

Transformative Dynamics: Reframing the Role of Reparations in Transforming Social Order

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I. INTRODUCTION

According to Kathryn Sikkink, a revolution of human rights advocacy in tandem with heightened levels of accountability for human rights abuses has led to a “justice cascade,” where it is now expected that human

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rights violators will be held criminally accountable for transgressions.¹ This normative shift of prosecuting individual perpetrators for human rights violations has also affected the larger picture of justice²: human rights violations do not live in a silo and often occur against a backdrop of much-needed institutional reform. This Article considers the relationship between transitional justice, development programs, and social services, specifically using reparations as an example of a transitional justice mechanism.

Although reparations and development programs may be connected, this Article argues that they must be kept separate for two reasons. First, combining the two overlooks the main purpose of reparations. Second, the combination muddles the appropriate level of expectation placed on each distinct effort and may place too high an expectation on reparations as the sole mechanism to transform social order. Therefore, establishing a clear limitation of what reparations can achieve properly situates individual transitional justice mechanisms as markers to establish what this Article calls “transformative dynamics.”

Accordingly, a post-conflict environment may be more conducive to achieving a transformational agenda through the layering of these incremental transformative dynamics. Implementing a transitional justice mechanism, like a reparations program, may be one such incremental—though significant—marker, but it will not singly create the transformation ultimately sought. This framing of transformative dynamics attempts to mitigate the placement of unrealistic expectations on transitional justice mechanisms in the larger goal of transforming social order.

This Article continues in five subsequent parts. Part II highlights applicable theory, beginning with a brief discussion of transitional justice and arguing instead for a transformative dynamics framework. This Part uses Robert Cox’s binary theoretical approaches to world order as an illustration. Part III introduces reparations as one transitional justice mechanism and explains how the purpose of reparations—specifically reparations under Roy Brooks’s Atonement Model—fundamentally limits what it can achieve, noting that reparations cannot and should not be expected to fill gaps in development programs or social services. Part IV addresses how reparations, development programs, and social services may be wrongly viewed as synonymous but can be complementary. Part V spotlights the importance of maintaining

1. KATHRYN SIKKINK, *THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS* 5, 16 (2011).

2. *Id.* at 5. “The norm of individual criminal accountability is powerful because it relates to broader ideas about justice. ‘Justice’ means many things to many people. It can mean fairness, political and economic equality of both opportunity and outcome, and accountability.” *Id.* at 12.

realistic expectations of transitional justice mechanisms in a transformative dynamics framework to properly measure success. Part VI concludes this Article.

II. THEORY: CREATING TRANSFORMATIVE DYNAMICS

As transitional justice evolves, scholars debate whether it should expand its scope to address more types of human rights violations or whether it is inherently limited in time frame and corrective measures. This Part briefly discusses the development of transitional justice and then opts to view transitional justice—in any of its forms—as establishing transformative dynamics rather than achieving transformation on its own.

Transitional justice³ originated as a response to widespread human rights abuses in the 1980s and 1990s.⁴ This “third wave” marked a shift from communism toward Western liberal market democracy and implementation of the rule of law.⁵ Because of the implied meaning of “transitional,” the concept of transitional justice has been viewed as “inherently short-term”⁶ and therefore, narrowly focused “to a relatively brief period of the most

3. Notably, some theorists have attempted to eschew the term “transitional,” believing it to be “a kind of syntactical error.” Paige Arthur, *How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice*, 31 HUM. RTS. Q. 321, 325 (2009). Because a “transition to democracy” was originally deemed to be the primary step to achieving political change, the continued use of the term “transitional” provides important context for why specific mechanisms are more often “recognized as *the* legitimate justice initiatives during a time of political change.” *Id.* at 326. This foundational understanding provides the background to where limits on transitional justice were set and why these boundaries have been pushed as challenges emerge as to whether a liberal democracy should continue to be the end goal of a state’s transition. *Id.* at 326, 359–63. For more information about why this “transition” paradigm emerged and resonated, see *id.* at 337. There is also extensive debate regarding why transitional justice is the most appropriate form of redress in response to atrocities. See, e.g., Colleen Murphy, *Transitional Justice and Redress for Racial Injustice*, in RECONCILIATION AND REPAIR: NOMOS LXV 181, 185 (Melissa Schwartzberg & Eric Beerbohm, eds., 2023) (explaining that “cases of state-sponsored and state-sanctioned wrongdoing” cannot be “analogous to an interpersonal relationship of domestic abuse” because post-atrocity situations require structural change, which must be accommodated).

4. DUSTIN N. SHARP, *RETHINKING TRANSITIONAL JUSTICE FOR THE TWENTY-FIRST CENTURY: BEYOND THE END OF HISTORY 2* (2018).

5. *Id.*

6. Lars Waldorf, *Anticipating the Past: Transitional Justice and Socio-Economic Wrongs*, 21 SOC. & LEGAL STUD. 171, 179 (2012).

egregious abuses.”⁷ Specifically, transitional justice has prioritized civil and political rights violations that amount to physical violence.⁸

However, the applicability of transitional justice has evolved. Where transitional justice had previously been applied in post-authoritarian contexts where states had “undergone significant political transition,” a “significant” transition is no longer a prerequisite.⁹ As a result, “[t]he question today is not *whether* something should be done after atrocity but *how* it should be done.”¹⁰

The “how” is debated.¹¹ For example, Ruti Teitel argues that transitional justice should be limited to political transformation and the rule of law to further democracy;¹² Naomi Roht-Arriaza expands the strictly legal limitation to a “set of . . . mechanisms”; Rama Mani opts to include “all existing methods”; and Rosemary Nagy asserts that transitional justice reaches beyond existing mechanisms.¹³ The United Nations also entered the debate by releasing a report that expanded transitional justice to include, “judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”¹⁴ A primary argument for expanding transitional justice’s applicability is that focusing only on short-term “can create problems for more comprehensive peacebuilding and development programmes.”¹⁵ Specifically, the narrow temporal focus risks “excluding the potentially deep and complex

7. SHARP, *supra* note 4, at 28.

8. *Id.* at 20.

9. Roger Duthie, *Transitional Justice, Development, and Economic Violence*, in JUSTICE AND ECONOMIC VIOLENCE IN TRANSITION 168 (Dustin N. Sharp ed., 2014). See Pádraig McAuliffe, *Transitional Justice’s Expanding Empire: Reasserting the Value of the Paradigmatic Transition*, 2 J. CONFLICTOLOGY 30, 36–38 (2011), for a summary of four main scenarios where transitional justice mechanisms have been applied to non-paradigmatic post-conflict societies, which McAuliffe categorized as the following: transitional justice in mature democracies; transitional justice in civil-civil transitions; transitional justice in ongoing conflicts; and transitional justice in authoritarian regimes.

10. Rosemary Nagy, *Transitional Justice as Global Project: Critical Reflections*, 29 THIRD WORLD Q. 275, 276 (2008).

11. Transitional justice “is a selective process,” in that it must define the scope of the transition and the harms considered. *Id.* (“Transitional justice thus involves a delimiting narration of violence and remedy. This raises, as Bell and O’Rourke put it, ‘fundamental questions about what exactly transitional justice is transitioning “from” and “to.”’”).

12. See RUTI G. TEITEL, TRANSITIONAL JUSTICE 5–7 (2000).

13. Nagy, *supra* note 10, at 277, 278.

14. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Rep. of the Secretary-General*, ¶ 8, U.N. Doc. S/2004/616* (Aug. 23, 2004).

15. Pamina Firchow, *Must Our Communities Bleed to Receive Social Services? Development Projects and Collective Reparations Schemes in Colombia*, 8 J. PEACEBUILDING & DEV. 50, 51 (2013).

socioeconomic roots of conflict.”¹⁶ In support, Simeon Gready argues that “a fundamental reorientation of transitional justice” is required, “wherein its temporal mandate is expanded so that it takes form as a long-term, victim-centered, and context-specific process” to address frequently overlooked rights violations that are not under the umbrella of civil and political rights.¹⁷ Alternatively, Lars Waldorf argues that the inherent “short-term, legalistic and corrective” characteristics of transitional justice cannot be extended.¹⁸

Regardless of whether transitional justice mechanisms can be expanded to accommodate socio-economic issues and a broader temporal focus, this Article asserts that transitional justice alone is not sufficient to transform a social order. “[T]ransitional justice is about unleashing transformative dynamics, not about creating transformation all by itself.”¹⁹ Paul Gready and Simon Robins explain that there must be a “move[] beyond enhancing the efficacy of transitional justice mechanisms to the potential of transitional justice to ‘unleash transformative dynamics.’”²⁰

16. SHARP, *supra* note 4, at 28.

17. Simeon Gready, *The Case for Transformative Reparations: In Pursuit of Structural Socio-Economic Reform in Post-Conflict Societies*, 16 J. INTERVENTION & STATEBUILDING 182, 183 (2022). Gready argues that

[w]hile 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.”

Id. at 192.

18. Waldorf, *supra* note 6.

19. SYLVIA SERVAES & NATASCHA ZUPAN, NEW HORIZONS. LINKING DEVELOPMENT COOPERATION AND TRANSITIONAL JUSTICE FOR SUSTAINABLE PEACE 16 (2010), https://www.ziviler-friedensdienst.org/sites/default/files/media/file/2022/zfd-new-horizonslinking-development-cooperation-and-transitional-justice-sustainable-peace-1625_107.pdf [<https://perma.cc/P5PZ-L5U9>].

20. Paul Gready & Simon Robins, *From Transitional to Transformative Justice: A New Agenda for Practice*, 8 INT’L J. TRANSITIONAL JUST. 339, 359 (2014). *See cf.* Dustin N. Sharp, *Crisis, Faith, and Transformation in Transitional Justice*, in BEYOND TRANSITIONAL JUSTICE: TRANSFORMATIVE JUSTICE AND THE STATE OF THE FIELD (OR NON-FIELD) 24, 25, 27 (Matthew Evans ed., 2022) (arguing that a transformative justice framework may encounter the same “traditional dilemmas” as a transitional justice framework). As Sharp states,

And yet from the transformative justice literature, it is not entirely clear why this particular hierarchy of values and not another one will ultimately prove more disruptive to the status quo across a range of context than other possibilities; nor is it clear whether the newly privileged values might not come with tensions, trade-offs, and dilemmas that are as vexing and intractable as those that came before.

Id. at 27.

This Article's interpretation of transformative dynamics aims to find a balanced middle point between two extremes.²¹ Robert Cox's binary theories—"problem-solving theory" and "critical theory"—may serve as an illustrative backdrop for navigating this middle ground.²² On one hand, the problem-solving theory "takes the world as it finds it" and works within the current world order parameters.²³ On the other hand, critical theory calls into question the prevailing order's parameters but is pragmatically limited by feasible alternative orders.²⁴ A transformative dynamics approach makes room for both by implementing efforts that fit in the world's current limitations while moving towards norm transformation.

South Africa provides an example of why a transformative dynamics approach would be effective. Transitional justice is a problem-solving approach: whether following a Teitel, Roht-Arriaza, or Mani application, transitional justice "fix[es] limits or parameters to a problem area and [] reduce[s] the statement of a particular problem to a limited number of variables which are amendable to relatively close and precise examination."²⁵ South Africa employed a Truth and Reconciliation Commission as a transitional justice mechanism and, recognizing the limitations of this mechanism, restricted the scope of inquiry by "narrowly defin[ing] victims . . . as those who had suffered egregious bodily harm."²⁶ Because of this limitation, "[a]partheid thus featured as the context to crime rather than the crime itself. The everyday violence of poverty and racism—and consequently the ordinary victims and beneficiaries of apartheid—were placed in the background of truth and reconciliation."²⁷ A survey conducted near the end of the Commission's mandate showed that two-thirds of the

21. This Article's application of transformative dynamics—which can still accommodate an original legalism view of transitional justice and retributive solutions—is distinguishable from Wendy Lambourne's vision of transformative justice that asserts a paradigm shift that prioritizes civil society participation in transitional justice mechanisms. See Wendy Lambourne, *Transitional Justice and Peacebuilding After Mass Violence*, 3 INT'L J. TRANSITIONAL JUST. 28 (2009). This Article's use of transformative dynamics is also a less extreme model than Colleen Murphy's concept of transitional justice, which aims to create societal transformations. Murphy, *supra* note 3, at 186. Rather, this approach heeds Sharp's call for a "both/and" approach that balances the extreme binary lenses and "will often prove the messier but more realistic and context-sensitive approach." Sharp, *supra* note 20, at 31.

22. Robert W. Cox, *Social Forces, States and World Orders*, in NEOREALISM AND ITS CRITICS 208 (Robert O. Keohane ed., 1986).

23. *Id.*

24. *Id.* at 208–10.

25. *Id.* at 208.

26. Nagy, *supra* note 10, at 284; see Gready, *supra* note 17, at 187 (classifying "gross violations of human rights as th[ose] associated with killing, abduction, torture, or severe ill-treatment, all of which fall[] under the banner of civil and political abuses").

27. Nagy, *supra* note 10, at 284.

population believed that the Commission's work had further deteriorated relations in South Africa and, therefore, believed the Commission to be largely unsuccessful because it failed to achieve reconciliation.²⁸ In response, Archbishop Desmond Tutu stated that the Commission's purpose was to "promote" rather than achieve reconciliation.²⁹ This was the limitation of the transitional justice mechanism.

Subsequently, the Committee on Reparations and Rehabilitation paid reparations to the victim class, pursuant to the Commission's limited definition.³⁰ The Committee recognized the insufficiencies of reparations in achieving the reconciliation sought by victims and called for "community rehabilitation", [sic] 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."³¹ However, this call for a social transformation, which is at the heart of critical theory, could not materialize under strictly transitional justice mechanisms.³²

This example lays the groundwork for two points this Article will next address. First, the problem-solving approach of transitional justice mechanisms is insufficient to achieve social order transformation sought by a critical approach. Expecting problem-solving methods to achieve critical change is unrealistic. Rather, problem-solving approaches are capable of *promoting* transformative dynamics. Second, failing to properly acknowledge these limitations and placing unrealistic expectations on mechanisms undermine transitional justice mechanisms' success.

Transitional justice mechanisms unleash transformative dynamics that create an environment conducive to development efforts that challenge the status quo. Transformative dynamics suggests a framework that is similar to Dustin Sharp's "critically motivated problem-solving theory"³³

28. PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 184 (2d ed. 2011).

29. *Id.*

30. Gready, *supra* note 17, at 188.

31. *Id.*

32. *See id.* at 190 ("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.").

33. Dustin N. Sharp, *What Would Satisfy Us? Taking Stock of Critical Approaches to Transitional Justice*, 13 INT'L J. TRANSITIONAL JUST. 570, 572 (2019) (arguing for an

and attempts to accommodate Brooks's calls for "practical idealism," which posits that "social justice theory should be idealistic yet practical."³⁴ One such transitional justice mechanism is reparations, which this Article will next discuss. Subsequently, this Article will consider how reparations should not be confused with developmental programs or social services.

III. TRANSITIONAL JUSTICE MECHANISM: ATONEMENT MODEL REPARATIONS

*"Even the most traditional morality only speaks of reconciliation when joined with the 'offer of compensation'; that is, the recognition of wrong committed, and of 'atonement through acts,' which is to say, reparations."*³⁵

Transitional justice mechanisms should not be expected to transform social order but may establish transformative dynamics that serve as benchmarks for systemic change. This Part will introduce reparations as an example of a transitional justice mechanism and will highlight how the purpose of reparations is such that it cannot be expected to be transformative by itself.

"Reparations offer money or resources in symbolic redress for violations"³⁶ and may be "compensatory" reparations at the individual level or "rehabilitative" reparations at the group or institutional level.³⁷ Brooks prefers reparations

"integrated approach" to Cox's binary theories, which goes beyond the status quo while remaining feasible).

34. Roy L. Brooks, *Framing Redress Discourse*, in RECONCILIATION AND REPAIR: NOMOS LXV 79, 117 (Melissa Schwartzberg & Eric Beerbohm, eds., 2023) (arguing that a social justice theory should be "morally defensible rather than politically viable" because historical social change, like ending slavery and Jim Crow, were considered utopian goals at the time).

35. Ignacio Martin-Baro, *Reparations: Attention Must Be Paid* (1990), reprinted in 1 TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 569–70 (Neil J. Kritz ed., 1995). This quote demonstrates an early articulation of Brooks's Atonement Model. See Brooks, *supra* note 34, at 88–89 ("[T]he perpetrator issues an apology and tenders reparations to make the apology believable. . . . Reparations come in many forms. They can be paid at the individual level ('compensatory reparations') in the form of cash payments or nonmonetary outlays (e.g. family recognition or a scholarship) to the victims or their families. Reparations can also be paid at the group or community level ('rehabilitative reparations'). They can be in the form of cash payments to the victims' institutions (e.g. support for HBCU's) or nonmonetary measures that benefit the victims' community (e.g. new laws, expanded services, commemorations, or museums).").

36. MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS 117 (1998).

37. Brooks, *supra* note 34, at 81; see also David Androff, *A U.S. Truth and Reconciliation Commission: Social Work's Role in Racial Healing*, 67 SOC. WORK 239, 245 (2022) ("Individual reparations range from direct cash payments, restitution, or social policy benefits for victims and their families in the form of scholarships, healthcare,

under an Atonement Model, which “embraces the core belief that redress should be about apology *first and foremost*.”³⁸ This model requires an “apology *plus* reparations” where the reparations “make apologies believable.”³⁹ Although there are different models of redress,⁴⁰ the Atonement Model clearly illustrates the deep-rooted purpose of reparations. Fundamental to the Atonement Model is the moral responsibility of the perpetrating state to acknowledge guilt and to “help repair the damage to the victim and society caused by the atrocity.”⁴¹ This baseline is achieved through an apology and reparation, which creates an opportunity for forgiveness by the victim.⁴²

The Atonement Model encapsulates the priority victims place on *acknowledgment* of guilt. The purpose, or what Lisa Laplante calls the “symbolic quotient,” of reparations cannot be overlooked: it is necessary that a perpetrator state “acknowledge the wrongdoing and convey [its] assumption of responsibility and contrition for having caused victim harm.”⁴³ Laplante reasons that “generous monetary packages” will be questioned or rejected if the state fails to recognize its responsibility for the rights violations.⁴⁴ Such rejection is exemplified by former “comfort women.”

housing, pensions, and employment. . . . Collective reparations may entail broad social, economic, or health policies, or symbolic reparations such as apologies and memorials.”)

38. ROY L. BROOKS, ATONEMENT AND FORGIVENESS 142 (2004). Firchow similarly argues for the necessity of an apology. See Firchow, *supra* note 15, at 56 (“Apologies and public demonstrations of contrition by perpetrators and government actors are fundamental in the process of reparation and reconciliation.”).

39. BROOKS, *supra* note 38, at 143, 142.

40. For a discussion on the Tort Model of reparations, which is focused solely on compensatory justice, see *id.* at 98–140.

41. Brooks, *supra* note 34, at 88; see Pablo de Greiff, *Transitional Justice and Development*, in INTERNATIONAL DEVELOPMENT: IDEAS, EXPERIENCE, AND PROSPECTS 412, 420 (Bruce Currie-Alder et al. eds., 2014) (“[R]eparations [provide recognition to victims] by signaling that the state takes violations of rights sufficiently seriously as to mobilize resources, something that typically involves the expenditure of ‘moral capital’ as well.”).

42. Brooks, *supra* note 34, at 89.

43. Lisa J. Laplante, *Negotiating Reparation Rights: The Participatory and Symbolic Quotients*, 19 BUFF. HUM. RTS. L. REV. 217, 219 (2013).

44. See *id.* Compare *id.* (“Money alone does not symbolize an apologetic stance, but must be accompanied by statements and acts of recognition. While some may argue that compensation contains an inherent symbolic element of recognition, I contend that an explicit acknowledgment of wrongdoing is necessary to maximize the reparative effect and to prevent against outright beneficiary rejection of pecuniary measures.”), and BROOKS, *supra* note 38, at 100 (“Compensation alone does nothing to restore or establish a broken relationship between victim and perpetrator.”), with MAYORS ORGANIZED FOR REPARATIONS AND EQUITY, <https://moremayors.org/mayors> [<https://perma.cc/E5RM->

Despite individual apologies issued by Japan's Emperor Akihito and Prime Minister Miyazawa, former comfort women have not accepted these statements as formal apologies on behalf of Japan.⁴⁵ Former comfort women also view the Asian Women's Fund, which relies on donations from private individuals and organizations, as insufficient because the Fund lacks the state's recognition of fault.⁴⁶ In fact, "many [former comfort women] have refused to even apply" for payment from the Fund.⁴⁷ "What these women seek is 'atonement money,' not 'consolation money,' which can only come directly from the perpetrator, the Japanese government."⁴⁸ Therefore, "[m]oney alone does not symbolize an apologetic stance, but must be accompanied by statements and acts of recognition."⁴⁹ This is at the heart of Brooks's Atonement Model of reparations.

It is vital that, despite being a powerful tool in "(re)gaining civic trust," the limitations of reparations be recognized.⁵⁰ Naomi Roht-Arriaza and Katharine Orlovsky explain that,

Reparations cannot, and should not, replace long-term development strategies. But they can be designed to be the initial "victim-friendly" face of the state, creating habits of trust and rights-possession among their target population that will set the stage for a more positive long-term interaction between the state and a sizeable group of its citizens.⁵¹

Thus, "[t]ransitional justice and development can be understood as distinct but related notions."⁵²

Pablo de Greiff explains that justice includes "both corrective and distributive dimensions," and where transitional justice mechanisms are a form of corrective justice, development programs are a form of distributive

9G4R] (describing the coalition's commitment to raising public and private funds to implement local reparations programs that would provide payments to Black residents to help close the Black/White wealth gap).

45. George Hicks, *The Comfort Women Redress Movement*, in *WHEN SORRY ISN'T ENOUGH* 113, 123–24 (Roy L. Brooks ed., 1999).

46. *Id.* at 124.

47. *Id.*

48. *Id.*

49. Laplante, *supra* note 43.

50. NAOMI ROHT-ARRIAZA & KATHARINE ORLOVSKY, INT'L CTR. TRANSITIONAL JUST., A COMPLEMENTARY RELATIONSHIP: REPARATIONS AND DEVELOPMENT 3 (2009), <https://www.ictj.org/sites/default/files/ICTJ-Development-Reparations-ResearchBrief-2009-English.pdf> [<https://perma.cc/7QS3-N2LA>].

51. *Id.* at 4.

52. Duthie, *supra* note 9, at 170; *see also* de Greiff, *supra* note 41, at 416 (arguing that redressing systemic rights violations is in and of itself a development goal because such violations "undermine human capacities" and "undermine agency and social capital or civic trust," thereby illustrating a shared goal of transitional justice and development).

justice.⁵³ But, development is more than providing goods and services within the status quo.⁵⁴ As Roger Duthie writes, “reparations can serve as a jumping-off point for efforts at social integration that are key to development.”⁵⁵ In other words, development can pick up where transitional justice stops short of transforming social order. Therefore, where transitional justice mechanisms—as a problem-solving approach—can promote transformative dynamics while functioning within established parameters, development programs—as a critical approach—can question the parameters and explore feasible alternatives.

IV. COMPLEMENTARY RELATIONSHIP: REPARATIONS, DEVELOPMENT PROGRAMS, SOCIAL SERVICES

In the case of former comfort women, many “argue that the Japanese government must shoulder the full cost of the payments; otherwise, the money is not a form of reparations or compensation for grievous wrongs, but rather a form of charity or *welfare*.”⁵⁶ There is a difference between development and reparations, and it is also necessary to highlight the further distinction of social services. Even though these three efforts are distinct, they can still be complementary. Simeon Gready explains that “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*.”⁵⁷ Development programs and social services may build on reparations’ transformative dynamics, but this relationship becomes especially muddled when human rights violations occur against a backdrop of deep-rooted socio-economic issues.

For clarity, a brief definition of the three—reparations, development programs, and social services—may be helpful. As discussed in Part III, reparations are direct responses to past atrocities and provide redress for

53. See PABLO DE GREIFF, INT’L CTR. TRANSITIONAL JUST., ARTICULATING THE LINKS BETWEEN TRANSITIONAL JUSTICE AND DEVELOPMENT: JUSTICE AND SOCIAL INTEGRATION 4 (2009), <https://www.ictj.org/sites/default/files/ICTJ-Development-SocialIntegration-ResearchBrief-2009-English.pdf> [<https://perma.cc/88TY-VRTN>] (discussing the direct and indirect links between transitional justice and development).

54. *Id.*

55. ROHT-ARRIAZA & ORLOVSKY, *supra* note 50, at 2.

56. Hicks, *supra* note 45, at 124 (emphasis added).

57. Gready, *supra* note 17, at 183 (emphasis added).

those transgressions. Alternatively, “the provision of social services and development have their focus on the present and the future.”⁵⁸ State development programs provide “infrastructure and institutions” to improve the “prosperity and welfare of its citizens.”⁵⁹ Social services fall under the purview of a state’s obligations “to ensure minimum material conditions to all its citizens in order that they can live with dignity.”⁶⁰

In situations where post-atrocity societies have deep-rooted socio-economic inequalities, there is a tension between the duty of a state to rectify that harm—for example, through Atonement Model reparations—and the duty of the state to provide the programs and services it is obligated to provide. Rodrigo Uprimny Yepes considers this tension in Colombia, where the state claimed to be torn between issuing reparations to victims of severe physical violence or creating development programs and fixing social services to address state-wide poverty.⁶¹ This tension risks convoluting and simplifying the situation’s true narrative. Séverine Autesserre explains the attraction of simple narratives: “[T]he aspect of ‘simplicity’—notably, an uncomplicated story line, which builds on elements already familiar to the general public, and a straightforward solution—is particularly important in enabling a narrative to achieve and maintain prominence.”⁶² However, Autesserre explores why this simplicity is dangerous.⁶³ For example, in the Democratic Republic of Congo, the central narrative asserted that the primary cause of the state’s violence was illegal exploitation of minerals, the main consequence of the violence was sexual abuse of women and girls, and the central solution to address the primary cause of the violence and, therefore, prevent the sexual abuse, was to extend state authority.⁶⁴ Although such simple narratives help enable advocacy, they can create dangerous discourse.⁶⁵

Firstly, spotlighting the illegal exploitation of mineral resources as the primary cause of violence improperly inflated it as a root of conflict; in reality, an estimated 8% of conflicts in the Congo were over natural resources.⁶⁶ Secondly, focusing on the sexual abuse of women and girls as the main

58. *Id.* at 186.

59. ROHT-ARRIAZA & ORLOVSKY, *supra* note 50, at 1.

60. Rodrigo Uprimny Yepes, *Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice*, 27 NETH. Q. HUM. RTS. 625 app. at 635 (2009).

61. *Id.* at 627.

62. Séverine Autesserre, *Dangerous Tales: Dominant Narratives on the Congo and Their Unintended Consequences*, 111 AFR. AFFS. 202, 207 (2012).

63. *See id.* at 208–10.

64. *Id.* at 204.

65. *Id.* at 208–09.

66. *Id.* at 211.

consequence of conflict eclipsed other prevalent forms of violence and the sexual abuse of men and boys.⁶⁷ Thirdly, expanding state building as the central solution merely exchanged one group of perpetrators for another.⁶⁸ Therefore, Autesserre states that although there may be good reasons for adopting simple narratives, they eclipse other legitimate causes, consequences, and solutions.⁶⁹ Such simplicity should not be exchanged for a thorough understanding of a situation's complexity. Obscuring these multi-layered problems ultimately "hinder[s] the search for a comprehensive solution."⁷⁰

In the case of Colombia, creating an either/or narrative whittles the true conflict down into a bite-sized dichotomy; this simple summary risks requiring a simple solution. That simple solution opens the door to the state, though perhaps "sometimes [acting] in good faith," to "present the provision of social services to poor victims as means of reparation."⁷¹ States may take advantage of this simple narrative by purposefully muddling the line between reparations and social services or between reparations and development. If social services or development programs and reparations are considered synonymous, then, as a result, "communities must suffer a 'quota of blood' in order to deserve development programmes and state intervention."⁷² Pamina Firchow explains that when states argue that basic services are acts of reparations, then "[t]his obliges the communities to bleed first if they are to have any kind of government intervention or satisfaction of their basic needs."⁷³ Rather, social services and development programs should be a state's symmetrical *obligation*, whereas reparations serve as a state's asymmetrical *recognition* of its responsibility for violating rights and its attempt to reconcile.

In a 2009 decision, the Inter-American Court of Human Rights addressed the danger of development fulfilling the role of reparations.⁷⁴ The judgment stated that "[t]he Tribunal considers that the social services that the State provides to individuals cannot be confused with the reparations to which the victims of human rights violations have a right, based on the specific

67. *Id.* at 216.

68. *Id.* at 220.

69. *See id.* at 209–21.

70. *Id.* at 221–22.

71. Yepes, *supra* note 60, at 636.

72. Firchow, *supra* note 15, at 60.

73. *Id.*

74. González ("Cotton Field") v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009).

damage arising from the violation.”⁷⁵ The Tribunal recognized the importance of reparations as a symbolic acknowledgment of the harm committed, and distinguishable from services provided by the state.

Even though this distinction is vital, reparations, development programs, and social services can serve complementary functions, laying the groundwork for transformation. Duthie notes that, though reparations are specifically for the victim class, “[r]eparations programs . . . may have moderate spillover effects in terms of institutional capacity.”⁷⁶ For example, “[p]roviding victims medical services may catalyze the creation of similar programs for non-victims, as has happened in some cases with mental health care programs originally created for victims.”⁷⁷ Similar to how reparations are intended to codify an apology in the Atonement Model, development efforts can play a supporting role to reparations.

V. DEFINING EXPECTATIONS AND SUCCESS

This Article has asserted that transitional justice mechanisms alone cannot induce systemic change but can create transformative dynamics. This Part highlights the value of recognizing the limitations of transitional justice mechanisms to establish proper expectations.⁷⁸

In Sierra Leone, individuals surveyed after the truth-telling process believed that the mechanism failed to make its intended impact.⁷⁹ Sierra Leoneans “expected the reconstruction of local and national infrastructures and the provision of social services.”⁸⁰ While these expectations are problematic, in part because of the need for distinction discussed previously in this Article, Duthie notes that “the fact that [Sierra Leoneans] *expected* a truth commission to address all of these needs . . . seems a failure on the part of the truth commission and its outreach efforts to explain what such an institution is capable of doing.”⁸¹ This also resonates with the Truth and Reconciliation Commission in South Africa, where South Africans had expected the Commission to achieve reconciliation, rather than merely

75. *Id.* ¶ 529.

76. Duthie, *supra* note 9, at 174.

77. *Id.* at 174–75 (“Similarly, civil registry and titling initiatives sparked by property restitution programs can lead to broader efforts to clarify registry of land, and such spillover can occur in the areas of budgeting, oversight, and procurement. There is also potential for reparations programs to strengthen local and regional governments more generally.”).

78. See Sharp, *supra* note 33, at 588 (“[I]t is important to recognize that in many contexts transitional justice is but a tail on a much larger peacebuilding and development dog.”).

79. Duthie, *supra* note 9, at 196.

80. *Id.* (internal quotations omitted).

81. *Id.* (emphasis added).

promote reconciliation.⁸² As Sharp explains, this gap between what transitional justice can do and what may be expected of it may “produce an unwarranted sense of pessimism, disillusion and failure.”⁸³

Failure to recognize the different purposes and realistic expectations of reparations risks tainting otherwise successful efforts. For example, Atonement Model reparations are limited to fulfilling a state’s moral duty to recognize its responsibility in violating rights, supporting this recognition through an act, and creating the opportunity for forgiveness.⁸⁴ Discussing Black Reparations in the United States, Brooks notes that “[a]tonement only means that slave descendants now have reason to begin to trust the government’s commitment to racial justice.”⁸⁵ If reparations are expected to create transformative dynamics, then providing this opportunity “to begin to trust” is a success.

In this way, reparations are not expected to transform social order. Rather, reparations promote transformative dynamics, which establish an environment conducive to other efforts to focus on transformation.⁸⁶ A reparations program kickstarts the opportunity for development programs to address transforming the social order. This, by itself, is a success.

VI. CONCLUSION

De Greiff states that “effective synergies depend upon sensible divisions of labor.”⁸⁷ This Article has discussed the differences between transitional justice, development, and social services to illustrate limitations and, in doing so, demonstrate how expectations should be placed on transitional justice mechanisms accordingly. Rather than expecting transitional justice mechanisms to transform social order, such mechanisms can contribute to

82. *See supra* text accompanying notes 28–29. In South Africa, the Commission provided a “clear and unwavering” message that “encourage[ed] an expectation among the public that reconciliation could and would actually be reached in the course of the commission’s expected two and a half years of operation,” which provided the foundation on which the public measured the Commission’s success. HAYNER, *supra* note 28, at 183.

83. Sharp, *supra* note 33, at 571.

84. *See supra* text accompanying notes 36–40.

85. BROOKS, *supra* note 38, at 204.

86. Sharp provides a social and economic rights framework example for measuring success. Success may be measured by applying a “progressive realization” standard to determine “not whether a transitional justice paradigm has firmly established a positive peace, but whether efforts are steadily pushing things in the direction of positive peace.” Sharp, *supra* note 33, at 588.

87. DE GREIFF, *supra* note 53, at 1.

transformative dynamics. This Article's application of transformative dynamics aims to find a middle theory approach between problem-solving within the social construct parameters and recreating those parameters with feasible alternatives. Recognizing the limitations of transitional justice assures that transitional justice mechanisms are employed to create transformative dynamics and held to appropriate expectations. This transparent limitation clarifies what may be deemed successful in transitional justice and social change.