**The Problem of Elites**

**Introduction: Transformative Justice’s Biggest Lacuna**

The transformative ‘turn’ in Transitional Justice (TJ) that animates many of the contributions to this volume is a welcome development inasmuch as it renders justice its full meaning. However, the transformative turn is generating its own discontents even among those sympathetic to the re-orientation of TJ. This is largely because transformative justice still appears to be defined more by what it is not (liberal, legalist, technicist) than what it is. Sandoval (2016: 168 and 177), for example, argues that transformative justice ‘remains vague and unclear, as are its desired goals and the ways to achieve them’, noting that ‘missing from the transformative justice literature is a detailed examination of the capacity and potential for the field to be truly transformative’. Core issues that define the prospects for transformation like the existence or not of basic security, the state’s revenue base or its ability to raise revenues and the relationship of localities, tribes, regional power-brokers etc. with the state have largely gone under-explored. Enlarging the focus of TJ is distinct from transforming social conditions; articulating norms is distinct from establishing them. Recent arguments that that ‘there has been little analysis to date of what it means to achieve structural change and socio-economic justice in a post-conflict setting’ and that TJ ‘lacks the tools for identification and implementation of such a broader agenda for change’ are more than defensible (Balint, Lasslett and Macdonald, 2017: 4).

This is true of both top-down and bottom-up theories of transformative justice. Because victims increasingly use the language of rights to appeal to the state to respond to their needs, some more top-down theories of transformative justice stress the normative power of the state as duty-bearer reoriented towards the pursuit of economic justice. These scholars emphasise the state’s capacity to define and then secure what can or should be regarded as important through the promulgation of rights, the creation of social capital for the disempowered and the definition of key concepts like justice that have a direct bearing on development programmes or national budgets (Arthur, 2009). Others stress the bottom-up potential of grassroots conceptualisations of justice to coalesce and catalyse broader national change (Gready and Robins, 2014). There are problems with both top-down and bottom-up visions, however. In the areas of limited statehood within which most transitional justice takes place, the state lacks the administrative reach, resource-base or legitimacy to effectively place the state at the centre of economic justice guarantees. States are typically hybrid, mixing rational governance structures with competing economic, traditional or regional power-structures that intermingle and interact. In these environments the state has no monopoly on loyalty or the provision of social goods, sharing as it does authority and capacity with other individuals or institutions (Boege, Brown and Clements, 2009: 17). Bottom-up visions of transformative justice commendably emphasise this local agency, but lack the sort of programmatic links (the ‘missing middle’) that might link up micro-local projects with broader structural change (McAuliffe, 2017a).

It is clear then that a discourse premised around the twin poles of rejecting liberal-legalist models and celebrating the emancipatory potential of localised justice projects cannot identify the political levers or economic tools that might catalyse the desired broader agenda for change. International actors and local NGOs or victim groups can only be understood as two (albeit important) parties to ongoing domestic struggles over resources and opportunities, struggles neither have any realistic hope of taming on their own. TJ is never simply an exported expert activity or a pristine reference point for emancipatory activity, but a conflict-ridden process in which numerous different societal actors are inevitably involved. Scholars sympathetic to the need for structural change have begun to move away from the reductive liberal-local binaries that characterise the discourse to examine the political economy of the states in question. This mode of analysis concentrates on how power and wealth are apportioned and disputed in a given society. It explores how domestic actors work as both promoters and resisters of justice projects for reasons largely but not exclusively endogenous to that political culture, and how the frictions between these actors condition all opportunity for change (see for example Arnould, 2016; Jones and Bernath, 2017; McAuliffe 2017b; Leclercq 2017). Transformative justice always challenges an existing order that did not permit such progress to develop organically. Systemic, structural violence that disenfranchises distinct sectors of society must be deliberately sustained by a political system that distributes power and resources unequally. The operation and effect of any model of TJ we promote on the spectrum from narrowly juridical accountability to socioeconomic transformation is inevitably ‘mediated by domestic responses to it, which can vary from compliance to adaptation, instrumentalization, resistance or non-participation’ (Arnould, 2016: 324). If it is to bridge the gap from critique to programmatic relevance, the evolving literature on transformative transitional justice needs to comprehend the main poles of effective political agency.

Of these actors involved in negotiating TJ, it is here argued that the most important, but least well understood, are domestic elites. Strategic options that are theoretically available to TJ implementers may not be ‘incentive compatible’ insofar they do not accord with the other compelling interests of critical politically effective groups to adopt (the government, faction leaders and economic elites, for the most part). As discursively framed in the TJ literature, elites emerge as a homogenous coterie of bogeymen pursuing a clearly definable class interest whose position is actively perpetuated by traditionally corrective TJ at the expense of empowering the marginalized (Aguirre and Pietropaoli, 2008: 367). However, though identified as one of the main barriers to transformation, there has been no sustained analysis in the transformative TJ literature of who elites are, what they do, the divisions between them or the incentives they might have to ameliorate the conditions of those in their society.

The homogenising and emphatically pejorative use of the concept of elites is striking as it is distinctly at odds with how other large-scale projects for economic or social transformation see them and interact with them. Peacebuilding operations, for example, are conceived as means of helping domestic elites surmount the difficulties presented by post-conflict transition, while democratisation projects live or die by the active participation of domestic elites (Zürcher, Manning and Evenson, 2013: 4 and 6). Post-conflict constitutions ‘are typically not the brainchildren of the people at large, but rather of established or newly dominant elites’ (Reynolds 2005: 65). Statebuilding is increasingly understood as the means by which powerful groups and individuals institutionalise their power as a legitimate form of state (Blieseman de Guevara 2010: 116). The resilience of that state, and its power in turn to pursue poverty reduction, depends crucially on the inclusiveness of the bargains struck between elites. For the UK Department for International Development’s (DFID’s) work in post-conflict states, for example, elite political settlements supporting the state ‘should be a first-order priority – even if these settlements come at the cost of accelerated development’ (DFID and UKAID, 2010: 15). Statebuilding agencies likewise accept that any social contract that emerges in fragile states must revolve firstly around the expectations of society within the state (a matter transformative TJ literature is attentive to), secondly the state’s resources and capacity to provide services (distinctly underexplored), and thirdly elite will to direct these resources and services towards the fulfilment of those expectations (again, underexplored) (Organisation for Economic Co-operation and Development, 2008: 17). We might wish that transitional states become more responsive to inequalities and poverty, but any state that does so can only achieve this by reconciling transformation with at least some elite interests. Even the most sensitive bottom-up and grassroots forms of participation will have limited effects on political or economic life without conscious engagement and dialogue with elites. It would be a mistake, therefore, to associate the reliance on existing elites with a conscious preference on the part of international interventionary actors. Reliance is better explained by necessity or unavoidability. Sovereignty inevitably makes national governments and the powerful economic and identity group leaders within the state the fundamental interlocutors for any form of intervention beyond the most-grassroots. Peacebuilding, statebuilding and TJ actors engage with elites because they have to, even though the normative standards through which the international community bestows legitimacy on the state may often conflict with the unspoken norms and informal rules of elite pacts (Salmon and Anderson, 2013: 49). Elite political settlements ‘set the constraints for what can and cannot be achieved’ in all developing states (Di John and Putzel, 2009: 18). They can do so negatively and positively.

In negative terms, most areas of limited statehood, and particularly those emerging from conflict, are subject to informal but pervasive elite pacts. As Whaites (2008: 7) notes, ‘the structures of the state are determined by an underlying political settlement; the forging of a common understanding, usually among elites, that their interests or beliefs are served by a particular way of organising political power’. This political economy means the state is rarely capable of rational means-end planning to address structural injustice, but must instead incorporate sectoral, regional, religious and economic elite interests. Furthermore, these political settlements create or calcify unequal power relations, which in turn produce economic realities that place material constraints on international actors and local reform constituencies.

In the more positive sense, paying attention to elites can also help in crafting transformative approaches to justice by understanding the political economy of elite accumulation and contestation patterns and the potential levers for altering them. It can help identify elite incentives to invest in state functionality, progressive taxation or welfare to alleviate the problems of commitment or insecurity that lead to accumulation or predation. Evans (2016: 14) is correct to argue that social movements, trade unions and NGOs offer valuable insights as to how a transformative agenda might be pursued, but if marginalised groups are to realise their rights to a living wage, water, housing or health, responsive elite institutions matter. Elites are a key determinant of the success of social movements – some elites will have incentive to orchestrate or respond to reform movements or victim networks in society, while others will have incentives to thwart them. However, a literature that only emphasises in a generic and binary sense the impact of dominant classes on dominated classes will miss the internal clashes between reformist dominant groups and non-reformist ones. As Akmeemana and Porter (2015: 126) argue, two particular choices appear to be especially important in determining the scope, depth, and durability of a successful transition for society as a whole. The first is the ability of elites to impose centralised arrangements to collect and distribute rents. The second is the ‘ability of central actors and the modalities they use to project authority and distribute resources to places where people live, including them in the settlement by delivering public safety, services, livelihoods and other opportunities’ (Akmeemana and Porter 2015: 126). Colombia’s land restitution programme is a state-driven exercise passed via thoroughgoing land restitution legislation by some national elites that prejudiced the interests of many other elites like faction leaders, drug trafficking and large agricultural and mining corporations (Nilsson and Taylor, 2017). TJ scholarship has quite rightly commended the agreement as an example of holistic and transformative response to marginalisation, but has evinced little interest in how this came about. Theories of transformative justice lack a practical politics to explain why domestic elites might elect to make these difficult choices and so have distinct limitations.

Though critics of TJ pride themselves on their greater attention to questions of power and agency, the core argument propounded herein is that existing conceptions of transformative justice lack a sufficient understanding of the obstructive or facilitative roles elites play in the maintenance or reform of economic structures. Without a strong understanding of those informal, shadow networks of privilege and patronage where real economic and social power lies, outsiders will always ‘grope in the dark and their actions will continue to produce perverse and unintended consequences’ (Berdal, 2009: 92). This chapter is not intended to be an exhaustive introduction to the study of elites in TJ, but I draw on disciplines like conflict studies, peacebuilding and elite theory that present more rigorous and instructive scholarship on elites to outline the ambiguous and contradictory political implications of (dis)engagement with them. The key question at all points is how to get domestic elites to improve individual welfare for the people as a whole when it is not in their immediate interests to redistribute resources. Elites are not homogenous and their coalitions are not static – effective links between TJ and transformation require a sophisticated approach that both identifies how elite relationships are drawn and re-drawn through alliances and resistances as they engage with international actors, the state and other social forces. To this end, the second section examines why transitional justice as a discipline has unhelpfully homogenised elites. The third section examines what scholars in other disciplines understand by the concept of elites. The fourth section explores elites as barriers to transformation, while the fifth section looks at their transformative role.

**Elites in TJ Discourse**

Because TJ is a self-consciously victim-centred discipline, it should not be surprising that elites have generally been ignored or disdained in the literature. TJ as a field self-identifies as ‘part of a larger turn toward embracing victims and the oppressed rather than the traditionally dominant victors and heroes of history’ (Rothchild, 2017: 459). However, the roots of the discourse surrounding elites can actually be found in attempts to transcend the victim-perpetrator dichotomy that initially characterised the field. The trial and truth commission models reliant on distinguishing victims from perpetrators that initially dominated TJ could not capture the moral grey zone where these polarised identities became blurred, where people become complicit in violence or engaged in resistance to it as part of the struggle to survive (Drexler, 2013). Fletcher and Weinstein (2002: 626), notably, questioned whether and how individualised guilt might contribute to myths of collective innocence. As scholars began to acknowledge that directly and indirectly committed gross human rights violations can only occur while the majority of the population passively supported it, the concept of bystander complicity (‘guilt through apathy’) began to emerge (Borer, 2003: 1107). A further sense developed that the victim-perpetrator, guilt-innocence binaries were a convenient focus for ‘those who most benefit’ from existing structures but could not be fitted into any existing mode of analysis (Evans, 1998: 16-17). Over time, and as concerns about socioeconomic injustice became mainstreamed within TJ, this concern with the relatively inert figure of the bystander morphed into a concern for the more active concept of the beneficiary. An early theorist of this concept as it applied to TJ was Mahmood Mamdani (1996). In arguing that the definition of injustice had to extend beyond bodily integrity abuses that preoccupied the South African Truth and Reconciliation Commission (TRC), he turned his attention to beneficiaries, those who accumulated wealth while by no means directly involved in apartheid. They are a larger group than direct perpetrators, but a much smaller group than the mass of victims impoverished by apartheid. Mamdani (1996) argued that those who do and do not benefit from conflict or the logic of authoritarian systems should become the focus of TJ. With the increasing focus on structural injustice, Marxist ideas of beneficiaries as ‘would-be perpetrators’ emerged, and ‘claims for historical justice consequently include all those who profited from the past regime… in this context, initial victory over the perpetrators of oppression “would be merely a first stage in a longer struggle against the passive beneficiaries of the old regime”’ (Franzki and Olarte, 2014: 209 citing Meister, 2011: 21f).

In a broader discourse premised on principles of equality, it is naturally problematic that some groups concentrate more wealth and power than others. ‘Elites’ has become the dominant catch-all for conceptualising these beneficiaries in contemporary TJ discourse, invariably seen as unrepresentative of their societies’ needs, manufacturing consent through corruption and clientage, the self-interested upholders of the radically inegalitarian status quo. Critics argue that the norms TJ emphasises are articulated *by* the powerful *for* the powerful (Robins, 2012: 4). They worry that TJ’s legalist discourse ‘can empower elites and outsiders at the expense of victims, particularly the most disempowered’ (Gready and Robins, 2014: 343). Elite political behaviour is furthermore associated with the masculinisation of politics and exclusion of women (Brown and Ní Aoláin 2014: 132). It is argued that inequality stems from the ‘entrenched ideology of elites’ (Miller 2008: 268). Theories or projects of justice ‘from below’, by contrast, are seen as inherently resistant to powerful hegemonic political and economic forces, and so are morally more worthy of our attention – indeed, a subaltern focus is presented as a welcome antidote to a fixation on elites (McEvoy and McGregor, 2008). Critics perceive ‘a need, as far as possible, to externalise transitional justice from political elites’ (Hansen, 2013: 119).

Even if the intellectual history and moral commitment of TJ to victims fosters a natural suspicion of elites, it still does not explain the tendency to essentialise their identities as uniformly conservative or predatory figures estranged entirely from community, culture, tradition or everyday life. For TJ activists in Bosnia, for example, the elite ‘were represented exclusively in a homogenized and negative way, as the main group responsible for the lack of progress in the country and for creating a divided society, unable to reach any consensus and interested only in remaining in power’ (Seixas, 2013: 81). The failure to explore elites or to disaggregate the ‘top’ in ‘top-down’ might be explained by the preference for exploring vast impersonal forces of structural injustice in analysing harmful social structures over actor-centred examinations of ‘great’ or ‘bad’ men that insufficiently capture wider relations of exploitation. The role of elites is also difficult to parse – the relationship of elites to each other and their supporters is opaque and often unreliable, while policy decisions are adopted in secret without much visible public discussion. Patterns of elite accommodation, clientage and informal patrimonialism and ‘off-budget’ practices relating to rents will appear outside the official reform ‘radar’, but will critically condition the resources available for welfare or redistribution and the motivations that might inform compliance or resistance to transformation.

The shape TJ assumes contains expressive messages about the individuals or communities that matter, and it is natural to wish to redress the power balance in favour of victims without bargaining leverage. It also is natural to esteem power that resides in communities over that of artificially-constructed states, and to prefer social movements that reflect immediate place-based concerns over external blueprints. However, the exaltation of social movements of the indigenous, poor and marginalised as a means of ‘challenging institutions steered by elites’ (Gready and Robins 2017: 964-965) carries one obvious danger, namely the assumption that genuine social transformation can be envisaged without accounting for elite support or opposition. As the rest of this chapter argues, to ignore elites is to ignore the loci of effective political power that condition all opportunity for meaningful change.

**Identifying Elites**

Elite theory attempts to explain why all societies are characterised by asymmetrical distributions of political and economic power (Zuckerman, 1977: 324) and why organised minorities tend to dominate disorganised majorities (Mosca, 1939: 53). It begins with the deep historical sociology of state formation. In the social state of nature, groups that attempt to establish self-defence and at least some form of community goods organise themselves hierarchically. These and subsequent, more complex forms of organisation require leaders. Though we attribute action to classes, tribes or social movements, what we generally mean is that some members of these groups, namely elites or sub-elites, have taken common action (Etzioni-Halevy, 1983). As Mann (1986: 6) puts it:

In pursuit of their goals, humans enter into cooperative, collective power relations with one another. But in implementing collective goals, social organisation and division of labour are set up. Organisation and division of function carry an inherent tendency to distributive power, deriving from supervision and coordination.

The authority this process generates gives leaders or groups thereof the wherewithal to speak for groups and represent them to others. With this authority comes both the potential for abuse but also the potential for creating effective social contracts. States essentially represent the imposition of order on a territory by a particular class or group of elites, even if they enjoy some degree of consent (Call, 2008: 61). The further up one goes in the state hierarchy the greater the coercive and/or bureaucratic power over actors at lower levels. However, while much of TJ critique inveighs against the formal, technocratic statebuilding it is implicated in, all states mix formal governance with informal governance. The latter ‘are based on implicit and unwritten understandings’ and ‘reflect socio-cultural norms and routines, and underlying patterns of interactions among socioeconomic classes and ethnic groups’ (Brinkerhoff and Goldsmith, 2002: 1). Critiques of TJ as liberal, formalist or technocratic are limited because they ignore the vast extent to which *de facto* informal practices of national or localised elites dominate, subvert or compromise *de jure* governance. Along similar lines, criticism of TJ for the limits of the formal liberal-democratic model it promotes pays insufficient attention to the way power is actually exercised, which bears little relation to this model. In many African states, for example, the public at large is seldom consulted in policy-making as decision-making in public affairs ‘is typically restricted to elites with a narrow social base’ (Bratton and Van de Walle, 1994: 470). The typical post-conflict or post-authoritarian state is a complex set of relationships between state frameworks, these domestic socio-political forces and ideational notions of authority (existing, of course, within an international political economy) (Jayasuriya, 2003: 383). TJ faces a crisis of relevance if it cannot extend beyond homogenisation of elites to understand these relationships.

Because the identity of elites is murky and difficult to research, they are notoriously hard to define precisely. Some delineation is possible. Dahl (1958: 464), for example, writes of that ‘minority of individuals whose preferences regularly prevails in cases of differences on key political issues’. For Etzioni-Halevy (1989: 29) the term ‘refers to those who wield power and influence on the basis of their active control of a disproportionate share of society’s resources’. In relation to societies outside the West, scholars have developed theories and typologies of elite power that are distinct from the homogenisation we see in most TJ literature. The ‘elite’ is a composite notion that refers less to a full characterisation of real people than to a specific agency at national and sub-national levels defined by competence (ability) and/or because they enjoy a superior status, be it political, social or economic (Madsen and Christensen, 2016). Some individuals enjoy sufficiently loyal constituencies (tribes, unions, political parties, other corporatist institutions) to legitimate relationships of supremacy and subordination and so can speak for the bulk of their followers (Bhuta, 2010: 806). Others control sufficient resources or wealth to dominate whatever regulatory process exists to ensure the guiding principles of the economy serve them well. The concept mixes state elites and non-state elites, formal and informal, political and economic, rural and urban. In Weberian terms, they might evince or mix charismatic, traditional and rational authorities (Weber, 1947). They may exercise power through elaborate systems of political beliefs, or do so entirely privately. Relationships can be cemented through alliances, business dealings, religious or tribal affiliation, or even marriage. They are united not by common positions (as the fifth section, below, argues, elites are often divided by interest or geography) but by the disproportionate power and influence they wield. Hossain and Moore (2002: 1) speak of ‘the most powerful 3-5 per cent of people within any political system’, those who ‘define what issues are to be taken up as political and policy problems and which are to be ignored or sidelined; how these issues are to be tackled; and what count as legitimate and feasible policy options’. Land-grabbing in Afghanistan, for example, is dominated by an unusually precise figure of ‘15,831 people as “relatives of high status government officials, members of parliament and other powerful and individual people”’ (Saeed and Parmentier, 2017: 25, citing *Daily 8AM* newspaper).

TJ as a discipline used to have an acute understanding of how the attitudes and interests of elites fundamentally conditioned opportunities for justice. All initial debates around impunity revolved around the ‘enormous causal power’ of elite bargaining in authoritarian transitions in Latin America and Eastern Europe (Arthur, 2009: 346). This remains the case with post-conflict transitions (Aroussi and Vandeginste, 2013). Subsequent treatments of elites in the context of post-conflict accountability were similarly sophisticated, most notably Subotic’s argument that the traditional accountability goals of transitional justice are contested between three types of elite, namely true believers, instrumentalists and resisters (2013: 127). Scholars are conscious of how elites can undermine traditional TJ, notwithstanding the discursive hegemony of TJ and its normalisation as peace processes become internationalised:

Research on the politics of transitional justice suggests that domestic elites may be swayed to engage in transitional justice when faced with strong international pressure or domestic demand, but often they will try to circumscribe or reshape these policies so that they better serve their interests or in order to contain their potential negative political impact (Arnould, 2016: 324).

Scholars worry that ownership of truth commissions worldwide has shifted from populations to national elites and the international community. In Ghana, for example, implementation of the truth commission’s plan depends largely on which party in in power (Aciru, 2017: 73 and 76). The Kenyan government and political elites have attacked the legitimacy of the International Criminal Court (ICC) and refused to nominate commissioners to the national Truth, Justice and Reconciliation Commission (Paffenholz, 2015: 866).The Maoist-led government in Nepal resiled from earlier commitments to implement TJ as the exigencies of domestic politics dictated (Robins, 2012: 12),a process replicated in Afghanistan as the Karzai government and parliamentary elites legislated for blanket amnesty (Saeed and Parmentier, 2017: 21-22).Domestic elites in the Democratic Republic of Congo (DRC), Burundi and East Timor have instrumentally adopted TJ as a means of including and excluding faction leaders from government as a form of conflict management (Ottendörfer, 2013; Arnould, 2016; Leclercq, 2017). Reparation mechanisms ‘created by political elites can often silence and marginalise non-elites, and women in particular, who are not part of the political negotiation’ (Moffett, 2017: 67) and so often take the form of undelivered promises.

The narrow legalism that the transformative turn rejects is widely believed to be derived from the initially circumscribed opportunities for justice that sprang from elite bargaining in Latin America and Eastern Europe. However, a baby has been thrown out with this bathwater – the acutely fine-grained analyses of the rational calculi of elites so familiar in the early TJ literature have been conspicuous by their absence in the transformative turn, to say nothing of Subotic-esque attempts to establish typologies of elite actors. In the critical TJ literature, once one gets beyond references to homogenised ‘elites’, less attention is paid attention is paid to these powerful spoilers who have something to lose from transformation than it is to the multiplicity of bottom-up resistances manifested in localised processes, non-engagement, public dissent etc. The discourse presumes a hydraulic relationship between the interests of elites driving transitional justice and ‘those most affected by the events of the conflict and indeed over the broader needs of the nation’ in which the interests of the former are inherently irreconcilable with the latter (Robins, 2012: 16).

One notable aspect of the failure to meaningfully scrutinise the relationship of elites to the political economy of post-conflict states is the insistence that these origins in elite negotiations produced a preference among TJ policy-makers to maintain existing normative and political hierarchies at the national level over the interests of the many (Arthur, 2009: 347; Aguirre and Pietropaoli, 2008: 367). Critics are correct that the liberal intervention package of democratisation, peacebuilding and TJ invariably leaves elite power intact, but this is more a result of the inherited national political economy than choice. While international interventionary actors present conditionality criteria that demand co-operation with defined outcomes, the institutions and norms that emerge are co-opted, compromised, distorted and instrumentalised by local power-brokers to suit their interests. Far from establishing the liberal and democratic peace consistently assailed in the discourse of the transformative turn (or even the shell thereof), international intervention typically culminates in conditions of hybridity in which liberal and illiberal, democratic and traditional elements coexist (Mac Ginty and Sanghera, 2012), but with a distinct tendency towards the latter. In many cases, liberal interventionary processes become ‘coopted by domestic elites who use the legitimacy and power resources granted by transitional governance, and the subsequent aid economy, to turn the state into an arena of rent-seeking and distribution that is then employed in the struggle for political power’ (Barma, 2012: 274). While there is little doubt that many of the most salient inequalities and elite behavioural incentives are produced at the global level, the practices that result from intervention lie at the far end of the spectrum from the liberal governance models propagated by international actors. The problem is not that the liberalism of international actors unduly limits the potential for structural transformation (though it does little to help) – the problem instead is that in areas of limited statehood, interventionary prescriptions over domestic governance of any stripe exercise very little influence over a political economy that is defined by (a) historically non-liberal incentives and (b) the pressing contemporary need for stabilisation. The TJ literature around transformation tends to assume the relationship that matters most for structural change is that between interveners and domestic elites. As the fourth section goes on to argue, it is instead those intra-elite bargains that exercise the most influence over the distribution of resources or opportunity in a state.

**How and Why Elites Resist Transformation**

The social structures of contemporary developing states, the sites for most TJ and those which most animate the transformative turn, cannot be explained by this model of capitalist bargaining and reciprocal demands for revenue and services that explains the historical sociology of state formation in the West (Tilly, 1992). Post-colonial politics were instead characterised by state capture by elites claiming legitimacy on the basis of liberation politics (Bates, 2015: 33-54). Because poorly-institutionalised states lacked capacity to implement and enforce central decisions and because broad-based civil society organisations like parties or unions with clear programmes were non-existent or weak, politics was highly personalised among those aforementioned figures that commanded the loyalties of constituencies through ethnopolitical mobilisation or domination of the military hierarchy, or who controlled sufficient inherited wealth or power to exercise decisive influence over politics. Ethnically-oriented patronage, clientelism and ‘pork’ became key connecting tissue of nation-building in pluralistic African, Asian, Caribbean and Pacific states (Brinkerhoff and Goldsmith, 2002: 20). In societies that developed as more relationship-based than rule- or institution-based, these became the foundation for more enduring political settlements, an ‘underlying or emerging “social order” based on political compromises between powerful groups that sets the context for institutional and other policies’ (Khan, 2010, 4).

Elites are generally committed to the endurance and stability of these settlements because they derive benefits from them. They maintain this stability through formal administration of government, constitutional deliberation, bargaining and adaptation at the top, but also through manipulation of the economy. Most pacts or settlements demonstrate the capacities of ‘grasping’ (extracting rents and revenues from domestic actors and international aid/trade) and ‘reaching’ (the redistribution of rents and services to supporters across the national territory) (Craig and Porter, 2014: 6). Historically-based forms of ‘reaching’ that we in the West would describe as neopatrimonialism, patronage and clientelism endure and routinise the political economy of the state in the absence of governmental bureaucratic sway. These complex chains of personal bonds between political patrons and their clients are fundamental to the ‘politics of survival’ in fragile and under-developed states as they guarantee mutual advantage – resources (jobs, opportunities) flow to dependants while support (votes, political support) flow to patrons (Migdal, 1988). These ‘Limited Access Orders’ quell tendencies toward violence by awarding privileged elites control of economic opportunities (monopolies, government contracts, tax exemptions, land rights, government employment), creating disincentives to grab more and incentives to maintain the flow of rents through peace (North, 2007). While clientelism and patrimonialism are associated with state failure, they should better be understood as context-sensitive apparatuses for social control and capital accumulation within the historical constraints imposed by post-colonial environments (Di John, 2010: 2 and 24). True state failure and conflict follows when they break down.

There are many reasons why conflict erupts in those societies TJ later deploys to, but they generally tend to be those where powerful groups are unable to maintain a stable coalition as exclusionary behaviour violates the expectations of key socio-political groups (for example, Tunisia, DRC, Cote d’Ivoire). In conflicts over access to state power or secessionist struggles, elites fight to (re)gain access to economic or political privileges they are excluded from or to protect those they enjoy. Some African conflicts in the likes of DRC, Chad and the Central African Republic have been described as ‘elite recycling’ (Tull and Mehler, 2005: 378-79). This narrow range of actors also dominate the terms under which conflict ends. As Aroussi and Vandeginste (2013: 190) note, peace agreements seldom result from societal pressure from below, but instead are initiated by military and/or political figures at national elite level. Though unrepresentative of the population, future stability must be rooted in their expectations – ‘elite agency is the locus for examining the chances of recurrence of internal armed conflict’ (Call, 2012: 217). In positive terms, power-sharing usually becomes the immediate short-term point of coalescence among conflict elites sufficient to engender acquiescence among their supportive populations, dependent on the distribution of material and psychological resources between those individuals and groups who can undermine the settlement. In more negative terms, there is an acknowledgment by domestic leaders (one shared by the international community) that most instability flows from situations where factionalised, winner-takes-all contestation can re-emerge. As Khan (2010: 4) notes, ‘if powerful groups are not getting an acceptable distribution of benefits from an institutional structure they will strive to change it’.

I have elsewhere described the tendency of post-conflict power-sharing towards policy stagnation and economic cartelisation that cripples the short-term prospects for transformation (McAuliffe 2017c). It is important to remember, however, that these once-off political settlements are supplemented (and sometimes succeeded) by ongoing processes of mediation, contestation and collaboration in areas like security, markets, capital, resources and public appointments that will draw on longer-established ways of doing things (Salmon and Anderson, 2013: 44). Indeed, these constantly modified settlements are increasingly understood as crucial to all longer-term development and peacebuilding. Successful transitions are those where settlements ‘are deepened, made more democratically inclusive and gradually institutionalised through security and service delivery out to the edge of the national territory’ (Craig and Porter, 2014: 2). However, elite settlements are rarely composed exclusively of statesmen and faction-leaders intent on institutionalising peace, or where these figures exist they can rarely divorce leadership from other claims to patronage or clientelism. Even those who are not involved as government or faction leaders may have benefitted from conflict in terms of power and prestige sufficiently to develop a ‘political-criminal nexus’ between the governing establishment and the criminal underworld so powerful its demands have to be taken into account (Godson, 2003: 260). In states like South Africa and East Timor, new elites, for instance among the black community or resistance leaders, benefit from the inequitable structures of the old system. Peacebuilding does little to affect these dynamics (Cheng, 2013, 73).

While scholars in the transformative turn place much faith in the resistant capability of communities and grassroots organisations to alter social structures, their repertoires of action are often subtle and non-confrontational forms of self-exclusion or boycott (Fatogoma, 2017: 18-19). By contrast, the most powerful informal elites have much broader repertoires of action. They enjoy power in the classic Weberian sense of the capacity to realise their will even where others oppose it – they have sufficiently loyal and clear constituencies to mobilise public demonstrations, can amass sufficient means of control or coercion to deploy strategic violence to maintain or alter the balance of resources (Boyle, 2009). They can credibly wield the threat of capital flight, while political parties function as tools of their entrenched interests. While the putative majority beneficiaries of transformative justice are diffuse and latent, the minority of elites are easier to organise and more coherent. These sub-state vested interests have great bargaining leverage with state elites or peacebuilders, who may be too weak or too distant to confront them, to say nothing of the grassroots actors TJ seeks to empower. Elites mobilise to counter economic reform or alternative welfare modalities. The post-conflict political economy calculus that emerges orients elites towards traditionally legitimate forms of patronage generation that undermines institutional governance models (Barma, 2012: 274).

In terms of transformative justice, this is most obviously problematic because most of the resources that would underpin a redistributive or welfarist approach to justice are employed in servicing patronage and clietelist practices. The tendency of elites to coalesce around a politics of stability instead of transformation also has other harmful knock-on effects that can stymie a transformative agenda. The manageable instability of elite settlements fosters short-term horizons as leaders try to maximise immediate returns over longer-term investment in infrastructure or people – it is more important to accommodate elite factions than to stimulate the sort of growth that conduces to structural reform (Di John, 2010: 24). Elites are seldom able to commit to singularly normative goals because maintaining the informal settlement usually means responding to elites and ignoring the needs of the masses (Brinkerhoff and Goldsmith, 2002: 9).

When we speak of transformative justice, we do so in an environment where domestic elites have a monopoly on power and where they have compelling reasons to promote short-term security over long-term development or transformation. Analysis of elites makes clear that their economic interests are born more out of issues of culture in under-institutionalised polities and the need for security than simple greed or familiar models of capitalist accumulation as the critical TJ literature implies. Even so, the pressures on them to adopt pro-poor policies are negligible. There are few obvious points where changing opportunity structures can influence or force formerly mobilised elites to prefer broad-based public goods provision to narrow patronage distribution or rent-seeking. Some do, however, exist.

**Developmental and Redistributive Functions of Elites**

Elites can fulfil constructive redistributivist or welfarist roles in post-conflict societies. If they did not, then those top-down progressive policies we occasionally see in transitions like progressive taxation, quotas for employment or education, regional investment programmes or anti-discrimination legislation would be impossibilities, as opposed to rarities. Scholars in the transformative turn are blind to the possibilities for this (like the aforementioned land reform in Colombia) if their conceptualisation of elites remains uniformly pejorative and homogenised. Two possibilities in particular are worth considering. The first responds to the homogeneity question – while critical TJ discourse treats elites as an inherently interconnected and interchangeable oligarchy, this obscures divisions between them that are productive of transformative or reformist impulses. The second builds on this and addresses the pejorativeness question to assert the malleability of elite incentives given their reliance on the provision of at least some social goods to maintain their status.

To begin with productive divisions between elites; political scientists, development scholars and peacebuilders have long been aware that different types of elites exist, often with conflicting interests. For example, rural land-holding elites are often the most adamantly opposed to pro-poor policies to keep the price of agricultural labour cheap, while bureaucratic elites in the civil service are often relatively pro-poor in the interests of a more functional state (Hossein and Moore, 2002: 18-19). Transitional states are riven with such conflicts. Robins’s examination of elites in Nepal reveals the disparity between elites promoting a high-caste Hindu ideal and newer Maoist elites in government opposed to exclusion on the basis of caste or ethnicity. Conflicts between landlords and the CPN-M over redistribution of the former’s land illustrate how elite interests can clash and open opportunities to co-operate with some elites against others (Robins, 2012: 18). Similarly, the (admittedly unsatisfactory) progress made in relation to redistribution and restitution of land in South Africa reflects the clash of interest between African National Congress (ANC) political elites in post-apartheid governments that monopolised political power after 1994 and the white landowners that owned up to 87% of the land there (Evans, 2016: 10). In El Salvador post-conflict economic elites and military elites clashed over the reputational damage ongoing impunity for the latter had on national recovery in terms of investment (Kirchner and Von Stein, 2009: 294). The inevitability of clashes of interests is significant because, as noted above, the political settlement that is (re)established after peace is not a once-off, enduring monolith – in the post-conflict period it is iterative as shifts in the economy, degree of statehood, international incentives etc. affect the organisational cohesion of elites who came together to make peace. Transformation of any sort requires contestation and contention at elite level. Instead of empowering bottom-up groups exclusively, effective TJ might be that which exploits cleavages between reformist and conservative elites or allies with some of them.

In societies not divided vertically by class but horizontally by ethnicity, religion or clan, there is an even less homogenous elite culture. A typical feature is clashes of state elites (themselves divided, as noted above) attempting to extract from society, and local elites that block consolidation of effective authority at the centre (Lake and Fariss, 2014: 569). In many states, political life takes the form of an ‘auction of loyalties’ where competing provincial elites extract a price for their allegiance from divided state elites (De Waal, 2009: 103). The boundaries between the state and the local are not sharply demarcated but drawn and re-drawn through negotiations over the exercise of political and economic authority. In those typically hybrid states where interpenetration of state and local elites through patronage relationships or clientelism is the norm, a proper understanding of the potential for change requires close analysis of the conflicts between them as they promote projects that grant access to certain resources to some groups over others. One thing greater attention to the hybrid nature of most transitional states makes clear is that combinations of state, traditional and community structures produce the best welfare outcomes. Effective bottom-up TJ again should look to weigh in in favour of reformist state elites against conservative rural elites where appropriate, or alternatively support local redistribution over the dispersal of resources to the metropolis.

Where elites are fragmented (and particularly where they have no concentrated revenue source like oil or minerals), ruling elites must work constructively to address the demands of constituencies and potential rivals in order to gain their political and financial support. These create the most propitious conditions for building strong institutions that extract revenue (taxation) from society and distribute benefits widely to broaden the national support base (Berg, 2012: 12). DFID and UKAID (2010: 5), for example, consistently ‘highlight the role of contestation and bargaining between the state, elites and citizens in building the public institutions that deliver development’. The homogenised, broad cultural label of ‘elites’ found in the transformative TJ literature hides important distinctions of power and incentive that we risk not understanding as these distinctions and identities develop in response to the evolving settlement after peace.

These clashes are important because they remind us that any progress towards amelioration of unfair social structures will be less the product of rational design from the top-down or successful agitation from the bottom-up than the outcome of compromises struck between different elites. Relationships between the elite and public are, after all, to a greater or lesser extent reciprocal. Clientelistic practices deliver access to resources or governmental support to poor individuals or communities, and ‘pork’ for regions or groups can provide even broader general gains. Elite settlements cannot survive without a threshold degree of public support because otherwise they could not mobilise supporters. As Brinkerhoff and Goldsmith (2002: 2) put it, reciprocal traditions between elites and supporters that endure:

usually do so because they provide some value to people. They are functional in the jargon of social science—or else they would disappear through disuse. One of the challenges of development is figuring out how to separate the de facto governance institutions that serve, or at least do not contradict, the majority’s needs and well-being, from similar-looking institutions that block or even reverse improvements in social welfare.

In areas of limited statehood, these practices may constitute pockets of effective governance even in the midst of wider state failure (Leonard, 2010), and this conditions support for elites outside of those who simply extract natural resources. As such, ‘elites can rarely take social constituencies for granted, they must maintain an ability to organise, persuade, command or inspire’ (Whaites, 2008: 4). The elite politics of political representation disdained in the TJ literature as irrelevant to the needs of citizens is the tip of an iceberg – often below the waterline we will find ‘followers’ or ‘masses’ whose support is underpinned by a collective pre-occupation with the economic and social wellbeing of the group. Public opinion can constrain even the most ostensibly exclusive or impregnable elite power (Etzioni-Helevy, 1983: 32).

The best prospects for transformation (or, at least, poverty alleviation or better provision of social minima) may therefore lie not with challenging elites, for that challenge is sure to fail given their indispensability to stability and social provision. Instead, bearing in mind (i) the transformative TJ focus on the rearticulation of norms and the empowerment of reform constituencies and (ii) the importance of good governance for the poorest and most vulnerable, the best prospects for transformation may lie with binding existing elites practices to a broader and more inclusive national project. Development actors in particular acknowledge that enhancing the incentives of elites to support inclusive long-term development is at the core of any pro-poor politics (DFID and UKAID, 2010:8). Hosseini and Moore (2002:5), most notably, argue that elites hold the key to developing meaningful anti-poverty strategies not out of any altruistic ethos, but out of self-interest in a more effective state to better project their influence, a bigger economic cake to divide up between their clients or wider welfare provision to expand the client base (Hosseini and Moore, 2002: 10). Inasmuch as transformative TJ aspires to truth commissions that diagnose socioeconomic ills, reparations programmes that conduce to broader welfare outcomes or grassroots empowerment, the best results are likely to emanate from constructive dialogue with elites about solutions to structural inequality and the sorts of framing of economic justice issues that bind elites to a greater commitment to address them. The most powerful arguments are those that not only accord with shared norms about what is morally right, but which tap into notions of elite self-interest and common gains (Hosseini and Moore, 2002: 10). Transformative aspirations like better education, housing and fertility control might better be justified in the instrumental language of development and economic growth than in terms of rights or of their intrinsic worth. Though the transformative turn emphasises bottom-up empowerment and resistance, better results may flow from activities that foreground some of the more inclusive elite incentives by foregrounding those ‘persuasive narratives that justify policies that might reduce poverty in terms of the achievement of other broadly accepted goals’ (Hosseini and Moore, 2002: 16).

**Conclusion**

This chapter has argued that while transformative justice as a rough normative orientation can be commended for its greater responsiveness to the needs of communities than liberal-legalist forms of TJ, its scope is increasingly attracting criticism for being too conceptually opaque. A policy-practice gap is apparent in the divergence between vaguely stated aspirations for structural change and the methods by which it might be implemented. One of the biggest lacunae in the transformative justice literature is the treatment of elites, which are addressed parenthetically, if at all, in a homogenised and pejorative fashion that generates more heat than light. Because of this, it is far from clear that scholars and practitioners have the wherewithal to productively engage with those national- or local-level actors who enjoy direct control over events and whose decisions are the critical factor in shaping the political culture that conditions all possibilities for change. Peacebuilders, development agencies and democracy promoters have long acknowledged that the prospects for any norms, practices or structural changes they and domestic allies promote can only be realised if they understand how existing forms of economic and political organisation (like settlements based on patronage, pork, resource monopolies, clientelism) are shaped by, and reproduce, the interests of elites and their constituencies.

This chapter started with the assumption that it is *not* primarily ‘the retributive roots and narrow agenda of its practitioners’ that prevents the emergence of a practice that addresses social injustice (Robins, 2012: 21), though undoubtedly these have unduly limited the imaginary of justice. The primary impediment to change is not how justice is framed, but the conditions in which it must be conceptualised. While political institutions might change dramatically after transition, prior political, economic and social elites are likely to endure. While some may disappear, others may even emerge stronger, to say nothing of those who rise to prominence during the events preceding transition. In environments where elites have jealously guarded their privileges and their particular constituencies against attempts to redistribute wealth or opportunity on a wider basis, it is uncommon for them to voluntarily concede such advantages where they have the option not to concede. The political economy of clientelism, neo-patrimonialism and pork are underpinned by pressing security logics and culturally legitimate relations. Transformation requires an explicit and constantly reinforced resolve to challenge constraints imposed by historic and contemporary socio-political circumstances. Because critiques of TJ do not engage with this reality in anything but a superficial fashion, it results in significant interpretative errors when trying to understand why post-conflict conditions take the shape they do, most notably the imputations of primary culpability for socioeconomic stasis to the field itself. If the proposals truth commissions, reparations programmes or grassroots actors formulate do not reflect at least some interests of at least some of these elites, their changing balances of power and shifting informal alignments, then it will appear superfluous.

Conflict with some elites is inevitable, but not necessarily all – what is essential for transformative TJ is first to identify and second to work with those elites willing to balance construction with extraction, support for their constituencies with other constituencies in common self-interest, who prefer more inclusive settlements to exclusive ones. Reynolds posits a realistic, if sobering, scope for amelioration (if not transformation) of society when he argues that ‘[i]f elite dominance is to be the reality, perhaps the best that one can hope for is that the relevant elites will decide to prefer long-term stability and state-building to short-term partisan advantage’ (Reynolds, 2005: 65). If transformative justice is to become meaningfully prescriptive and develop some means-end forms of analysis, it needs a research agenda that foregrounds how credible commitments elites make to the public, and the gradual expansion or greater inclusivity of the goods they deliver to retain or build public support, occur. Instead, by focussing to a large degree on the liberal-legalism of TJ and the liberal prescriptions of democracy, the market and rule of law it is supposedly embedded in, we concentrate on formal political institutions at the expense of the socio-political informal structures of power and practice, most notably elite settlements or ‘ways of doing things’ that ultimately underwrite them and alter them beyond recognition.

To do these things, we need to develop an infrapolitics of TJ, one where the concealed sites of agency - culture, identity and self-preservation at the top – have a telling effect on more visible institutional or liberalising dynamics (to adapt phraseology in Richmond, 2011: 116). Such an infrapolitics might (i) provide a practical language for policy proposals, (ii) generate a more productive analysis of the entrenched hierarchies to be challenged, and (iii) help us recognise the limits of change in transitional environments. Instead of asking who TJ should be for (this has been well answered in the transformative justice literature), it would ask what elite actors (local/national, traditional/formal, economic/political) count, and how they interact to produce outcomes. It would shift analysis from the realm of victim-centred values and transformative norms, where we are comfortable, to the arena of compromises and negotiations, where we are not. Indeed, while the bottom-up grassroots actors transformative TJ theorists wish to empower are disparate, those political, economic and institutional elites who possess concentrated power may be easier targets to both identify and to focus reform efforts on. Though in no way dismissive of grassroots empowerment, it remains to be seen whether a literature that has fetishised the local, the bottom-up and subaltern resistance can mimic the pragmatic embrace of elites we see increasingly in development and peacebuilding discourses.

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