

Elites

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The role of elites (those ‘from within the dominant institutions of [political] rule, social prestige and/or economic exploitation’) is usually understood in contradistinction to that of the masses, those ‘actors in subordinate or excluded positions in the social, economic and political order of the ancien regime’ (Karl and Schmitter 1991, pp. 274-275). The tension between the two groups is one that runs through transitional justice at every stage in the debates that consume the field. From the first justice versus amnesty dilemmas to the era of truth versus justice, the normalisation of transitional justice and the present-day era where transformative and bottom-up iterations of transitional justice contest its liberal-legalist biases, elites have been a preoccupation insofar as their assent makes accountability or repair to victimised masses possible, while their resistance or veto diminishes the scope of the transition. However, in a body of scholarly work that becomes ever-more inclusive and deeply researched in its understanding of the needs and desires of masses (most notably victims), elites by contrast have become less and less well understood and theorised over time. The earliest scholarship on transitional justice in the late 1980s and early 1990s was underpinned by an acute awareness of the limits imposed by the political economy of transitions that were largely negotiated between outgoing authoritarian and incoming democratic elites. From this high-watermark of elite theorisation, over time the once paramount attention paid to elites has diminished. The embrace of international law as the normative underpinning of post-authoritarian or post-conflict justice appeared

to reduce the salience of bargaining between domestic actors in elaborating transitional justice policy. Furthermore, as institutional measures of transitional justice change from the more statist approaches like criminal trials, reparations, national truth commissions or vetting to the more restorative approaches like community healing, memorials and monuments, the assent or prohibition of elites ostensibly became less causally significant to the projects scholars observe and support. A commendable tendency to see the 'best' struggles as being those at local level and the best policies those which directly empower the poor has served to marginalise the previously predominant concern with elite divisions and interests.

It is only in the last decade, as the attention of transitional justice scholarship becomes sharply redirected to issues of structural injustice like poverty, underdevelopment and inequality that statist approaches and elite recalcitrance have been brought back in to analysis. However, an emerging discourse that generically treats of elites as an inevitable barrier to more economically transformative forms of transitional justice has emerged that is sharply at odds with how development and statebuilding actors aspiring towards similarly transformative outcomes conceptualise them. The homogenising and emphatically pejorative use of the concept of elites is problematic. The labels we use can pre-empt and distort more discerning inquiries into the potential for powerful actors to catalyse meaningful justice. The discursive construction of elites as the self-interested upholders of a radically inegalitarian status quo may produce the reality it seems to reflect - the power of definition over 'elites' assumes predictable attitudes towards on their part the role of government, distribution of resources and the potential scope of transitional justice that is unhelpfully reductionist.

Elites in the Early Days of Transitional Justice

The earliest theorisations of transitional justice were informed by an acute understanding of how the liberal ideologies of incoming elites, on the one hand, and interests in self-preservation of outgoing elites on the other, fundamentally conditioned the prospects for the public demand for accountability to be realised (Skaar 1999). In the earliest amnesty versus justice debates, liberalising elites acquiesced to limited criminal sanctions, amnesty and impunity negotiated with outgoing military and Communist elites. Indeed, almost all European transitional justice between World War II and post-conflict transition can be explained by the strategies successor elites developed to deal with injustices committed by the previous, authoritarian regime (Huyse 1995). The Latin American debates around impunity that conditioned early theorisation in the field revolved around the 'enormous causal power' of elite bargaining in authoritarian transitions in Latin America and Eastern Europe (Arthur 2009, p. 346). Scholars assessed, defended or assailed elite assumptions that justice could obstruct a transition that otherwise looked inevitable by stiffening authority figures' will to resist in negotiations. This focus on political change as transition to democracy that helped to legitimate those claims to justice and in so doing prioritized legal-institutional reforms would later be criticised for obscuring other claims to justice that were oriented toward social justice and redistribution (Arthur 2009). However, this initial comparative approach to transitional justice stressed the importance of factors that provided a bridge between ideas-based and interest-based explanations for how transitional justice takes the idiosyncratic shapes it does in diverse contexts. Subotic (2013, p. 127), notably, argued that the traditional accountability goals of transitional justice are contested between three types of elite, namely true believers, instrumentalists and resisters. There remains some degree of attention paid to elite bargaining over criminal

accountability in the likes of Kenya where possible ICC referrals have become an issue for intra-elite horse-trading (Musila 2009). Scholars have also examined and how power-sharing between antagonists operates as a barrier to post-conflict accountability (Aroussi and Vandeginste, 2013). Scholars are conscious of how elites can undermine traditional forms of accountability or redress, notwithstanding the discursive hegemony of transitional justice 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, p. 324).

Elites and the Turn Towards Holistic Transitional Justice

Beyond criminal accountability, elite interests have become progressively de-centred in transitional justice discourse. Three broad but related reasons explain this trend. The first is a marked tendency within critical transitional justice scholarship to de-privilege the state, and hence the elites at the apex of its formal and informal political structures. Because transitional justice is a self-consciously victim-centric undertaking, it is understandable that elites might lose some of their earlier paramount importance. As a field, it 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). There is even a fear that scholars and

practitioners themselves may become a remote elite in sites of intervention, complicating the 'who speaks for whom' dilemma that runs through reflexive forms of praxis (Rooney and Ní Aoláin 2018, p,2). The second is the embrace of civil society as an analytical concept which can be understood in contradistinction to traditional elites. Transitional justice has seen what might be called a participatory revolution that emphasizes reconnection with to the true 'subjects' of justice, namely, the voiceless, the local, the grassroots and the indigent. To prioritise bottom-up engagement and empowerment, alternative TJ approaches looked both 'inwards' and 'downwards' for (true) justice. Theories or projects of justice 'from below' 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). It may also be significant that while victims' and civil society organisations are relatively straightforward to access for research purposes, relationships between elites are seldom visible and are more often deliberately covert, and consequently difficult to research.

The third reason for de-centering elites flows from the emerging concern that transitional justice, if it is to be relevant, must address issues of inequality, maldistribution and poverty. There is an understandable dismay with the competence and probity of contemporary transitional states, particularly the types of neopatrimonial states that emerged after transitional justice in the likes of El Salvador, Sierra Leone and East Timor, where extensive truth and accountability processes have done little to ameliorate a fundamentally damaging socio-economic status quo. Scholars, despairing of the political and economic stasis and corruption of post-conflict states in particular have moved elites out of the explanatory spotlight,

emphasising instead the fragmentation of politics, disengagement from institutions of governance, and expanding areas of social life that fall outside of the ambit of state authority. Elite failures to embrace economic justice, and their tendency to use power to pursue market-based solution and reward supporters, is evident in contexts as disparate as Argentina, Poland, Kenya and South Africa. In a broader discourse premised on principles of equality, it is naturally problematic that some groups concentrate more wealth and power than others. To the extent that transitional justice has understood socioeconomic and development matters as alien concerns to the field, it has endured internal self-critique for complicity in this. 'Elites' has become the dominant catch-all for conceptualising the beneficiaries of structural injustice in contemporary transitional justice discourse, invariably seen as unrepresentative of their societies' needs, monopolising opportunity and wealth while manufacturing consent through clientage and corruption. Scholars criticise the field's initial reluctance to meaningfully scrutinise the relationship of elites to the political economy of post-conflict states, suggesting it reflects a preference among TJ policy-makers 'to maintain existing normative and political hierarchies at the national level over the interests of the many.' (Aguirre and Pietropaoli, 2008: 367). Rooney and Ní Aoláin (2018, p. 2) convincingly argue that high-profile local negotiators are more apt to address the violence at hand and not the structural violence that underlies the resort it, implicitly manifesting a hierarchy of issues 'reflecting the status quo power dynamics and priorities of the state and elites.' Critics worry that political elites shape transitional justice discourse to exclusionary ends, 'finding in it a malleable set of linguistic tools for obscuring more self-serving or sinister agendas' (Van der Merwe and Lykes, 2018, p. 383). Particularly in post-colonial sites of transitional justice, truth-telling, criminal accountability, acknowledgement or any other measures that

might deliver justice for victims or institutional reforms 'are conceived as threats to the power of the local elite. As a result, their engagement with transitional justice measures has been in protecting their privileges and powers, and substantively little else' (Yusuf 2018, p.275). Critics perceive 'a need, as far as possible, to externalise transitional justice from political elites' (Hansen, 2013: 119).

Elites and Transformative Justice

As a field of research and praxis, transitional justice is undoubtedly more responsive to victim needs with its more holistic attention to issues of welfare, community development, structural inequality and poverty than it was when the field was being established. However, the aspirations are so totalising (at times resembling the content of modern governance in its entirety) that if transitional justice is to meaningfully impact life at anything beyond the most grassroots level, it will need to engage with the interests and motivations of actors who control national politics and the economy to a much greater degree. Much of the most transformative iterations of transitional justice (a state sufficiently interventionist to regulate patterns of wealth distribution, welfare, and health) shade into statebuilding, but here again elites are also prominent. Theorists in this field have long argued that the developmental, welfarist or redistributive potentials 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' (Whaites 2008, p.4).

Of course, De Greiff (2009, p. 41) is correct when he argues that the most serious challenge facing transitional justice processes seeking structural reform is that 'powerful economic elites' may attempt to derail or undermine the process.

Where political elites are factionalised or divided, post-authoritarian and post-conflict

governments are of necessity preoccupied with short-term survival and seldom commit to long-term development or redistribution that can underpin structural transformation. Economic elites may even use their economic power to extract exclusive benefits through patronage, monopolies and restrictions on competition. However, there is no state in the world that totally abjures responsibility for provision of services or alleviation of poverty. However, transitional justice literature uses the concept of elites in a pejorative sense to imply an uniformly corrupt, greedy and conservative establishment, thereby fostering a discourse in which their interests are assumed to be opposed to more emancipatory or reformist groupings. Development studies literature, by contrast, is moving away from this sort of 'interest group economism.' Inevitable conflicts between rich and poor cannot be assumed, for the simple reason that that at least some elites will have ideological commitments to poverty alleviation or a self-interested motivation to use development to bolster their political prospects (Moore and Putzel 1999, pp. 21-22). Development, statebuilding and political theorists largely accept that most states are fundamentally ordered by formal or informal political settlements in which prominent elites allocate institutions and power between themselves. The explicit or tacit agreements among these elites inevitably affect the responsiveness of the state to international norms, domestic reform coalitions and public need. Scholars of these settlements argue that quality of governance and pace of development (on which economic justice depend) are inevitably the product of struggles and compromises among powerful elites. Insofar as these elite factions secure access and control over sources of wealth and power or advance certain ideology or national vision, the homogenised depiction of elites characteristic of the shallow critical discourse in transitional justice does not help us understand the importance, in poor countries, of

the relationship between people who control political power and those who control economic opportunity. This a relationship that is fundamental to any aspiration towards greater state responsiveness to poverty or inequality. In most post-authoritarian and post-conflict states, there can and often does exist a mutually-supportive relationship between *some* elites and citizenry which the pejorative elite discourse does touch upon. Political leaders need capital to generate state revenue, finance parties and invest to create prosperity that support any political order. Economic elites need public authority to provide security, financial and physical infrastructure, and credible reassurance that they will be able to retain a certain level of profits from their investments. The World Development Report (World Bank 2011, p. 120-128), for example, contends that that successful transition from chronic fragility and/or cyclical violence is most likely to be produced by 'inclusive enough' political coalitions. Here, political elites send credible and publicly meaningful signals of change in order to (re)build confidence in collective action as a necessary prelude to intergenerational investments of political and social capital to transform society in inclusive ways. While there is something idealistic in the idea of inclusive coalitions where different elites can coalesce and amass sufficient capability, authority, and legitimacy to collectively sustain meaningful and egalitarian development over the long haul, theories of transitional justice that emphasise transformation or socio-economic justice must pay some attention to the existence of formal and informal elite pacts that underpin growth, development and welfare in the developing world. Examination of post-conflict states reveals that in contemporary contexts, the process by which elite bargaining lead to alterations in the make-up of the ruling coalition (as groups break off or ally with broader segments of society) exerts a decisive influence on responsiveness to public needs. As the statebuilding theorist

Alan Whites puts it, 'elites can rarely take social constituencies for granted, they must maintain an ability to organise, persuade, command or inspire. Wider societies are not bystanders in political settlements or state-building.'

As with statebuilding, development scholars and practitioners eager to promote equitable development of the sort that animates transformative theories of transitional justice have long argued that because elites are indispensable in creating effective public authority, it is 'more helpful to think about the potential for their interests to overlap with a progressive agenda, or about more indirect strategies that could help shift their interests over time' (Unsworth 2010, p. 10). Ultimately, only much-maligned elites can engage with or reconcile often competing interests and encourage institutional and behavioural change that can bring more equitable policy outcomes. Pressure from grassroots agents may be salutary, but a transformative agenda needs to engage with figures who can mobilise coalitions to support reform, raise revenue and deploy what state capacity exists to develop a more equitable future that other elites with potentially effective veto power over public policy can buy into. The fundamental question becomes not how elite interests can be circumvented, for this is impossible – the question is in what circumstances might forms of transitional justice like truth commissions, reparations and institutional reform promote greater responsiveness or alliances with broader segments of society. It is possible that too much emphasis has been placed on the way the liberal international transitional justice imaginary constrains a state's 'policy space', and too little on how it affects their political settlements.

Conclusion

Transitional justice began as a discipline fundamentally concerned with what opportunities for justice emerged from a large-scale shift in the ruling elite coalition.

Amnesty, trials, vetting and truth were the products of explicit and implicit horse-trading over power and accountability. Since then, if we break the field down into its constituent parts of *transition* and *justice*, the latter has eclipsed the former as a subject of study. Scholars dwell more on the meaning of justice for victims and for the field's self-identity than the political economy of application. The more reflexive, internal critique of transitional justice's liberal-legalism this shift has produced is welcome. However, insofar as it adopts a uniformly uninterested and disdainful attitude to elites, it minimises the scope for socio-economically emancipatory forms of justice it increasingly aspires towards. An approach to transitional justice that takes cognisance of political settlement or elite bargaining calls into question the proposition that justice is a matter of envisioning justice sufficiently broadly, empowering bottom-up coalitions or tempering the liberalism of interventionary actors, even if we accept that all of these things are welcome. It is the nature of elite political settlements that shapes a state's potential for more redistributive politics, and not the ideology of transitional justice interveners. The centrality of elite acquiescence to meaningful justice was apparent in first generation scholarship that embraced the Latin American, Eastern European and South Africa transitions. Transitional justice at all points was realised in the interstices between justice advocacy and the limits of the emerging elite settlement. That this advocacy commendably embraces a wider set of socio-economic issues by no means suggests that elite settlements decline in relevance. If anything, the opposite is the case. While liberal transition often removed old authoritarian elites from the liberal-legalist chessboard, attempts to alter broader social structures implicates much stickier and less institutionalised interests that permeate the economy like neo-patrimonialism and transnational capital. If transitional justice is to speak

meaningfully to the need for state responsiveness to socio-economic needs of victims and citizens, it will have to understand the matrix of political opportunity created by divisions between elites and their different dispositions. Scholars and activists must reconcile an understandable suspicion that those who exercise power do so as forms of self-interested domination with an acknowledgment that there are elites who instead comprehend power more as a constructive capacity to get things done in some common interest.

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