and its transformation of liberal democracy. The result has been that, from its very beginnings, transitional justice has largely had to respond to transitional contexts in which neoliberal rationalities have dominated the social, political and economic contours of transition. It is undoubtedly beyond the scope of this analysis to show in granular detail that each transition has been neoliberal. Instead, the task ahead is to show that transitional justice has emerged and consolidated itself in a generalised and global turn towards neoliberalism that, whilst always particular to each context, imposes its unmistakeable form upon transitions. As such, the aim of this exercise is not to universalise the details of a particular neoliberal transition, but to argue that transitions exist within a context that has been globalised by the neoliberal turn.

The neoliberal turn was precipitated by the social, political and economic conditions that crystallised as a result of a major and global structural economic crisis of the 1970s, which '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' (Duménil & Lévy, 2011, p. 17). As Dardot and Laval (2013, p. 157) point out, the neoliberal turn responded to the crisis, starting with the political

programmes of both Thatcher and Reagan, which upended the broadly Keynesian socio-economic relations of the post-war period. As such, the task was to destroy the collectivised economic relations of workers as part of a greater strategy of creating ‘generalised competition, including in the order of subjectivity’.

Following the UK and USA, the neoliberal turn was ‘subsequently replicated by a large number of governments and transmitted by major international organizations like the IMF and World Bank’ (Dardot & Laval, 2013, p. 151). As it turns out, the instrumentalisation of IFIs became central to the virulent spread of neoliberal governmentalities across the globe. During the seventies, these institutions were transformed into disciplinary apparatuses by governments ‘won over to the dogma of monetarism’ (ibid., p. 153). Reconfigured, these institutions 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. 154).

For weaker, developing, and transitional countries the ‘turn’ became increasingly unavoidable. For many nation-states, neoliberalisation was the cost of accessing much needed financial support from these institutions. Through Structural Adjustment Programmes and, later, Poverty Reduction and Growth Strategies, financial aid and loans were used as leverage for wide-ranging policy changes designed to re-engineer the state along neoliberal lines including privatisation, trade liberalisation, the cutting of subsidies to commodities like food, as well as policies designed to encourage small and medium enterprises. Following the collapse of communism, IFIs have consolidated their position at the forefront of global governance. As Mirowski (2013, p. 62) has argued, the World Bank, World Trade Organization (WTO) and IMF, not to mention credit rating agencies, are now a central part of global governance strategies designed to “‘lock in” [...] neoliberal policies and therefore, to restrict the range of political options of national governments’.

Transitional justice emerged during the neoliberal turn, developing from the third-wave transitions to democracy, which, beginning in the early 1980s, swept across Latin America and later Eastern Europe and Africa. In *The Shock Doctrine* Naomi Klein (2007, pp. 177-181) provides a reminder that many of the so-called third-wave transitions were often exploited opportunities for neoliberalisation. In Eastern Europe, for example, the emerging social orders that followed the end of communism were not only committed to democracy but to neoliberal economic reform. Indeed, the changes advocated by the IMF encouraged a radical transformation of Eastern European countries largely along neoliberal lines. As Klein's case study on Poland demonstrates, policies like the wholesale privatisations of industries, the elimination of price controls and so on, were demanded in return for desperately needed IMF loans. In this sense, transitional justice arrived within the global dynamics of the neoliberal turn.

This is also true of many of the Latin American transitions such as in Chile and Argentina where forms of authoritarian rule were paired with aggressive neoliberal economics. The subsequent transitions away from authoritarian rule often entailed creating democratic institutions whilst maintaining a neoliberal economy. In Chile, for example, the transition 'took place within the confines of the 1980 constitution', within which, as Karin Fischer (2009, p. 336) shows, 'the foundations of the neoliberal model survived the return to parliamentary democracy'. Even in Argentina where an intensive turn to neoliberalism was not immediate, the debt crisis which would eventually pave the way for neoliberal structural adjustments was already entrenched and thus constrained the socio-economic parameters of the transition – a victory for the left it was not. In South Africa, too, the terms of the negotiated transition meant that hard-won democracy was undermined by a neoliberal economic programme (Bond 2000).

Following the end of the cold war, the disciplinary and governmental role of IFIs and the United Nations has become further entrenched. These organisations have taken a more active role in the management of conflict and post-conflict situations, under the auspices of peacebuilding. Based on the liberal peace thesis, peacebuilding attempts to transform transitional societies into liberal democracies, reconstructing them around (neo)liberal economic policies and parliamentary institutions. The ‘economic component’ of peacebuilding operations should be emphasised. As Michael Pugh (2005, p. 24) has argued, peacebuilding operations attempt to impose ‘a form of economic control and regulation to establish market correctives in societies that have been resistant to conventional marketisation imperatives’. In other words, the economic imperatives of peacebuilding provide a philosophical, theoretical and practical set of tools to convert war-torn societies into neoliberal states.

In the post-cold war era, transitional justice has completed its own meteoric rise, becoming ‘governmentalised’, that is, integrated as a central component of these peacebuilding efforts. Today transitional justice is ‘an active domain of policy, practised by the United Nations, and supported by regional organisations, IFIs, bilateral donors and specialised NGOs’ (Sriram 2007, p. 579). In this sense, transitional justice has eventually converged with institutions and practices that have become central to global forms of neoliberal governance. Now integrated into peacebuilding operations, most, if not all, of the transitions that transitional justice has attended have been defined by neoliberal imperatives of marketisation and the production of states as arbiters of market competition.

While the question of why transitional justice has taken this trajectory is certainly intriguing, for the purposes of space and time this question will be left to one side.⁵ For the

⁵ Although I alert the reader to the recent histories of human rights undertaken by Samuel Moyn (2012; 2014), which demonstrate that transitional justice and human rights emerged as a hardy ‘utopia’ that responded to the

purposes of this analysis, the important question is not ‘why’ but ‘how’; how does transitional justice support neoliberal transitions? Remembering that, above all, neoliberalism configures both the subject and its field of social relations, I argue that transitional justice’s gesture to neoliberal governmentality is located in the way that it, too, structures social relations and attempts to create particular subjectivities. This gesture, like neoliberalism itself, follows the paradoxical movement of *omnis et singulatim*.

TRANSITIONAL JUSTICE AS *OMNIS ET SINGULATIM*

Taking each aspect of *omnis et singulatim* in turn, I propose to outline first how transitional justice attempts to bring transitional societies together in ways that are compatible with processes of neoliberalisation. Of course the act of re-gathering war-torn societies, or ‘bringing them together’ following the end of conflict, should be considered transitional justice’s *raison d’être*. From its very inception, transitional justice has been committed to ideas of reconciliation or at least to creating processes that can bring previously warring factions back together.

For early transitional justice networks, the process of bringing together was explicitly connected to transitional justice’s ability to construct shared, authoritative truths. In 1989 the attendees of the Aspen Conference on transitional justice were agreed: there is ‘an obligation to investigate and establish the facts so that the truth be known and be made part of the nation’s history [...] truth-telling, it was agreed, responds to the demand of justice for victims [and] facilitates national reconciliation’ (Henkin 1989, pp. 4-5). While the relationship

dramatic failures of the more programmatic visions of society offered by socialism, Keynesianism and so on. In this respect, one could certainly speculate that transitional justice became popular in policy circles because its own ‘pragmatic’ and ‘realistic’ micro-utopianism did not threaten, and, in fact, could compliment neoliberal policies which were often framed in terms of their own ‘realism’ or ‘pragmatism’.

between truth and reconciliation is rarely simple, for the early transitional justice networks at least, creating a shared truth about past human rights abuses brought societies together as a springboard for reconciliation.

A decade later Martha Minow (1999, p. 430) conceptualised the work of trials and truth commission as that of creating shared truths, which the author refers to as collective memories. For the author, the purpose of constructing collective memory is not to memorialise or simply to ‘re-call but also re-member, that is, to reconstitute a community of humanity against which there can be crimes [...] and within which victims and survivors can be reclaimed as worthy members’. In other words, transitional justice, Minow argues, creates shared truths as collective memories that bring societies together, particularly their previously marginalised victims, by providing a forum in which their experiences are recognised as part of a widely-accepted truth about the past. For Minow this minimal bringing together provides the basis upon which other projects like reconciliation and nation-building can begin.

By probing this notion of ‘shared truth’ a little further, one can see that this version of ‘bringing together’ already has a certain resonance with neoliberalism’s own forms of integration, which explicitly avoids the collectivisation of responsibility. For transitional justice, constructing a shared truth requires identifying who or what is responsible for the past. Constituted primarily through the lens of human rights law, this is generally articulated as individual criminal responsibility for past human rights abuses rather than a substantive notion of collective responsibility for the past. This is most obvious in the case of criminal trials, where individual criminal responsibility is foregrounded. But in truth commissions too, as in South Africa and Sierra Leone, truth-telling exercises are organised around extracting the testimonies of individual perpetrators and then aggregating them into a truth about the past. In this sense, shared truths identify responsible individuals, but with the intended effect of amassing the whole. As Brown (2006, p. 79) might argue, then, transitional justice enacts a

form of ‘amassing’ only by ‘distinguishing’ some, and thus achieves the former through its ‘seeming opposite’.

That being said, it is Teitel’s account of transitional justice that directs this analysis to the more political consequences of bringing societies together under shared truths. For Teitel (2000, p. 1) transitional justice brings societies together by creating a ‘consensus’ about the past. As Teitel argues, ‘in transition, the very foci that form the basis for a new social consensus are expected to emerge through the historical accountings’. Like Minow and others, then, Teitel sees transitional justice as a minimal ‘bringing together’; a precursor for reconciliation that amasses transitional societies in the new temporal-spatial plane inaugurated by the production of a shared truth about the past. Importantly, this version of the past is connected to a particular version of the future. As Teitel (2000, p. 89) argues, transitional justice provides opportunities for transitional societies to ‘cohere around a shared historical account. Historical consensus is tightly linked to building political consensus’ (my emphasis). The backward-looking endeavour of producing a shared truth about the past is understood to have the forward-looking intention of bringing individuals together in a new socio-political imaginary; shared truths provide ‘a “workable” past for a changed future’ (ibid., p. 92).

The political expediency of this procedure *vis-à-vis* neoliberalism can be better understood by interrogating Teitel’s recourse to the term ‘consensus’, which affords a lexical resonance with the critique of neoliberal governance forwarded by Brown (2015, pp. 129-130). As I showed earlier, neoliberal governance deploys consensus as part of a move designed to ‘downplay to the point of disavowing structural stratifications in the economy’, which unequally differentiate races, classes, genders and so on. At stake, here, is the depoliticisation of the economy, which is the necessary prerequisite of a thin, purely economic notion of neoliberal ‘community’. Casting itself in post-ideological terms, neoliberalism is

underpinned by an ‘emphasis on “what works”’, and thus ‘eliminates from discussion politically, ethically, or otherwise normatively inflected dimensions of policy, aiming to supersede politics with practical, technical approaches to problems’. Society is conceived in soft terms as a smooth space where individuals are harmonised through ‘dialogue, inclusion and consensus’, in order to pursue the non-political ends of the ‘social’ now understood as a series of technical problems.

In a similar way transitional justice utilises consensus to perform the necessary function of smoothing over the different stakes of a factionalised, transitional society, with the aim of moving forward together in the pursuit of a very particular and, I argue, neoliberal vision of the future. At the centre of this movement is the legalism afforded by human rights discourse, which, as Catherine Turner (2013, pp. 201-202) shows, has its own depoliticising impulse, aiming as it does to supersede ‘existing political conflict and [allow] a society to move towards a new form of governance, shielded by the formality of law and legal procedure’. In this way human rights provide a depoliticising legal discourse utilised by transitional justice mechanisms as a ‘necessary means of transcending politics’. Through the vernacular of human rights, transitional justice thus attempts to arbitrate between the various factions within conflicts by providing a less contestable version of the past that is based on factual findings of criminality, rather than between the political claims and counter claims of oppositional movements.

As Miller (2008, pp. 280-281) has shown, the result of this consensus about the ‘truth’ is that transitional justice is inflected with its own invisibilities with regards to the past. Transitional justice achieves consensus by delimiting a narrative of the past that is largely organised around the physical violence caused by conflict or the excesses of authoritarian regimes. Using human rights law to define the key issues related to the past, transitional justice provides a very limited knowledge (or ‘truth’) regarding the economic underpinnings

of the conflict; the narrative of the past ‘becomes one of physicality rather than structural violence [...] allowing the transitional justice institution and the state to address the former while essentially backgrounding the latter’. In its shared truths, transitional justice emphasises that the past’s key antagonisms took place between victims and perpetrators of human rights abuses. As a result, transitional justice downplays notions of causality rooted in the antagonistic socio-economic striations that differentiate classes and races, and which may well have precipitated the conflict, and/or have been the contested terms on which it was fought.

For example, Robert Meister (2011, pp. 50-82) has shown that while the liberation struggle in South Africa was waged against apartheid explicitly as a form of socio-economic subjugation of particular races, the truth consensus afforded by South Africa’s Truth and Reconciliation Commission (TRC) radically recast this narrative through the lexicon of human rights, redefining apartheid as a conflict that was evil insofar as many human right abuses were committed against individuals. In doing so, the TRC articulated a narrative of apartheid that reduced ‘the scope of evil social injustice to pain and the scope of political evil to cruelty’ (ibid., p. 69). Importantly, notions of the socio-economic were backgrounded for the sake of forming some kind of consensus that could be agreed upon not only by the victims and perpetrators of the regime, but all its passive beneficiaries. Human rights thus provided a platform to reach ‘a moral consensus that the past was evil’ so that it became possible ‘to reach a political consensus that the evil is past’ (ibid., p. 25). Claims for socio-economic justice made by the liberation movement were suspended by a shared recognition of the legally defined physical harms committed by both sides in order that the nation could move forward in its (neo)liberal configuration.

As Meister’s argument indicates, more than a series of ‘omissions’ that pertain solely to the backward-looking element of transitional justice, it is important to consider what these

‘truths’ imply about the (neo)liberal futures to which they purport to contribute. By downplaying socio-economic issues rooted in the striations of class and race in the past, the implication is that the shared present, itself authorised by reaching consensus regarding the past, is also imagined as a smooth space uncomplicated by the socio-economic striations that continue to constitute social and economic life. For all that is left are the traces of unresolved antagonisms between perpetrators and victims; a problem for which transitional justice provides some form of redress. At the very least, its shared truths provide victims with forms of recognition that might form the basis of a future reconciliation, which will eventually extinguish these traces. In this sense, transitional justice creates a transitional environment that is amenable to the needs of neoliberalisation, bringing individuals together in ways that supplant and supersede deeper notions of solidarity that, for example, call for mechanisms of wealth redistribution incompatible with the neoliberal project.

At its very worst, this becomes more than a prefigurative gesture, and transitional justice forms explicit connections between past human rights abuses and the necessity of neoliberalisation. In particular, processes of neoliberalisation come to be framed as a technocratic exercise which societies can utilise to ensure that the past repeats itself ‘never again’. A startling example of this connection is given in the sophisticated narrative forwarded by the Sierra Leonean Truth and Reconciliation Commission (SLTRC) following the country’s decade-long civil war. Whilst primarily investigating human rights abuses, the SLTRC also sought to understand the conflict’s antecedents. It largely framed these antecedents around the notion of ‘bad governance’, which ‘provided a context conducive for the interplay of poverty, marginalisation, greed and grievances that caused and sustained the conflict’ (SLTRC 2004, p. 7). Carefully avoiding the socio-economic antagonisms of class, the SLTRC framed the past in neoliberal terms: as a failure to achieve the technical task of harmonising individuals in the technical running of the economy.

When it came to making recommendations that were designed to ‘prevent the repetition of violations or abuses suffered’ and to ‘respond to the needs of the victims’ (SLTRC 2004, p. 20), many of these recommendations were made under the assumed need for ‘good governance’ to spur on economic development considered essential to prevent a repetition of the past. In reality ‘good governance’ is a euphemism for neoliberalisation insofar as it implies the creation of an economic environment which is technically sound⁶ and therefore attractive for foreign investment. As the SLTRC (2004, p. 160) put it ‘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.’ In this respect, the consensus around human rights abuses as the key problem of the past is harmonised with transitional processes of neoliberalisation through the invocation to support the creation of a neoliberal economy as the technical apparatus that could prevent the return of human rights abuses.

TRANSITIONAL INDIVIDUALISATION: HUMAN RIGHTS AND ITS VICTIMS

Crucially, the process of amassing a society under a shared truth is also combined with simultaneous practices that individualise subjects. Such processes are also located in transitional justice’s utilisation of human rights discourses to articulate and prioritise the key concerns of transitions. For more than simply delineating a narrative of the past, human rights implies and produces forms of subjectivity through processes that ‘redescribe and rearticulate human beings to themselves’ (Odysseos 2010, p. 757). Above all, I argue that transitional justice produces subjects as human rights victims not only in a rigid legal sense, but as the

⁶ I use ‘sound’ here to denote competitive tax rates; a smaller, more efficient public sector; and so on. The point is that the Sierra Leonean TRC readily incorporated neoliberal assumptions that the economy is not a political but a technocratic formation that can be optimised to work for everyone.

generalised subjective condition for the members of transitional society. Before seeing how this subject is produced, however, it is worth outlining the specific character of the victim subjectivity implied by transitional justice.

Drawing its definitional lexicon from human rights law, transitional justice often delineates the past in terms of political violence carried out against individuals by state or para-state organisations. Above all, this provides a conceptualisation of victimhood that is interesting for two reasons. Firstly, as a body of law, human rights recognise individuals (rather than collectives) as legal subjects. In this sense, transitional justice makes sense of widespread, mass violence as a series of crimes which took place against individuals *qua* individuals. Or, as Meister (2011, p. 28) puts it, transitional justice practices are designed ‘to decollectivize both injury and responsibility and to redescribe systemic violence as series of individual crimes’. In this respect, the subjectivity implied by human rights victimhood is already one which individualises transitional societies according to the legal logics it uses to make sense of the past.

Secondly, this notion of victimhood often reduces human life with all of its complex forms of victimisation⁷ to a matter of biological life and bodily integrity. As Alain Badiou (2001, p. 11) has strongly argued, human rights articulate a victim as 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’. In this sense, the victim is a ‘powerless, helpless innocent whose naturalist attributes have been negated’ (Mutua 2001, p. 203) by the oppressive apparatuses of the state and/or violent conflict. Individualised as the body in pain, the victim thus embodies the inversion of the (neo)liberal subject; an *individual who is not free* or, rather, whose ability to exercise their freedom through acting and choosing has been obliterated.

⁷ Socio-economic victimisation, for instance.

Certainly, it is this vision of victimhood that Teresa Godwin Phelps (2004, pp. 40-41) articulated when she related the effects of torture to the destruction of the victim's voice. For Godwin Phelps 'the victim is reduced to prelanguage screams and moans', to the extent that 'torture reduces the victim to a voiceless body'. In other words, the human being, now without language, is reduced to an individual body in pain. For Godwin Phelps the role of transitional justice and the truth commission in particular is to provide a space for victims to reclaim their voices (ibid., p. 51).

Importantly, this victim is produced as a subject, not in the act of violence itself, but when the act and the victim, as the subject of that act, are mediated by transitional justice NGOs, mechanisms, human rights activists, lawyers and so on. In *The History of Sexuality*, one of Foucault's concerns was with how speech acts become constitutive of subjectivity. For Foucault (1998 [1979], pp. 58-59), a good example of this process is the practice of confession constructed by the Catholic Church: 'the truthful confession was inscribed at the very heart of the procedures of individualization by power'. As Jeremy Tambling (1990, p. 2) notes, Foucault's point is that practices like confession address beings with discourses, through which they are 'made to define themselves [...] and in which they must name and misname themselves'. In the same way, victims are constituted as such through speech acts that define them and their experiences in certain ways.

Claire Moon (2008, p. 51) has argued that the South African TRC constituted individuals as victims: by giving testimony 'victims collude in their own subjection as victims by "bearing witness" to suffering'. Similarly, Judith Renner (2015, p. 1113) has argued that 'victim' and 'perpetrator' organise discursive categories that 'offer individuals the opportunity to identify with a place in the social structure that tells them who they are and what they can do'. Subjects constitute themselves through the various ways in which they 'step into' and 'identify', or even, it should be said, when they try to reject or reconstitute

these categories. Importantly, while both Moon and Renner show how producing subjectivities is a central aspect of truth commission hearings in particular, it is possible to see that this process of becoming subject extends to interviews, testimonies, group activities and workshops; anywhere in which individuals become victims because they are defined, identify, and speak as such.

But more than merely transforming *some individuals* into victims, the scope of transitional justice is to generalise the victim as a subjective transformation that occurs across the social body. For those who are not victims, but who have a presence in – and are witnesses to – the past, transitional justice also attempts a subjective transformation. For these ‘others’, transitional justice mechanisms forward a ‘passionate denunciation of the wounds of the present’, which pushes us to think of ourselves and others in the framework of human rights (Odysseos 2010, p. 758). It is precisely this function that transitional justice is designed to carry out. For non-victims, consensus demands that they ‘bear witness’ to a shared truth about that 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*’ (my emphasis), of the past now they know the truth about its evil (Meister 2011, p. 28).

These forms of subjective production have specific political consequences. As Louiza Odysseos (2010, p. 764) argues, these various forms of subjective transformation ‘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 displacement is enacted through the processes of individualisation that are engendered when other lexicons and forms of subjectivity come to be replaced with the legalism of human rights. Importantly, these processes of

individualisation are also depoliticising not only because they decollectivise harms, but also because they displace forms of political agency – latent or realised – with the passivity of the hapless victim. In this sense, transitional justice generalises victimhood in ways that enact a process of dissembling. Transitional justice acts as a kind of ‘ideological clearing house’, which displaces collective and communitarian subjectivities, some overtly political and others not, with the generalisation of the passive and individualised form of human rights victimhood.

This process is integral to the implementation of a neoliberal project. Following Dardot and Laval (2013, pp. 96-97), I showed earlier that neoliberalism emerged as a reaction to both the failure of liberalism, and 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 drastically 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. For example, the neoliberal revolution in Thatcher’s Britain was predicated on a confrontational transformation of the relations between workers and businesses that greatly eroded the collectivised economic relations of workers (ibid., pp. 147-160). It is through these practices that 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 positive language of

rights, transitional justice performs an ideological stripping back of the subject to the victim, as an individualised and suffering body.

On this front it is important to point out that there is no real contradiction between the production of passive victim subjectivities and the neoliberal subject as an ‘entrepreneurial self’, who ‘cannot be passive but must move strategically in a world rife with risk’ (Mirowski 2013, p. 96). Rather, the passive victim and the entrepreneurial subject should be thought of as two points on a continuum that can be understood by returning to some of the more technical suppositions of neoliberalism. As I showed earlier, neoliberal freedom is not an *a priori*, natural condition, but the result of an interventionist state intent on producing well-constructed markets. In this sense the state is not extricated from the individual and the market, but is supposed to intervene so long as its intervention serves the purposes of ‘creating market situations and forming individuals adapted to market logics’ (Dardot & Laval 2013, p. 148). Freedom is the ability to make choices through a market that is, in part, constructed and maintained by the state.

This being the case, stripping subjectivity back to individualised forms of passive victimhood should not be understood as counterproductive to neoliberal transitions. Rather, it should be thought of as the first step of a longer process designed to shape ‘subjects in order to integrate them into new structures’ of governing (Odysseos 2010, p. 763), including the market. For the victim subjectivity implied by transitional justice forms the kernel of the neoliberal subject; a passive individual that is eminently governable and who, through various interventions, can be easily inserted into the economic apparatuses of the market. As such, transitional justice first provides a kind of individualisation that serves as a blank slate; the reduction of a subject to a substance which can then be moulded, incited to exercise its agency as an economic subject of competition.

The continuity between victim and entrepreneurial subject is crystallised by Pablo de Greiff (2010, pp. 13-14), whose own work is concerned with making connections between transitional justice and economic development. As a result, de Greiff conceives victimhood in economic terms that would not be unfamiliar to avowed neoliberals. Unaddressed violations of human rights lead

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. Finally, one can also say that unaddressed human rights violations *undermine the capacities that are fundamental to exercising choice* at the core of the concept of human development. (My emphasis)

For de Greiff transitional justice is intended to address a particular conceptualisation of harm, one which is ultimately organised around the way in which human rights abuses erode an *individual's* capacity to take part in economic activity. In other words, the victim is conceptualised as the inversion of *homo oeconomicus*.

Expanding on this in his contribution to *Development Ideas*, an online resource set up by the International Development Research Centre, de Greiff (2015, pp. 14-16) clarifies this point: for him, '[s]erious human rights violations shatter normative expectations fundamental to our sense of agency in the world [...] The end result is a generalized weakening of agency' and, furthermore, negatively effects 'the functioning of markets and trade, and investment in small enterprises'. One can see how de Greiff's model crystallises the continuity between victimhood and *homo oeconomicus*. When victimhood is defined as individualised passivity it is not difficult to see that it causes a problem for neoliberal theories of economic development, which can be resolved by finding mechanisms that encourage individuals to reintegrate themselves into competitive markets.

As a result, transitional justice then becomes an initial step in this integration process, providing a further step in the development of *homo oeconomicus*. As de Greiff argues

‘transitional mechanisms can promote *individual improvements in welfare* by acknowledging people’s stories [...] by giving them channels of voice and recognition as having equal citizenship rights’. Transitional justice thus serves ‘to signal the significance of the status of citizens as rights bearers’ (ibid., p. 24). It is already possible to detect the subtle conversion of the citizen into an economic subject that Brown (2015, p. 108) identifies as a crucial aspect of the neoliberal usurpation of democracy. Citizenship rights are conceived in terms of their purported service to (neoliberal) economic development. As de Greiff (2010, pp. 13-14) would have it, citizenship rights are designed to create civic trust and forms of social capital that decrease transaction costs, increase market size and, above all, enable an individual to enter the market. Transitional justice thus provides an initial moment of human ‘flourishing’ that is integral to the realisation of subjects as *homo oeconomicus*.

More than simply stripping back, then, transitional justice might be best understood as an anticipatory step in a process of what Odysseos (2010, p. 750) has called ‘ontogenesis’, taken ‘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’ (ibid., p. 759). On this front, reaching a consensus about the past shows transitional societies what kinds of subjects they do not want to be: passive victims. In contrast, the futures implied by transitional justice support neoliberal transitions by providing forms of recognition that are compatible with a neoliberal conception of freedom. Victims are to become individual citizens, rights holders, who are now ‘free’ but only inasmuch as their freedom is a result of markets which are constructed across an ever-increasing number of social processes and activities, ‘even where money is not at issue’ (Brown 2015, p. 31).

CONCLUSION

Beyond a negative relation defined by various sites of omission, this article has attempted to show that transitional justice might have a productive relationship with neoliberalism, engendered by its attempts to structure social relations and forms of subjectivity. I have shown that transitional justice attends to this through its own kind of *omnis et singulatim*, one that not only echoes neoliberalism's own practice of 'amassing and isolating' (Brown 2015, p. 30) but also prefigures and supports the process of neoliberalisation at the point of transition. For transitional justice is both unifying and individualising; it unifies and amasses the social body whilst simultaneously projecting and producing individualised subjects that can be shaped into enterprises.

By generating a consensus about the past, transitional justice utilises shared truths that gather transitional societies together in the present through both the denunciation of its evils and the recognition of its victims. By generating consensus through the 'technocratic' legalism of human rights, not only does transitional justice echo the post-ideological discourse of neoliberalism, but it tends to suspend claims for socio-economic justice, supplanting them with the need to address the needs of victims of physical cruelty. In doing so, transitional justice sketches out the conditions for a present where the antagonisms wrought by the economic relations of production are no longer relevant, opening up space for a neoliberal imaginary where individuals are both enterprises and stakeholders coming together to solve technically defined problems.

At the same time its generalisation of the victim subjectivity engenders processes of individualisation, isolating subjects as the victims of individualised crimes. In this sense, while transitional justice attempts to inaugurate a sense of community based on the shared recognition of these victims, this notion of community is 'thin' and supports the construction

of neoliberal societies at the point of transition. For the production of human rights victims provides passive, malleable subjects that can easily be integrated into competitive markets. Indeed, transitional justice provides the initial moments of ‘human flourishing’ that are necessary in the seemingly uncomplicated movement from human rights victim to *homo oeconomicus*.

This analysis indicates that through the vernacular of consensus, transitional justice provides a way to manage expectations in an era where the global economy does not readily succumb to demands for transformation and redistribution. With its emphasis on recognising individual suffering at the cost of more substantive notions of systemic and structural violence, transitional justice inaugurates a new society, one that is properly governed, and that is amenable to neoliberal economy as a purely technical necessity. For those interested in more substantive notions of justice, this analysis may highlight the need to think another kind of transitional justice, one that harnesses rather than supplants claims for socioeconomic justice. Above all, this requires a set of investigative tools that can re-politicise the economy as a relevant field of enquiry in regards to the past, and can challenge the legitimisation of its neoliberal configuration as a technical necessity in the present and for the future. In a world still feeling the fallout of the 2008 financial crash, this task must be attended with some urgency.

ACKNOWLEDGEMENTS. My thanks to Tom Harding and Stefanie Petschick, whose comments on an earlier draft of this article helped to sharpen its style and content. I also thank the reviewers for their helpful comments, which have greatly improved the article.

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